

MEETING OF THE PARLIAMENT

Thursday 2 February 2006

Session 2

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Scottish Parliament

Thursday 2 February 2006

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 09:16*]

Business Motion

The Deputy Presiding Officer (Trish Godman): Good morning. The first item of business is consideration of business motion S2M-3907, in the name of Ms Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Human Tissue (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Human Tissue (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated (that 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, other than a suspension following the first division in the Stage being called, or otherwise not in progress):

Groups 1 and 2 – 40 minutes

Groups 3 and 4 – 1 hour 10 minutes

Groups 5 to 7 – 1 hour 40 minutes.—[*Ms Margaret Curran.*]

Motion agreed to.

Human Tissue (Scotland) Bill: Stage 3

09:16

The Deputy Presiding Officer (Trish Godman): We move to stage 3 proceedings on the Human Tissue (Scotland) Bill.

I will make the usual announcement about the procedures that are to be followed. We will deal first with amendments to the bill, then we will debate the motion to pass the bill. For the amendments, members should have with them the bill as amended at stage 2—SP bill 42A—the marshalled list, which contains amendments that I have selected that were lodged by the deadline and the groupings that I have agreed.

The division bell will sound and proceedings will be suspended for five minutes before the first division this morning. The period of voting for the first division will be 30 seconds. Thereafter, I will allow one minute for the first division after a debate and all other divisions will last 30 seconds. As members are aware, the use of the division bell in stage 3 proceedings was agreed by the Parliamentary Bureau as part of the protocol on use of the division bell.

Section 3—Use of part of body of deceased person for transplantation, research etc

The Deputy Presiding Officer: Group 1 is on presumed consent of adults for transplantation. Amendment 11, in the name of John Farquhar Munro, is grouped with a number of amendments that are shown on the groupings list, which also shows the amendments that are subject to pre-emption. If members consult the list, that will save me from having to read them all out.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I hope that the debate will be useful and effective.

In the United Kingdom, on average one person who is waiting for an organ transplant dies every day. Between April 2004 and March 2005, 52 Scots who were awaiting transplants died. Many others did not even make it on to the list before they died. The many people who have family members or close relatives who are waiting for transplants know the trauma that that causes. In the past 10 years, although the number of people who are waiting for organs has increased, the number of organs that are available for donation has fallen. The resultant gap must be addressed.

The main reason why I have lodged amendments that promote presumed consent is that although I welcome the Scottish Executive's efforts to bridge the gap between organ donation

and demand, its proposals alone will not increase the rate of organ donation, which presumed consent would do.

Figures show, and statistics demonstrate, that opt-out systems increase donation levels. Spain has the highest organ donation rate of any country: its opt-out system has led to a rate of 33 cadaveric organ donations per million population. The question is this: does Scotland aspire to reach that level or Denmark's level, which is less than half that number of donations per million population and which operates an opt-in system that is similar to that which the Scottish Executive proposes?

Repeated surveys indicate that 90 per cent of people in this country support organ donation, but only 21 per cent of people carry organ donation cards, which is surprising. Ninety per cent support the concept, but only 21 per cent carry cards to confirm their wishes. That indicates to me that, although the Scottish Executive's proposals will codify existing laws and perhaps make the work of transplant units easier, the core pool of people who wish to donate will remain limited to the 21 per cent of people who carry donor cards.

Unsurprisingly, when individual wishes are unknown and recently bereaved relatives are asked to decide whether to allow organ donation, many opt for the default position, which is not to donate. As a result, about 40 per cent of relatives refuse to give their consent. However, if they are asked the question again after a month, they say that they regret their decision.

Whatever the result of the votes on my amendments in the group, it is important that the Executive encourage people to discuss organ donation with their families. The adoption of a system of presumed consent would address that by making it easier for people to achieve their wish to donate, given the exceptionally high level of support for donation, and is therefore entirely in line with the principles of the bill. Also, the adoption of a system of presumed consent will increase the number of donations by the simple means of increasing the number of donors in the donor pool. Figures undoubtedly show a positive correlation between presumed consent and higher rates of organ donation. However, the stark fact remains that, even if we take the glowing example of Spain, only 33 bodies per million population there are suitable for donation.

At the very least, whatever the method of organ donation Scotland will have at the end of today, the Executive must at least aspire to a level of donation that is the same as, or greater than, that of Spain.

I move amendment 11.

Mr Stewart Maxwell (West of Scotland) (SNP): John Farquhar Munro ably explained his reasons

for lodging the amendments in the group and why it is vital that members support them. I, for one, support them.

The debate on amendment 11 and John Farquhar Munro's other amendments in the group is not about a small change to the law, a technical issue or an administrative change to an organisation; it is literally a debate on a subject that is a matter of life and death for many of our fellow Scots. As John said, 52 people died last year while they were waiting for transplant organs.

Recent estimates show that, if presumed consent were to be included in the bill, approximately 29 extra donations would be made. That figure does not mean that 29 people would be saved, but that 29 people would get a heart transplant, 29 more would get a liver transplant and another 58 would get kidney transplants. In total, 116 people would be saved if presumed consent were introduced. In addition to the 116 people who would be saved, another 58 people would be lifted out of blindness. We are talking not only about saving lives; many people need cornea transplants that will give them sight again.

The debate on John Farquhar Munro's amendments is extremely important. As he said, although 90 per cent of people in this country support organ transplantation, very few carry a card. I carry a card and I know that many other members of the Scottish Parliament also do, but many people do not.

Importantly, the debate is not about the removal of anyone's rights. If we were to have a system of presumed consent, a person would have the absolute right to say that they do not wish their body to be used after their death—that right is absolute; it cannot be taken away. Instead, we are talking about granting rights to people who are waiting desperately on transplant lists.

To this day I have never understood why other people should get the final say about what happens to me on my death. If I die and my expressed wish is that my body be used for transplant, why can others override my wish? I do not think that other people—whether my wife, mother, father, daughter or my nearest and dearest friends—should have the final say about what happens to me; I should have the final say. At the point of my death I want my body to be used, if it is at all possible, to help others. That is the right thing to do. By introducing presumed consent we could achieve that; we could give life to many people.

I urge members to look not to their party whips—I hope that they have not been whipped on this issue—but to their consciences, and to consider whether to introduce presumed consent would be the right thing to do for our fellow Scots. I ask

members to support John Farquhar Munro's amendments.

Dennis Canavan (Falkirk West) (Ind): I support John Farquhar Munro's amendments for the simple reason that they would help to save lives. I am sure that we can all think of at least one friend or relative who has died waiting for an organ transplant that never came. Statistics suggest that every week someone in Scotland dies while waiting for a transplant and others die without even getting on to the waiting list. Nevertheless, many deceased persons' organs, which could have been used to save lives, are buried or cremated because the deceased person never got round to signing up to the organ donor register or to informing their relatives of their wishes.

It would be wrong to assume that all the people who are not on the register object to organ donation. Opinion polls suggest that about 90 per cent of the population would be willing to donate their organs for transplant, but only 21 per cent are on the register. If a system of presumed consent were to replace the status quo of presumed objection, there would be a greater likelihood of granting the wishes of deceased persons.

What about the wishes of the relatives? John Farquhar Munro's amendments would ensure that if the nearest relative objected and the deceased person had not opted in, the removal of organs for transplant could not go ahead. In such situations, the wishes of the relatives would be taken into account.

Evidence from other countries suggests that a system of presumed consent increases the rate of organ donation. Belgium and the Czech Republic have a system that is similar to what John Farquhar Munro proposes and they both have donation rates of more than 20 per million population, compared with only 12.3 per million population in the United Kingdom. That suggests that the amendments could lead to an increase of more than 60 per cent in the donation rate.

The Westminster Parliament failed to introduce a system of presumed consent in the Human Tissue Act 2004. The bill that is before us fails similarly, although public opinion is already moving towards support for presumed consent. A few years ago, there was only minority support for that position, but last year a survey that was conducted on behalf of the BBC indicated 60 per cent support.

Parliament has a great opportunity to show a lead not just to the people of Scotland but to people throughout the UK. By agreeing to the amendments, Parliament would lead public opinion, set an example to other parts of the UK and save lives, while respecting the wishes of

people who have lost loved ones. I urge members to support the amendments.

09:30

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): In introducing his amendments, John Farquhar Munro set out well why the bill is before us, which is to save lives by increasing organ donations. Last year, 52 people died because there were not enough organ donations and 700 people are still on the waiting list for donations.

In Scotland we are doing slightly better than the rest of the UK. Statistics that have just been published show that 21 per cent of people in the UK carry an organ donation card, as John Farquhar Munro and Stewart Maxwell said, but in Scotland the figure is nearer 25 per cent. The card is completely worthless, because it has no legal standing whatever. The card has no force in law, which is why the Executive introduced the bill; it wants to ensure that the card has legal effect. We had a little bit of to-doing at stage 2, but I am delighted that the Executive has ensured that the 25 per cent of Scots who carry cards and are on the register will have their wishes legally enforced as soon as the bill is passed.

Stewart Maxwell said that no one has the right to overrule his wishes. That is correct. The bill is all about authorisation, which the amendments fail to recognise. The whole basis of our national health service is informed consent, not presumed consent. In other words, it is not a case of doctor knows best or the state knows best.

I refer to some of the evidence that the Health Committee received; I wish that some members had turned up to listen to it. According to Dr MacKellar of the Scottish Council on Human Bioethics, the system of presumed consent, which John Farquhar Munro advocates, is supported only by the British Medical Association; none of the other medical organisations is in favour of it, because it would be a breach of the European convention on human rights and of bioethics. The argument that John Farquhar Munro, Stewart Maxwell, Dennis Canavan and others have made that an opt-out system would increase donations is wrong and flawed; it would not do so.

Mr Maxwell: Will the member give way?

Mike Rumbles: If the member waits a minute I will let him in.

In evidence to the Health Committee, John Forsythe of the Scottish Transplant Group said that a few years ago the refusal rate—the rate of relatives refusing consent to transplant—was 30 per cent and that it has now increased to 46 per cent. He said that we can only guess why the rate

has risen, but following events at Alder Hey children's hospital, Bristol royal infirmary and other places, there has been a slight loss of trust of those who deliver care among those who receive it. It is important that what we put in place does not damage that trust further.

In paragraph 133 of the Health Committee's stage 1 report we highlighted John Forsythe's comments. We said:

"there is little evidence from international experience that changing to a presumed consent system produces a major change in levels of donation. He indicated that colleagues in Spain, where an opt-out system is used, had advised him that what happens there is very similar to what is proposed in the Bill – that relatives are consulted to ascertain the views of the deceased."

That is what the bill is about.

John Farquhar Munro's amendments are well-meaning—their aim is to increase the level of donations. However, I believe, and all the evidence suggests, that they would not do so. If the amendments are agreed to, they would damage the campaign, in which so many of us throughout the chamber and the country have been involved for so many years. They would increase mistrust of the NHS and the state and they are not supported by any medical organisation other than the BMA.

Authorisation, as is provided for in the bill, is the right way to proceed. I am convinced that, coupled with a major advertising campaign, the bill—unamended by John Farquhar Munro's amendments—will be instrumental in saving lives. It is a very good bill and the 700 people who are waiting for organ donations will welcome it. I do not think that the amendments would help in any way.

The Deputy Presiding Officer: Another three members wish to be called. They have two minutes each.

Mrs Nanette Milne (North East Scotland) (Con): I will be brief. The provision to ensure that once authorisation is in place relatives cannot overturn it after the death of the potential donor will strengthen the present opt-in system. It will, coupled with on-going promotion and support of transplantation, ensure an increased number of donors. None of us disagrees that we need more donors.

I point out to John Farquhar Munro and others who have cited the example of Spain that there, the most important factor in identifying donors is not considered to be the opt-out system but the fact that every hospital in Spain has someone with the responsibility for ensuring that, when a person dies, their relatives are approached with a view to the deceased's organs being donated. That is the

significant factor, not whether we have an opt-in or an opt-out system.

Janis Hughes (Glasgow Rutherglen) (Lab): I am well aware of John Farquhar Munro's interest in this area, which is similar to mine and that of others, including my colleague, Margaret Jamieson, who has previously debated the matter in the chamber.

This is an emotive issue and I have much sympathy for the arguments that have been expressed. I believe that the bill, in the form in which it has been presented to Parliament, and the information that the Executive has committed to issue as part of the legislative process, will make a huge difference and will highlight the issues surrounding organ donation and transplantation.

I am aware of the systems in other countries, such as Spain, which John Farquhar Munro mentioned. There are various systems in various countries—I do not know which, if any, would be right for Scotland. There are soft opt-out systems and hard opt-out systems. Which would be right for Scotland? We have not had that debate. We did not take evidence on that at length during stage 1 of the bill, but such an important issue deserves careful consideration. We know that some people are in favour of what John Farquhar Munro suggests and that some people are not. We have to ensure that we hear everyone's views and that the professionals who are involved share the view of those who wish to change the legislative position.

We must give the matter careful consideration and we should not deal with it in amendments at stage 3. I hope that we can return to the matter at some point. I will not support John Farquhar Munro's amendments today.

Shona Robison (Dundee East) (SNP): The vote on the amendments should be a free vote, because it is not a party-political issue; it is about the views of individuals. My personal view is that authorisation is the way to proceed because we must respect the wishes of deceased persons. There should be informed consent, not presumed consent.

The relatives of a deceased person who had not expressed a view about organ donation will be consulted. Mike Rumbles made the most important point in the debate so far when he said that the issue is about trust. Like it or not, after Alder Hey and other tragedies, the public have lost some of their trust in the system. That must be built up again; the bill will go some way towards achieving that. It has the potential to increase the level of organ donation, but that potential will be realised only if the bill is backed up by an effective public information campaign about organ donation.

That will be the key to the bill's success. I ask people to support the bill and to reject John Farquhar Munro's amendments.

The Deputy Minister for Health and Community Care (Lewis Macdonald): As many members have said, the most important principle in the bill is the principle of authorisation. We have put that principle in place because we recognise that the existing system of passive consent to organ donation is no longer fit for purpose.

In modernising our human tissue legislation, we had a choice to make between a system that would replace passive consent with active authorisation, which is what the bill proposes, or a system which would presume consent on the part of people who do not object, which is what John Farquhar Munro's amendments would put in place. As Janis Hughes suggested, a time might come when it will be safe to presume consent on the part of people who have expressed no view. However, that time is not now.

In my view, a change that is as radical as a switch to a system of presumed consent for transplantation could be introduced only if there were clear evidence of strong public and professional support for it. Although many members might welcome such a move, the evidence simply does not exist. As Mike Rumbles, Nanette Milne and others said, one of the lessons from disclosures about retention of children's organs after post-mortem examination is that, for many people, presumed consent is not consent at all.

Many people are willing to donate organs and tissue after their death, but they want to have their say about what organs or tissue will be taken from their bodies and what that will be used for. That is why the fundamental premise of the bill is so important. The bill is based on the principle that people's wishes should be respected after their death. That means that it is for each person to make those wishes clear. If that has not happened, authorisation must be obtained from the people who were closest to that person in life and who are most likely to know his or her wishes. Without authorisation from the deceased or their nearest relative, transplantation cannot happen. On that basis, I hope that Stewart Maxwell will accept that what he says he wants will be delivered by the fundamental principles of the bill as it stands.

Under Mr Munro's amendments, the only wish that people would be able to record would be to prohibit the removal and use after death of their body parts for transplantation. Where there is no prohibition, the adult may be deemed to have authorised the removal and use of organs but only—as Dennis Canavan pointed out—after their

nearest relative has also had the opportunity to object to donation going ahead.

There are a number of grounds on which the nearest relative can object to organ donation, despite the fact that the deceased person had not registered their objection to their organs being donated. One of those is that transplantation of the deceased adult's body parts would cause significant distress to the nearest relative or to the deceased person's partner, parent, child, brother or sister.

A clinician who was in urgent need of an organ would face a much harder task if Mr Munro's amendments were passed. Under the current system, which we wish to replace, he or she would have to seek the consent of the family of the deceased. Under the provisions in the bill, that onus on the clinician will no longer be required if a person has, before their death, authorised organ donation. The nearest relative would need to be consulted only if no such authorisation had been given. In that event, the nearest relative would be asked whether they knew the person's wishes and were prepared to authorise organ donation.

Under Mr Munro's amendments, the clinician would always have to contact the nearest relative unless a specific prohibition had been registered by the deceased. The nearest relative could then object on the basis of the distress to themselves or another person in the family that would be caused by the transplantation. In other words, there would be not fewer barriers to organ donation—which is John Farquhar Munro's intention—but new barriers to organ donation. In practice, if a person wanted to donate their body parts, that positive intention could be ignored and overruled by the nearest relative on the basis of the distress that might be caused to family members.

John Swinburne (Central Scotland) (SSCUP): Will there be a national register of people who want to donate human parts after death?

Lewis Macdonald: That is precisely what the bill will do. It will place at the centre of the process the authorisation that has been granted by an individual, rather than an objection that might have been registered by that individual or another person, which is what would be required under a system involving presumed consent.

It has been said that about a quarter of the Scottish population have put their names on the NHS organ donor register. Under the bill, their organs will automatically be available for transplantation after death. Under John Farquhar Munro's amendments, nobody's body would be available in that sense; every case would have to be checked with the nearest relative by the clinician, unless a prohibition was in place.

The approach that the bill takes is the right one. It will increase the number of organ donations, honour the wishes of the deceased and bring up to date the basis on which relatives are approached.

This is a policy matter—it is not simply a matter of personal belief. I therefore urge John Farquhar Munro to seek to withdraw his amendments. If he will not do so, I urge Parliament to maintain the unanimity of support for the principle of active authorisation by rejecting his amendments.

09:45

John Farquhar Munro: The majority of opinion seems to be opposed to what I propose, which is disappointing.

I support the Executive's proposal in the bill. It is an excellent move and a big improvement on what we have at the moment. However, I introduced the concept of presumed consent to enhance and improve the bill. As a consequence, I would like to test the feeling of Parliament, so I propose that my amendment be voted on.

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I suspend the meeting for five minutes.

09:46

Meeting suspended.

09:51

On resuming—

The Deputy Presiding Officer: We will now proceed with the division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Canavan, Dennis (Falkirk West) (Ind)
 Curran, Frances (West of Scotland) (SSP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)

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)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (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)
 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)
 Matheson, Michael (Central 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)
 McLetchie, David (Edinburgh Pentlands) (Con)
 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 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)
 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)

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 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 18, Against 87, Abstentions 0.

Amendment 11 disagreed to.

Section 4—Disapplication of sections 3, 6 to 12 and 14 in certain circumstances

Amendment 12 not moved.

The Deputy Presiding Officer: The amendments in group 2 are technical or consequential amendments. Amendment 1, in the name of the minister, is grouped with amendments 38, 61, 5, 6 and 7.

Lewis Macdonald: As you mentioned, Presiding Officer, the amendments in group 2 are technical or consequential amendments. Amendments 38 and 61 follow the amendments that were made at stage 2 to prohibit the withdrawal of authorisation for transplantation after it has been given by an adult's nearest relative or, in the case of a child, by a person with parental rights and responsibilities.

Amendments 5 and 6 seek to ensure that an adult who is blind or unable to write is able to withdraw authorisation for post-mortem examination in writing through the use of a signatory and a witness. They complete the package of amendments that we have lodged to make provision for people in that category. Amendments 1 and 7 are simply drafting amendments.

I move amendment 1.

The Deputy Presiding Officer: I refer members to the list of groupings, which shows the pre-emptions.

Amendment 1 agreed to.

The Deputy Presiding Officer: Group 3 is on the disapplication of the authorisation requirements in parts 1 and 2 for the bodies of persons who have been dead for at least 100 years. Amendment 2, in the name of the minister, is grouped with amendment 4.

Lewis Macdonald: Amendments 2 and 4 were lodged as a result of concerns expressed by the Wellcome Trust and the Medical Research Council to the Executive about the possibility that the bill would curtail investigations of bodies of historical interest. Much can be learned from the removal of a tissue sample from a body that has been held in an existing collection for many decades. If an ancient body is discovered preserved in a peat bog, researchers will naturally be keen to examine the body for the information that it might yield—for example, on the cause of death. Under the bill, such investigations might conceivably be held to constitute an offence, because no authorisation for such activities would be in place from the individual or from identifiable family members, for obvious reasons.

We do not want scientists to have to investigate the family tree of a body in a peat bog before they undertake carbon dating of it. Therefore, amendment 2 disapplies the authorisation and offence provisions in part 1 in cases in which the person died at least 100 years before the day on which section 3 comes into force. Amendment 4 does the same in relation to part 2, on post-mortem examinations.

The amendments are drafted broadly so that they will permit anything involved in relation to the body of a deceased person, where the person died at least 100 years before the day on which the relevant provision comes into force.

Amendment 2 moved—[Lewis Macdonald]—and agreed to.

After section 5

Amendment 13 moved—[John Farquhar Munro].

The Deputy Presiding Officer: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Canavan, Dennis (Falkirk West) (Ind)
 Curran, Frances (West of Scotland) (SSP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Swinburne, John (Central Scotland) (SSCUP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 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)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 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)
 Matheson, Michael (Central 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)
 McLetchie, David (Edinburgh Pentlands) (Con)
 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 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)
 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)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 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 18, Against 84, Abstentions 0.

Amendment 13 disagreed to.

Amendment 14 not moved.

Section 6—Authorisation: adult

The Deputy Presiding Officer: Group 4 is on the prohibition of the use of body parts for transplantation. If members look at the list of groupings, they will see the pre-emptions. Amendment 15, in the name of Nanette Milne, is grouped with the amendments shown in the papers.

Mrs Milne: I will speak principally to amendments 15 and 17, because the others are all consequential on amendment 15. If the amendments appear to be somewhat complicated, that is because they reflect the complexity of the bill.

The amendments would enable a person to register opposition to the removal of a body part after death for the purpose of transplantation, research, education, training or audit. They would give the choice actively to prohibit the removal of a body part as well as actively to authorise it. They address the potential problem that would face a person who does not know his nearest relatives and so cannot make his wishes known to them, or who does not trust them to act on his wishes. Without the amendments, such a person could not prevent unknown or unreliable relatives from making the decision to have body parts used after death against the person's wishes.

We feel that the absence of a fail-safe mechanism to allow people to record their wishes, whether positive or negative, is a cause for concern. The amendments would allow for everyone's wish to be respected and accepted, and would prevent an unethical situation arising should a decision go against the real wishes of a deceased person.

Apart from amendment 17, the amendments in the group are consequential on amendment 15. They mirror the structure of the bill, so that each

time the authorisation process is mentioned, the choice of prohibiting authorisation will also be mentioned.

The amendments do not apply to children who are under the age of 12, but they do apply to those who are aged between 12 and 16. If children who are between the ages of 12 and 16 can authorise donation, it is logical that they should also be allowed to prohibit donation.

The amendments also reach into the area of checking the relevant paperwork after death, to ensure that medical practitioners check for prohibition as well authorisation before removing body parts for transplantation and so on.

Amendment 17 addresses the situation that could arise if conflicting mandates are in place. It makes it clear that the terms of the later authorisation should be followed. For example, if the first mandate stated that all organs could be donated following death, and then another was drawn up afterwards that stated that all organs could be donated apart from the corneas, the latter would be acted upon as reflecting the true wishes of the deceased person.

The amendments do not seek to introduce a register for prohibition because, as was made clear in evidence to the Health Committee, there are many ways of registering authorisation, whether through the donor register, verbally or in writing; therefore, neither should notice of prohibition be limited to a register. Again, that mirrors the provisions in the bill. However, the bill does not prevent the setting-up of a register and the issue could be revisited in future if necessary.

It seems to me only right that people who feel strongly about the matter should be given the opportunity to record their opposition to the removal of some or all of their body parts for the purposes stated in the bill.

I move amendment 15.

10:00

Euan Robson (Roxburgh and Berwickshire) (LD): I read the amendments with interest, and I believe that they would add an unnecessary level of complication. If the individual wishes to prohibit the use of all their body parts, they need only not actively authorise use, and there are other methods by which someone who does not wish one or more of their body parts to be used, but is quite prepared for other parts to be used, can make that clear without having a level of complication in the bill that puts the use of certain body parts on a sort of statutory basis. I fail to see why the bill would need to go into such a level of complication and detail when, if an individual does not wish a particular body part to be used, they

can express that very clearly to their relatives during their lifetime.

Although I understand the intention behind the amendments, they would lead to a level of complication and difficulty in the bill—and perhaps to some unforeseen circumstances in certain aspects of the day-to-day working of the bill—that would be unfortunate. In times to come, we might need to revisit the subject if clear difficulties arise from the practical application of the bill. However, at this stage, I am not minded to support the amendments.

Lewis Macdonald: Nanette Milne's amendments respond to very serious discussions at stage 1, but I do not believe that they are necessary or appropriate. I do not think that we should extend the organ donor register to become a register of both authorisations and prohibition; nor should we set up and run a separate register of organ donation prohibitions. Whichever vehicle was used to implement the amendments, it would run directly counter to the purpose of the bill, which is first and foremost to support people's wish to do something positive after their death. That is the principle behind authorisation.

I recognise that there are people who do not want parts of their bodies to be used for the purposes in the bill and who might feel strongly about that. I fully accept the principle that their wishes should be respected, but I am confident that the bill will allow such objections to donation to be respected. The first safeguard in the bill is that nothing can happen if there is no authorisation by the person, or by their nearest relative or a person with parental rights and responsibilities. There can be no transplantation by default, nor—because of the decision that we made a few minutes ago—can there be any transplantation on the basis of presumed consent. The bill underlines that by bringing criminal sanctions to bear. If a clinician were to proceed without authorisation, they would face stiff penalties, including a fine or imprisonment, or both.

Where there is no record of the person's wishes, we seek to address the concern that a family member might sanction a donation through ignorance by placing responsibility for authorisation on the person who was closest to the deceased in life and so is most likely to have the greatest awareness of the deceased's attitude to the issues.

Section 7 makes it clear that where the nearest relative has "actual knowledge" that the person was unwilling for any part of their body to be used for transplantation, they must not give authorisation. The reality is that people who feel strongly about such matters will not keep their feelings to themselves. They will share their views with their family and friends. If their views have a

religious dimension, they will no doubt share them with others of the same faith. It is hard to envisage strong views on such a matter being unknown to any of those who might be asked.

That would leave only the highly unusual case of a person living in isolation, either without any surviving relatives or, for some reason, unable or unwilling to mention to anyone close to them their own strongly held views on such matters. Of course, if people in that position object to organ donation, their wishes should be respected as much as anyone else's, but I do not believe that recording those wishes in a register set up for that purpose, or in the organ donor register, is the way to do that. In such cases, people can set out their wishes in their will, and they can also ensure that their views are reflected in the medical record held by their general practitioner.

I think that the medical record is the best place for such views to be recorded, because if there was the possibility of somebody becoming an organ donor, the clinician would either contact that person's GP or, if they were unable to do that, consult the person's medical record. No clinician will proceed with a transplant involving an organ about which he or she is not fully informed. Recording wishes in that way is the key and can already be done routinely, either verbally or by writing to one's GP setting out one's objections and asking for the letter to be added to the medical record.

I understand the concerns behind Nanette Milne's amendments, and I am happy to offer guidance to GPs to ensure that they include any such objection in a patient's record. I will tell GPs that any such objections should also be included in the extract from medical records that they provide to NHS 24. In the near future, the introduction of the electronic health record will provide a further vehicle by which an objection recorded by a GP can be accessed readily by a transplant co-ordinator seeking a donor. In addition, we are working with the General Medical Council on including in its "Good Medical Practice" guidance, which applies to all doctors, a provision making clear a doctor's duty to respect the wishes of his or her patients after death.

I ask Nanette Milne to consider withdrawing her amendments on the basis of the assurance that I have been able to give today.

Mrs Milne: I lodged the amendments in the group precisely to deal with the isolated people whom the minister mentioned—people who do not have relatives in this country or close by to whom they have been able to express their wishes, and who feel strongly about not donating their organs. It has been made quite clear to me by the Scottish Council on Human Bioethics that there are people who are currently considering withdrawing their

names from the organ donor list if the bill is not amended to take account of the fact that some of them specifically do not want to donate certain organs, because they feel so strongly about the issue. It would be regrettable if a bill that attempts to increase organ donation were to lead to the loss of even two or three donors. I appreciate what the minister has said about offering guidance, but I will press amendment 15.

The Deputy Presiding Officer: The question is, that amendment 15 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)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (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)
 Scanlon, Mary (Highlands and Islands) (Con)
 Tosh, Murray (West of Scotland) (Con)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Barrie, Scott (Dunfermline West) (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)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (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)
 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)

Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 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)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Eleanor (Highlands and Islands) (Green)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Welsh, Mr Andrew (Angus) (SNP)
 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 13, Against 67, Abstentions 0.

Amendment 15 disagreed to.

The Deputy Presiding Officer: Amendment 16, in the name of John Farquhar Munro, has already been debated with amendment 11. I ask John Farquhar Munro to indicate whether he intends to move amendment 16.

John Farquhar Munro: I do not intend to move amendment 16. There is also a list of amendments in my name further on in the marshalled list, and I would like to withdraw all those amendments at this stage.

The Deputy Presiding Officer: That is a good idea, but I am afraid that I cannot allow you to do that. However, I will be as quick as I possibly can be when I come to that point in the proceedings.

John Farquhar Munro: I just thought that it might save us some time.

The Deputy Presiding Officer: It would have done and I am grateful for your suggestion, but I am afraid that we have to have each decision to move or not to move amendments properly recorded.

Amendments 16 to 23 not moved.

Section 7—Authorisation by adult's nearest relative

Amendments 24 to 37 not moved.

Amendment 38 moved—[Lewis Macdonald]—and agreed to.

The Deputy Presiding Officer: Amendment 38 pre-empts amendment 39.

Section 9—Authorisation: child 12 years of age or over

Amendments 41 to 57 not moved.

Section 10—Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities

Amendment 58 not moved.

The Deputy Presiding Officer: Group 5 is on authorisation by the nearest relative when no person has parental rights or responsibilities. Amendment 59, in the name of Eleanor Scott, is grouped with amendments 63, 109 and 111 to 113.

Eleanor Scott (Highlands and Islands) (Green): I should begin by declaring an interest, as I am a member of the British Medical Association.

Amendment 59 and the other amendments in the group, which are in my name, are very much in the spirit of the rest of the bill, and are simply intended to close a gap. In debating the bill, we are dealing with highly sensitive matters, none more so than the death of a child.

The sudden death of a child is always devastating and an unspeakable tragedy for the child's family. Some families can find a small measure of consolation if their dead child's organs can give life to another child. In general, the bill provides for that, but it makes no provision for the rare eventuality of no one having parental rights at the time of the child's death. One can all too easily envisage a situation that might arise if a whole family were involved in a fatal accident, when both parents were killed and the child later died of his or her injuries. As the bill stands, another relative could give permission for the parents' organs to be donated, but no one could give permission for the child's organs to be donated.

10:15

If the parents are unable to consent to their child's organs being donated because they have been killed or so severely injured that they are unable to give consent, a near relative should be able to give consent. That is what amendments 59 and 63 would do.

I will read out amendment 109, which gives the hierarchy of relatives in the order in which they can be asked for permission. That hierarchy is in line with the one elsewhere in the bill for adults,

but it is the other way round. The amendment states:

"For the purposes of sections 10 and 11, the nearest relative is the person who immediately before the child's death was—

- (a) the child's parent;
- (b) the child's adult brother or sister;
- (c) the child's grandparent;
- (d) the child's adult uncle or aunt;
- (e) the child's adult cousin;
- (f) the child's adult niece or nephew."

That is similar to the hierarchy for adults, except that it does not include provision for a family friend to give permission if no relatives are found. I felt that that would not be appropriate in the circumstances.

Amendment 111 clarifies that the hierarchy outlined in amendment 109 includes step-parents and half-siblings, which is in line with the rest of the bill.

Amendments 112 and 113 are essentially tidying-up amendments. Amendment 113 provides that a relative can be skipped in the hierarchy if he or she either does not want to make the decision or cannot realistically be contacted. That parallels the provisions in the bill for adults.

My amendments would close a gap and are in line with the intention of the bill.

I move amendment 59.

Lewis Macdonald: As Eleanor Scott said, the amendments stem from concerns that were expressed in evidence that the BMA submitted to the Health Committee at stage 1.

As with other amendments this morning, we have sympathy with the concerns expressed and the motives that lie behind them, particularly in the context of transplantation, where there would—in a very few cases—be a risk of valuable organs not being used because there was no one to give the necessary authorisation.

This is a complex area, but to some extent the matter is already addressed in Scots law. Section 7 of the Children (Scotland) Act 1995 allows parents to appoint guardians for their children in the event of the parents' death. That means that, if the parents die, the appointed guardian immediately becomes responsible and takes over parental rights and responsibilities. The guardian would, as a result, be classed as the person who had parental rights and would, therefore, in the circumstances that Eleanor Scott describes, be able to give authorisation for a transplantation to go ahead.

That outcome would, of course, require parents to have appointed a guardian under the 1995 act.

In any case, we are committed to raising people's awareness of what might happen after a person's death. One issue that we will want to highlight, and which reflects Eleanor Scott's concerns, is that parents should always take the precaution of appointing a guardian who would have responsibility for their children after their death.

Mr Maxwell: The minister's approach seems strange. He says that he will take on board the concerns expressed by Eleanor Scott and try to make parents appoint a guardian. Frankly, I would be surprised if anyone in the chamber had appointed a guardian in the way that he suggests. I certainly have not appointed a guardian in the event of a car crash in which my wife, my daughter and I are all fatally injured. Why not accept Eleanor Scott's amendments and deal with the problem here and now?

Lewis Macdonald: Public awareness raising clearly must start in the chamber. All of us who have children should have regard to their interests in the event that we die unexpectedly. Everyone in the chamber and elsewhere should be encouraged to do so, and to appoint a guardian to take parental responsibility if, tragically, the circumstances arise in which that is required.

The point that lies behind the amendments is reasonable. However, the amendments have been lodged only at stage 3, and I fear that they do not achieve their intended purpose. I will highlight a couple of issues.

First, the provisions would not apply to children for whom a local authority has parental rights and responsibilities, which in reality is a far more common occurrence than the car crash scenario that the amendments are intended to address. The bill was amended at stage 2 to address the Health Committee's recommendation that local authorities be prohibited from having the power to authorise any of the activities in the bill. Children for whom local authorities have parental rights and responsibilities would not be covered by Eleanor Scott's amendments. The changes that were made at stage 2 reflect the recognition—which we believe is right—that there will be occasions on which it is not proportionate to make provision for authorisation of organ donation on the part of a child.

The other aspect that gives me significant concern relates to amendment 109, on the nearest relative list. As presented, the list includes in the hierarchy a parent of a child, but does not provide for circumstances in which that parent has, for one reason or another, ceased to have parental rights and responsibilities. In some circumstances, a parent might have had his or her parental rights removed, for example if he or she had been involved in abuse of the child. It would be inconsistent to allow such a parent to have the

right to give or withhold authorisation under the bill. Equally, there might be reasons why another relative did not have access to the child during their life, and in such a case the relative should not be given a role after the child's death.

I fully recognise the purpose of the amendments, but I believe that promoting the appropriate mechanisms whereby parents can ensure that their children's interests are looked after in the event that the parents die is the way forward. I therefore oppose the amendments in Eleanor Scott's name.

Eleanor Scott: I point out to the minister that amendment 109 was lodged only at stage 3 because we had expected the Executive to plug the gap earlier in the process. Amendment 109 is intended to plug a gap that exists in the bill, and it is very much in the spirit of the bill.

I agree with the minister's comment that if a guardian had been appointed they would have parental rights, and my amendments would not come into play. However, as Stewart Maxwell said, the reality is that most people have not appointed a guardian. Perhaps in 10 or 15 years' time public awareness will be such that most people will have done so, but in the event of a child losing both parents in an accident now, they are likely to be left without anybody who has parental rights.

As I said in my opening speech, the death of a child is always a tragedy. The only greater tragedy is when a second child who might have been saved by the donated organs of the first child dies. We are talking about rare eventualities, but they are circumstances for which the bill should provide, so I press amendment 59.

The Deputy Presiding Officer (Murray Tosh): The question is, that amendment 59 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)
 Brownlee, Derek (South of Scotland) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 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)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 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)
 Gordon, Mr Charlie (Glasgow Cathcart) (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)
 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)
 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)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 39, Against 66, Abstentions 0.

Amendment 59 disagreed to.

Amendment 60 not moved.

Amendment 61 moved—[Lewis Macdonald]—and agreed to.

The Deputy Presiding Officer: Amendment 62 is pre-empted.

Section 11—Authorisation as respects child who dies under 12 years of age

Amendment 63 not moved.

Section 12—Removal of part of body of deceased person: further requirements

Amendments 64 to 97 not moved.

Section 12A—Removal of tissue sample to determine viability of transplantation

Amendments 98 to 100 not moved.

Des McNulty (Clydebank and Milngavie) (Lab): On a point of order, Presiding Officer. I ask the Presiding Officers to consider the point that, this morning, a whole series of very detailed stage 3 amendments has simply not been moved. They will have required a lot of work from ministers and civil servants. I wonder whether the issue could be examined with regard to efficient government and making our parliamentary processes more efficient.

The Deputy Presiding Officer: It is possible—indeed, probable—that if a member lodges a substantive amendment, the clerks will point out that a significant number of consequential amendments will be necessary. Each of those amendments requires to be moved in turn. However, it might be worth reflecting on the

question whether there should be a mechanism to allow consequential amendments to be withdrawn if the substantive amendment is withdrawn. If that was the point of order to which Mr McNulty was heading—[*Laughter*—the Presiding Officers will reflect on it.

I detect from the mood of the chamber that we should ignore the point of order and deal with the issue. [*Applause.*]

Section 13—Preservation for transplantation

The Deputy Presiding Officer: Group 6 is on bodies that are being preserved for transplantation not being moved to other premises. Amendment 3, in the name of the minister, is the only amendment in the group.

10:30

Lewis Macdonald: In response to a stage 2 amendment from Dr Jean Turner, I gave a commitment to look again at section 13(1), which provides for the steps that can be taken by managers of NHS hospitals and registered independent health care premises to preserve bodies for transplantation.

Amendment 3 seeks to clarify that such managers will be able to move bodies or body parts to other premises only if authorisation is already in place. It will therefore not be permissible under the bill to transport a body or body part to other premises if authorisation for transplantation does not exist. Of course, in only a very few situations can a body be moved and still be available for transplantation, but doing so when no one has authorised transplantation might upset family members and could be viewed as disrespectful to the deceased.

I believe that amendment 3 clarifies the point in the spirit of the bill, as it makes provision for those very unusual circumstances on the basis of authorisation.

I move amendment 3.

Amendment 3 agreed to.

Section 8—Existing request by adult not acted on before commencement of sections 3 and 6

Amendment 40 not moved.

Section 14—Offences: removal or use of part of body of deceased person for transplantation, research etc

Amendment 101 not moved.

Section 18A—Authorisation by virtue of Part 1 for transplantation to have priority

Amendments 102 to 106 not moved.

After section 20

Amendment 4 moved—[Lewis Macdonald]—and agreed to.

Section 24—Authorisation of post-mortem examination etc: adult

Amendment 5 moved—[Lewis Macdonald]—and agreed to.

Section 44—Conditions attached to authorisation

Amendment 107 not moved.

Section 45—Nearest relative

Amendments 108 to 113 not moved.

Section 46—Witnesses: additional provision

Amendment 6 moved—[Lewis Macdonald]—and agreed to.

Amendments 114 and 115 not moved.

Section 48—Amendment of the Anatomy Act 1984

Amendment 7 moved—[Lewis Macdonald]—and agreed to.

Section 54—Interpretation

The Deputy Presiding Officer: Group 7 is on the meaning of “tissue” and “tissue sample”. Amendment 8, in the name of the minister, is grouped with amendments 9 and 10.

Lewis Macdonald: The purpose of amendments 8, 9 and 10, which seek to adjust an existing definition in and add a further definition to the interpretation section of the bill, is to clarify a number of issues that were raised in evidence or were highlighted by the Health Committee.

Amendment 8 amends the definition of “tissue” in section 54(1) explicitly to define tissue as including skin, corneas and bone marrow.

Amendment 9 adds the phrase “any derivative of skin” to the definition of “tissue sample”, which will allow such parts of the body including hair and nails to be retained from a post-mortem examination.

Amendment 10 is a technical amendment that is consequential to amendment 8. For the purposes of the bill, corneas will be included as a form of tissue, which reflects the way in which the transplantation community regards them.

Clarifying that skin is a form of tissue will allow living children and adults with incapacity to donate skin for the purposes of transplantation, subject to independent scrutiny by the Human Tissue

Authority. It will also mean that adults with capacity will not be prohibited from donating skin.

In the post-mortem context, the amendments seek to clarify the meaning of “tissue sample” in section 23(5), which lists the parts of the body that can be retained from a post-mortem examination. As a result, “tissue sample” will be understood as including skin and derivatives of skin, such as hair and nails.

This group of amendments fulfils a commitment that I gave to the Health Committee at stage 2, and resolves the doubts that were raised about the status of certain types of human material under the bill.

I move amendment 8.

Amendment 8 agreed to.

Amendments 9 and 10 moved—[Lewis Macdonald]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Human Tissue (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-3785, in the name of Andy Kerr, that the Human Tissue (Scotland) Bill be passed.

10:34

The Deputy Minister for Health and Community Care (Lewis Macdonald):

This morning's consideration of amendments has been good and has reflected a broad consensus not on every issue but on the basic principle of the Human Tissue (Scotland) Bill that, wherever possible, we should respect and follow the positive wishes that the living express about what should happen to their bodies after death.

The Executive's stage 3 amendments have put some final touches to the bill and round off changes that were made at stage 2. I believe that the bill has been very much strengthened and improved by the range of amendments that have been agreed to, many of which were brought forward by the Executive as a response to comments made and issues raised at stage 1. The thoughtful and serious way in which issues were raised and debated at every stage is a credit to the Parliament, the Health Committee and all those involved in the process.

The process by which ministers sought to respond to members' views has been in keeping with our approach to the development of the bill. We started by responding to concerns about past practice in post-mortem examinations and we worked closely with patients representatives and with a range of clinicians to ensure that the bill supports and strengthens best practice in each of the areas with which it deals.

It is worth reflecting briefly on the main changes that have been agreed to the bill since our stage 1 debate on 30 November. First, we have incorporated an approach to donation by adults with incapacity that is in harmony with the principles in the Adults with Incapacity (Scotland) Act 2000. The bill, as amended at stage 2, now makes it clear that the only forms of donation that are open to a living adult with incapacity under part 1 of the bill are organ donation as part of a domino transplant operation or the donation of regenerative tissue. In practice, "regenerative tissue" will mean bone marrow and skin. Our consultation last autumn showed that there is general support for our approach. The approach will also apply to donation by living children.

We have also responded to concerns about the original definitions of the terms "organ" and "tissue" by clarifying the areas of uncertainty that members had raised, specifically to do with

corneas and skin. We have made adjustments to the provisions in parts 1 to 3 of the bill relating to authorisation. In particular, we have made sure that the needs of those who are blind or unable to write can be taken into account for each type of authorisation and for the withdrawal of authorisation.

The key feature of the bill is that the concept of authorisation has replaced the concept of consent. By "authorisation", we mean the way in which people express their wishes about what they want to happen to their body after death. We use the word in the sense of, "I give my authorisation for the use of any part of my body after my death for the purpose of transplantation." That is a very direct and forceful statement for a person to make, as it allows the individual to take the initiative in making their views known.

Mr Kenneth Macintosh (Eastwood) (Lab):

Does the minister accept that, despite the vote this morning, many of us have every sympathy with the amendments lodged by John Farquhar Munro on presumed consent? I echo the words of my colleague Janis Hughes, who said that, although we could not move to a system of presumed consent, that is not the end of the matter. If we can regain trust in the system, presumed consent may one day be a possibility.

Lewis Macdonald: It is certainly worth saying that one of the purposes of the bill is exactly what Ken Macintosh says: to regain trust in the system of organ donation and post-mortem examination. I believe that we will be able to move forward. However, it is important to acknowledge that passing the bill today will be the biggest contribution that we can make to increasing the number of organs that are available for donation. The wishes of the quarter of the Scottish population—more than a million people—who have already indicated that they would like their organs to be used for transplantation after death will now have legal force. As Mike Rumbles said, that is new and significant. The bill will significantly increase the number of organs that are available for donation. On that basis and on the basis of the trust that would thereby be regained, more and more people will register as donors.

The bill will also update the Anatomy Act 1984. In response to evidence that was given at stage 1, we introduced amendments at stage 2 that provide more stringent controls on authorisation by children aged 12 to 15. The amendments will exclude bona fide museums from the need to be licensed for the public display of anatomical human remains. They will allow, subject to conditions, the public display of a wide range of anatomical human remains in the interests of education, training or research, including the health education of the general public.

We have had a thorough debate on the principles of the bill from stage 1 on and we have just had a full debate about how those principles are best applied in today's circumstances. The Parliament's support for those principles is to be welcomed. The bill is about respecting people's wishes by giving effect to them after a person's death; that respect is enshrined in the principle of authorisation. The bill modernises and replaces the unsatisfactory approach that exists in the current legislation and it gives us a system in relation to transplant matters that is fit for purpose in the 21st century.

I move,

That the Parliament agrees that the Human Tissue (Scotland) Bill be passed.

10:40

Shona Robison (Dundee East) (SNP): The Scottish National Party is pleased to support the Human Tissue (Scotland) Bill at stage 3. I would like to thank all those who gave evidence to the Health Committee. It is crucial that the focus of the bill has been on determining the wishes of the deceased and on ensuring that those wishes are respected. The concept of authorisation should ensure that a person's wishes are respected if those wishes are registered in some way and that, when no wishes have been registered, there is a clear process for ascertaining any wish that the deceased might have made and for seeking authorisation through the nearest relative hierarchy.

The hope is that, by strengthening the opt-in system, there will be an increase in the number of organ donations in Scotland. There are members in all parties who favour a system of presumed consent, as expressed by John Farquhar Munro and others. However, the Parliament made the right decision in rejecting the amendments that called for the introduction of presumed consent. It is important that we build public confidence in the system, which proposals for a system of presumed consent would not do.

The new system of informed consent should make it easier to ascertain a person's wishes. As we know, most people would want to donate their organs, so, alongside the new legislation, a public awareness campaign will be crucial in encouraging more people to register their wishes and to discuss them with family members. The rules for living donation in the bill are sensible.

It is essential that the bill should provide the required reassurance to parents and others who find themselves in the traumatic situation of having to deal with a hospital post mortem. Procedures have already changed in the wake of what happened at Alder Hey children's hospital, but it is

crucial that we frame such changes in legislation. The concept of authorisation also applies to hospital post mortems, although it is complicated by the fact that different standards of authorisation are required in different cases. Concerns about that were expressed during the progress of the bill. The minister has gone some way to reassure us that the guidance on authorisation will be very clear. It is right that the penalties for a breach of procedure will be severe—they must be so that public confidence is restored and the public is reassured that scandals like Alder Hey do not happen in future.

With regard to the reform of the Anatomy Act 1984, there is a need to ensure that human body parts are not displayed for purely entertainment purposes and that they are treated with respect. The amendments to the bill provide reassurance that that need will be respected. I compliment the minister on going out of his way to provide reassurance and to lodge amendments in answer to concerns that were raised.

The bill's overarching aim is to increase organ donation and therefore the number of lives saved. I hope that we will have a system for carefully monitoring the impact of the legislation in achieving that aim. I hope that the minister, in his summing up, will tell us how he will ensure that such a monitoring system is introduced and that there will be regular feedback to the Parliament on the success of the legislation.

10:44

Mrs Nanette Milne (North East Scotland) (Con): I, too, thank all those who gave evidence to the Health Committee. I also thank the committee clerks and lawyers who guided me through the plethora of amendments—which arose from one policy intention—in my name at stage 3. The Conservatives welcome this complex and important bill, with its separate provision for, first, organ and tissue donation and, secondly, the retention of organs and tissues at post mortem.

The new framework for organ donation and transplantation at post-mortem examinations and the associated removal, retention and use of body parts should go a long way to ensuring that the wishes of the deceased and their families are respected. It should in future spare bereaved families the distress that was caused to relatives in the past by the discovery that their loved ones' organs had been removed at post mortem and retained without their knowledge or permission.

The updating of the provisions in the Anatomy Act 1984 on anatomical examination and the public display of bodies and body parts is welcome, too. We had concerns about the lack of clarity of the bill as introduced on biomedical

research and its proposal of an overly restrictive licensing system to control public display. However, the Executive dealt with those worries at stage 2 and we are happy with its amendments. We are satisfied that the Executive has gone a considerable way to acknowledging the need for clear definitions of “tissue”, “organs” and “body parts”, so that people who sign authorisation forms are sure about exactly what they are authorising. That is an important part of fostering trust between the medical profession and the public and we welcome the minister’s response to the concerns that were raised.

With regard to organ donation and transplantation, we are pleased that authorisation by a potential donor cannot be overruled by relatives after the person’s death because we feel that it is important that the informed consent of a donor is respected. The strengthening of the opt-in system, coupled with the intention to promote, support and develop programmes of transplantation that is clearly expressed in the bill, should help to increase the level of organ donation, without progressing us to the point—at this time—of having the opt-out policy that exists in Spain, which was promoted in some of the amendments that we considered earlier. As I have said on previous occasions, even in Spain it is acknowledged that the most important factor for the identification of donors is not the opt-out system but the availability of staff in hospitals who are responsible for identifying possible donors.

Valid concerns have been expressed to me that the bill does not provide a fail-safe mechanism for ensuring that the wishes of those people who object to donation are respected. In cases in which the deceased person has not made known their wishes prior to death, the bill allows for a soft form of presumed consent; in other words, it provides for an opt-out system that is similar to the one that is used in Spain. The fact that it does not make provision for people who object to donation in general or to the donation of specific organs is of serious concern to some people who do not know their nearest relatives or who do not trust them to respect their wishes.

As I said during our consideration of amendments, the Scottish Council on Human Bioethics has stated that it is aware of a number of single people who are considering taking their names off the national health service organ donor register—

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I was a little puzzled by the member’s assertion that the bill offers a form of presumed consent, because the bill is based on authorisation. It is fine if someone has authorised organ donation in the past, but those people whose names will appear on the list will be asked

to give authorisation. There is no presumed consent.

Mrs Milne: I was referring to cases in which the deceased has not stated their wishes and they have no close relatives who might know their wishes. The Scottish Council on Human Bioethics certainly interprets what the bill proposes as a soft opt-out system. Some people are considering removing their names from the organ donor register and it would be a tragedy if they were to do so because they were afraid that their wishes would not be implemented.

I welcome the minister’s offer of guidance on the matter, but I am disappointed that Parliament rejected my stage 3 amendments because, like the minister, I want as many potential organ donors as possible to come forward to help the many people in Scotland who are suffering end-organ failure. My son would not be alive today but for the generosity of a donor family and I would not want to lose even one donor because of their fear that their wishes would not be respected.

However, all in all, I welcome the bill’s provisions. The Executive’s amendments go a long way to alleviating the concerns that the Health Committee and others expressed at stage 1. As a result, the bill has been improved significantly. It represents a great advance on the Human Tissue Act 1961, which it replaces, and we will be happy to give it our support at decision time.

10:49

Euan Robson (Roxburgh and Berwickshire) (LD): The Liberal Democrats welcomed the bill’s introduction in June last year and, in common with all members, we are gratified to have watched its subsequent progress. I pass on my party’s thanks and appreciation to everyone who has made the bill’s passage to this stage possible. The Health Committee, its witnesses and ministers have all made major contributions to what is another important success for the Scottish Parliament. The bill is an example of progressive reform of outdated legislation and a clear response to some of the public concerns that were raised in cases to which other members have referred.

The bill modernises, clarifies and improves the law in the areas of organ and tissue donation, transplantation and hospital post-mortem examination. It deals with deficiencies in the law in the difficult area of the use of bodies and body parts. The first of its five key objectives is to repeal the Human Tissue Act 1961 and to replace it with separate provision for, first, organ and tissue donation and transplantation and, secondly, hospital post mortems. Its second and third objectives are to make clear the purposes of a

post-mortem examination and to introduce the concept of authorisation for obtaining permission for organ donation, post-mortem examinations and the removal and retention of body parts at post mortem. Fourthly, it provides for authorisation for the retention and use of organs and tissue that have been removed during post-mortem examination and, fifthly, it seeks to amend the Anatomy Act 1984 on the use and display of bodies and body parts.

The key debate has been about the difference between informed consent and presumed consent. To move to a system of presumed consent would be a highly significant—indeed, a radical—change. As was said during consideration of the first group of amendments earlier this morning, the NHS is founded on the principle of informed consent. In my view, a change from a system of informed consent to one of presumed consent would require a sea change in public opinion and, frankly, I do not detect such a shift.

Many members have said that an increase in levels of organ donation is essential for the 400 or so people who are waiting for transplants, and everyone can agree with that. Given that we need to encourage more people to register, a public awareness campaign is necessary, but the key is the bill's purpose of restoring trust in the system. If people trust the system, they are more likely to engage with it.

In summary, the bill moves us from a position of passive consent to one in which active authorisation is required, but it does not provide for a system of presumed consent, in which individuals would have to register to dissent from the use of their organs. As Ken Macintosh has said, public opinion may move further on the issue in time and, in all probability, much will depend on the success of the public awareness campaign and the number of people who register for organ donation.

I was pleased that during this morning's stage 3 consideration of amendments the minister gave an assurance that guidance would be issued for the benefit of people who object to the use of certain, but not all, of their body parts. Guidance is important in such an interesting and difficult area. Like other members, I would regret it if people chose to withdraw their consent because they felt uncertain. Although the Executive rejected the amendments on that subject that were considered this morning, it acknowledged that a genuine issue was being raised. It is therefore incumbent on the Executive to provide the maximum possible reassurance to those people who find themselves in that position. I hope that very few people will consider withdrawing from organ donation as a consequence of what is in the relevant part of the bill.

The minister sent a letter on foetal tissue to the convener of the Health Committee and I welcome the assurance that it gave that guidance will be issued on that particularly difficult area. I hope and believe that both that letter and the guidance that will be issued will help.

Today we have considered some valuable amendments that responded to issues that were raised during the committee stages. The genealogy profession may not be expanded as a result of the amendment on bodies that are more than 100 years old, but it was nonetheless an important amendment.

Overall, the bill is extremely valuable. The Liberal Democrats have supported it from the outset and have supported the changes that it has been necessary to make to it. We commend it to the Parliament and will be pleased to vote for it this evening.

10:54

Eleanor Scott (Highlands and Islands) (Green): I will be brief. I simply want to put on record my and my party's support for the bill, which addresses issues of public concern. It will provide clarity on the law on hospital post mortems and on the difference between authorisation for post mortem and authorisation for organ retention. I hope that the bill results in increased confidence and trust among the public that their bodies and those of their relatives will be treated after death in the way in which they wish. I also hope that it will encourage people to make their wishes clear prior to their death.

Of course, I am disappointed that the amendments in my name, which would have allowed consent to a child's organs being donated to be given by the nearest relative in the event of the death of both parents, were not agreed to. I will not revisit that debate, but I thank all those who helped with the drafting of the amendments. I supported the amendments in the name of John Farquhar Munro on the introduction of a system of presumed consent. I would like to think that, through a process of awareness raising and perhaps by training and changing practice in hospitals, we can greatly increase the number of organ donations. I share Ken Macintosh's view that the issue may have to be revisited.

I welcome the bill and I thank all those who have worked on it.

10:56

Janis Hughes (Glasgow Rutherglen) (Lab): As other members have done, I thank the Health Committee clerks who, over the past few years, have had to deal with a steady stream of proposed legislation and inquiries. I record my sincere

appreciation for the support that they offer members, which was crucial as we dealt with the sensitive issues that surround organ donation and retention. I pay tribute to those who gave evidence to the committee during our stage 1 deliberations. For many of them, the experience was emotional, so I thank them for their valuable assistance and contribution. I am sure that the bill is all the better for that.

As with last week's debate on prescription charges, there is consensus that we need a new approach to organ donation. As I have mentioned before, I worked in a renal unit for 11 years, where I saw at first hand the difficulties that are faced by patients who suffer from renal failure. All too often, they have to wait an inordinate amount of time for a suitable donor to be found. I support the bill because it will make a real difference to the lives of many people in Scotland. However, the Executive must take the lead on the matter, because the bill will not in itself result in a huge increase in the availability of organs. The Executive must do as much as possible to raise awareness of the importance of organ donation. As Shona Robison said, a high-profile public information campaign is vital. I urge the minister to ensure that that takes place should the bill be passed.

Much has been done to raise awareness of organ donation, but there is still a huge disparity between the level of support for donation and the number of organs that become available. It has been argued, forcefully in some quarters, that a system of presumed consent would remedy the problem. As I said earlier, I have sympathy with John Farquhar Munro's arguments in relation to presumed consent, but I do not believe that the timing is right for the introduction of such a system. As the issue is extremely sensitive, we would need to be sure that there was significant public understanding of and support for such a move, but I am not convinced that we can say that at this stage. I do not believe that the bill is the correct vehicle with which to achieve John Farquhar Munro's aim. Nonetheless, like Ken Macintosh, I hope that the matter will be considered further. As has been said, we should first increase public confidence in the system; that is what the bill, if it is passed today, will achieve. If we assume that a system of presumed consent would not be right at this time, it is surely even more incumbent on the Executive to do as much as possible to transfer the support for organ donation into positive action.

Nanette Milne's amendments raised important issues but, ultimately, I was not persuaded that they were necessary. I note that Nanette Milne did not move most of her amendments. The bill starts from the fundamental principle that the individual's wishes should be paramount. We will move from a

system of consent to one of authorisation. That is far more than just semantics, because the term "authorisation" implies a positive decision. As the minister said, if people do not give authorisation, that should be enough to indicate their wishes. As someone who has long argued for greater use of modern technology in our health service, I look forward to the introduction of the electronic patient record. We heard from the Executive that it will allow general practitioners to register patients' wishes. For those reasons, Nanette Milne's amendments were not necessary, although they allowed us to broaden the debate.

The bill ranks as one of the most important pieces of proposed legislation that the Parliament has considered. For people who are waiting for suitable donors, it will be a huge step forward. I hope that the Parliament will vote in favour of the bill—I will certainly give it my full support.

11:00

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): We heard earlier that, last year, 52 Scots died while they were waiting for an organ transplant and that almost 700 Scots are waiting on the transplant list. Those figures are a stark reminder to members that, for every one of those people and their families, a real tragedy might be averted if we increase the number of transplants. The central aim of the bill is to increase the availability of transplants and to save lives. Therefore, the focus has always been on how best to achieve that objective and how best to save lives.

The Scottish Executive ministers' move away from a system of consent for transplants towards a far more appropriate system of authorisation is entirely the right approach to an emotive subject. It must be right that the wishes of the individual should be respected and that the opportunity should be given to ensure that their wishes are carried out. I understand the motives behind John Farquhar Munro's amendments on presumed consent, but I am pleased that they were defeated because they would have undermined the whole purpose of the bill. That was accepted by Health Committee members—John Farquhar Munro's proposals did not receive support from any committee member at stage 2. However, as Lewis Macdonald said, the bill will improve the current organ donation system.

I mentioned donor cards earlier. Part of the problem with the present donor card system is that, until the bill is passed, the cards will carry no legal authority. It comes as a surprise to many people that the cards and the organ donor register have no legal status. That means that relatives, who may be entirely unaware of the deceased's wishes, are asked to give consent to organ

donation in obviously difficult circumstances. That is not a good situation, to say the least. However, the bill will give the organ donor card scheme legal status. The system of authorisation that the bill outlines is the right way in which to proceed, as it is based soundly on the clear wishes of the individual. If authorisation has been given, no other hurdle will need to be overcome. If the individual has not made clear a wish to donate—although 25 per cent of Scots have already done so—the nearest relative will be asked for authorisation to proceed. That huge improvement on the current system should lead to a dramatic improvement in transplant rates. As Janis Hughes said, to achieve the successful outcome that all members want, the bill must be combined with a comprehensive advertising campaign by the Scottish Executive.

The bill is a good one; it is perhaps one of the best bills that the Scottish Parliament will ever pass. It is good news for the families who are waiting for a transplant for their loved ones. I hope that, at decision time, the bill will be passed unanimously.

11:03

Mr David Davidson (North East Scotland) (Con): The issue is sensitive, so I congratulate the Health Committee and the minister on the way in which the bill has been handled. Committee members have welcomed the evidence that was given on the bill. Since the Parliament began in 1999, all members have received regular communications from people expressing anxiety about permission and organ retention. There has been utter confusion on those issues, which, combined with the bad practice that has occurred in hospitals throughout the country, has led to bad press, which in turn has resulted in a complete lack of confidence and a lot of mistrust. I hope that the bill will set that right. If we do not have public trust and confidence, we have no chance of achieving a decent system of authorisation.

I can see where John Farquhar Munro's amendments on presumed consent came from, but the measures that he proposed would be a move too soon. The public are not ready for them and there is no appetite for his principles to be accepted at this time.

Others spoke about problems such as rising refusal rates, people withdrawing from the donor card scheme and the bad experiences at some hospitals before the bill was published. Shona Robison, along with Mike Rumbles and others, said that the system must be based on informed consent. I welcome the minister's definitions, which give clarity to and confirm the authorisation system. The guidance that will be issued to general practitioners is also welcome. GPs will be

a vital link in maintaining patient records, but many of them do not know what is contained in their patient records. That process must be made easier. More people move around and do not necessarily live in the same area where their records are kept. The instant transfer of records and electronic access to them will make the scheme work. Access to authorised consent forms must be made easier.

Donor cards will have legal status, which is important, but I have sympathy for the argument that was made by the amendments in the name of Eleanor Scott and Nanette Milne. We could all highlight scenarios that are not covered by the bill's provisions; lawyers in particular could do that. The Executive must maintain an open mind in that respect should a particular case arise. In time, changes may have to be introduced by regulation to include particular cases, not to remove them from the provisions of the bill. The need to review the legislation was pointed out by Ken Macintosh and others.

Janis Hughes referred to the campaign to increase the number of organ donors. We must ensure that people are encouraged to sign up to donor schemes and give them confidence in the system. Some concerns in the biomedical field remain. However, the bill is a vast improvement on what was in place.

There is an issue concerning changes that relatives may wish to make to a deceased individual's donation request. A close eye must be kept on that. It will not be easy to increase trust in the various sectors involved. People still write to MSPs with their concerns about organ retention. Not just ministers, but health professionals can convince people about organ donations. When I ran several pharmacies, they all carried donor card application leaflets, mainly from the British Medical Association. Health Scotland has a role to play in promoting organ donor cards. Approximately 700 people are waiting for organ transplants and the number is increasing every year. After the bill is passed, I hope that some inroads will be made in reducing that figure to give hope to many people and their families.

11:08

Roseanna Cunningham (Perth) (SNP): The bill concerns organ donation, transplantation, post-mortem examination and research. For obvious reasons, the debate centred mainly on donation and transplantation provisions. This morning's debate has shown broad consent and support from all parties for the bill's proposals. The legislation is necessary because of advances in technology and medical science and widespread concern following the revelations about past practices at Alder Hey children's hospital, Bristol

royal infirmary and other hospitals. We cannot gloss over those concerns or the serious nature of what occurred in those cases. At the Health Committee, such cases were forcibly presented in evidence as examples of presumed consent that had gone badly wrong and as a warning of what can happen if one presumes too much. That is why the committee took the view that it did.

The main debate has centred on presumed consent—on opting in or opting out. In evidence that the committee heard on post-mortem donations, it was clear that—despite the organ donor register, opt-outs and authorisations—the process would stall if relatives were in serious and evident distress. The professionals told us that, notwithstanding the existence of an organ donor card, they would not be happy to proceed if relatives were in serious distress. We learned that, even in Spain, which purports to operate an opt-out system, the same thing happens.

The Parliament was right to reject John Farquhar Munro's amendments. No matter what one thinks of the arguments, it would be quite wrong procedurally to introduce such a radical change to our system by means of amendments at stage 3.

I note Ken Macintosh's comments about presumed consent. Given the concerns about introducing such a provision at stage 3, I wonder whether presumed consent would be a suitable subject for a standalone debate in the chamber, at some point, simply to allow the arguments to be rehearsed in more detail. It would be interesting to see the outcome of such a debate.

One or two issues were raised to do with live donation and anomalies such as domino transplants. Members have noted that such concerns have been addressed. It is a testament to the Parliament's legislative process that anomalies were picked up and addressed at the committee stage and did not find their way into legislation—which might very well have happened in the past in another place.

Concerns were raised about complicated authorisation forms, which have now been considerably simplified. The legislative process has been extremely useful. However, Shona Robison, Janis Hughes and Mike Rumbles are absolutely right when they talk about the urgent need for publicity and education. That, of course, will require resources.

On the issue of presumed consent, I think that it was John Farquhar Munro who talked about the likelihood that the majority of people who are not currently on the organ donor register would not actually object to their organs being used. That may be true, but the answer lies not in moving towards presumed consent, but in encouraging

more authorisation. With the greatest of respect to members, that will entail more than just advertising. We will have to go out to where people are and take the campaign to places such as the supermarkets and the high streets. I hope that the minister will come back to Parliament with some outreach proposals along those lines.

If the proponents of presumed consent stood outside supermarkets and actually asked people to sign up and give their authorisation there and then, we could test the assumptions about how many of the silent majority are relaxed about giving their agreement, and how many of them are just saying that they are relaxed while hiding their concerns. We have to be very careful about making assumptions. If the proponents of presumed consent are right, people will be happy to sign up there and then when they are offered the cards. There is a challenge for the minister. Let us proceed with such a campaign.

Although I am closing the debate for the SNP, I have had a long and close involvement in the passage of this bill as convener of the Health Committee. I thank once again all those who helped the committee during its discussions on the bill. In particular, I thank the clerks—especially for making written sense of our various verbal discussions—and all those who came to give evidence. Of course, I also thank the committee members themselves. It has been a bill of moral, medical and legal complexity.

I give a particular mention to the people whose concerns over some of the issues have been driven by deep personal and emotional connections. Chief among those people were the parents groups that were set up after the scandal over the retention of children's organs. For those people, the continuing debate must sometimes be very difficult indeed.

With those thanks to all involved, I commend the bill to Parliament.

11:14

Lewis Macdonald: I thank members across the Parliament for their support for the Human Tissue (Scotland) Bill, which they have demonstrated here at stage 1, in committee at stage 2, and here again this morning. The bill's passage through the Parliament has been assisted by a great many people, whose contributions I acknowledge. I thank the many individuals and organisations who took the time to work with ministers and with our officials, as well as with the Health Committee, on identifying the aspects of the bill that could be clarified and improved. I acknowledge those who responded to the various consultations and those who gave evidence to the Health Committee.

Members of the Health Committee deserve particular recognition for the careful way in which they considered the bill and for the measured way in which a potentially difficult debate was conducted. I put on record the Scottish Executive's thanks to the Health Committee clerks, who ensured the effective management of the committee stages of scrutiny, and I record my own particular appreciation for the hard work and commitment of the Executive's bill team throughout the process.

The bill gives us a modern system of authorisation for organ donation, post mortems and other purposes that is fit for the 21st century. I believe that the bill has been further strengthened by all the attention that it has received. It gives us an excellent basis from which to move forward. I have no doubt that, as Ken Macintosh suggested, the bill will restore and improve public confidence in the system of post-mortem examinations. I am equally convinced that it will give all the health professionals who are involved with post-mortem examinations renewed confidence about approaching family members in circumstances that are obviously very distressing. The expected increase in the number of examinations that I believe will result from the bill will yield enormous benefits, both for families and for society as a whole.

There is widespread support in the chamber for action to increase the number of organs that are available for transplantation and for ensuring that a person's wish to be a donor is not overturned after their death. Currently, families refuse to agree to donation going ahead in 40 to 50 per cent of cases. Our new system of authorisation, which is founded on honouring people's wishes, will mean that the person's own wishes are paramount. That will, I believe, lead to a considerable increase in the number of organs that become available.

We want to go further, however—as members have suggested in today's debate that we should do—and take advantage of the new legislation to develop further the transplantation infrastructure in Scotland. One of the key messages that we have gleaned from the evidence that was gathered during scrutiny of the bill is that we need to ensure that the right arrangements are in place and that we devote the necessary resources to the organisation of organ donation and transplantation. I am asking the Scottish transplant group to develop that, taking into account the views of NHS board chief executives and regional planning groups.

We have been asked about monitoring. We will monitor the impact of the eventual act on transplantation in every respect. The Scottish transplant group and UK Transplant will undertake

that monitoring on our behalf, especially in relation to the organ donation rate in Scotland, which is clearly a matter of concern. On post mortems, the Executive will track the number of hospital post-mortem examinations and we will work with NHS Quality Improvement Scotland on monitoring the standards that apply to hospital post mortems. As regards aspects relating to the Anatomy Act 1984, the inspectorate arrangements that are in place will ensure on-going monitoring of the provisions.

Throughout the process, we have kept an eye on what has been happening with human tissue legislation in the rest of the United Kingdom. The bill will be a distinct piece of Scottish legislation, but we want to ensure consistency for people throughout the United Kingdom as far as possible, particularly when it comes to the timing of the introduction of the new arrangements. The Human Tissue Authority will scrutinise applications from Scotland for living donation, and it will do the same for the rest of the United Kingdom. The authority will be in a position to begin that work in the autumn. For that reason, the UK Human Tissue Act 2004 will not commence in England and Wales in general until 1 September this year.

Given the cross-border role of the Human Tissue Authority, that appears to offer us here in Scotland a very suitable commencement date. Commencement on 1 September will allow us time to put in place the training that health professionals and others will need to help them to implement the new legislation as effectively as possible. It will also allow us proper time to develop the regulations and guidance that will add detail to the bill's provisions, on which I have given further undertakings today. Above all, it will give us more time to raise public awareness and to inform people about the effects of the bill and its significance for each of us. That is the central message about the bill.

I advise Roseanna Cunningham that we will come back to the Parliament and say more about how we will carry forward the policy. A campaign is under way to encourage donation, and we will seek to put in place a registration campaign over the next few months. We will issue a Health Department letter to NHS boards, with guidance of the kind that I described earlier in the debate and at previous stages. Above all, the bill is about ensuring that everyone has the opportunity to make their wishes known.

One of the key changes under the bill is that the organ donor card will change from being a gesture of willingness to being a legal statement. Once the act comes into force, it will be even more important for people either to carry a donor card or to put their name on the organ donor register. Under the bill, those steps remain the two most convenient vehicles by which people may make

their views known about what they wish to happen to their bodies after their death. The result is that carrying a donor card or putting our name on the register will count under the bill as a form of authorisation. The provisions of the bill will work to ensure that all such authorisations are respected. On that basis, we expect there to be a significant increase in the number of organs that are made available for donation.

A number of the points that have been made in the debate have emphasised how important it is that, as well as registering or carrying a card, people discuss their wishes with family members and those who are close to them so that, in the event of their death, those who might be asked about the person's wishes are aware of them. That is clearly a wise action to take, although it does not take the place of authorisation, which, as has been said during the debate, removes the requirement for a relative to be asked.

We will work with UK Transplant to change the wording on the existing forms that are available from general practices, from the Driver and Vehicle Licensing Agency, through passport applications and elsewhere, so that they reflect the new legislation. That will enable us to ensure that not only will we have changed the law but, at the point at which we implement it, a sustained effort will have been made to ensure that people can take advantage of the law and authorise donation if that is what they wish to do. Those who make a declaration to that effect will know that it has the backing of the law.

It is incumbent on each of us to take advantage of the power that the bill creates, whether that gives someone else the gift of life after our own death or enables medical research, which could save or enhance the life of future generations. We want to encourage every citizen to think about that. The decision on self-authorisation is one for each and every citizen to make, and we want to ensure that each and every citizen is aware of how the law is changing. We want to encourage people to give the matter serious thought.

Mr Davidson: Will the Deputy Minister for Health and Community Care encourage the Minister for Education and Young People to consider ways in which schoolchildren can be taught about the background to the subject and what their rights will be in the future? In that way, authorising donation will become a part of growing up and a natural response.

Lewis Macdonald: That is a valid point. When we address the issue of how to raise awareness and ensure that that is the case, we will have regard to the fact that the law will make specific provision for children of secondary school age or over the age of 12. David Davidson's point is pertinent to that.

On that basis, and on the basis of the very broad support that we have heard this morning, I look forward to the vote later today confirming that the bill is the appropriate vehicle for the changes that we propose and that it has support across the Parliament.

The Deputy Presiding Officer (Trish Godman): As we have reached the end of the debate before the time that is set out in the *Business Bulletin* for the next item of business, I suspend the meeting, under rule 7.4.1(d), until 11.40.

11:24

Meeting suspended until 11:40.

11:40

On resuming—

Question Time

SCOTTISH EXECUTIVE

General Questions

Central Heating Programme

1. Mr Charlie Gordon (Glasgow Cathcart) (Lab): To ask the Scottish Executive whether it will review the definition of “existing central heating system” within the context of the non-eligibility criteria for the central heating programme. (S2O-8856)

The Deputy Minister for Communities (Johann Lamont): The definition in question is contained in the Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2001 (SSI 2001/267). We are considering those regulations in their entirety as we develop our new central heating programmes, and we will carefully consider the wording of the definition in that context.

Mr Gordon: Does the imminent end of the current phase of the central heating programme afford an opportunity to introduce greater operational discretion, so that, for example, the existence of an old-fashioned storage heater in the hallway of a house will not lead to people being ineligible to benefit from the scheme?

Johann Lamont: Yes. We recognise the programme’s significance and success, and we have spent more than £200 million on fuel poverty measures in the period in question. However, inflexibilities and technicalities in the programme that could not have been predicted have been thrown up, often through constituents contacting members, and it has been recognised that the aim of lifting people out of fuel poverty has not been met in certain circumstances as a consequence. I assure the member that in developing and reviewing the process, I am particularly mindful of the small issues that can make a difference to individual constituents and that I will take on board any comments that members have on such issues as we progress.

Christine Grahame (South of Scotland) (SNP): In that spirit, I remind the minister that 5,000 households with children in Scotland live in fuel poverty and have no central heating. Central heating could be installed in those households at an estimated cost of £1.6 million. In reviewing the regulations, will she take that into account and

consider lifting those vulnerable children out of the difficult circumstances in which they live?

Johann Lamont: We are still considering how to take the programme forward. We have already indicated that we intend to extend it to cover over-60s who are on pension credit. Of course, we must be mindful of the target of lifting people out of fuel poverty and the costs of any measures that we want to develop, but we recognise the points that have been made, which have also been forcibly made elsewhere. Those points and suggestions about who should be included in the programme will be taken into account as we move towards taking final decisions.

Planning Inquiries (Community Engagement)

2. Dr Sylvia Jackson (Stirling) (Lab): To ask the Scottish Executive what measures and resources it can provide to enable local authorities, communities and individuals to promote effective representations at formal public inquiries into major planning applications, such as for the Beaulieu to Denny power lines. (S2O-8859)

The Deputy Minister for Communities (Johann Lamont): Pre-inquiry meetings are invariably held well in advance of major public local inquiries, and all groups and individuals who have made representations would be invited to those meetings, at which the procedures would be explained and questions would be answered. General guidance on public inquiries is also available on the inquiry reporters unit website or by requesting assistance from the unit’s staff. Any announcement about whether a public local inquiry will be held into the Beaulieu to Denny power line proposal is a matter for the Deputy First Minister and Minister for Enterprise and Lifelong Learning, Nicol Stephen, because the application would be made under the Electricity Act 1989.

Dr Jackson: I thank the minister for that clarification. However, she will be aware of the massive legal fees that are involved when local groups make representations to a public inquiry and the pressures on the budgets of local authorities—particularly on those of small councils, such as Stirling Council in my area, which must set aside nearly £500,000 for putting its case. Will the Executive consider reviewing the procedures for public inquiries in order to reduce the legal bills that fall on local groups and council tax payers?

Johann Lamont: The member will be aware that there is currently no specific funding for local authorities to cover the costs of managing applications. However, an opportunity has been afforded to us by the radical proposals in the Planning etc (Scotland) Bill to consider such matters, to address the issue of resources and the experiences of different groups and to carry out an honest appraisal of the costs and how they can be

managed. As we move forward to considering the hierarchy of approaches to proposals, we recognise that we must consider whether fees are commensurate with the work that is involved. We are very keen to be in close dialogue with local authorities and others about how those processes are managed.

Mary Scanlon (Highlands and Islands) (Con): Will the upgrading of transmission lines, such as the Beaulieu to Denny line, be considered under the national planning framework in future to ensure local and parliamentary consideration and scrutiny?

Johann Lamont: As the member is aware, I already said that the proposals will be developed under the Electricity Act 1989 and dealt with by the Minister for Enterprise and Lifelong Learning. That is the current situation. If there is a proposal to change it, that will be explored as the bill progresses through Parliament.

Education (Public-private Partnerships)

3. Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): To ask the Scottish Executive when it will announce the next round of PPP funding for education. (S2O-8912)

The Deputy Minister for Education and Young People (Robert Brown): The Scottish Executive is currently supporting schools public-private partnership projects with a capital value of £2.5 billion, which carries a long-term commitment for the duration of the contracts. Further financial support for school building projects is a matter for the next spending review.

Mr Arbuckle: When the next spending review comes round, will the minister bear it in mind that the more lead-in time that local authorities can be given to make their decisions, the more efficient their spending will be?

Robert Brown: I entirely accept Andrew Arbuckle's point. However, the PPP project is a long-term one and we need to be able to spread the contracts—the building work and so forth—over time. The detail, as he rightly says, is a matter for local councils, which are responsible for presenting to us their priorities in that regard. Clearly, priorities have to fit in with spending announcements.

We are dealing with the second tranche of proposals at the moment and they are at various stages of development. There will be progressive implementation throughout Scotland of the current and future spend on those projects.

Fiona Hyslop (Lothians) (SNP): How many hundreds of millions of pounds have been paid out as excess profits to private financiers as a result of the PPP contracts? Before any future spending

commitments are made, will the minister consider adopting the Scottish National Party's proposal for a not-for-profit contract so that we can build more new schools and put smaller class sizes for pupils before excess private profits for financiers?

Robert Brown: The SNP appears to live in a different world from the rest of us. The reality is that record levels of funding have gone into the school building project through PPP, the schools fund and prudential borrowing. The details of the matter have been debated many times in the chamber. The question whether there are excess profits is another matter into which I do not propose to go today.

It is the Scottish Executive's view that there is substantial advantage to be had from the additional spend that we receive as PPP funding, which has allowed us to do a series of things that did not happen in the education field under previous regimes. That is the essential point as we see school buildings going up all over Scotland.

Lord James Douglas-Hamilton (Lothians) (Con): Does the minister agree that it is important that local authorities work with PPP providers to ensure that adequate green space is made available in new school campus developments to make absolutely certain that children have access to sufficient informal play and exercise areas?

Robert Brown: I very much agree. The Scottish Executive gives local authorities guidance in that regard, but I stress that it is up to local authorities to make their own decisions in such matters and to be accountable to their electors for the decisions that they make and the priorities that they set. However, the Scottish Executive supports the importance of green spaces and play facilities.

Pre-school Education

4. Dr Elaine Murray (Dumfries) (Lab): To ask the Scottish Executive whether it considers that qualified nursery teachers make a valuable contribution to pre-school education. (S2O-8874)

The Minister for Education and Young People (Peter Peacock): The short answer is yes. The Executive has issued guidance on the involvement of teachers in pre-school education that recognises the distinctive contribution that they can make alongside other early years staff.

Dr Murray: The minister will be aware of research undertaken in England and Wales—the effective provision of pre-school education study—that demonstrated that not only did input from nursery staff with graduate-level qualifications improve children's attainment in their later years, but the effect was particularly marked when a staff member was trained in teaching. Does he therefore share my concern that some local authorities, including Dumfries and Galloway

Council, have been considering removing teachers from nursery classes as part of the current savings exercise, albeit that councillors have now rejected the most extreme options placed before them by officials?

Peter Peacock: The study referred to makes an important contribution to our thinking about the policies on early years. However, I make it clear that when the Executive changed rules in the schools code to allow local authorities more flexibility in deciding whether to deploy teachers in a nursery setting our intention was not to remove teachers from that setting but to provide genuine flexibility, such as allowing a teacher to cover a group of centres in rural areas, rather than work in a single centre.

I hope that I made it clear in evidence to the Education Committee yesterday that we recognise the distinctive dimension that teachers can bring. However, other qualified staff also lend important dimensions to the teaching of young people in the early years setting.

Ms Sandra White (Glasgow) (SNP): I thank the minister for his truthful answers and hope that Glasgow City Council was also listening to them. He will know about that council's proposals to remove all qualified teachers from nursery schools. By his own admission, it is excellent to have qualified teachers in nursery schools. The curriculum for excellence and the three-to-18 curriculum stress that there should be smooth transitions between educational stages.

Bearing in mind the minister's answers today and his evidence to the Education Committee, will he meet Glasgow City Council and tell it of our concerns, the concerns of the Education Committee and his concerns about the removal of qualified teachers from nursery schools, which is being done to save around £370,000? The proposals are budgetary and are nothing to do with children's welfare.

Peter Peacock: I have great respect for Glasgow City Council. It is a progressive education authority that has a range of new ideas about how to develop education in Glasgow, for which it has my support.

The decisions that it might or might not arrive at are very much a matter for Glasgow City Council, but the Executive's policy is clear: although we leave it to local authorities to make such decisions, we recognise that teachers have a particular contribution to make in the early years setting.

Fair Trade

5. Mr Kenneth Macintosh (Eastwood) (Lab): To ask the Scottish Executive whether it will provide further support to help to develop fair trade in Scotland. (S2O-8866)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): The Scottish Executive is committed to supporting fair trade and has taken a number of steps to support fair trade products. The parliamentary cross-party group on fair trade, which I chair, recently met to discuss appropriate steps for how best to achieve our agenda, and will continue to receive full support from the Executive.

Mr Macintosh: I thank the minister for the welcome lead that the Executive has shown on fair trade matters. Is she aware of the many areas in Scotland, including East Renfrewshire, that are currently pursuing fair trade status? Will she engage with the fair trade community to explore what further help might be available to those areas—for example, to improve the marketing of fair trade products and the procurement process so that supplies can be delivered more easily to public authorities? In particular, will she consider issuing guidance to public authorities that makes it clear that fair trade sits comfortably alongside the best-value regime in securing the most cost-effective use of public resources?

Patricia Ferguson: The group that I chair is currently looking at a range of options, one of which is how we achieve fair trade status for Scotland as a country. We will work very closely with the Fairtrade Foundation to develop that work.

We are sure that one of the criteria that we will be expected to meet is that of achieving a critical mass of local authorities, community, church and faith groups and schools to sign up to the fair trade agenda and achieve fair trade status. The work in East Renfrewshire is helpful in that regard.

Guidance is already available to local authorities and other public sector agencies on the use of fair trade products through the procurement process. By coincidence, at this week's meeting of the cross-party group on fair trade, we discussed the possibility of looking at that guidance again to see whether it can be strengthened. We are also considering the possibility of holding a seminar for public sector agencies, perhaps in the autumn, to develop that agenda further.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Given that a number of us from the Parliament will visit Malawi next week as part of the Commonwealth Parliamentary Association visit, and that we will meet Malawian fair trade sugar and coffee producers, what message should we send and which questions should we put to the Malawians about the prospects of the Scottish public sector buying their products and supporting economic development in that country?

Patricia Ferguson: Obviously, the Executive is working with the Malawian Government on our co-operation agreement. We intend to take forward

that agenda as expeditiously as we can. I would be very grateful if the delegation of which Mark Ruskell is a member could bring us back some information on the projects that he mentioned. If there is a way in which the Executive can assist any of those projects on the ground or in connection with marketing here, for example, we are more than happy to look at the possibilities and to give any assistance that we can.

Cruise Ship Ports (Greenock)

6. Mr Duncan McNeil (Greenock and Inverclyde) (Lab): To ask the Scottish Executive how it will help to promote Greenock as a port of call and embarkation for cruise ships. (S2O-8868)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): Several locations in Scotland, including Greenock, market themselves as cruise liner destinations. VisitScotland has embarked on a research project into the economic impact of cruise tourism. Various ways of marketing the varied attractions of Scotland to potential visitors from cruise ships that call at Scottish ports will be assessed in light of the findings of that study.

Mr McNeil: From her visits to Inverclyde, the minister will be aware of the importance of Greenock Ocean Terminal to the local economy in my constituency. The 22 cruise ships that will call at Greenock this year will bring 30,000 passengers, plus crew, into the area. I hope that they will spend some time and money in the area as well as in other parts of Scotland.

Although the port operator, Clydeport plc, and others continue their efforts to promote Greenock Ocean Terminal, we would be grateful for Executive assistance in one small respect. Will the minister look into the possibility of proper signage being erected, similar to that which exists on the approaching trunk roads for the ferry terminals? That would help to put Greenock Ocean Terminal on the map for visitors and locals.

Patricia Ferguson: I met many of the people who are involved in the project during my recent visit to Inverclyde with Duncan McNeil. I put on record my thanks to the volunteers who are making the experience of those who embark and disembark at Greenock as pleasurable an experience as it is possible to have. The volunteers are also doing a good job in taking people from the cruise liners around the attractions of Greenock and Inverclyde.

I point out to Mr McNeil that the matter of signage is primarily for the local authority. I agree that the Greenock Ocean Terminal should be adequately signposted and I draw his attention to the "Scottish Road and Motorway Tourist Signposting Policy and Guidance: A Consultation

Paper", which the Executive issued at the end of last year. I understand that the consultation period closed last week, but I am sure that any further thoughts that he may have on the matter could be fed into the process and that my colleague Tavish Scott would be interested to hear them.

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

Corporate Killing

8. Karen Gillon (Clydesdale) (Lab): To ask the Scottish Executive for its response to the view that was expressed by David Watt, head of the Institute of Directors, as reported in the *Daily Record*, that corporate killing laws were a "witch hunt" against bosses and that most industrial accidents were due to human error at a lower level and more likely to be caused by "alcohol than by individuals acting in a corrupt or homicidal manner". (S2O-8854)

The Minister for Justice (Cathy Jamieson): The corporate homicide expert group was established to review the law on corporate liability for culpable homicide. Its membership was drawn from a wide range of interest groups, including representatives from the business sector. If organisations take appropriate steps to protect their workers and the public, they have nothing to fear from any reform of the law in this area.

Karen Gillon: I am sure that the minister appreciates the distress that the comments have caused, particularly to the relatives of the Findlay family who died in an explosion in my constituency. The relatives are campaigning for a change in the law on corporate liability for culpable homicide.

The minister is presently considering the views of the expert group. Given the complexity of the issue and the need for mature debate on the subject, how does the Executive intend to move forward on the matter? We need to ensure that such misinformed and ill-judged comments can be put to bed once and for all.

Cathy Jamieson: I recognise the work that Karen Gillon has done on the issue in representing her constituents and in serving as a member of the expert group. The Executive is considering the recommendations of the expert group. We are also looking at what is happening at United Kingdom level. We will report to the Parliament on the matter in due course.

Following the lodging of Karen Gillon's question, the Institute of Directors has been in touch with me and has provided a further statement. I will ensure that the information that it contains is conveyed to her, as appropriate.

First Minister's Question Time

12:00

Prime Minister (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister when he will next meet the Prime Minister and what issues they will discuss. (S2F-2085)

The First Minister (Mr Jack McConnell): I look forward to seeing the Prime Minister soon, and we will discuss issues of importance to Scotland.

I take the opportunity to congratulate members who were involved in last night's danceathon to raise money for Malawi. I understand that they raised about £1,300, all of which will be donated straight to projects in Malawi. They are to be congratulated and I hope that there will be further events in the future.

Nicola Sturgeon: Last night's effort was absolutely tremendous and I am sure that it is great news for the Malawi fund.

I am sure that, like all of us, the First Minister was absolutely horrified at the news earlier this week of the 11-year-old girl in Glasgow who collapsed after using heroin. Does he agree that, after parents and families, schools and teachers are often the first line of defence in the war against child drug abuse? If so, can he explain why national funding for drugs education and teacher training has been withdrawn?

The First Minister: First, I presume that all of us, from all parties, feel shock at the incident that was reported last weekend. In such circumstances, it is always difficult to talk about the individuals involved, but it is clear that the incident raises issues for us. I hope that we will be able to respond to those issues at the same time as we give support to the school and people affected by the incident.

One of the achievements of recent years has been to ensure that drugs education is available in every school in Scotland. That co-ordinated programme of drugs education has run alongside interventions with young people in the community, the work of the Scottish Drug Enforcement Agency—with the choices for life programme for primary 7 children—and the other efforts that are under way to educate young people and others that heroin in whatever form it is taken is addictive. All those aspects, which all involve additional resource, have been important over the years. In my view, a comprehensive approach to the problem is essential.

Nicola Sturgeon: The First Minister will be aware that since 1999 there have been no fewer

than four reports—the most recent of which is from Her Majesty's Inspectorate of Education—calling for better training of teachers in schools so that they can better provide drugs education.

I draw to the First Minister's attention a parliamentary answer given by the Minister for Education and Young People only last week. Is the First Minister aware that, according to that information, all dedicated Government funding for drugs education and awareness in schools and for drugs education training for teachers was withdrawn completely in March 2004? Given recent research showing that 13 per cent of 13-year-olds and 35 per cent of 15-year-olds in Scotland claim to have used drugs, does not that lack of financial commitment to drugs education represent a fundamental flaw in the Executive's drugs policy?

The First Minister: It was appropriate to have a specific funding allocation when comprehensive drugs education was not available in every school and comprehensive continuing professional development was not available for every teacher—not just in teacher training but throughout their working life—as it is now as a result of the agreement that we reached with teachers' unions and teachers themselves in 2001.

Since then, we have mainstreamed not only continuous training for teachers but the funding. We have ensured that, throughout Scotland, there is available not just an incidental amount of funding for drugs education and an incidental amount of training for teachers to become better drugs educators; we have ensured that councils and schools are able to mainstream the funding and the training to ensure that drugs education is available in every school.

That is important, but it is also important that we review the situation. Ms Sturgeon might be interested to know that this month we are due to receive the report that we commissioned last year on drugs education in schools—now that the programme is several years on—to ensure that we can learn further lessons and that the programme can be expanded and improved in years to come.

Nicola Sturgeon: That will be the sixth report in six years and, right now, there is still no dedicated funding for drugs education. The First Minister talks about comprehensive education, but I suggest to him that he has no idea what is going on in schools in relation to drugs education. How can he possibly know when the Executive's annual survey that was set up to monitor drugs education in schools has not been carried out since 2003, before the funding was withdrawn? How can he know when, last week, in answer to the question, "How many teachers have been trained in drug awareness and prevention?" the Minister for Education and Young People said that he did not

know because the Executive does not collect that information?

Is it not time for the First Minister to admit that not nearly enough is being done to educate kids about the dangers of drugs? Is it not time for him to get his finger out and do a bit more about it?

The First Minister: I had many differences with Michael Forsyth when he was my local MP in Stirling and when he was the Secretary of State for Scotland. However, one of the things that he achieved in his time as Secretary of State for Scotland was to depoliticise the drugs issue and to ensure that parties and party leaders came together and rose above party-political debate to ensure that concrete action happened in Scotland. That has been the case until today, and I am disappointed that Ms Sturgeon has chosen seriously to misrepresent the situation.

Over the years, the nationalists and many others have consistently called for us to hypothecate less of the local authority budget for education and other matters to give local authorities more choice over how they spend their money in schools and elsewhere. We refuse to do that until we are certain that services are being delivered. Only when we were certain that drug education was available in every school and that teachers were being properly trained before they became teachers and throughout their working lives did we move away from a hypothecated budget and start to mainstream the budget to ensure that local authorities could make decisions at a local level. Our objective was to create an improved service that was better funded. We achieved that and it is wrong to misrepresent the situation.

Ms Sturgeon misrepresents another aspect. What happens in schools is an issue, but so is what happens in the home, and there is an issue of parental responsibility. In the case that has been mentioned, there is also a responsibility among the neighbours of the dealer who was selling heroin to someone of the age of 11. Either they did not spot it or, if they knew about it, they did not report it. There is a responsibility on the parents of the 11-year-old girl and there is a responsibility on us to ensure that we take more prompt action for youngsters who are living with drug-addicted parents and put the interests of the children first, locally and nationally. That is something that we intend to review.

Nicola Sturgeon: I accept that the solution to drug abuse is complex and I agree with the First Minister's latter comments. However, surely there can be no doubt that education is a vital part of the solution. It is not politicising an issue—in this week of all weeks—to say that we should be doing more to educate our children about the dangers of drugs. It beggars belief that, when faced with the increasing use of drugs by children, the

Executive's response has been to stop the monitoring of drugs education in schools and funding for it. Does the First Minister agree that it is time for us all to do more to prevent more young children from falling victim to drugs?

The First Minister: I am sorry, but it is politicising the issue to completely misrepresent and distort the position. Not only is there now training for teachers in advance of their becoming teachers and throughout their working lives and improved funding for education as a whole and for drugs education in particular through schools and other agencies, including the police service and the Scottish Drug Enforcement Agency, which runs the choices for life programme, but we have ensured that drugs education is available in every school in Scotland. We are reviewing that not to have another report, as Ms Sturgeon complains, but to ensure that we improve the situation. I hope that, when we receive the recommendations, we can work on an all-party basis to take them forward.

Education is important in tackling drug abuse, but what happens in the home and in the community is at least equally as important. There is a serious issue in relation to youngsters in homes in which the family is involved in drug abuse and drug addiction. The hopes, opportunities and futures of those youngsters must come first. That is why, while we continue to improve drug education in schools, we will examine seriously what happens in the home and what our social services are doing about it.

Cabinet (Meetings)

2. Miss Annabel Goldie (West of Scotland) (Con): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-2086)

The First Minister (Mr Jack McConnell): The Cabinet will discuss a wide range of issues, including regeneration and, I suspect, the on-going work on criminal justice, which is a subject that comes up regularly in discussions with Miss Goldie at question time.

Miss Goldie: If an 11-year-old girl asked the First Minister about taking heroin, would he give her information that was designed to help her to know the score so that she could decide for herself or would he tell her how dangerous drug abuse is and say that under no circumstances should she experiment with heroin?

The First Minister: The two things are the same. That is precisely why we are running a national advertising campaign not just on our television screens—I am sure that people will have seen the campaign regularly in the evenings in January—but in our schools and elsewhere.

Appropriately, given what happened last weekend, the particular message for the early part of 2006 has been that smoking heroin is just as addictive as injecting heroin. We were aware that that message was not getting through, particularly to younger people. That is why we supported, with considerable resource, a national advertising campaign to ensure that young people not only know the impact of drugs but are dissuaded from drug abuse by the force of that information.

Miss Goldie: This appalling case highlights two simple points: the need for a clear message on drug abuse and the need for that message to be presented effectively. We have neither. Is it not time to ditch the discredited know the score campaign, which is a mocking echo of confusion and failure, and adopt a commonsense message that is designed to prevent our young people from even contemplating taking drugs? Does the First Minister accept that a straightforward, sensible message must be presented in an innovative fashion, not by people such as me and the First Minister but by former addicts and others with first-hand experience of the problem?

The First Minister: That is precisely the change that we have made, and are making, to the drugs information campaign. The simple message of the past—the just say no approach—is not enough on its own. If we tell youngsters to say no without explaining why, without explaining the range of dangers that exist and without supporting those youngsters in the community by giving them the confidence to say no to their peers or to older people who might try to deal in drugs with them, the message will fail.

Getting youngsters to say no is, of course, the primary objective of our drugs campaign, but at the same time we are ensuring that they have the information to make the right choices and the confidence to say no in a range of different situations and to say to other young people, “Did you know about this? Can you make that choice too?” That is our job and we do it in innovative ways in our schools, through our police forces, through communities, through other young people and through the role models that young people have. I agree that the message should come not from politicians but from people to whom young people will listen. That is why we will continue the effort, step up the campaign and ensure that young people get the message clearly and make the choice to stay away from drugs.

Miss Goldie: The trouble is that young people are not saying no. The number of under-15s who have been treated for drug abuse has more than doubled since the introduction of the know the score campaign, so the recent case is not an isolated incident. We need a strong anti-drugs message now. It must be straightforward,

unequivocal, clear and commonsense. If the First Minister will not listen to me, will he listen to his Labour colleague on Glasgow City Council, Gaille McCann, who believes that this desperate incident should

“act as a wake-up call to us all, particularly the policymakers in their ivory towers”?

The First Minister: I think that that is true and I will return to that point, but it is also important to note that, when there is an increase in the number of people who are getting treatment, it is sometimes because they are coming forward and being identified. The treatment services are available because of the additional investment that we are putting into them. I understand that, currently, 418 young people under 16 are entering treatment. That is good because, otherwise, those 418 youngsters would be out on the street taking drugs and, perhaps, encouraging others to do the same. We need to have a comprehensive approach.

I agree with the point about looking at the policies and the way in which we respond. We know that youngsters who are in the homes of drug-addicted parents are more likely to get involved in drugs. That has become a fundamental issue for us. How do social services and other services respond to such situations? The needs of the children must come first and be considered when they are at a very young age. There should be a review of how our social services and others respond to ensure that youngsters have the best possible chance in life.

The Deputy Presiding Officer (Murray Tosh): There are two constituency questions.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I welcome the First Minister's comments, particularly about the role of social services. The case that has been mentioned has shocked the east end of Glasgow as much as it has shocked the rest of Scotland.

My concern is to ensure that we support schools. I ask the First Minister to demonstrate that we give that support through the allocation of resources for drugs education to ensure that communities are not as badly affected as they have been by this case. Therefore, will the First Minister indicate what resources are presently available and what procedures are in place to ensure that we support children and give cities such as Glasgow enough resources to tackle the problem of drug misuse?

The First Minister: Mr McAveety will be aware that the Minister for Education and Young People recently announced increased resources for the city of Glasgow and other areas with particular problems. I hope that that will be supported

throughout the chamber as we tackle these difficult issues.

From my earlier exchange with Ms Sturgeon, Mr McAveety will also be aware not only that there are increased resources for schools, but that there is drugs education in every school and that we have the required back-up and support for that from the community. I understand that, in Glasgow alone, 10 specific projects on alcohol and drug abuse are funded by our changing children's services fund, working in the areas of the city that most require such assistance. Ultimately, the state and schools can do so much, but families, neighbours, friends and others in the community also have a role to play.

If there is going to be a truly national effort, we need to ensure that our policies are appropriate and effective and intervene at the right time. We must also ensure that people identify the problems for us by being active in the community and reporting incidents. That is why we have used the money that we have taken from drug dealers, following their court case, to run local campaigns and to get local people to identify dealers so that we can convict more of them and stop this abuse happening in communities across Scotland.

Rob Gibson (Highlands and Islands) (SNP): Is the First Minister aware of the widely rumoured £3.5 million deficit in the books of the Western Isles NHS Board, which comes on top of the shock news earlier this week that a senior clinician with 24 years service in the islands has been sacked for whistle-blowing over allegations of bullying made by senior staff against the board chairman and chief executive? Will the First Minister insist that his Minister for Health and Community Care, Andy Kerr, takes heed of widespread local opinion, including that of Western Isles Council, and uses powers of intervention under the National Health Service Reform (Scotland) Act 2004 to restore quickly to the outer isles a health service that is based on trust and harmony and that can spend its scarce funds on patient services rather than protracted staff grievance procedures?

The First Minister: It would be totally inappropriate for a Government minister to intervene in an individual employment case in relation to which proceedings have not yet been completed. In such situations, whether in the health service or anywhere else, it is right and proper that individuals who have been the subject of disciplinary action by their employer should be able to follow the correct procedures, go through the appeals and thereby have their case heard.

I recall that, fairly recently, there were calls for ministers to intervene in an individual disciplinary case following an incident at either Inverness College or the university of the Highlands and Islands. However, the case was resolved by going

through the proper procedures, which was the right way for that to go. I do not think that it would be right for ministers to intervene in this case.

Retirement Age (Public Sector Workers)

3. Colin Fox (Lothians) (SSP): To ask the First Minister whether the Scottish Executive will safeguard the right of Scotland's public sector workers to retire at 60 under the rule of 85 regarding age and years of service. (S2F-2102)

The First Minister (Mr Jack McConnell): Any member of the local government pension scheme has the right to retire at 60 if they choose, and there are no plans to change that. However, the rule of 85 allows only those members who qualify to do so with an unreduced pension.

Colin Fox: That answer completely contradicts the answer that the Minister for Finance and Public Service Reform gave to an earlier question. Hundreds of thousands of public sector workers in Scotland are furious at the Scottish Executive's attempts to withdraw their pension rights. Is it not the case that the legal advice that the Executive quoted was completely contradicted by the advice of both the Convention of Scottish Local Authorities and Unison, as well as by the advice of the European Commission spokesperson on employment, Katharina von Schnurbein, who ruled that

"The directive has no influence on pension value or pension age. It is completely up to the member state. If they think it is reasonable for people to retire at 60, under EU law that is perfectly legal"?

Will the First Minister assure us that he intends to protect the right of Scotland's council workers to retire at 60?

The First Minister: As I said, any member of the local government pension scheme has the right to retire at 60 if they choose to do so, and there are no plans to change that. There are plans to change the rule of 85, but negotiations about how that will impact on individual members of staff who currently work for local authorities in Scotland are still continuing. It is right that those discussions continue. I make it clear that any attempt by Colin Fox or others to distort the picture should not be believed.

Colin Fox: I ask the First Minister, therefore, to allay the fears of more than 200,000 local government workers, including carers and teacher assistants, who fear that the Scottish Executive is simply playing its part in sending a signal as part of a wider attack on pensions that will see employees across the country asked to pay in more, work longer and receive far smaller pensions when they retire. Will he assure us that that is not part of the plan that he has announced?

The First Minister: It is important to remember two things. First, we have a duty to obey the law. Although we may from time to time receive calls from at least three of the Opposition parties to disobey the law, we are not prepared to do that—on fishing, on some of the issues that the nationalists raise or on the issues in respect of which Colin Fox and others regularly call on us to disobey the law. We should not disobey the law. We should implement the law under our duty as Government ministers and as a Parliament, and we intend to do so.

Secondly, we intend to look after the public purse, and we need to ensure that, while obeying the law, we have a mind to the cost of the local authority pension scheme. We are ensuring that that happens, and there will be proper negotiations with those responsible on the impact of the change on individual members of staff.

Sectarianism

4. Mr Charlie Gordon (Glasgow Cathcart) (Lab): To ask the First Minister how its “Action Plan on Tackling Sectarianism in Scotland” will involve all sections of the community in the drive against sectarianism. (S2F-2090)

The First Minister (Mr Jack McConnell): Community-led action will have an increasing impact in stamping out bigoted attitudes, and I am proud of the way in which Scots have risen to the challenge of defeating sectarianism. The 18-point action plan that I announced on Monday represents a national effort to work with schools, universities and colleges, football clubs, churches, marching organisations, the police and many other stakeholders to achieve that goal.

Mr Gordon: Is the First Minister aware of the good work that is currently being done in Glasgow by Glasgow City Council, by the sense over sectarianism campaign and by schools such as St Mirin’s Primary School and Croftfoot Primary School in my constituency?

The First Minister: The sense over sectarianism campaign and a number of other organisations working in that area have done a tremendous job in recent years, not only to raise the issue in the community and to ensure that schools and other organisations receive support but to put pressure on politicians to respond, as I believe we have now done. The work that is going on in Glasgow schools, particularly in the schools where I met pupils on Monday, at St Mirin’s and Croftfoot, is outstanding. The youngsters whom I met on Monday were inspiring. I believe that the coming together of those youngsters for a variety of different activities, including reading, visits to other centres, drama and other activities, will have a lasting impression on them for the rest of their lives. I congratulate the teachers involved and I

certainly encourage the youngsters to keep up the new friendships that they have made and to ensure that they continue to educate the adults in their lives, as some of them are clearly doing, into their secondary school years and beyond.

Donald Gorrie: Will the First Minister ensure that all the organisations that are keen to combat sectarianism feel genuinely involved in the action plan and that it is not perceived as some Government thing that they have to trail along with? In particular, will he ensure that contact is made with the great majority of decent people in many organisations who will help to combat the small minority of extreme fanatics who cause much of the trouble?

The First Minister: I agree with Donald Gorrie on both his points. There have, indeed, been discussions with a wide variety of organisations over the past year, since the summit that was held last February. I was disappointed to hear the comments last weekend of some people who felt that they had not been informed or involved enough. There certainly has been involvement, but I am delighted to know that people want more involvement and more information. We will certainly ensure that we step up our efforts in that regard over the weeks and months ahead.

Patrick Harvie (Glasgow) (Green): I certainly welcome the proposal in the action plan on the twinning of schools to encourage shared activities and to help to overcome the barriers that exist between communities. Such things are happening in some areas already. However, surely it would be better not to put up those barriers in the first place. Is it not time for the First Minister to clear the path towards full integration in our education system? If he is not able to take that position at this time, will he at least agree that the creation of new religious dividing lines in our school system would be a step in the wrong direction?

The First Minister: I do not agree with the abolition of Roman Catholic schools in Scotland. We need only look across the border to England to see a wide variety of schools of different faiths. The youngsters who attend those schools do not hate other religions.

Sectarianism in Scotland does not come from the schools; it comes from history, tradition, families and sometimes the communities in which youngsters grow up. Our job here is to ensure that, through the school system, youngsters are brought together whatever school they attend; that, through the force of the law, we tackle those who abuse others in the community as a result of a religious divide; that we manage and make decisions on marches and parades more effectively and with more determination to stamp out violence and abuse in the years to come; and that we work closely with all our religious

leaders—including the Moderator of the General Assembly of the Church of Scotland, who I see is with us today, and others who have supported these efforts—to bring together people of different faiths, so that they understand each other more, tolerate each other's views more and, at the end of the day, create a far more happy and inclusive Scotland.

Drug Use (Children)

5. Stewart Stevenson (Banff and Buchan) (SNP): To ask the First Minister what action the Scottish Executive has undertaken in response to the findings published in 2003 by Professor McKeganey, which examined the extent of drug use and exposure in 10 to 12-year-olds. (S2F-2103)

The First Minister (Mr Jack McConnell): I have every sympathy with Stewart Stevenson. He has a record of raising these issues and today he has had to follow on from earlier questions. I acknowledge the particular problem in his constituency and his interest in the issues. I hope that we can continue to work together on them.

As I said earlier, we are taking action on a number of fronts. We are ensuring that drugs education is available in all schools; that there is a national public information campaign; that there is early intervention and diversionary programmes for youngsters and families; and that there is improved treatment for those with acute problems.

Stewart Stevenson: I take the opportunity of saying that the First Minister will have a faithful friend for any sensible initiatives to which we can all sign up. However, the signs are not encouraging. I have been asking questions for around three months about what we know of these issues. The First Minister will know that Professor McKeganey's report was commissioned not in Scotland but by the Home Office—it was not a Scottish report.

In written answers on 3 November and 18 November, I was told that we do not know the size of the drugs trade and that we do not work with the Home Office. We do not have a report such as the one produced annually in London that gives information on the size of the drugs trade south of the border, on how many people are using different drugs, and on what the impact of those drugs is. Is it not time that we had quality research into factual ways of determining policy in Scotland—research that is at least as good as what is available south of the border?

The First Minister: It is vital that our approach covers all the different areas in which we must have an impact through policy, funding and the other decisions that we make. We do that not by

reference to the Home Office but by reference to what is happening here in Scotland.

If Mr Stevenson indeed watches the matter carefully, he will see that in certain areas the Home Office and the United Kingdom Government are learning from what is happening in Scotland. That is good, and such an approach helps us because drug dealers do not exist in either Scotland or England but move across the border.

Aside from Professor McKeganey's report, the report entitled "Hidden Harm: Responding to the needs of children of problem drug users", on which an action plan will be published this spring, was also produced in 2003. We know from that report, and from the widespread consultations that are important if we want to bring together everyone who works in the drugs field, that we need to improve drugs education in every school in Scotland and that not only the police but—critically—our Scottish Drug Enforcement Agency must take certain educational and enforcement measures. Indeed, the Parliament will debate this afternoon the creation of an agency with wider powers, among other issues. Furthermore, we need to ensure that the money that we retrieve from dealers through convictions is reinvested in the community to tackle any damage that has been caused.

Evidence has shown that those actions must be taken, and the changes and adaptations in policy, the new laws that have been created and the new funding that has been allocated in recent years have all been based on that reality. We will continue to do those things and more.

National Health Service (Health Checks)

6. Mary Scanlon (Highlands and Islands) (Con): To ask the First Minister whether the Scottish Executive will consider introducing regular NHS health checks. (S2F-2093)

The First Minister (Mr Jack McConnell): We are committed to a national health service that responds to people's health needs throughout their lives and, indeed, have already adopted a strategy of targeted health checks for those who are most at risk from disease.

Mary Scanlon: If the Executive is considering the introduction of NHS health checks, why was the annual health check for the over-75s, which was introduced by the Tories, dropped in the new general practitioner contract?

The First Minister: I was going to be kind to Mary Scanlon, because I think her interest in the matter is genuine, but I cannot resist reminding her of what happened to the change that the Tories made. The GP contract was amended in 1990 by the then minister with responsibility for health, Mr Michael Forsyth, to include a health

check for patients who had not been seen by a GP for three years. However, the introduction of the measure was such a shambles and the programme was so badly organised, implemented and monitored that the Conservative Government dropped it in 1993.

Our current commitment to health checks is very important. In Scotland, we will quite rightly begin by targeting checks at those who need them most. Indeed, that is the rationale behind not only the health checks but the prevention 2010 programme that the Minister for Finance and Public Service Reform announced in response to the report by Professor David Kerr—the other Kerr—in the autumn. That preventive approach will not only ensure that our health service is more effective but save lives.

The Deputy Presiding Officer: That concludes questions to the First Minister.

12:33

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Health and Community Care

Older People's Services (Remote Areas)

1. Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): To ask the Scottish Executive how it will protect services for older people in remote parts of Scotland provided by centres such as the Assynt centre in Lochinver and the Cala Sona in Melness. (S2O-8909)

The Deputy Minister for Health and Community Care (Lewis Macdonald): It is for individual local authorities to determine what level of provision is required to meet the needs of older people and to arrange an appropriate range of services. In the current financial year, we have provided councils with £1.6 billion to support their provision of community care services.

Mr Stone: The deputy minister will be aware that, during the past hour, Highland Council has, thankfully, decided to put on hold the proposal to shut the Assynt centre in several months' time. Does he agree that the upset and distress for local people has been colossal, that the issue has not been handled as well as it could have been and that the council's decision is just a holding move? Will he ask his officials to look into what has happened and into the possibility of maintaining for the long term that important centre in a remote part of the Highlands, where we desperately need respite beds and where distance is a huge issue?

Lewis Macdonald: Jamie Stone rightly alluded to the fact that my officials are in touch with Highland Council on that and a range of related matters. However, it is important to be clear that it is not for ministers or officials to tell councils how they should make best use of the resources with which we provide them. We are clear about the importance of appropriate services being available to people where they can access them. Clearly, those services need to meet given standards, which are set by the Scottish ministers. We look to local authorities to ensure that, whatever range of services they provide in order to meet the needs of people in those positions, they do so in a way that meets those standards. Jamie Stone referred to the importance of respite; again, that is well understood and is reflected in the guidance that we give to local authorities.

Rob Gibson (Highlands and Islands) (SNP): I wonder, from what the minister says, whether he understands how difficult it is in small communities to maintain the jobs that can flow from having care homes? It is essential in the Highland area, where a third of the beds for care homes are provided by the council, that we maintain jobs that support local people—in small communities such as Assynt—and that we have a policy of moving forward. He said that he gave councils £1.6 billion for the provision of community care services. Can he build into that some element for remote communities to encourage the expansion of small care homes?

Lewis Macdonald: It is important to be clear about the direction of policy, which is not to encourage more people to be resident in care homes but to enable more people to stay in their own homes. I know from Jamie Stone's and Rob Gibson's questions that they appreciate the importance of people having access to services close to home. That is our intention too. However, it would not be appropriate for Government to dictate to councils whether sheltered housing, care homes or other forms of support are most appropriate in the circumstances. That is for councils to decide; they are elected and are therefore accountable.

Mrs Nanette Milne (North East Scotland) (Con): It has come to my notice that Lorn and Islands district general hospital and, as far as I can make out, other hospitals in Argyll and Bute, have been unable to refer anyone for home care packages for free personal care since November. Since Christmas, there have been no referrals to nursing homes because there is no money. Will the minister confirm that? If that is the case, does it not make a mockery of the Executive's principles of free personal care for the elderly, and independence and choice for elderly people?

Lewis Macdonald: I cannot confirm the details that Nanette Milne has provided to the chamber, but I am aware of issues around the funding of free personal care and how councils carry out their responsibilities in that regard. We are working closely with the Convention of Scottish Local Authorities to ensure that there is a better understanding around the table of the funds that are provided and the purpose for which they are provided, and to ensure that they are properly spent. The policy position is clear: an entitlement to free, personal care in the circumstances that have been described.

Eleanor Scott (Highlands and Islands) (Green): I appreciate what the minister says about this being a decision for local authorities and the tendency to emphasise the need to keep people in their homes and provide the appropriate care for that. However, does he agree in principle that,

given our increasing frail and elderly population, we need a spectrum of care in all communities that will include residential and respite care as well as home care?

Lewis Macdonald: I agree with the principle that Eleanor Scott enunciates. That is the principle that underlies "Delivering for Health", which Andy Kerr announced to the Parliament a few weeks ago. Making a spectrum of care available in communities is the right way forward. We will look to our delivery agencies to deliver that in the most appropriate way in their local areas.

National Health Service (Sustainable Development)

2. Mr Mark Ruskell (Mid Scotland and Fife) (Green): To ask the Scottish Executive how NHS Scotland will contribute to sustainable development. (S2O-8920)

The Deputy Minister for Health and Community Care (Lewis Macdonald): The NHS in Scotland will continue to work towards further significant reductions in its consumption of energy and water, in carbon dioxide emissions and in volumes of waste sent for disposal. We are currently updating NHS Scotland's environmental policy, and NHS boards are making good use of NHS Scotland's computerised environmental management system, as are others in the health care, retail and manufacturing sectors throughout the United Kingdom.

Mr Ruskell: I welcome the minister's commitment to reducing the direct impact that the NHS has on the environment and on resource use. Can he tell us how the NHS will play a more fundamental role in, for example, developing an indicator for the overall well-being of the nation? Is that something that the Executive is pushing on, which we will see in the future?

Lewis Macdonald: The direction of our policy is to recognise both the impacts of the environment on health and the role that the health service plays in the environment. If that is the direction in which the member is inviting me to go, I am happy to confirm that we endorse that cross-cutting approach. Indeed, our officials on the environment side are working together in precisely those areas.

Nursing

3. Michael McMahon (Hamilton North and Bellshill) (Lab): To ask the Scottish Executive what action is being taken to encourage school leavers and students to consider nursing as a profession. (S2O-8867)

The Minister for Health and Community Care (Mr Andy Kerr): The Health Department is pursuing several initiatives on behalf of the health service in Scotland that will enable health boards

to improve recruitment and retention. The careers for health team within the Health Department is leading on a number of initiatives to increase public interest in health-related careers that include nursing and midwifery.

Michael McMahon: I thank the minister for his efforts in encouraging young people to enter nursing as a profession. However, I advise him of the other side of the argument, which was brought to me by four students at one of my local high schools. They informed me of their visit to an open day at Glasgow Caledonian University. They went along to show their interest in a nursing career but were advised that two thirds of the places on the course for the forthcoming year were reserved for mature students. Where does that type of policy fit in with encouraging young people to become student nurses?

Mr Kerr: It does not. I would be interested in taking up that matter with the member, as what he says gives me some concern about the implementation of that policy. It also runs counter to many things that we are involved in—for instance, the creation of an online virtual hospital, using games technology, that enables school pupils and the public to experience and learn about health care careers. That is one of many initiatives in which we are involved that is targeted at young people. We also attend national careers and recruitment fairs throughout Scotland to try to encourage folk into the NHS family. I find what the member says surprising, and I am happy to consider the individual case that he has raised.

Shona Robison (Dundee East) (SNP): Does the minister agree that pay and conditions are important in encouraging school leavers and students to consider nursing as a profession? Will he respond to the concerns that are being raised by staff and unions about delays in the implementation of agenda for change? Can he reassure us that the May deadline, to which he has referred previously, will be met and that health boards will have the necessary resources to implement agenda for change?

Mr Kerr: The agenda for change exercise has been a huge one for the NHS in Scotland. It involves Scotland's biggest workforce and represents a major change in the terms and conditions of those who work in the NHS. It was subject to individual interrogation at every review that I carried out during the summer. I implemented several steps that ensured that enough resources were put into the local agenda for change process. I value that; the deal is clearly important not only to those involved, but in what it delivers for patients in ensuring that we have a more flexible and better trained staff that will deliver our health services in the future. This undertaking is huge and I have said to boards—

and I maintain this position—that I want to implement agenda for change as quickly as possible.

However, two things are vital. First is the quality of the process. I do not want to rush the job and end up with an unwieldy number of appeals. Secondly, if the job is rushed, the very people whom we seek to support—our employees—may lose confidence in the process. A balance must be struck. I share the member's concern about the delay, but I have made it absolutely clear to health board chairs and everyone who is involved that we must deliver agenda for change. At my last meeting with those chairs, it was clear that we are beginning to make substantial progress. I take the point, I understand the concerns, and I want to deliver an NHS workforce that is fit for purpose. Agenda for change is integral to that.

Hospitals (Parking Charges)

4. John Farquhar Munro (Ross, Skye and Inverness West) (LD): To ask the Scottish Executive whether it has any plans to regulate the cost of parking charges at hospitals. (S2O-8911)

The Minister for Health and Community Care (Mr Andy Kerr): Guidance on car park charging on NHS sites was issued to NHS Scotland in April 2004. That guidance is designed to manage better the use of limited parking facilities, discourage unauthorised parking and improve the security of car parking. Therefore the Scottish Executive has no plans to regulate the cost of parking charges at hospitals.

John Farquhar Munro: I hope that the minister appreciates the problem that hospital car parking creates for families who several times a day visit their relatives in hospital. I suggest that Scotland's health boards offer free permit parking for qualified and registered families, and I hope that he will encourage that.

Mr Kerr: That opportunity is already in the guidelines. However, we must be clear. It does not make sense for the Executive to centrally determine what those charges might be and how those systems might work. There are many health care facilities around Scotland, but public transport arrangements for each are different, as are the availability of public parking on streets and other places, the availability of land for parking and indeed council policies. Fly parking is a big issue in certain parts of Scotland—people inappropriately use our health service parking facilities. Although I do not wish to drive that from the centre, because those are local issues, any parking scheme should be not about profit but about improving parking facilities for users. NHS boards can have the arrangement to which the member refers.

The Deputy Presiding Officer (Murray Tosh): I call Kenny MacAskill at this point, and withdraw question 7.

Mr Kenny MacAskill (Lothians) (SNP): Is there a proposal to improve the availability of access by public transport? Will steps be taken to provide financial support for that, given that many hospitals are now being built on out-of-town sites and are difficult to access without a car? As John Farquhar Munro clearly said, hospital car parking has an impact not only on staff and patients, but on visitors.

Mr Kerr: I take the point seriously, and I have been working on it. The Minister for Transport and Telecommunications and I have met, and we correspond regularly on the matter. I have made this issue clear to NHS board planners. There are good examples of green travel plans and public transport travel plans. For instance, I saw recently the work that is going on in Tayside. However, such work is not widespread enough.

When we survey public opinion on the health service, one top-line message from patients, their families and users of the service is that parking, access and public transport are issues. Therefore we will continue to work as we have been on green travel plans and to invest in better signage and better availability of public transport to our hospitals. Nonetheless, I accept that we can do more, and that is why my discussions with the Minister for Transport and Telecommunications are on-going.

We have developed some local projects, such as that in Rutherglen in Glasgow, on which we work with patients and their families to improve access. I accept the member's point; access is not what it should be, but he can rest assured that we are working on it.

The Deputy Presiding Officer: Question 5 is withdrawn.

University of Dundee (Nursing and Midwifery Training)

6. Marilyn Livingstone (Kirkcaldy) (Lab): To ask the Scottish Executive what communication it has had with the University of Dundee in respect of the impact on the recruitment of nurses and midwives of the proposed relocation of nursing and midwifery training from Kirkcaldy to Dundee. (S2O-8861)

The Minister for Health and Community Care (Mr Andy Kerr): Decisions about where and how pre-registration nursing and midwifery programmes are provided are a matter for the higher education institutions that deliver them, in consultation with all other stakeholders including NHS Scotland.

The University of Dundee notified the Executive of its intention to consult stakeholders about a proposal to relocate the theoretical element of pre-registration nursing education from Kirkcaldy to its main campus in Dundee. Under the proposal, Fife students will continue to undertake the clinical practice element, which comprises 50 per cent of the programme, in Fife. I sought an assurance that, before any decisions are made, the university will undertake a demonstrably robust and comprehensive consultation with staff, students and key stakeholders and discuss the outcome with the chief nursing officer at the Scottish Executive Health Department.

Marilyn Livingstone: The minister will be aware that the university's contract for the provision of nursing and midwifery education was awarded in 1996. First, will he inform me how long the contract has to run and whether the proposed changes comply with the spirit of the contract? Secondly, is he aware of the serious concerns that stakeholders have expressed about the impact that the changes will have on nurse and midwife recruitment in Fife, particularly from mature students?

Mr Kerr: I am aware—because the member has made me aware—of some of the concerns about the matter in Fife. Of course, the purpose of the consultation exercise that the university is undertaking is to consider those concerns. We want to ensure that we retain all our existing students so that they go on to work within NHS Scotland. Any student loss would be a tragedy for the service. We must also ensure that their education experience is valuable and appropriate.

As I understand it, the university's proposal will allow the theoretical element of the programme to take place in a new, purpose-built facility. I am not saying whether that is right or wrong—that is a matter for the consultation. I understand that Fife students currently undertake the theoretical element in an older building that is thought to be becoming unfit for purpose, but, again, that is a matter for the consultation. No decision has been taken and no decision will be taken until the consultation process has been completed. In my view, the matter is about investment in the training and skills agenda, valuing our students and making sure that we retain them within the service.

On the member's first point, the contract was renewed recently. I will come back to the member about the precise timescale of the contract as and when appropriate.

Wheelchair Services

8. Margaret Smith (Edinburgh West) (LD): To ask the Scottish Executive whether it has any concerns regarding the waiting times for the

assessment and provision of adult wheelchair services. (S20-8915)

The Deputy Minister for Health and Community Care (Lewis Macdonald): We do have such concerns. As a result, we allocated £1.9 million of interim funding to the wheelchair service to help to reduce waiting times during the current financial year. We set wheelchair centres a target that 80 per cent of adults should wait no more than 26 weeks from their referral to the time when they leave the centre with the appropriate equipment to meet their clinical need. All five wheelchair centres in Scotland are currently meeting that target.

Margaret Smith: I raise the issue today on behalf of an 18-year-old constituent who has a degenerative condition that means that his wheelchair needs are subject to frequent change. His experience of the service is not quite what the minister described. He has been told that he will have to wait 11 months for an assessment of his wheelchair needs. He has also been told by those who provide the service in NHS Lothian that patients are becoming bedridden because they are having to wait. Some patients have been bedridden for six months. I accept that the minister is trying to do what he can, but does he think that the review that is being undertaken and the extra money that has been provided can be put to good use in improving the unacceptable waiting times?

Lewis Macdonald: I believe that that is the case. NHS Quality Improvement Scotland has indeed commissioned a review that is examining the structure of the service and considering the best way for services to be delivered. Margaret Smith referred to her constituent who is 18 years old. One of the difficult areas for those who need to access the wheelchair service is the transition from children's services to adults' services. In some respects, that might be particularly marked in Lothian, where the services are provided from different centres. The review is considering ways in which patients who need access can get access quickly. The funding that we provided in the current financial year has undoubtedly made a difference and we expect to receive the report from NHS QIS by the end of the financial year.

Environment and Rural Development

Single Farm Payment

1. Richard Lochhead (North East Scotland) (SNP): To ask the Scottish Executive how many farmers who are retired or living overseas are entitled to single farm payments and what the estimated total amount of such payments is. (S20-8839)

The Minister for Environment and Rural Development (Ross Finnie): To qualify for receipt of the single farm payment, claimants must be engaged in an agricultural activity. The European Commission, not Scottish ministers, sets what constitutes agricultural activity, which includes maintaining land in good agricultural and environmental condition.

There are nine farm businesses located in Scotland for which the title holder has a correspondence address outside the United Kingdom. The estimated single farm payment awards for those businesses total £177,000. The fact that the owner of a farm business resides overseas is not a factor in determining eligibility for single farm payments. All farm businesses, regardless of where the owner resides, must meet the conditions of the scheme, which include undertaking an agricultural activity.

Richard Lochhead: I thank the minister for his informative answer. Like other rural members, I am sure, I have been contacted by constituents who believe that the residency of the farmer receiving the single farm payment should be a factor. Like many members, those constituents believe that such payments should go to farmers who live on or work the land directly. It is not right—it is perhaps immoral—that such payments should go to farmers who are living overseas or have retired in this country and are no longer working the land. The minister is aware that there are fishermen who are given quota despite the fact that they no longer go to sea and are in effect retired; this is a similar situation that is causing controversy in the farming sector. Does he agree that it is immoral that payments should go to farmers who are retired and that something should be done about that? Will he do anything about it?

Ross Finnie: We must be careful to keep the issue in some sort of perspective. I understand some of the concern that exists, but I gave an answer to the effect that £177,000 out of a possible total of in excess of £400 million goes to farmers who are residing overseas. We should be careful not to give the impression that there is a widespread problem throughout Scotland.

Mr Lochhead will be aware of the arrangements between farmers. He properly raised with me the case of someone who had written to him claiming that they had purchased property for which they did not receive the entitlement. It was claimed that the entitlement was being received by the entitlement holder, who had gone abroad. That claim turned out not to be accurate. We must be careful about allowing unfortunate rumours to emanate.

The issue for us is whether an entitlement holder is renting or leasing land in a perfectly economic way that allows other people to manage the land. I

would have to raise the issue of farmers resident overseas at a European level, because the European Commission decides who is eligible. However, there is an interesting debate to be had about whether, if an entitlement holder is leasing land and the value of that let has been suitably reduced to allow the person to use that land and meet the conditions for single farm payments, Scottish agriculture is the net loser.

Mr Andrew Arbuckle (Mid Scotland and Fife)
(LD): Would the minister care to comment on the trading of single farm payment entitlements? This week, there is an auction in Aberdeen where those bits of paper are being traded.

Ross Finnie: Mr Arbuckle's question follows on very sensibly from that of Richard Lochhead. Under the previous system, people were eligible for a number of entitlements, which are now in a single payment. Even under the old arrangements, it would be perfectly possible for someone to qualify who had entered into a contractual arrangement with a third party to carry out farming activity. Under the old schemes, it was possible to have an address overseas, as long as the conditions of the schemes were met.

I am not overly happy about tradability. However, given that single farm payments have been established as an entitlement for an individual, we would have to consider very carefully the implications under the European convention on human rights of regulating to remove that entitlement. As I explained to Richard Lochhead, the definition of what constitutes the owner and agricultural activity is enshrined in the relevant European regulation.

Water Framework Directive

2. Murdo Fraser (Mid Scotland and Fife)
(Con): To ask the Scottish Executive what representations it has received in relation to the implementation of the water framework directive by the Scottish Environment Protection Agency. (S2O-8890)

The Deputy Minister for Environment and Rural Development (Rhona Brankin): The Executive has received representations from a variety of stakeholders, most recently from the consultation on SEPA's charging scheme. Those representations have been about the way in which SEPA will implement its WFD obligations. The Executive continues to work with SEPA and our stakeholders to ensure that implementation of the WFD secures an appropriate balance between protecting and utilising the water environment in Scotland.

Murdo Fraser: The minister will doubtless be aware of the concerns that the farming sector has raised about the financial and administrative

burdens of the new regulations. SEPA has made concessions on the charges, but does she accept that there will still be an administrative burden? Does she recognise that farmers, who struggle with an ever-increasing mountain of red tape in their businesses, will not welcome the regulations, which will simply add to that administrative burden? Will she look at that issue with SEPA to see what can be done to simplify the paperwork that will be involved?

Rhona Brankin: I am aware that farmers have made representations on the matter. SEPA has been working closely with the sector and its representatives to try to ensure that any regulation is proportionate. I understand that the banding system that is used for the charging scheme unfairly penalises operators who are on the borderline between bands or who rotate their crops on rented land as part of good land management practice.

We must ensure that we keep it simple. For example, we can ensure that authorisation charges are banded on the basis of the total site in an application rather than the number of abstraction points. Applications could include rented land. We need to ensure that SEPA works closely with the agricultural sector to protect the land, in a proportionate way that takes into consideration the sector's interests.

Mr Andrew Arbuckle (Mid Scotland and Fife)
(LD): I applaud the minister's ideal of keeping it simple, but is she aware that the farmers who are applying for an abstraction licence have 12 qualifying points? They have to work out a mathematical sum that is beyond most before they find out how much they have to pay.

Rhona Brankin: The consultation period ended in December and, as the member will know, there were more than 100 responses to it, which ministers will have to examine closely. Eventually, it will be ministers who make the decision about appropriate charging schemes. They will have to balance the needs of the environment with social and economic considerations.

Urban Woodland

3. Bristow Muldoon (Livingston) (Lab): To ask the Scottish Executive what initiatives it is supporting to maintain and develop woodland in urban areas. (S2O-8872)

The Deputy Minister for Environment and Rural Development (Rhona Brankin): Forestry Commission Scotland introduced the woods in and around towns initiative in 2004, which has already brought some 1,500 hectares into active management and created over 300 hectares of urban woodland. The initiative includes a challenge fund and last week I announced a £2

million boost for the fund. We now have nearly 80 partnership projects in urban areas across Scotland. We are also active partners in the Central Scotland Forest Trust, which is helping to eradicate the legacy of industrial dereliction in the central belt.

Bristow Muldoon: I welcome the resources to which the minister referred, part of which was used to enhance access to woodlands close to Livingston for walkers, cyclists and horse riders. Does she agree that access to woodland areas for people who live in urban areas is extremely important in enhancing their quality of life and providing exercise opportunities? What is the Executive doing to promote access to woodlands, particularly among young people and through schools?

Rhona Brankin: The kinds of benefits to which Mr Muldoon referred are hugely important. Clearly, Forestry Commission Scotland's role in working with local councils such as West Lothian Council is important. I pay tribute to the work that that council has done in improving access to forest land. Mr Muldoon rightly recognises the importance of schools in this regard. Indeed, a number of projects across Scotland to develop forest schools have been taken forward recently.

The projects that the woods in and around towns initiative provides give communities a huge range of benefits, such as skills training for the long-term unemployed; the upgrading of footpaths; the thinning of woodland; the creation of woodland ponds; community events; and, of course, the provision of children's play areas, which is hugely important.

Cockle Harvesting (Upper Solway)

4. Alasdair Morgan (South of Scotland) (SNP): To ask the Scottish Executive what discussions it has had with the relevant regulatory bodies regarding the enforcement of regulations on cockle harvesting on the upper Solway. (S20-8844)

The Minister for Environment and Rural Development (Ross Finnie): The Scottish Executive has had a number of discussions with a range of regulatory bodies about the enforcement of regulations on the Solway cockle fishery. Those bodies include the Scottish Fisheries Protection Agency; Dumfries and Galloway constabulary; the Maritime and Coastguard Agency; the Health and Safety Executive; HM Revenue and Customs; the Gangmaster Licensing Authority; Dumfries and Galloway Council and the Cumbria sea fisheries committee. Most recently, a meeting was held by the Executive on 1 February at which all those organisations were represented. Further discussions will continue as necessary.

Alasdair Morgan: I am sure that the minister is aware that a great deal of illegal cockling happens on the upper Solway. Often, hundreds of people are involved at a time, perhaps 6 miles out from land in an area where the tides can come in very quickly—much more quickly than a man can run. When we talk to the regulatory agencies, they say either that they have no power to do anything, or, if they have power, that they have no resources to do anything. The potential for a major tragedy in the near future is very real indeed, and simply having more meetings will not put that off. Will the minister say what concrete action will be taken?

Ross Finnie: I am grateful to Alasdair Morgan and other members from his area for their interest and for the great amount of intelligence that they provide from time to time about illegal activities. I share Mr Morgan's concerns about illegal fishing, which could have a serious environmental impact on the Solway.

The point that Mr Morgan makes about the potential for a human tragedy is very serious. I hope that he does not regard my meetings with such a wide range of bodies as unimportant. The matter is complex. People are not only breaking the law as regards sea fisheries but breaking other laws as well. The meetings are therefore necessary.

Mr Morgan asks about resources. People are going to sea illegally and they are doing so in a random way. We are trying to ensure that, by collaborating with all the bodies with which we are in discussion, we can bear down on those people as effectively as we can. I would not pretend to Mr Morgan or to anybody else that the matter is easy to deal with, but we are seized of the danger of a human tragedy.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): Will the minister confirm that an announcement is imminent on the formation of the Solway shellfish management association? That association would license cockle fishermen, thus making the identification of illegal fishermen all the easier.

Does the minister agree that the successful enforcement of regulations by either the SSMA or the Scottish Fisheries Protection Agency could only be made easier by the full involvement of the private owners of the foreshore and sea bed, who are currently largely excluded from the process of managing these valuable assets?

Ross Finnie: We are close to resolving some of the rather unfortunate last-minute issues that have to be resolved before confirming the order that will lead to the formation of the management association. Mr Fergusson is right to say that the association will make it much easier to identify the legal and the illegal fishers.

Regulations will allow us to define more clearly who is legally responsible. I was not aware of people being excluded from the process of executing the law, but if Mr Fergusson has concerns that people who could be helpful are being excluded, I would be happy to discuss them with him.

Forests (Recreation)

5. Mrs Mary Mulligan (Linlithgow) (Lab): To ask the Scottish Executive what support is given to Forestry Commission Scotland and others to develop forestry land for recreational pursuits. (S2O-8873)

The Deputy Minister for Environment and Rural Development (Rhona Brankin): Last year, through Forestry Commission Scotland, we invested £7.8 million in creating opportunities for more people to enjoy woods and forests in Scotland, which attract 26 million visits annually. Forestry Commission Scotland also works with VisitScotland, Highlands and Islands Enterprise and Scottish Enterprise on forest-related tourism, which brings in more than £160 million each year.

Our woods in and around towns initiative provides opportunities for town dwellers to enjoy their local forests. Other forests provide settings for more energetic or specialist activities such as mountain biking, orienteering or even husky sled dog racing.

Mrs Mulligan: I am sure that we will pursue that last activity. The minister might be aware of heartlands, which is a derelict coal-mining site west of Whitburn in my constituency that is now undergoing regeneration. One proposal is to use the adjacent forestry land for walkways, mountain bike tracks and so on—although not, I have to say, for husky sled dog trials. Perhaps we should think about that. Will she consider supporting such developments to ensure that my constituents have a place where they can engage in healthy pursuits? If so, can she tell us what form that support might take?

Rhona Brankin: I very much welcome the heartlands regeneration project at Polkemmet colliery. Indeed, I understand that, at almost 600 hectares, it is one of the largest in Britain and aims to provide jobs, housing and community facilities.

I understand that Forestry Commission Scotland will be involved in helping to plan the wooded areas and path networks and that a bid has been submitted for European regional development funding. The commission is also working closely with the council on creating and developing green areas in West Lothian. In fact, this afternoon, it is meeting the council to discuss its contribution to the work of the Central Scotland Forest Trust. I am

happy to provide the member with information following that meeting.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The Carron valley forest, which is partly in my constituency, is on many people's doorstep and serves a very large urban population in central Scotland. The minister will be aware of the on-going work there; indeed, one voluntary group in particular has been developing mountain bike and walking trails in the forest and has generally been encouraging people to use it. How will the Scottish Executive support the group to develop the recreational facilities in the forest?

Rhona Brankin: Again, Forestry Commission Scotland has been in discussions with the Carron valley development group on these matters and I particularly welcome the development of mountain bike trails in the area. I believe that the commission has been discussing with the group heads the terms of an agreement on the future management of the trails. After all, it is one thing to help with capital, but the key issue is how the trails and on-going costs are managed. We need that sort of partnership working on such matters.

The Forestry Commission recreation plan for Carron valley includes proposals to develop a network of trails for walking, riding, cycling and wider leisure and recreation use that should provide more people with opportunities for healthy outdoors recreation and lead to greater health benefits. I am happy to provide any interested members with further information about the work in the Carron valley.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The minister will be aware of Glentress in my constituency, which is renowned not only for mountain biking but for midnight mountain biking, a pursuit that I have not yet tested. However, is she aware that, in order to compete internationally with other competitions that are being held, we need additional support for the physical and tourist infrastructure of the entire Tweed valley? What work is she carrying out with the Scottish Executive Enterprise, Transport and Lifelong Learning Department and the Minister for Tourism, Culture and Sport to ensure that there is a co-ordinated approach for the whole area rather than for the forest alone?

Rhona Brankin: Forestry Commission Scotland has a specific post that involves working with officials on tourism-related activities. I should point out that Scotland has had a huge success in providing facilities for mountain bikers. In fact, I believe that the commission leads the way in Europe—and perhaps the world—in that activity.

As the member will be aware, some high-level mountain biking competitions are coming Scotland's way and the developments at Ben

Nevis and, indeed, Glentress have played an important role in that respect. I am more than happy to furnish the member with information on Forestry Commission Scotland's activities with regard to mountain biking and, specifically, competitive mountain biking.

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-3786, in the name of Cathy Jamieson, that the Parliament agrees to the general principles of the Police, Public Order and Criminal Justice (Scotland) Bill.

14:55

The Minister for Justice (Cathy Jamieson):

I start by recognising, as I believe everyone in the chamber recognises, that everyone in Scotland should have the right to feel safe and to be safe in our homes and on our streets. We should be able to go to school or work or out for an evening without worrying about being harassed or attacked. Our new laws on antisocial behaviour and the management of offenders were introduced to help to make that happen.

However, our police and prosecutors also need more powers to do their job more effectively, and they need to be backed up by the right support services. The bill is a further step towards creating the safer, stronger communities that each and every one of us wants.

At the outset, let me deal with an issue that we all want to be tackled robustly. We have seen the figures and we know that more than half the murders in Scotland are committed with a knife, but we also know that there are no simple, quick-fix solutions. We know, too, that legislation on its own is not enough to solve the problem. We must continue our efforts to reduce the violence that blights too many of our communities, with a particular focus on dealing with knife crime. Stabbings and slashings are not an inevitable part of life, and they should not be seen as such. It is not a given that young men, fuelled by alcohol, should routinely carry blades and use them—often with disastrous consequences for other young men from the very same communities. That is why we must ensure that the police have the powers that they need to prevent knife crime and why the courts must have the power to deal with knife crime when offenders are brought to justice and are convicted.

I am pleased that the Justice 2 Committee was able to consider the idea of hospitals reporting knife injuries while having a thorough and thoughtful debate on some of the difficulties involved. Parliament will be pleased to hear that, only yesterday, a voluntary pilot project began in Glasgow with the support of the police and the national health service. We intend to monitor the progress of the project closely, and I will be happy

to provide the Justice 2 Committee with further information before stage 2.

Last week, the shocking consequences of hard drugs on our streets hit home for all of us. There are those who need help and support to overcome drug addiction, and we will give them that help. One of the provisions in the bill adds to our resources: mandatory drug testing will give the police new powers to test drug-using offenders and require them to attend assessments. Such assessments will help people to face up to their problems and will reduce the crime that they commit to feed their addictions.

The committee thought about and discussed the provision in detail, and I agree with it that people who commit crime should not get access to treatment more quickly than people who have recognised that they have a problem and who volunteer for assessment. Parliament should be assured that I do not intend to prioritise one route to treatment over any other. However, we cannot ignore the links between drug misuse and crime, and we must take every opportunity to intervene to break those links and to stop the user becoming the street-corner dealer who feeds their habit by drawing others into the miserable world of drug addiction.

Stewart Stevenson (Banff and Buchan) (SNP): I agree that there is a huge issue with drug addiction. Until a moment ago, the Minister for Health and Community Care was sitting beside Cathy Jamieson. Drug addiction is a criminal justice problem, but it is also a health problem. How does Cathy Jamieson intend to develop better links between the criminal justice system and the health service so that the criminals who are driven by what is largely a health problem get the appropriate help as well as the appropriate punishment?

Cathy Jamieson: I agree with Mr Stevenson. In realigning how we deal with the funding of drug projects and in developing a strategy, we took that point on board. I assure the member that although Andy Kerr is no longer sitting beside me, he and I have worked in very close co-operation on the issue. It is right and proper that we look at drug users' health needs, but we have to recognise and take seriously the fact that people who start off as drug users may end up as dealers on our streets.

If we are to tackle the serious drug dealers who exploit our communities—especially the most hard-pressed—we need to disrupt their activities, seize their assets and bring them to justice. That is why the work of the Scottish Drug Enforcement Agency will be put on a statutory footing and will have a new structure and new powers to recruit police officers and support staff directly. Scotland must not be a soft touch when it comes to dealing with serious organised crime. That is why we are

creating incentives that will encourage criminals to help with the prosecutions of their so-called colleagues, which will enable us to secure more prosecutions and convictions of the criminal bosses.

I will move on because the bill covers a wide range of issues and I have only a short time to deal with them. The bill will introduce football banning orders. As most members probably know, football has been one of my passions in life since I was a child. No one wants the passion to be taken out of the game, but when that passion boils over into hatred, bigotry, verbal abuse and violence, it destroys our enjoyment of the game and the game itself. It is sad that for too long behaviour that would have been unacceptable anywhere else has been tolerated at football matches. The proposed banning orders will give the police and the courts power to prevent disorder before it starts by banning hooligans from the places where they cause trouble.

Of course, it is not just around football matches that hooligans cause problems. As Donald Gorrie identified during First Minister's question time, other events can be targeted by people who want to cause disruption. We must listen to communities that have suffered as a result. The bill will bring in new powers on marches and parades, will give communities more access to information about the marches and parades that take place in their area and will modernise the process of considering the granting of permission for such events. I welcome the Justice 2 Committee's support for the proposed measures. I know that concerns have been raised about their potential cost to local authorities, but I do not believe that the cost will be unmanageable.

As I said at the beginning of my speech, the police and the wider criminal justice system must be backed up by efficient and effective support services. I am pleased that the committee also supports the creation of the Scottish police services authority and the Scottish crime and drug enforcement agency. The SPSA will overhaul the way in which support services are delivered and will focus on allowing police officers to concentrate on operational policing. That is what our communities want and expect.

The police must have the right powers and structures, but it is just as important that they have the support and trust of the public whom they serve. That is why the bill proposes measures to deal with the complaints process. If members of the public want to make a complaint against the police, they must be sure that their complaint will be handled efficiently and that mistakes will be rectified and any problems acted on. The new police complaints commissioner for Scotland will drive up the standard of police complaints

handling in all our forces. The new approach recognises the strengths of the current system and, in particular, the value of the role that is played by the area procurators fiscal, who already ensure that under their direction criminal complaints against the police are investigated independently.

I want to make members aware of a few areas in which new provisions will be introduced at stage 2. Measures will be proposed that respond to Professor Irving's report on the management of sex offenders. The safety of our children is a priority for me. That is why I have decided to add new provisions on that to the bill at stage 2 rather than wait for a future bill, which would mean a delay in the implementation of what I hope all members will agree is a vital policy.

Measures that will enable better enforcement of inshore fishing regulating orders will also be introduced at stage 2. Those hardy souls who were in the chamber for questions to the environment and rural development ministers will already have some insight into the matter, about which Alasdair Morgan asked a question. Members who are not in that position might wonder why such proposals should be included in a justice bill, but they should believe me when I say that we are talking about an enforcement issue. Regulating orders enable local fishermen to manage their inshore shellfish fisheries but, as has been pointed out, they do not have clear powers to enforce them. As we heard during question time, the police and other members of the community have genuine concerns about public safety as a result of dangerous cockle fishing in the Solway. I do not want that situation to continue any longer than it has to. That is why I intend to lodge amendments to the bill at stage 2.

As I said, the bill is wide ranging. I thank the Justice 2 Committee and its clerks for their clear and comprehensive report on it and I welcome the committee's endorsement of the bill's general principles. The committee worked hard to cover a wide range of issues in a short space of time and I have no doubt that it will continue its thorough scrutiny at stage 2. I certainly look forward to the policy discussions that are to come.

I move,

That the Parliament agrees to the general principles of the Police, Public Order and Criminal Justice (Scotland) Bill.

15:05

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

As a member of the Justice 2 Committee, I put on record my thanks to the committee clerks for their hard work and to the staff of the Scottish Parliament information centre who gave us

briefings on the bill, which is complicated and covers a multitude of issues. Given that, it will not be possible to cover all the issues in a short speech, but I will do what I can.

I put on record again that I am happy to support the proposals on the Scottish police services authority, the Scottish crime and drug enforcement agency and football banning orders; I am particularly happy with that measure, as I experienced a Celtic-Rangers game during stage 1.

The creation of a police complaints commissioner for Scotland is a more difficult issue, but I am persuaded that the proposed powers for the ombudsman, combined with the role of the Procurator Fiscal Service, will provide the necessary safeguards for the public and that it is not necessary to have a completely independent service. The arguments on both sides have been well made but, on balance, the bill has got the matter just about right.

On public processions, I welcome the attempt to balance the needs of communities and marchers, although I remain to be fully convinced that the bill will satisfy either party. However, any attempt to wrestle with that difficult issue is welcome. As the committee recommends, I would like the bill to be amended so that local authorities will have to advise marchers of their decision on proposed events seven days in advance. Given that marchers will have to give 28 days' notice of their intention to march, it would be entirely reasonable for local authorities to have to give at least seven days' notice of their decision.

I support the measures on offensive weapons, but I do not believe that they go far enough. Unfortunately, I do not think that they will cut knife crime, which is the intention. We all know about the volume of knife crime and the ever-younger age at which people carry knives. However, throughout Scotland in 2003, only two charges were brought of selling knives to persons under the age of 16. I welcome and support the move to raise the legal age for purchasing knives from 16 to 18 but, unfortunately, the measure will have no impact if we do not enforce the law.

I also welcome the move to double the maximum sentence for possession of a knife. However, although the Executive's announcement and accompanying press release proclaimed that the maximum sentence for possession of a knife is to be doubled, the Executive unfortunately omitted the fact that it is to be doubled only for people who are convicted on indictment. In 2003, around 2,800 people were convicted for possession of a knife, but only 42 people—less than 2 per cent—were convicted on indictment. Of those 42, only 32 received a custodial sentence, of whom only two received the maximum sentence. Therefore, the

doubling of the maximum sentence on indictment will apply to 0.07 per cent of people who are convicted of possession of a knife. Does anybody believe that that will have any impact on knife crime?

The Deputy Minister for Justice (Hugh Henry): I will leave aside the point that we intend to double the sentences for the less serious crimes, too. To help me to respond to the debate, it would be useful if Stewart Maxwell said what he is looking for. He has identified the problem, but I am not sure whether his concern is about a failure of the courts to impose sufficient sentences or about a failure, in his perception, of prosecutors to bring appropriate charges. Perhaps he wants us to move in the direction of Tommy Sheridan's proposal for mandatory sentencing.

Mr Maxwell: The committee made it clear that it does not support mandatory sentencing and I agree with that, as it would remove all flexibility from the courts. The Executive has said what it will do to cut knife crime and I am saying that that does not go far enough. I hear what the minister says about summary cases—I will come to that in a moment.

If we are to have a real impact on knife crime, we must do much more. Therefore, I intend to lodge amendments at stage 2 that would have that impact.

The bill will amend section 49(1)(b) of the Criminal Law (Consolidation) (Scotland) Act 1995 to double the maximum sentence on indictment for possessing a knife, but if we were to amend section 49(1)(a) of that act, we would double the sentence in summary cases. We do not have to wait for another bill to be able to do that; we could do it now. As it stands, the bill will impact on 2 per cent of those who are convicted, but my proposed amendment would impact on 98 per cent. Together, those provisions would catch 100 per cent with no delay.

For some time, I have been raising in the committee and in the Parliament the need for hospitals to report non-accidental offensive weapons injuries to the police. It is time that we introduced a system of mandatory reporting, as it is clear that official figures on knife attacks underestimate the size of the problem by anything from a half to three quarters. Providing the police with the information that they require to be able to crack down on knife crime would have an immediate impact. The police would know what weapons were being used, where and at what time incidents were occurring and what age groups were involved, which would allow them to focus their resources extremely effectively.

We do not have to wait for any further pilot studies—although I welcome the one that has just

started in Glasgow—because one has been carried out in Cardiff, which resulted in a 24 per cent drop in the number of hospital admissions. Mandatory reporting works and we should implement it in Scotland as soon as possible. I was pleased to hear the minister's statement on that issue, and I look forward to the committee receiving more information before stage 2.

The power to take fingerprints using hand-held devices raises civil liberties issues and although I support any reasonable measures to combat crime, I have some concerns about that power.

The bill states that fingerprints

“shall be destroyed as soon as possible”,

but that is rather open ended, and I would be happier if the bill placed a time limit on their retention. The Executive's response to the committee on that point was that fingerprints will be deleted straight away. Therefore, I assume that the Executive will consider supporting an amendment that places a maximum time limit on the retention of fingerprints, and I would appreciate hearing the Executive's view on that in the deputy minister's closing speech.

The second concern about fingerprints arises when a person refuses to be fingerprinted because they have done nothing wrong and it later transpires that the police officer's reasonable suspicion was misplaced and that the person was entirely innocent. Because the person refused to be fingerprinted in the first place, they would have committed an offence. It does not seem reasonable that an innocent member of the public should commit an offence by asserting the fact that they are innocent, so I ask the Executive to reconsider whether that should be an offence in the circumstances that I have described. I also ask the Executive whether it would support an amendment to rectify the matter.

There is insufficient time to cover all aspects of the bill, but the Scottish National Party will support the motion at decision time. We look forward to stage 2 and some of the improvements that will be made then.

The Deputy Presiding Officer: I call Annabel Goldie, who, I understand, will speak as the convener of the Justice 2 Committee.

15:12

Miss Annabel Goldie (West of Scotland) (Con): Yes, I shall speak as the convener of the committee, adopt an attitude of irreproachable neutrality and be uncharacteristically benign to the minister and her deputy.

On behalf of the members of the committee, I thank the minister for her kind comments about

the committee. I also thank my colleagues on the committee, our clerks and all the people who made written and oral submissions.

By any standards, the bill is a chunky piece of proposed legislation. It is in disparate parts but is a solid bill and required careful stage 1 scrutiny. The co-operation of all who were involved made that scrutiny easier and fruitful for the committee, and I hope that our stage 1 report has been helpful to the Executive. The Association of Chief Police Officers in Scotland described the bill as the most significant proposed legislation to affect policing since the Police (Scotland) Act 1967. As convener, I reassure those who gave evidence to the committee that we treated all submissions with great seriousness and paid close attention to the views that were expressed.

Members who are present and the Executive will be aware that concern has been expressed in some quarters about part 1 of the bill, which deals with the police. The question has been asked whether the constitution of a Scottish police services authority and the creation of a Scottish crime and drug enforcement agency are healthy, workable or desirable. I reassure all those who gave evidence on that point that the committee listened to their concerns closely, that it reiterated those concerns to the Executive and that the Executive gave specific assurances. In particular, the Executive assured us that the Scottish police services authority will be a hands-on body that will provide police support services and oversee the Scottish crime and drug enforcement agency but will not affect the existing tripartite arrangement for our police forces. It is important to emphasise that existing unitary police authorities and police boards are not being abolished. There seemed, at one point, to be legitimate confusion over the possibility of that happening.

The Justice 2 Committee listened carefully to concerns about those issues but, on balance, we felt that the Executive's reassurances were firm and clear and that the proposed structural changes offered a sensible way forward. The committee was in no doubt that the global challenges that Scotland now faces in relation to both national and international crime require specific structural processes to address them. We felt that the existing Scottish Drug Enforcement Agency has a fine record behind it, and that the proposals in the bill were a sensible recognition of the extremely important strategic role that we now ask the agency to perform and of the support that we think it needs if it is to continue with the very important task that we place on it.

As Stewart Maxwell indicated, the Police, Public Order and Criminal Justice (Scotland) Bill is a wide-ranging bill, and it is impossible to comment on all its provisions in detail, but there are a few

areas that I wish to draw to the Executive's attention. We were struck by the evidence that we received on public processions, a subject on which emotions run high, as we recognise. I strike one slight note of demur: the committee felt that the guidance that is being prepared by ministers would have been most helpful to us if only it had been available for our consideration during stage 1, in time for the preparation of our report. I accept the practical difficulties of producing such guidance but—if I may recommend this as good practice for the future—we would have found it extremely helpful to have had sight of it prior to the conclusion of our stage 1 consideration. That would have allowed us better to understand the work that will confront local authorities when they receive applications for permission to hold processions.

Stewart Stevenson made some important points about the provisions in the bill relating to offensive weapons. The committee noted the ethical dilemmas that might arise regarding the mandatory reporting of non-accidental offensive weapons injuries and considered that the matter required further debate. In other words, there was no lack of sympathy, but there was a genuine feeling that there was a lack of education and information about the topic. It would have been premature for the committee to attempt to come to any view on that. I echo what Stewart Stevenson said—I beg his pardon: I mean Stewart Maxwell—about how the charges are to be proceeded with. We wish more charges to proceed on indictment.

The drug testing and assessment procedures are, in principle, to be welcomed. Genuine practical concerns were expressed about timescales, however, and it is right that ministers should be aware of them. This is not just some technical debating point; we are talking about a real issue. It is important that anybody who undergoes a test is not left in limbo, that there is an understandable timescale within which the assessment is carried out and that the appropriate intervention or action is then determined.

The final area on which I wish to comment is the technical matter of offenders assisting with investigations and the proposals to give certain individuals immunity from prosecution. The Law Society of Scotland has circulated a letter to members in which the society inquires why the committee thought that there might be practical problems with implementation. I am mindful of any suspicion that phraseology may be used as a cop-out to spare us going into the detail, but our concerns were highly technical. Basically, having listened to the evidence and noted the concerns expressed—I direct members who have inquired about the matter to pages 54 to 58 of the committee's stage 1 report—the committee's view was that there was some merit to those concerns.

We felt it necessary to point out that subsequent criminal proceedings might well be prejudiced by the operation of natural justice in instances when an accused might be debarred from a fair trial or when issues might arise under the European convention on human rights. Given the technical nature of the relevant sections, the committee felt it necessary to signal the potential practical difficulty in implementing those proposals.

The Justice 2 Committee agreed by majority to the general principles of the Police, Public Order and Criminal Justice (Scotland) Bill. Putting on my party hat, I can confirm that my party also agrees to the general principles of the bill.

15:20

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The Police, Public Order and Criminal Justice (Scotland) Bill contains some positive reforms and I welcome the consensus that is developing in the chamber. Putting the Scottish Drug Enforcement Agency on a proper statutory footing and widening its scope explicitly to cover serious crime are part of shaping a modern police service to tackle what is—unfortunately—more modern crime.

As the Justice 2 Committee's convener said, the committee carefully considered the evidence that it received. Chief police officers and police board conveners told us that moving away from the tripartite arrangement to a directly funded body, with a strategic direction set by ministers and a strategic officer, would be detrimental. We examined closely the proposals and the evidence that we received and we are content that the proposals are right and that there is scope for greater parliamentary scrutiny under the proposed approach than there is under the current approach.

Other positive reforms include football banning orders, rationalisation and improvement of marches and parades regulations and good proposals on incentives for providing assistance to prosecutors and on improving the criteria for immunity from prosecution, notwithstanding the caveats that Ms Goldie outlined.

The bill ranges from new types of police services for Scotland to toughening the provisions on the sale of fireworks and from a major reform of the police complaints system to changes to procedures for marches and processions. It puts together many different matters, each of which requires close scrutiny. We will have a busy stage 2.

I will focus on proposals on three issues: police complaints; knife crime, which we have heard about; and compulsory drug testing and assessments. I fully support the proposals on all

three issues. Those on the first are excellent and those on the second are good but do not go far enough. On the third, we must be careful that the proposals are not counterproductive.

The Liberal Democrats have for many years campaigned for an independent police complaints body and I am delighted that we will vote today on the general principle of establishing one. The body will build on the best elements of Scotland's distinct legal and prosecution system, especially, as we have heard, the independent supervision by the Procurator Fiscal Service of investigations into criminal allegations against the police.

The fear was expressed to the committee that the police complaints commissioner's office would be neither a gateway for complaints nor an independent investigative body. It is right to address people's complaints as early as possible—most of my casework complaints have related to that. A senior officer in a local police station or division will address most complaints, and experience since the establishment of the Independent Police Complaints Commission in England suggests that that will happen.

The commissioner will also have the power to order reinvestigations of more serious complaints and additional powers to make recommendations and reports and to produce wide-ranging reports to the Parliament, with what can be, in effect, additional penalties. Further, the commissioner must approve the person who undertakes the reinvestigation. When the Deputy Minister for Justice gave evidence to the committee, I was pleased that he confirmed that it would not necessarily be a police officer who reinvestigated such allegations.

The measures will mean that the public can have confidence that there will be independent oversight of complaints against the police of a criminal nature or about bad practice. I am glad that we are progressing consensually on such a liberal reform, because confidence among the public that they have an independent route of complaint is crucial.

We have heard about the measures to deal with knife crime. The doubling of the sentence length for convictions on indictment for possession of a knife is welcome. The committee heard from the Strathclyde violence reduction unit and from medical staff from Glasgow. There is little doubt about the seriousness of knife crime, which we have debated in the chamber. The most up-to-date statistics about Glasgow from the unit are encouraging. They reveal that, between April 2005 and September 2005, the numbers of crimes of murder, attempted murder and serious assault decreased. The unit says that the number of murders reduced from 37 in 2004 to 28 in 2005. However, the figures are of course still way too

high, and too many crimes involve knives and young men.

In Scotland in 2005, 72 people were murdered with a sharp implement. In Glasgow alone, 193 attempted murders involved a knife. The violence reduction unit also tells us that 17 per cent of all knife murderers between 1996 and 2005 were under 18. Those are chilling facts and we must have an effective response. The effect of knife crime is considerably greater than the blight of firearms and, at stage 2, we will have to examine closely whether the bill should be amended to bring sentencing for knife crimes more in line with that for firearms crimes.

Figures in answers to parliamentary questions that I have asked show that in 2003, there were 3,253 summary cases involving possession of an offensive weapon and having in a public place an article with a blade or point, as opposed to 42 on indictment, as Stewart Maxwell mentioned. I welcome his support for what I have said since December following my questions to the First Minister, and trust that he will support the amendments that will be lodged—indeed, there may be a degree of consensus at stage 2. I do not want there to be amendments simply on sentencing, although sentencing for knife crimes should be more in line with sentencing for firearms crimes, as I said at First Minister's question time in December. We must innovatively look at the type of sentences involved—both custodial and in the community—and get down to the real reasons why young men of my age and younger go out kitted up with knives and mobile phones on Friday nights.

I am disappointed that there has not been more emphasis in the debate on post-assessment drug treatment and testing. Castle Craig hospital, which is in my constituency, has residential places for people with drugs problems. It receives admissions from Lanarkshire, Glasgow and Fife and it currently has vacancies. However, until there is a system in which there is testing, assessment and treatment, which Miss Goldie mentioned, we will not get to the heart of the problem. I hope that this debate will start a debate on such a system that will continue through stage 2.

The Deputy Presiding Officer: I make it clear as we go into the open debate that there is enough time for all members to be called. However, members will need to be disciplined, or I will need to shave time from members who are to speak later.

15:26

Pauline McNeill (Glasgow Kelvin) (Lab): I commend the Justice 2 Committee—as ever—for

producing a thorough report, the conclusions of which are easy to read and helpful to those who have not been directly involved at stage 1.

The Police, Public Order and Criminal Justice (Scotland) Bill represents further progress in responding to the challenges that are involved in fighting crime in our communities. The bill deals with real, live issues in the fight against knife crime, which is an endemic problem in our society. It will increase the powers of the police, modernise the structures of our police agencies and introduce a new police complaints commission. Overall, the bill will result in good legislation—that is demonstrated by the Justice 2 Committee's tests. That committee seems to be largely reassured on a number of fronts although, as ever, further refining will need to be done at stage 2. That, after all, is the purpose of that stage of the process.

When we introduce fairly radical changes, it is important to try to win as far as possible the confidence and support of those who will be charged with the responsibility of making those changes. As a result, there are probably further discussions to be had.

I welcome the proposed change of name to the Scottish crime and drug enforcement agency. The new name may be a wee bit harder to say, but it better describes what the Scottish Drug Enforcement Agency has been doing for the past few years. Scotland has done extremely well in tackling serious and organised crime. It is the largest user of Interpol and we have led the way in the use of covert intelligence methods. Through the adoption of the provisions in the Proceeds of Crime Act 2002 and the more recent Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, we have contributed in a number of ways to tackling organised crime and paedophilia networks. The Scottish Drug Enforcement Agency has been at the forefront of using those new laws, which is why I welcome the attention that the bill has given to it.

I recognise the controversies that are involved in changing how things are done and the concerns that ACPOS has raised about the new ways of recruiting staff to the agency, which represent a departure from how things have been done in the past. However, like the Justice 2 Committee, on balance I support the provision to allow direct recruitment because, as crime becomes more sophisticated, we need to be able to recruit some staff whose expertise lies first and foremost in the specific areas in which such expertise is needed. I am thinking of very large fraud cases and crimes that have been conducted on the internet. There is a need to upskill the agency.

We need balance in all things, and I want to provide caveats to the proposed changes. It is important to ensure that the agency and the other

special agencies do not attract all the most experienced officers. We must ensure that we spread that experience throughout the service. The new agency will have more independence than the previous structure, which was in effect managed through the eight police forces. For that reason, it is right that the new agency's relationship with the Executive will be a wee bit closer; the Executive will set the strategic priorities, but has made it clear that that will not cover day-to-day operations.

I am reassured by the commitment to training, particularly the training of new recruits who are not police officers. Again, it is extremely important to emphasise that those new recruits must be trained to the same standard as our police officers. In the past, we have trained our police well and run good programmes; it is important that that should continue.

I welcome the creation of the new Scottish police services authority. The national forensic service requires some attention. We know that the service is critical to the prosecution of crime, but the way in which things are done under the current structure has resulted in delays in service, which have impacted on the prosecution of crime. The test of whether we have introduced a good measure will be the extent to which a national forensic service reduces delay and brings about efficiencies. The same applies to organised crime. We are dealing with more sophisticated criminals and forensics have become a key part of the work.

Others will comment on this, but I want to mention our endemic knife culture and the need to legislate for tougher sentences. Those members who visited Glasgow sheriff court the other night—it is the busiest sheriff court in Europe—received quite an insight. Staff went through the index of the weapons that are brought in daily; it included knives, machetes and horrific weapons that we had never caught sight of before, but which people carry daily.

There is further work to be done in that area and just doubling the sentence will probably not turn the culture round. We all know that, but the bill represents a vital step and sends out the message that if someone carries a knife, they face prosecution and a very tough sentence; even if they are defending themselves, they must think twice.

15:32

Stewart Stevenson (Banff and Buchan) (SNP): After extensive consultation with my political colleagues, I make an apology and an offer. I apologise for causing confusion by sitting beside the other Stewart in the Parliament and I offer to avoid creating situations in which such

difficulty might arise in the future. I hope that that is helpful to Annabel Goldie.

I start with a part of the bill about which I will say absolutely nothing. My father used to play for Ross County 85 years ago and that is my excuse for knowing nothing whatsoever about football; unlike the minister, I will say nothing on the subject.

The bill touches on very serious matters. I am delighted to see that the mainstream parties in the Parliament share a broad consensus and I anticipate a willingness for us all to work together to refine in detail our similar, if not identical, objectives to improve the situation for the people of Scotland.

Although the events of the past week have concerned a single person, namely the young girl involved in the drugs scene in Glasgow, they give us a window or keyhole into a much bigger and more general problem. That is why I am particularly enthusiastic about anything that will beef up our ability to meet the drug barons' economic and organisational firepower with something equivalent in our criminal justice system. For me, and I suspect for many others, the war on drugs is a more immediate, real and bigger threat to us than the war on terror, about which we hear so much—not that I want to dismiss the latter; I only want to see emphasis on the former.

I give my whole-hearted support to the changes in the SDEA. The people in the SDEA, who are drawn from many disciplines—traditional police and others—are precisely the people who can understand how the drugs business operates and how it can be intervened in, disrupted and destroyed. The key, however, will be to get the money off the drug barons. It does not matter how many drug barons we take out of the equation, because as long as it is possible to make £1 billion out of the industry throughout Scotland—that is my estimate; according to some, the sum is five times that—people will come back into it. It is vital that the strategy that is laid down for the new agency addresses the banking system and the way in which lawyers collaborate with the major drug barons. Of course, the problem is not just Scottish but transnational, by which I mean that it is a problem throughout the developed world. It is right, therefore, that there should be incentives for everyone who is involved in our agency to work with as many people as possible.

The bill talks about immunity and incentives—I see a place for those and I know that others do too. However, I am cautious, because it is all too easy for people to try to buy their way out of difficult situations into lesser difficulties by a tissue of invention when the complexities of the interlocking parts of the organised crimes network make it difficult to test the veracity of what is being

said. I can see the possibility of people being planted into the system deliberately to mislead and disrupt the efforts of the law enforcers.

Jeremy Purvis: Does the member agree that the aspect of the bill that would allow prosecutors to withdraw offers is a welcome step forward, in contrast to the black and white system that we have at the moment?

Stewart Stevenson: I agree entirely—that is good.

I very much welcome the increased emphasis on special constables. That initiative stems from the work of Pat Shearer, when he was assistant chief constable—he is now deputy chief constable—of Grampian. He is an excellent fellow, who has done some good work there. Of course, constables come from the community and all this will work if there are good attachments to the community.

Section 75 prohibits retesting for drugs when someone is being held. The minister should perhaps reconsider that, simply because drugs can be available inside prisons. There is an issue there that we might want to consider. Section 74 mentions a device for obtaining a record of the skin on a person's fingers, as distinct from a fingerprint. We should confirm whether DNA would be collected by that process. I welcome further attention on sex offenders—the minister knows of my special interest there.

The challenge for us all in the bill is the continuing debate between local decision making and central institutions. We have not resolved that debate; the bill moves it in one direction and, on this occasion, I welcome that. The key issue is that legislation will not solve all the ills. We need to do other things as well.

15:38

Patrick Harvie (Glasgow) (Green): In rising to speak in a debate on the Executive's justice legislation, it is a pleasant change for me to be able to say that I will vote for this bill. I am sure that the minister will be overjoyed to learn that. I have concerns about details of the bill, some of which have been mentioned, and I hope that the minister will be able to respond to those concerns in his closing speech.

I do not have time to discuss every aspect of the bill, but I will touch first on the carrying of knives. I am grateful for the Justice 2 Committee's report. The Executive and the committee are right to rule out mandatory sentences. We should all acknowledge that flexibility is appropriate. I can support the idea of increasing the available sentences, but what I really want is more appropriate and effective sentences. I do not

believe that longer sentences are necessarily more effective.

I will support the Executive's motion, so it feels only right that I should criticise something. I will pick on Hugh Henry's recent column in his local newspaper, in which he mentions my approach to the issue of punishment in previous debates. The sentences for knife carrying are an appropriate example. Punishment may have a role if it achieves something positive—if it changes someone's behaviour and makes them engage with the reasons why they offended in the first place. If it fails to do that, we need to think again: punishment is not an end in itself. Again, I refer to the research that has shown that young people who carry knives overestimate wildly and disproportionately the number of other people around them who do so. They think that knife carrying is far more common and widespread than it is. Unless we do something to get to grips with that perception, I find it difficult to accept that we will change that behaviour.

Jeremy Purvis: I support what the member says. However, according to Professor McKeganey's research, which we have heard about today, 34 per cent of males had carried a weapon in the previous year. That experience was particularly common among young men. Therefore, there is a real and serious problem rather than just a problem of perception.

Patrick Harvie: Although 34 per cent may be a significant figure, the number of young people in a school, youth group or peer group who are carrying a knife at any time may be much lower than those who are carrying knives estimate it to be. Those people carry a knife because they think that they may need it, not just for status.

On marches and processions, I am on record as saying that I welcome the Executive's attempts to address the issue. I met Sir John Orr during his review, and I have great sympathy for anyone who has to deal with this thorny issue. There is a need to ensure that the bill's provisions do not impact on political demonstrations, for instance. I would welcome an assurance that the Executive shares that concern and does not expect the provisions to do so. I also seek reassurance on the time limits. Last-minute approval for a march or demonstration can be problematic for the organisers. If organisers have to give 28 days' notice, it seems only reasonable that local authorities should carry out their negotiations in a reasonable period. Last-minute permission is not reasonable if a long period of notice has been given. I wonder whether that can be addressed in guidance.

On the powers in relation to suspects, I share Stewart Maxwell's concern about the proposed power to take fingerprints using hand-held

devices, and I look forward to hearing the Executive's response on that.

Mandatory drug testing is one of the issues on which we always have difficulty in balancing different human rights. Mandatory testing is about gaining information, and the justification for it is the use to which that information will be put. If it is used to increase the likelihood that someone will accept treatment and support, I can accept and agree to mandatory testing. However, it will do that successfully only if testing leads quickly to assessment and if assessment leads quickly to treatment. Also, mandatory testing must not result in a shortage of treatment places in some areas for people who enter the system other than as suspects of crime.

Another recent idea is mandatory testing for HIV and hepatitis C. I am glad that that proposal is not included in the bill, as it fails the test that I have just said mandatory drug testing should pass. The information that would be gained would put at risk the suspect's emotional and physical health and would offer no genuine benefit to the other people involved, even if there was reason to fear a risk of infection. I understand that the Executive has talked about pursuing the proposal through a working group. Will the ministers update us on where their thinking has got to on that issue?

I look forward to hearing responses on those issues and on the stage 2 issues of sex offenders and fishing regulations. I await the detail of that with great interest.

15:45

Mr Kenneth Macintosh (Eastwood) (Lab): I will speak in favour of the Police, Public Order and Criminal Justice (Scotland) Bill. Indeed, I am encouraged by the way in which members from all sides have united on the important range of measures in the bill. If I have time, I will comment on a couple of proposals but I want to focus on the importance of tackling knife crime.

I am sure that many of us are aware of the knife culture that is endemic to parts of Scotland, especially the west. The figures, some of which Jeremy Purvis mentioned, make grim reading. Per head of population, three and a half times more knife murders are committed in Strathclyde than in England and Wales. To take January last year as one example, in Strathclyde there were eight murders and 33 attempted murders. Twenty-one of those attempted murders involved a knife. Jeremy Purvis also mentioned the age of offenders; echoing that, more than 96 young men under the age of 21 have been convicted of murder in the past three years.

Each of those statistics relates to an individual story, too often a tragic one. The minister will be

aware of the nearly 2,000 residents in East Renfrewshire who petitioned the Executive in support of the tough action that it is now taking on knife crime. Many of those residents told their own stories; I will quote one such story, but I will not mention the names of those involved:

"I am sending in this petition as our family have suffered from knife crime. Our nephew and son was murdered on 12 November 2002. Our boy was only 22 and was never in trouble. The murderer had a long list of previous convictions including assault, firearms offences and drug offences, yet he only got 5 years and is now out of prison."

What an example. That family were victims twice over. Not only have they lost their son to a vicious thug, but they have become the victims of a criminal justice system that has offered them little justice.

There are many more such stories of families who have lost their sons and daughters or have seen them suffer as a result of an often unprovoked and random knife attack. Little punishment has been handed out. I will give another example. A young student came to see me last year. He had been walking down Sauchiehall Street—not even late at night—to catch his bus when suddenly his face was slashed horrifically. He had to insist that the police look at closed-circuit television footage to try to catch the two attackers, although he had little confidence that they would be caught. In another case, which I have brought to the minister's attention, a young woman constituent who was stabbed met her attacker the following week outside Glasgow Central station. Despite the fact that the woman had identified that man, he had not even seen the inside of a police station, let alone been put behind bars.

I mention those cases not to have a go at the police or the courts—far from it—but to highlight the casual, everyday, almost normal way in which knife crime is treated in this country. I want to highlight our seeming indifference to and acceptance of something that is completely unacceptable. I do not believe that the minister or any of us would pretend that the tough measures that are in the bill will solve the problem. Pauline McNeill made that point earlier. However, those measures will help and I know that they are part of a bigger picture.

I have mentioned previously the Strathclyde police violence reduction unit, which Jeremy Purvis mentioned earlier. That unit has the task of challenging and changing our attitudes to knives over the next 10 or 20 years. I am pleased that the unit has now gone national and I am delighted that the Executive has supported an initiative, which the unit developed in my constituency, to put police officers in schools. The officers—I believe that they have been termed "campus cops"—work with education and social services and the health

authorities. In countries such as Denmark, similar units have proved to be effective in improving discipline, reducing truancy and encouraging punctuality and other responsible behaviour in young people. Police officers provide an example of moral authority, and I believe that policemen in particular are invaluable role models for young boys. Too many young boys have no such positive male figure in their lives. We must crack down firmly on knife crime and the bill does that. However, over the long term, we need to work with boys at an early age to change that casual attitude to the regular carrying of knives.

I am particularly pleased with the introduction of football banning orders, which have been used effectively in England and Wales. I hope that the minister will assure me that we will co-ordinate our actions with authorities south of the border. For example, hooligans who are banned from following English football teams abroad must be unable to use Scottish airports to get round the restrictions that have been placed on them.

The new powers to clamp down on the misuse of fireworks will build on the excellent measures that have already been introduced.

I have a particular interest in the establishment of the Scottish police services authority, specifically because the position of the Scottish Criminal Record Office will be clarified. The lack of clear lines of responsibility for the fingerprint bureau is a factor in the difficulties that are being experienced by three of my constituents who work in that area. I hope that the minister can assure me that the new authority will take a far more robust approach to defending its reputation and the reputation of its staff.

The bill is welcome. It will reassure residents in East Renfrewshire and throughout Scotland that the public authorities are on their side. If it helps us to challenge and change the attitude of young Scottish men to the carrying of knives, it will be a worthwhile achievement. I have no hesitation in giving the bill my support.

15:50

Bill Aitken (Glasgow) (Con): One could accuse Scottish Executive justice ministers of many things, but lack of effort is not one of them. Since 1999 there has been a plethora of justice legislation, but the figures are still very bad indeed. I am not saying that the legislation that has been passed is bad, although I have said before that much of it is unnecessary. However, no matter how good the legislation is, everyone's efforts will be wasted unless there is enforcement.

The principal issue in the Police, Public Order and Criminal Justice (Scotland) Bill is offensive weapons. We welcome the doubling of the

maximum disposal, but unless there are enough police on the streets to catch those who carry knives and other weapons, we will not get far. The most effective way to combat knife crime is the method that Strathclyde police operated a number of years ago. Glasgow city centre was flooded with uniformed police officers who utilised their stop-and-search powers and, thereafter, those people who were arrested were taken to court at the earliest opportunity. If we do not have police officers on the streets in that way, we are wasting our time.

I listened carefully to Stewart Maxwell's point that, of those people charged under the Criminal Procedure (Scotland) Act 1995, only 42 were processed on indictment. It is clear that a number of those cases should be indicted, but if the summary powers were realistic—time and again we have urged the Minister for Justice to increase them—there would be no need to take the case to the sheriff and jury court. We should bear it in mind that someone with a 12-month sentence automatically gets one third off for a plea and half of the sentence in respect of automatic early release. That will not change even if the Sentencing Commission's proposals are implemented, so we will not get too far in that respect either, unless we get a pleasant surprise in the weeks ahead and an announcement is made that the Minister for Justice has finally agreed to implement what we have been suggesting for years: an increase in sentencing powers on summary complaint to 12 months. Nonetheless, we welcome the proposals.

The minister and I have a shared passion for football. Neither of us would wallow in self-congratulation, but I do not think that we in Scotland have the problems that occur down south, despite the fact that we have the Rangers and Celtic matches, which, to say the least, get a bit exuberant from time to time. The bill provides that certain people might be required to surrender their passports when a game is being played abroad, but those powers will seldom be required because Scottish football fans behave themselves extremely well overseas at both international and club level. Nonetheless, the measures are worth while, although I suggest once again that if there are not enough police to enforce the powers, we will not get far. How can one spot five or six people in a crowd of 70,000? Perhaps the minister has better eyesight than I have, but I do not think that the police will be able to do that.

I turn to processions and parades, which is an evocative and difficult matter. The bill's provisions are worth while and I agree with them, but, again, unless they are sufficiently policed we will not get far. Experience in the matter reveals that the vast majority of those who participate in marches conduct themselves in a reasonable manner; it is

the hangers-on who present the difficulties. I have observed that happen time and again. The simple answer is to have a sufficient number of police officers to police not only the march but those who attach themselves to it, who are the real problem. However, the powers that the bill gives to local authorities to select and, indeed, change routes that are likely to be provocative or just a downright nuisance are worth while.

I end with one genuine warning, in respect of the incentive for providing information or evidence. Bearing in mind that we live in the days of European conventions, it could be argued that that is effectively a bribe for someone to give evidence and that they are, therefore, being pressurised to tell lies. I hope that that is not the case, but I also hope that if the Executive proceeds with that aspect of the bill it will do so with considerable care and after the maximum amount of research.

15:56

Carolyn Leckie (Central Scotland) (SSP): I have been happy to substitute for Colin Fox on the Justice 2 Committee while he pursued the Abolition of NHS Prescription Charges (Scotland) Bill. I have enjoyed it, and I have learned a lot from my experience of considering the Police, Public Order and Criminal Justice (Scotland) Bill. I believe that I have played a constructive role in dealing with many aspects of the bill, and it is with that constructive attitude that I approach today's debate.

I am in a minority in relation to the general principles of the bill. Sometimes I dissent on the basis of principle, sometimes because of the lack of evidence that has been presented to justify certain measures and sometimes because of a lack of confidence that the pledges associated with some measures will be honoured.

I will concentrate first on drug testing and referral for assessment. I believe that the provisions are well intentioned and that the aim is to address the serious issue of drugs, but we have our philosophies mixed up. The drug problem should be approached as a health issue. Rather than place some health functions in the criminal justice system, we should take the health problem of drugs out of the criminal justice system altogether, and provide health professionals with more resources to develop their skills. If anything should be mandatory it is the provision of rehabilitation and treatment for everyone who wants to access it. Unfortunately, that is the problem.

Patrick Harvie: Carolyn Leckie knows that I am broadly sympathetic to the idea that addiction should be treated primarily as a health issue, rather than as a criminal justice issue. However,

even if that were the case, with the best will in the world people who are addicts would continue to come into contact with the criminal justice system from time to time. Is the proposal not slightly more positive than many of the other ways in which the criminal justice system currently treats such people?

Carolyn Leckie: Patrick Harvie needs to consider the evidence that was submitted when the provisions were debated. A great deal of fear was expressed that, even if people have a mandatory assessment, there is little evidence that it will achieve much in the way of co-operation and getting effective treatment. The client base is already known to the police and the health authorities because of drug-related crime. There is not an awful lot of evidence that mandatory assessment will have a big effect on getting people off drugs. It is not proven. I draw the member's attention to the evidence that was given by Mary Hepburn, who is an expert in providing help and support to women with drug problems during and after pregnancy. She stated that she was not convinced that the measure would help the job that she is trying to do.

In the context of the attacks on human rights that have been led by the Westminster Government in particular, I am concerned that football banning orders without conviction and fingerprinting without charge are further attacks on our civil liberties. I am not convinced of the case for those measures.

I am also concerned about the extension of the notice period for parades and demonstrations to 28 days, although I know that most demonstrations give even more notice than that. Without guidelines from the Executive I am not assured that subjectivity or bias will not be involved in the decision whether to waive the 28-day rule for political demonstrations that need to be called at short notice. The Westminster Serious Organised Crime and Police Act 2005 requires seven days' notice for demonstrations within the Westminster area, which has led to Milan Rai being charged under the 2005 act for simply reading out the names of 97 British soldiers who have died in Iraq—of course, the figure is now 100. When we consider what was proposed and promised in legislation that has been passed, and compare that with what is proposed in the bill, I think that I am justified in being worried that what will be done in the name of the bill once it is passed will represent a serious attack on civil liberties.

Obviously, the bill has many aspects and it is impossible to cover all of them. On the possession of knives, the committee received compelling evidence about the extent of the problem, but the evidence regarding the solution was not so

compelling. Much is claimed and believed, but there is little evidence. Our jails are full, and criminal laws are clearly not addressing many problems. I am not convinced, therefore, that increased sentences will solve the problem of people carrying and using knives. Indeed, a lot of compelling evidence showed that the people who end up as murderers or attempted murderers of an evening do not set out in the morning with that intention. I do not know whether the possibility of an increased sentence will enter their heads either. Rather than increase sentences, the problem of the availability of knives could be tackled more vigorously.

I tried really hard to like the bill but, unfortunately, I do not, and I will vote against it.

16:02

Jackie Baillie (Dumbarton) (Lab): Members throughout the chamber have covered many different aspects of the bill. It would be fair to say that there is, with one exception, reasonable cross-party support for the bill and its twin objectives of enhancing the effectiveness of the police and improving safety in our communities.

I do not want to rehearse all the bill's provisions, because others have done that far more effectively than I can. Rather, I want to focus on two specific areas: the independent police complaints commissioner and tackling knife crime, which is an increasing challenge on our streets and in communities across Scotland.

Let me start with the police complaints commissioner. I acknowledge the Executive's efforts to restore public confidence in the police with the establishment of a new, independent commissioner who will be responsible for non-criminal complaints about the police. To avoid overlaps, the commissioner will need to have an effective protocol with the Crown Office and Procurator Fiscal Service, which investigates allegations of criminal conduct by police officers.

I am concerned about overlaps, particularly the commissioner's overlap with the Scottish public services ombudsman. I welcome the Executive's intention to lodge amendments at stage 2 to ensure that there is clarity about the commissioner's responsibilities. However, I want to address three particular concerns that the ombudsman raised with the Justice 2 Committee.

First, the police are already within the ombudsman's jurisdiction. Although the ombudsman cannot investigate criminal matters, they can investigate any complaint of maladministration or service failure against the police. That existing capability creates the real possibility of duplication and confusion with the jurisdiction of the police complaints commissioner.

Secondly, there is concern about the procedures that relate to civilian staff who are employed by the police. They form a crucial part of the police service, but they are employees, unlike police officers, who are office holders and, as such, are subject to specific disciplinary measures that do not apply to civilian staff. Unlike police officers, therefore, the status of police civilian staff and, indeed, some of their functions equate much more closely to those of staff and bodies that are within the ombudsman's remit.

Thirdly, clear opportunities exist for the efficient sharing of services between the ombudsman and the independent police complaints commissioner. I hope that we can look into those opportunities carefully.

I want to widen the debate slightly. We now have a plethora of commissioners in Scotland. They all do different and—yes—valuable jobs. However, in our genuine desire for a transparent and rights-based approach, I sometimes wonder whether we are in danger of creating institutional clutter.

When we created the Scottish public services ombudsman in 2002, we did so because we wanted a complaints system that was open, accountable and easily understood, and that had the trust of the Scottish public. It was to be a one-stop shop, replacing four separate ombudsmen. That was absolutely the right thing to do.

It strikes me that having the ombudsman gives us the opportunity to consider two questions: is there a need for yet more complaints commissioners to sit on different issues; and can we take an imaginative look at how the ombudsman service can consider rights issues proactively, as well as consider complaints? If it was right to create a one-stop shop in 2002 because it was open, accountable and easily understood, it would, perhaps, be right to do so again. I ask ministers to reflect on the matter—and not only in the context of the bill.

I will turn quickly to the question of tackling knife crime. I do not want to repeat all the evidence that the Justice 2 Committee heard on the extent of knife crime in Scotland, because Ken Macintosh and Jeremy Purvis covered that very well; nor do I want to repeat the powerful evidence of medical professionals who said that the scale of the problem might be even greater than we fear, because every day and every night many incidents after which people end up in accident and emergency units go unreported.

I want to share this information with members: the problem does not affect only our most hard-pressed communities. A variety of knives were removed from people visiting this very Parliament in the past year. Members might imagine that it

would be just a handful of knives, but they would be wrong. The true figure is in the high hundreds, and perhaps even approaches the thousands.

I therefore welcome any initiative that tackles knife crime—including the Executive's welcome proposal to double the sentence for knife crime on indictment. That will have a deterrent effect if we also ensure that we have consistent prosecution and sentencing policies. Pauline McNeill is right to say that, although the Executive's proposal will not be enough on its own, it signals a tough approach to knife crime.

I confess to being slightly confused by the position of the Scottish Socialist Party, because Carolyn Leckie did not address the issues fully. The SSP voted against increasing sentences for knife crime. Do SSP members think that there is a problem? Perhaps they do not. Their most recognisable politician—one Tommy Sheridan esquire—has called for mandatory sentencing on knife crime, but that is not SSP policy, as Carolyn Leckie made clear. The SSP does not believe in zero tolerance of knife crime. One of Tommy Sheridan's colleagues has been quoted as saying that his proposal was "ill-thought-out". Even that august organ, the *Scottish Socialist Voice*, said that his position is not an appropriate one for the SSP. However, I dismiss the splits and intrigues of the SSP as mere diversions. The party has no answers to the serious problem of knife crime, and no answers for our hard-pressed communities.

I will finish on this point: Detective Chief Superintendent Carnochan said that the reason we should pass the bill is that

"The Parliament will not pass many pieces of legislation that will save a life, but this bill has the potential to do that."—[*Official Report, Justice 2 Committee*, 22 November 2005; c 1854.]

I urge members to support the bill.

16:08

Alasdair Morgan (South of Scotland) (SNP): I thank the minister for what she said about regulating orders for offshore fisheries, and I look forward to seeing the details. If a person is 6 miles out on a sandbank in the Solway and cannot see the shore, if their all-terrain vehicle has broken down, and if the tide is coming in faster than they can run, it is easy to see the risk to their safety.

Those who indulge in any one illegal activity tend also to indulge in several other illegal activities. None of us should regard illegal cockle fishing as harmless and a bit of a joke.

In my question during environment and rural development question time, I raised two points, one of which concerned the powers available to

enforce the law. I think that the minister will deal with that.

The second issue centred on the resources available to enforce the powers, which leads me to the main topic of my speech. I want to pursue a genuine line of inquiry that I do not think that anyone else has pursued, although it links with Bill Aitken's comments about resources.

Every society experiences an inexorable increase in legislation and the regulation of business and individuals. That is nothing new; indeed, it has been the case ever since the factory acts were passed a couple of centuries ago. All this legislation is introduced for worthy reasons. A problem arises, either suddenly or over a long time; the press, constituents and politicians complain; and the Government legislates. One point that perhaps does not apply to this bill—which, after all, is really a compendium of several small bills—is that we should work a bit harder to decide whether parts of legislation are proportionate to the real size of, rather than the number of headlines about, a problem.

Beyond that, each law and regulation has a cost, and those costs are now beginning to pile up. I certainly do not think that we evaluate the relative benefits of each measure that we agree to against its costs and the cumulative costs. As a former member of the Finance Committee, I understand the frustration that it has long felt at the number of financial memorandums that contain inaccurate, vague or optimistic costings that depend on regulations that have yet to be drafted or guidance that has yet to be written. According to those memorandums, the various pieces of legislation also place a burden on local authorities or other organisations that will presumably be underfunded—with, as we all know, consequences for council tax.

More important, given that we must discriminate—or should be discriminating—between different measures on the basis of whether their value to the community is matched to their cost and whether the authorities that must deliver them can meet the cumulative cost of all the legislation that we pass down, we need robust financial information in order to make such choices instead of simply passing legislation willy-nilly.

With regard to this bill, the Justice 2 Committee's report says that:

"The Finance Committee expressed extreme concern that ... guidance was still in the process of development"

and that it felt that the

"estimated cost savings for mobile fingerprinting were simplistic and flawed".

The Finance Committee also highlighted the Executive's comment that, as far as knife crime

and mandatory drug testing were concerned, the costs for the police would come out of existing budgets. How often have we heard that before? Moreover, paragraph 328 of the Justice 2 Committee's report refers to the Finance Committee's observation that

"there was a pattern in the Bill that a number of costs ... are not specifically funded but ... are expected to be met from existing ... resources".

In its response, which was issued yesterday, the Executive said that the concerns expressed by ACPOS and local authorities were unfounded, exaggerated and unconvincing. However, local authorities and other organisations cannot be wrong about their fears regarding all legislation. After all, we all know that the total burdens on them have been going up and up.

In her opening speech, the minister said that she did not believe that the costs would be unmanageable. She is right; on their own, they are not unmanageable. However, the question that we must ask about this and every other piece of legislation is whether the costs are unmanageable in the context of all the other burdens that we have placed on local authorities and other organisations since we started legislating.

In conclusion, I wish to raise a completely different issue that has not yet been mentioned. I was struck by the policy memorandum's comment that, although there were 14,000 special constables in the 1950s, there are now fewer than 1,000. I am astonished by that decline. Clearly the measure in the bill is not intended to bring the number back up to 14,000. However, given that we have created community wardens and the like and given that the policy memorandum and the Justice 2 Committee say very little about special constables, apart from the mechanics of their allowances, do we have a real view on the future role of such constables in our society? Do we know why we have them or why we are keeping them?

16:15

Maureen Macmillan (Highlands and Islands) (Lab): We have had a consensual debate, and that reflects the deliberations of the committee, which were also consensual—for the most part. The committee endorsed the Executive's proposals to legislate to set up the Scottish police services authority, which would oversee the Scottish crime and drug enforcement agency. We did that despite objections from representatives of the police and local authorities, including my own local authority. The convener of the Highlands and Islands Northern Joint Police Board wrote a very strong letter to the committee voicing her objections. The Scottish police authority conveners forum wrote a letter objecting to the

proposals, after the publication of the committee's report.

The various police representative bodies objected to how the SCDEA would be governed, and in particular to the appointment of lay members. Neither did they want officers to be recruited directly to the agency; they would prefer them to be seconded. It is not unusual for organisations to resist change. We listened carefully to their arguments, but we rejected them. The SCDEA will be, as members have said, a unique organisation that will deal with very sophisticated crime at an international level. The committee felt that dealing with such crime needed the input of lay specialists who might not be available through the usual tripartite governance arrangements. We got strong assurances from the Executive regarding the training of directly recruited officers. We envisage that those officers would be recruited for their expertise in finance, information technology and other high-level skills that would be useful in the kind of work that the SCDEA would do.

The proposal for a police complaints commissioner was generally welcomed, although the director of the Scottish Human Rights Centre felt that a commissioner should also be responsible for criminal complaints against the police. At present, such complaints are the responsibility of the Crown Office and Procurator Fiscal Service. The director wished us to adopt the English system. However, we did not agree with removing the supervision of criminal cases from the Procurator Fiscal Service, since the prosecution service in Scotland is totally separate from and independent of the police. If the general public do not realise that, we should make it a matter for education and not simply adopt English police complaints procedure. The complaints procedure will be robust, because the commissioner will be able to appoint independent personnel to supervise the conduct of any contentious complaints inquiry. That should reassure members of the public who feel that there is a lack of transparency in the process.

However, the Executive still has to answer the question that Jackie Baillie asked about the role of the Scottish public services ombudsman and about how the proposed police commissioner's remit would impinge on the ombudsman's remit. In his letter to the committee yesterday, the minister offered to address that concern at stage 2. The committee will be interested in the amendments that are lodged as a result.

If we believe that the new police complaints procedure is robust, there should not be an issue surrounding the new powers that are proposed for taking fingerprints electronically at a crime scene for the purposes of identification or elimination

rather than the present system of requiring people to go to a police station to be fingerprinted. I realise, however, that that does not address Stewart Maxwell's concern. Concerns were expressed that the new power might be misused by the police and that fingerprints so obtained might be illegally retained. However, our safeguards are the strict regulation of police procedure and, as a backstop, the police complaints commissioner and the Crown Office and Procurator Fiscal Service.

Fortunately, I will pass over the issue of knife crime, as it does not occur in the area that I represent; neither are there many football-related offences around the Ross County football ground—or processions, for that matter. However, I would like to raise the matter of mandatory drug testing and assessment for those who are arrested. We heard conflicting evidence on the issue. However, if mandatory drug testing is successful, the committee would regard it as a tool in combating the drugs culture. We noted that organisations such as the Scottish Drugs Forum, Safeguarding Communities-Reducing Offending, and the Law Society of Scotland were sceptical that the mandatory nature of the proposals would encourage drugs misusers with chaotic lifestyles to engage. There was a feeling that the present voluntary arrangements were working well.

There was concern, too, that people could find themselves being charged and convicted of not turning up for a mandatory drug assessment, rather than for the charge that was originally brought against them. I have concerns about that. It is particularly important that the lapse of time between testing and assessment is as short as it can be. I seek reassurances from the minister on those points. We note that the project is a pilot—the minister told us that in committee. We have been assured that it will be properly resourced and monitored, but we will have to keep an eye on that.

The area that I found most difficult to disentangle was the one that is dealt with in sections 83 to 88, which propose to put on a statutory basis the courts' ability to consider sentence reduction when an accused pleads guilty and enters into an agreement to assist the prosecution. Section 88 seeks to place on a statutory footing the prosecutor's common-law powers to grant immunity in return for co-operation. The Law Society of Scotland had particular concerns about that. I am aware that the legal arguments are arcane and seem to be finely balanced, but the Executive felt—and we agreed—that the proposal offered a way of combating serious crime that was used in other countries and that Scotland could not afford to be seen by criminals as a soft mark. I support the proposals, but realise that they could well be

challenged when the first such cases go through the system.

I thank the Executive for engaging with the committee and answering all our questions and queries and I thank the clerks for their hard work and professionalism.

16:21

Donald Gorrie (Central Scotland) (LD): First, I apologise to members for my absence from the chamber. In the middle part of the debate, I was called away by two very important people—in other words, ministers. I apologise if I appear to be slightly trembly about the knees. I am not referring to the justice ministers, I hasten to add.

I welcome the bill, although I am sure that there is a lot of fine tuning to be done. I want to concentrate on three aspects of it: democratic accountability and transparency, football and parades.

There is some substance in the point that the Convention of Scottish Local Authorities made about the distinction between having elected people running things and having appointed people running things. It is not an absolute rule, but more and more we tend to have appointed people running things. Before the 1997 election, George Robertson stated that he would have a bonfire of quangos. Since then, quangos have been breeding like rabbits; there has not been a bonfire at all. I do not know what other members feel, but I find that it is often the case that when someone draws to my attention an alleged failure by an organisation and I write to a minister about it, they say that they cannot do anything about it because the organisation in question is the responsibility of the health board, the police, the prison service or some other body. In such cases, our power to represent constituents and to probe what goes on is seriously diminished. I think that the bill presents a risk of that happening. If I have misunderstood the situation, I would be happy to receive assurances to the contrary. In my view, there is an issue about making people as accountable as possible; I hope that the bill can do that.

Jackie Baillie raised a point that has been exercising me recently in another connection—how we control the ombudsmania from which we rather seem to be suffering. Given that we want to appoint people who are highly independent, what do we do if we think that they are doing a really bad job? If we try to control what such people do, they will not be independent and the whole point of having them will be lost. That difficult issue applies right across the board. Democratic accountability and how we have independent scrutiny while maintaining democratic control are matters that

arise in relation to police inquiries, police complaints and the management of the police under the proposed new structure. Many difficult issues are involved.

On marches and football banning orders, the bill is definitely moving in the right direction. When members raised some of those issues quite some time ago, we were told that there were big problems to do with the European convention on human rights, but the Executive seems to be satisfied that what is in the bill will be okay. I certainly hope that it will be, because people's right not to have their life incessantly disturbed by repeated marches or misbehaviour by football hooligans is as important as the right of the hooligans or fanatics to do their thing. In football, the issue is not just about sectarianism, although that is an aspect; other aspects are rivalry between clubs and the misbehaviour to which football unfortunately seems to lead. I do not know why that is—perhaps rugby and shinty are so violent on the pitch that people do not misbehave off it.

The bill will take us in the right direction, but we need to scrutinise the measures carefully and try to involve football clubs and marching organisations in a friendly way so that they run events better. We need more self-regulation as well as legal regulation. If we get that right, the bill will have made a big advance in Scottish society.

16:26

Bill Butler (Glasgow Anniesland) (Lab): As a member of the Justice 2 Committee, I support the motion in the name of the Minister for Justice. As other committee members have done, I place on record my thanks to the clerking team for their sterling efforts in supporting our scrutiny of the bill.

The bill's aims are to strengthen the effectiveness of the police and to improve the safety and security that are afforded to communities throughout Scotland. As evidenced in members' speeches, the bill contains a wide range of measures, from the establishment of the Scottish police services authority, which will provide common police services and maintain the new Scottish crime and drug enforcement agency, to the introduction of mandatory drug testing and referral for certain arrested persons.

I will focus on a few of the measures through which the bill seeks to improve the safety of the communities that we seek to represent. One particularly chilling aspect of offending, which causes concern among members from all parties and among people throughout the country, is the high incidence of violent crime that involves the use of knives and other offensive weapons. The minister and many members referred to that. The

figures show that knives and other sharp instruments continue to be the most common method of killing in Scotland. That distressing trend touches every part of Scotland, but it is most apparent in Glasgow and the west of Scotland.

Members of the Justice 2 Committee will recall the eloquent evidence that we heard from Detective Chief Superintendent Carnochan of the Strathclyde police violence reduction unit, who spoke with the compelling knowledge of one on the front line. When asked about the likely impact of the bill's proposals on knife crime, he said:

"If we prevent one family from having to visit a grave and another family from having to go to Barlinnie or Polmont for the next 10 years to visit their teenage son, the bill will have been a success."—[*Official Report, Justice 2 Committee*, 22 November 2005; c 1854.]

The detective chief superintendent was firmly of the view that the proposals on knife crime have, as Jackie Baillie said, the potential to save life. The sentiments that the officer expressed have stayed with me and I believe that they will strike a chord with people throughout Scotland. The committee was right to welcome, by majority, the proposals to increase the available sentences for knife crime.

I argue that there is a general welcome for the strengthening of police stop-and-search powers and widespread agreement that punishment must be condign. Ministers are not convinced about the need for mandatory sentences and the committee, rightly, did not support any move in that direction. Nevertheless, while I wholly acknowledge the independence of the judiciary, I urge, as my constituents would expect, the fullest use of the powers that are available to sentencers in the appropriate circumstances. I hope that the ministerial team will give due consideration to the committee's request that

"the possibility of reviewing current practices to encourage more cases to be brought forward on indictment"

be explored. We seek not direction, but guidance. Such encouragement would be a great move forward.

The second aspect of the bill that I would like to mention is the introduction of football banning orders, which is dealt with in sections 47 to 65. Although the level of violence and disorder in domestic games in Scotland has thankfully dropped since the early 1980s, there is still a worrying element of football-related violence and disorder, even at minor games. Of course, FBOs are not a complete solution.

The committee was reassured that the proposed orders, made under civil procedure, are a proportionate response to the problem of football-related violence and disorder and that the length of the orders was also appropriate. As with several aspects of the bill, the majority of the committee

was content that a proper balance had been struck between the rights of the individual and the rights of wider society. That balance was part of the complicated debate around the bill's proposals to modernise and standardise the arrangements for public processions. That provision is not about curtailing essential rights of assembly. It is about ensuring the fullest possible participation of the communities of Scotland in decision-making processes. It is not a right of veto, but a right to be considered and properly consulted.

The Executive will introduce amendments on fisheries protection and the management and registration of sex offenders at stage 2. The bill presents us with an opportunity to continue building safer communities across Scotland and I commend it to the Parliament.

16:31

Jeremy Purvis: It is always a pleasure to follow Bill Butler in justice debates. It has been a good debate. I record my thanks to the bill team and ministers for the open way in which they have worked with the committee. I trust that that will continue in the next stages.

Scotland now has a record number of police officers—more than 16,000—supported by record investment. By introducing the bill, the Executive will give those police officers a wide range of new powers that will improve their effectiveness and help them to tackle problems to improve safety in our communities, which is the ambition of all members.

Alasdair Morgan asked whether we have the right approach to the use of special constables within communities. Stewart Stevenson stressed that they are members of the community. Although police numbers are at a record level, further recruitment of special constables will be encouraged through the proposal to allow incentive payments to be paid to special constables who undertake an agreed number of duties in a 12-month period—a Liberal Democrat manifesto commitment. A debate is needed in Parliament and in local areas as to how special constables can be used more flexibly, working with road safety and other community safety partners.

In August, the National Crime Intelligence Service released its latest figures on football hooliganism in England and Wales. The figures show that, despite the greatly improved situation inside football grounds, there has been an overall increase in football-related violence. Patterns have changed. Rather than the vicious and commonplace scenes of fans rioting inside stadia in the 1970s and 1980s, most trouble now appears to be taking place well away from football grounds. One of the by-products of football banning orders

will be that for the first time robust statistics in Scotland will be collected about arrests near or around football grounds.

I am grateful for the time afforded to me by Lothian and Borders police when I recently spent a day with them at a Hibs v Rangers football game. Thankfully, it was quiet with no arrests. I was impressed by the professionalism of the police. I was further reassured when I learned that the head of the force's tactical support unit is a constituent of mine, particularly if I ever need to call on the force's services. Although improvements could be made in intelligence gathering to identify so-called casuals, the force's approach was beyond reproach.

The majority of those who attend matches in Scotland and who follow clubs and the national team to games abroad have no intention of causing trouble. However, a minority use football as an excuse to indulge in bigoted, racist or sectarian abuse. It is welcome that the bill lists those types of abuse as criteria to be used in cracking down on such conduct. I would be lying if I said that I did not hear disgusting language and witness disgusting behaviour in the football ground, even though it was below the level of criminality, at the game that I attended. The powers in the bill will provide banning orders that will cover the whole of the UK. Hooligans will be prevented from travelling abroad when their passports are taken from them. Sentences of up to 10 years are the right way for dealing with those violent and bigoted individuals.

There has been much debate this afternoon about the establishment of the Scottish police services authority, which is intended to provide common police services and to maintain the Scottish crime and drug enforcement agency. The proposal has been warmly welcomed, albeit with the caveat that it is very complex. Indeed, it could be said to question the approach that has been taken to policing since 1967. As Annabel Goldie said at the beginning of the debate, we questioned whether the proposed changes were healthy and workable and we came to the conclusion that they were. We understood their complexity, and the complexity of some other measures was outlined by Maureen Macmillan.

On the subject of drugs, Stewart Maxwell and others raised the issue of timing, referring to the time from assessment to treatment rather than the time from test to assessment. The First Minister has said that he wants to review how we address the circumstances in which children are at risk. That is topical and is worthy of further consideration at stage 2. It is an important issue. In its drugs strategy, the Executive says:

"Data about the numbers of children living in families in which parents ... misuse drugs is patchy."

Stewart Stevenson stressed the importance of that during his constructive speech—and we were all very pleased to hear about his Ross County lineage. It has been reported that

“The Greater Glasgow Drug Action Team estimate that there may be between 7,000 - 10,000 children”

living in such households, often under the supervision of members of their extended family, rather than their mother or father. I want the minister seriously to consider working with the Minister for Health and Community Care to prioritise giving places on programmes addressing drugs problems to people who have to care for children. Earlier, I mentioned Castle Craig hospital, in my constituency, and I do so again now. The hospital has places available for residential abstinence programmes. Local authorities and national health service boards tend to go for the cheaper option of methadone programmes in the community, rather than abstinence programmes.

I sympathise with the views that Bill Aitken and Jackie Baillie expressed about institutional clutter. Bill Aitken also mentioned clear-up rates and increases to summary sentences. He was wrong in everything that he said, but he said it very well. Finally, Alasdair Morgan gave a master class in restraint. It was like being a fly on the wall of a shadow Cabinet meeting, with Mr Morgan pleading restraint on every other SNP spokesman giving daily spending announcements. That was admirable.

This has been a constructive debate and we will be receiving amendments from a number of sources at stage 2. Despite the fact that they will be from a number of sources, I hope that they will be consensual. In the end, the common view is that the bill is for increased community safety and faith in the justice system. I hope that the reforms will be constructive and that the consensual spirit will carry through until the end.

16:38

Margaret Mitchell (Central Scotland) (Con): The Police, Public Order and Criminal Justice (Scotland) Bill is diverse and wide ranging. As other members have pointed out, in the limited time that is available for this stage 1 debate, it is only possible to consider the bill's provisions in the broadest terms. The bill's major focus is to increase police effectiveness and to improve community safety. I will highlight a number of welcome provisions.

Part 1, on the police, includes a duty to be conferred on the new Scottish police services authority to develop and provide a national forensic science service. There is no doubt that the pooling of the frequently overstretched

regional forensic resources into one forensic science service that will operate at national level will go some considerable way towards eliminating the delays in court proceedings that have been a direct consequence of the necessary forensic evidence not being available on time, when it is required. It is that pooling of resources, together with the desire for a more effective and efficient use of common police services, that is behind the proposal to create the SPSA.

Also to be welcomed is the provision in part 1 to establish a police complaints commissioner to oversee non-criminal complaints against the police. The Conservatives have advocated having such a post for some time. That should bring the necessary transparency to the complaints procedure. I look forward, first, to the Executive's response on the need to ensure that the police complaints commissioner has sufficient powers and, secondly, to getting details about the complaints commissioner's interaction with the Crown Office and Procurator Fiscal Service, which will continue to investigate criminal allegations against the police.

Part 2 is on public order. Measures that should go some way towards improving community safety and police effectiveness include the introduction of football banning orders; the powers of search and arrest in relation to some offences involving fireworks, whose misuse blights communities; and the processions provisions, which seek to strike a balance between the right of a community to be free of disruption and the rights of those who wish to march.

Part 3 is on criminal justice. The provisions on offensive weapons and the doubling of the maximum sentence length for possession of a knife are very much needed, given the vicious and escalating incidence of knife crime, which Kenneth Macintosh illustrated poignantly. Given that the sentencing provision will not apply to summary charges—notwithstanding the amendment that Stewart Maxwell proposes—and given that the proportion of knife crime charges that are proceeded with on indictment is small, it is to be hoped that the minister will take on board the committee's recommendation and the plea from Bill Butler that current practices should be reviewed to encourage more cases to be taken on indictment.

The provisions in part 3 to provide the police with powers to require a suspect to divulge their date and place of birth will aid identification on the criminal record system and are sensible, as are the provisions on mandatory drug testing and assessment, which will give the police powers to direct some accused persons to early treatment.

Although the proposal to give police the power to take advantage of the new technology that

allows fingerprints to be taken outwith a police station is welcome, the concerns that have been expressed about retention timescales will require to be addressed at stage 2, to ensure clarity about when those fingerprints will be deleted.

The success of many of the provisions will depend on their being properly funded and resourced. The Finance Committee's observation, to which Alasdair Morgan referred, that a number of the costs that are associated with policing will not be specifically funded, but will be expected to be met from existing police resources or to be offset against assumed time savings, requires to be scrutinised more fully at stage 2. The funding issue is a crucial part of the bill.

As Annabel Goldie and Jeremy Purvis said, other technical issues relate to the provision of statutory incentives for supplying evidence for use against others and the impact on the number of pleas in bar of trial that can be taken under Scots law. How the proposals in the bill interact with the common-law pleas in bar should be clarified at stage 2.

On that basis, the Conservatives are happy to support the bill's general principles. Like other members, I look forward to seeing the management of sex offenders measures and the better inshore fishing regulations that will be produced at stage 2.

16:44

Mr Kenny MacAskill (Lothians) (SNP): The debate has been wide ranging. That is understandable, given the wide range of measures that the bill encompasses. The debate is characterised by two words: consensus and balance. To her credit, the minister set the consensus at the outset. In an eloquent speech, she made clear what SNP members in particular have said—that some matters cannot be dealt with simply by legislation.

There was a brief spat between the deputy minister and my colleague Stewart Maxwell. Our position is not that we oppose increasing sentences for crimes involving knives—indeed, we will not fail to support efforts to address sentences in summary cases—but we oppose the grandstanding that took place. Of course increasing the mandatory sentence will be beneficial, but we should be clear that the number of people involved is very limited. However, a consensual tone was set by the minister.

The minister made it clear that the problems are wide ranging and that we must address them through legislation, but the law on its own will not solve the problems. Most members have mentioned at some stage the two issues that have taken up the major part of the debate: knife crime

and drugs. Ken Macintosh in particular spoke about our having a knife culture, which is clear; indeed, the minister said that, too. Of course we must address our knife culture and clamp down firmly on people who carry and use knives and weapons, but we would be deluding ourselves if we thought that doing so provides the sole solution. We must accept that the problem is deeply ingrained and wide ranging and that a variety of issues must be addressed, from education to drink, drugs and deprivation, for example.

It is obvious that problems relating to drugs affect the criminal law, but those problems are predicated on social problems. Of course we must clamp down hard on drug barons, as Stewart Stevenson said, but we would be deluding ourselves if we thought that we could address the drug problem simply by repression. There is a wide range of reasons behind the drug abuse that takes place in Scotland, some of which we should not sympathise with. I have no sympathy for yuppies and people from affluent backgrounds who use cocaine as a recreational drug. However, we should consider those from other backgrounds who take drugs because of a lack of hope or belief in or expectation from society and knowing that they will not simply reduce their lifespan but kill themselves. Members cannot address such matters simply by passing criminal legislation. The minister was correct to point out that we must address such problems in various ways.

Obviously, the bill covers a wide range of issues; indeed, bills sometimes must cover an amalgam of issues. We await with interest the amendments that are lodged at stage 2 because we want to ensure that there is adequate scrutiny and that the bill is not too wide ranging. Perhaps it will need to be, especially with regard to sex offenders. Before the Parliament was established, there was a criticism that, as a result of the timescales to which the United Kingdom Parliament in London had to work, we ended up with miscellaneous provisions bills in which there was sometimes little relationship between the matters covered. Law that is made in haste can be bad. However, there might be no alternative. Having scrutinised the amendments at stage 2, we might accept the minister's proposals, but we should try to work against such an approach.

Bill Butler and other members have said that, fundamentally, this is a matter of a balance. Ms Leckie disagrees with that, but I think that we live in a much more complicated society. When we are legislating on any aspect of the criminal law, we must balance the individual's rights against the state's rights. However, as I say, we live in a changed society and we are right to reconfigure things for various reasons.

First, we live in an atomised society in which people do not know their neighbours—often, they do not know the people who live across the road. Years ago, when a policeman asked for someone's name and address, he would probably then know who they were, but that does not happen in our society as a result of the movements that there have been, urbanisation and changes in where policemen stay—they do not necessarily live in the community in which they work. It is therefore important to address how we deal with the criminal law.

Science has also moved on. Science now provides us with techniques that were not previously available to work out who an offender is. If new fingerprint technology and DNA-swabbing techniques are available, I cannot see why we cannot consider using them. Patrick Harvie said that the issue is what is done with information. We are not gathering information as Big Brother would in order to try to create a superstate. The issue is what we do with information. We should balance the rights of the individual with the rights of our community.

That is where I fundamentally disagree with Ms Leckie. We are individuals and we must protect individuals' rights. She will recall that most of us in the chamber—apart from the Conservatives—agreed many years ago in Scotland that there is such a thing as society and that we do not live only as individuals. A person's individual rights must tie in with the rights of communities to march and so on.

Jeremy Purvis: Does the member have as much suspicion as his colleague Mr Maxwell does about the extended powers in the bill to take fingerprints electronically, as was outlined at the beginning of the debate?

Mr MacAskill: I think that such measures have to be introduced, but the question is what one does with them. Are we opposed to the measure in principle? No, we think that it is sensible. The practice exists and it is important to protect society, the community and the individual from perpetrators of crime. However, we have to monitor how we use such powers. We welcome to some extent the clarification that has been provided. We need to work out how and when the police will exercise the powers. It is not fair to expect the police to give an immediate guarantee about how long they will retain fingerprint information—be it for two or seven days or whatever. Let us work such things out and as long as we bear that in mind, we will be able to address the matter.

Bill Aitken, and Alasdair Morgan in particular, spoke about resources. Jeremy Purvis might think that Alasdair Morgan's remarks were flippant, but I thought that he made a valid contribution. The

issue is not so much the individual actions that we take but the compounding of what we are doing. We have to take cognisance of the effect that we have on our colleagues in local government from all political parties—complaints do not come from SNP councillors alone. We must recognise that the actions that we take in Parliament impact on what councillors have to do and must be viewed in total. That is why Alasdair Morgan's points were fundamental.

We are happy with the bill and we will support it at stage 1.

16:51

The Deputy Minister for Justice (Hugh Henry): The debate has been exceptionally good, and the speeches have reflected the significance of the bill. I am heartened that, with one notable exception, there is agreement across the Parliament that we need to act to protect the people we serve.

Although it is true that we need to be bold and sometimes decisive, the caution that members have urged on us is right. If we take steps that have the potential to impact on individuals, we need to be sure not only that we are doing the right thing but that we have protected people—individuals and communities—in the best possible way. I will return to the question of rights, on which several members, including Kenny MacAskill, touched.

It is important to remember the broader context of the bill, and I will try to pick up on as many of members' points as possible. We are fulfilling a commitment to take measures to reduce violent and drug-related crime, with which I do not think anyone could disagree. We have committed ourselves to making communities safer and to making people feel safer in those communities. We have promised steps to reform the legal system, and the bill is another part of that process.

Bill Aitken complained about the amount of legislation that we have proposed, but I argue that such legislation is long overdue. If anything, our programme of legislation reflects the fact that we did not have a body such as the Parliament to consider the breadth and volume of legislation required. We are addressing weaknesses and gaps. I agree with Bill Aitken on that.

However, the question is now one of enforcement. As Kenny MacAskill suggested, we need to take a step back and to reflect on how that enforcement takes place. We should not impinge on the responsibilities of the police, who have a duty to enforce independently. The Crown Office has a duty to act, but it does so independently. Our judges have a duty to sentence and to reflect the legislation that we pass, but they do so

independently. We need to put the debate on enforcement in that context.

The bill is about making communities safer. It is about ensuring that the police have the powers they need to do the job they are required to do and that they are backed up by effective support services. Members have heard from not only the minister but a number of members across the political spectrum that the bill gives the police the powers they need to tackle knife crime, football violence and drug-related crime.

Patrick Harvie: On that point, in evidence to the Justice 2 Committee, the minister acknowledged Mary Hepburn's point, to which Carolyn Leckie referred, that mandatory drug testing and assessment will not be appropriate for all people, particularly those who are already in treatment. He was asked,

"Would some cross-reference be made when the person was brought into the police station, about what was happening to them?"

and replied:

"Yes, through the assessment."—[*Official Report, Justice 2 Committee*, 29 November 2005; c 1895.]

That confuses me. Will the minister clarify the situation? It seems bizarre to suggest that the decision to test will be contingent on the outcome of an assessment that comes afterwards.

Hugh Henry: Patrick Harvie is perhaps a bit confused about the issues. I can respond to him on the detail of that by letter. At the moment, I want to concentrate on the broader principles.

By using mobile fingerprint readers to check suspects' identity without having to spend time taking them back to the police station, and by requiring suspects to reveal their date and place of birth, the bill will help the police to identify suspects more effectively. I understand the concerns that have been raised about how long fingerprints might be retained for. We have said that they should be destroyed as soon as possible, and I acknowledge that more work needs to be done on that. The difficulty is that if we say that the fingerprint should be dispensed with immediately, does that mean immediately after it is taken? We start to get into arguments. Should it be after seven days? If we do not need to keep it for seven days, why should we do so? There are issues that we need to address and we have tried to phrase the bill in a way that recognises that a fingerprint should not be held for any greater length of time than is absolutely necessary.

Mr Maxwell: I agree with the minister's point about the difficulty of putting such a provision in place, but the reason for the concern that a number of members have expressed is that if there is not a deadline, people will become overly

concerned about the build-up of data on innocent people. Surely, just for the sake of public perception and to ensure that the public feel reassured that we are not gathering data and creating a national database, it would be worth coming to a mutually agreeable solution to the problem and agreeing on a date by which the fingerprint should be destroyed. Surely that is reasonable.

Hugh Henry: We will consider that again, because we recognise that there are concerns. Whatever we do, we need to ensure that it is effective. We need to strengthen prosecutors' ability to get co-operation from criminals who can provide evidence to put other major criminals behind bars. The bill does that.

Concerns have been raised about the ECHR. We think that the bill is compliant. Concerns have been raised that the bill might be used and abused by criminals. Yes, we need to be alive to that. However, Jeremy Purvis, I think, made the point about having the opportunity to return to the legislation and remove any advantage given, if we have evidence that that has happened.

The bill impacts on many areas. Questions have been asked about the organisation of public processions. The bill will enable local authorities to take account of a wider range of factors when considering marches and parades. Patrick Harvie asked whether the legislation would be used against political demonstrations. All demonstrations and marches should be treated equally—no organisation should be treated any differently. However, the bill will ensure that the rights of communities—which Donald Gorrie alluded to—that have been affected over many years are considered in the same way as the rights of marches and marchers. The provisions in the bill are about ensuring that a balance is struck when decisions are made. I acknowledge that there are concerns about the time period for notifying people that a march has been banned, and we will consider that. We think that our suggestion is reasonable, but it is only proper that we should reflect on the arguments that have been advanced. We will come back to that at stage 2.

Comments have been made about police complaints. Donald Gorrie talked about ombudsmania, but Jackie Baillie put it into the proper perspective. Our proposals are about having an independent police complaints commissioner. I do not think that we should be precious about what the commissioner will look like, but their independence must be guaranteed, their rights and powers must be properly enshrined and they must be effective. If the committee wants to consider what the structure should be and come back with proposals, let us have a further debate at stage 2. Some interesting

suggestions have been made that are worth further reflection.

Stewart Maxwell raised the issue of mandatory reporting. I suggest that mandatory reporting is not always necessary. In Wales, reporting takes place on a voluntary basis, and the minister referred to a pilot voluntary scheme that started in Paisley yesterday, which I hope will lead to progress. However, the question of the information being used effectively by the police is a point well made.

I conclude by putting the bill in the context of human rights, which was an issue raised by Kenny MacAskill. It is important that we recognise human rights as a valid issue for the Parliament to consider. As Kenny MacAskill suggested, it is right that we give due recognition to the rights of individuals. However, it is also correct to say that the human rights of the decent majority in communities throughout Scotland need to be considered. When we talk about human rights, it is incumbent on the Parliament to ensure that we refer not only to a small, specific part of our community. I hope that the bill will give the people we represent confidence that their human rights will be properly addressed.

Police, Public Order and Criminal Justice (Scotland) Bill: Financial Resolution

17:02

The Presiding Officer (Mr George Reid): The next item of business is consideration of a financial resolution. I ask Hugh Henry to move motion S2M-3822, on the financial resolution in respect of the Police, Public Order and Criminal Justice (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police, Public Order and Criminal Justice (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in paragraph 3(b)(ii) of Rule 9.12 of the Parliament's Standing Orders;

(b) any increase in expenditure of a kind referred to in paragraph 3(b)(iii) of that Rule; and

(c) any charges or payments in relation to which paragraph 4 of that Rule applies,

arising in consequence of the Act.—[*Hugh Henry.*]

The Presiding Officer: The question on the motion will be put at decision time.

Decision Time

17:02

The Presiding Officer (Mr George Reid):

There are three questions to be put tonight. The first question is, that motion S2M-3785, in the name of Andy Kerr, that the Parliament agrees that the Human Tissue (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Human Tissue (Scotland) Bill be passed.

The Presiding Officer: The second question is, that motion S2M-3786, in the name of Cathy Jamieson, on the general principles of the Police, Public Order and Criminal Justice (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (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)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)

Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 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)
 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) (Ind)
 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)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Curran, Frances (West of Scotland) (SSP)
 Fox, Colin (Lothians) (SSP)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)

ABSTENTIONS

Sheridan, Tommy (Glasgow) (SSP)

The Presiding Officer: The result of the division is: For 98, Against 4, Abstentions 1.

Motion agreed to.

That the Parliament agrees to the general principles of the Police, Public Order and Criminal Justice (Scotland) Bill.

The Presiding Officer: The third question is, that motion S2M-3822, in the name of Tom McCabe, on the financial resolution in respect of the Police, Public Order and Criminal Justice (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police, Public Order and Criminal Justice (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in paragraph 3(b)(ii) of Rule 9.12 of the Parliament's Standing Orders;

(b) any increase in expenditure of a kind referred to in paragraph 3(b)(iii) of that Rule; and

(c) any charges or payments in relation to which paragraph 4 of that Rule applies,

arising in consequence of the Act.

Childhood Obesity

The Deputy Presiding Officer (Murray Tosh):

The final item of business today is a members' business debate on motion S2M-3732, in the name of Elaine Smith, on childhood obesity in Scotland. The debate will be concluded without any question being put.

Motion debated,

That the Parliament expresses concern at recent findings published by NHS Scotland which suggest that the proportion of Scottish children who are overweight, obese and severely obese is far higher than anticipated in all age groups and is twice that of the expected UK average; recognises this means that more than a third of our 12-year-olds were considered to be overweight last year, 19.4% were considered to be obese and 11.2% severely obese; accepts that these figures represent a potential time bomb for the NHS in terms of the future costs of the treatment of obesity and related illness; acknowledges the commitment by the Scottish Executive to tackle this problem; considers that more robust measures are needed, such as investing further in the promotion of breastfeeding as the healthiest start in life, removing unhealthy dietary choices from our school environments and increasing the focus and commitment to physical activity in our schools; acknowledges that examples of best practice exist, such as South Coatbridge's Healthy Lifestyle Project, and believes that, in light of these findings, a national debate is needed to re-examine all possible options and means of making progress on this issue.

17:05

Elaine Smith (Coatbridge and Chryston)

(Lab): I thank all the members who signed my original motion and all those who have stayed for the debate.

Almost weekly, a story breaks in our national press that highlights another aspect of our children's unhealthy lifestyles. This week brought the news that two years into the Scottish Executive's drive to make school meals healthier, pizza and chips still reign supreme among the favourite lunch choices of primary school pupils. Last week, we learned that only 7 per cent of secondary school pupils in Scotland receive their allotted two hours of physical education per week. The situation is even worse in primary schools, where only 5 per cent receive the recommended physical education time.

Other recent reports have included the news that children in Scotland drink more fizzy drinks than youngsters anywhere else in Europe, are among Europe's most regular consumers of sweets and confectionery and are among the least likely in Europe to have been breastfed.

In December last year, NHS Scotland published findings that showed that more than one third of 12-year-olds were overweight. Of those, 19 per cent were obese and 11 per cent were severely obese. I have no doubt that the Scottish Executive

is taking the issue seriously. Indeed, the World Health Organisation's endorsement last year of the Executive's approach to health improvement as an example to other countries indicates that we are moving in the right direction, but is that enough? The startling figures on childhood obesity and the child health surveillance programme's prediction that as many as 50 per cent of our children could be obese by 2020 suggest that much more needs to be done, and soon.

The recent evaluation of the Executive's free fruit in schools initiative is overwhelmingly positive. It highlights the potential to increase the consumption of fruit and to improve healthy eating practices in children throughout the population. It also confounds some critics who have condemned the universal provision of healthy food to children on the basis of a misconception that children will not eat it. Given the impact that such an initiative has had and considering the scale of the challenge that we now face, I fail to see how the Executive cannot look more favourably on the possibility of setting up pilot schemes to examine the enormous impact that a similar, larger-scale initiative such as free school meals could have for our children's future health.

Last week, I joined the Deputy Minister for Education and Young People at Shawhead nursery school in my constituency, where he launched the new nutritional guidelines for pre-school children. The enthusiasm that those young children showed towards the healthy food that was put in front of them was extremely encouraging. It underlined the scope for success if we introduce children to healthy eating at the earliest possible opportunity. Research and science increasingly tell us that good nutrition from the start of life, and even from conception, can have a significant impact on our childhood health and on our later lives.

Various studies have found that breastfed babies are significantly less likely to become obese. A study that was published in the *British Medical Journal* found that 4.5 per cent of bottle-fed babies were obese by the time they reached the age of five or six, but only 2.8 per cent of breastfed babies developed similar problems. Equally, it found that babies who were breastfed for a year or longer were more than five times less likely to become obese.

If we consider that obesity in childhood is a known risk factor for a variety of conditions in adulthood, including cardiovascular disease, diabetes and obesity, the role that breastfeeding can play in public health promotion becomes clear. In September 2004, I took part in an innovative curriculum-based initiative that the healthy lifestyle project piloted in Rosehall high school in Coatbridge in my constituency. That initiative

sought to promote breastfeeding awareness in secondary school children in an area that has some of the lowest breastfeeding rates in Scotland. It focused on the science and nutritional impact of breast milk and the social influences on breastfeeding. Pupils were able to discuss those issues with local health promotion professionals.

The project was a resounding success. A significant improvement in positive attitudes to breastfeeding was reported among children in all the age groups that were involved. Most significantly, greater understanding was reported among boys, who had previously expressed more negative views than girls. That project is a valuable example of a way in which breastfeeding awareness can successfully be integrated into the curriculum with positive results. I urge the Executive to examine the project's findings with a view to supporting its roll-out to other areas in Scotland.

As members know, the Scottish Parliament has taken steps to improve the uptake of breastfeeding in Scotland. We are making some progress, but the Executive needs to be more proactive in its support. The Breastfeeding etc (Scotland) Act 2005 provides an opportunity to increase awareness in the general population, but to date the Executive has not fully grasped that opportunity. Most notably, during last year's national breastfeeding awareness week, the national advertising campaign did not mention the new protection that is afforded to mothers. I hope that the minister will consider that and make amends this year.

It is clear that there is no single solution to the problem. A great many factors need to be considered, including the widespread loss of green space, the need to encourage and support opportunities for play in our communities and the action that is needed to tackle the aggressive marketing of unhealthy foods to our children. I am sure that other members will want to address some of those factors. I do not have time to do so.

I believe that we need a more overarching national strategy that is mainstreamed throughout departments and tiers of government. For example, a great many initiatives are promoted and developed by both the Scottish Executive and local authorities to improve health outcomes and reduce inequalities, but in my constituency I am still regularly bemused by planning decisions that allow fast food takeaways to open at alarming rates in local communities and often near schools. They offer cheap lunches to children, but the price will be paid in the longer term in their health.

I congratulate the Scottish Executive on its commitment to tackling the problem, but I implore it to be much bolder in its aims. It has been robust on tackling smoking; surely it must be equally

robust and radical in tackling the factors that contribute to obesity in Scotland. Tackling obesity is estimated to cost the national health service £172 million per year, but it will cost us a great deal more if we fail to recognise the gravity of the situation right now. The facts could not be clearer. In Scotland, we have reached a crisis point in our children's health. The situation is dire and it is time for urgent and decisive action.

17:12

Christine Grahame (South of Scotland) (SNP): In the first half of the 20th century, obesity and severe obesity were rare. They were more commonly associated with the affluent classes, whereas today, regrettably, they are more likely to be found in socially deprived areas. In the past 50 years, obesity has increased so rapidly that, in many developed countries, it is normal to be obese and abnormal to be underweight. When the United States of America sneezes, we catch a cold tomorrow. In America, it is estimated that 61 per cent of adults are overweight.

As Elaine Smith pointed out, the concern in Scotland is childhood obesity. When I look for the origins of the problem, I look back even further than breastfeeding—as I understand it, breastfed children cannot become overweight because the nature of breastfeeding will not allow that to happen—to pregnancy. If a mother eats badly, we might start even at that stage to have a child who will eat badly and become obese.

The proportion of children in Scotland who are obese is double the United Kingdom average. The concomitant effects include the risk of type 2 diabetes, which is now common. Indeed, even type 1 diabetes is on the increase. As well as the physical dangers—fat children often turn out to be fat adults—there are social and psychological consequences such as stigmatisation, discrimination and prejudice, although sometimes there is an “it's fun to be fat” approach and people proudly display it. That is an understandable reaction, but we have to address it because of the illnesses that are linked to obesity. It would be fun to be fat if it were not for all the illnesses that follow as a consequence.

I have to say that, in my childhood, we ate well. After the war, we ate simple food. We ate vegetables from the garden and the streets were our playground. There were hardly any cars and there were certainly no parked cars. Those days have gone. We must consider the lifestyle of children nowadays—this is not a health issue, but a lifestyle issue. There is a lack of physical activity. Children cannot play in the streets because of parked cars and people complaining. There are not enough sports facilities. Even sport in school is on the decrease from the horrible days when I was

made to vault horses and play hockey and netball in the pouring rain and the frost. Those days have gone, and we must get children back into activity.

I want to address something quite sinister that happens to our children: in this consumerist society, sales are directed at children from an early age. McDonald's and the various other fast food outlets use pretty packaging and little gifts. It is extremely difficult for a tired parent to resist taking their child there. I know that there has been an attempt to address the issue recently, because of the bad image that it creates, but much of that activity is still going on. While we are driven by companies that see children, from an early age, as the consumers—the sweet buyers, the chip buyers and the chicken bite buyers—we will not be able to address childhood obesity as we need to.

To some extent, we have attacked commercial activities in schools. I refer to the selling of fizzy drinks and the alleged sponsorship by chocolate manufacturers, for example, which allows people to get a computer if they collect a certain number of chocolate wrappers. That is the wrong signal to our children.

In the short time that I have left, I want to make a simple point to the minister. This is an area in which Scotland can take the lead. I applaud Elaine Smith for raising the issue. Although some steps have been taken, I agree with her that we need a national campaign across all portfolios and ministerial briefs to address the problem. For once, perhaps, Scotland—which is such a wonderful producer of good food, which has plenty of space to exercise and which has good will—will deliver a healthy generation in the generation to come.

17:17

Mrs Nanette Milne (North East Scotland) (Con): I welcome the debate on Elaine Smith's motion on childhood obesity in Scotland and agree with her that all possible options for dealing with it need to be considered. As the motion suggests, we are sitting on a time bomb. I have not signed the motion, not because I disagree at all with its general content, but because I would prefer to see in it a greater emphasis on parental responsibility.

As our society has changed, we have all become used to eating more fast food. Parents and children have less time together. These days, many do not sit down to eat together, and it is all too easy to pick up takeaways or ready meals to put in the microwave. Children, as well as adults, lead fairly sedentary lives in front of computers and television screens, and parents are afraid to let their children walk to school because of traffic dangers or to play outside for fear of abuse by strangers. As a result, over the past 20 years, the

number of overweight and obese children in the UK has risen steadily.

The shocking truth in today's Scotland is that obesity now affects children as young as three and a half. As Elaine Smith said, a third of 12-year-olds are classed as overweight, with 19.4 per cent deemed obese and 11.2 per cent deemed severely obese. Those figures are appalling. Scotland is recording rates that are twice, four times and five times higher than the projected UK average.

As we know, children who are overweight tend to become overweight adults and have a higher risk of developing serious health problems in later life. With type 2 diabetes now appearing in teenagers, we face a very serious problem.

There needs to be an awareness of the damaging effects of poor diet and insufficient exercise. In my opinion, it is the responsibility of parents to provide balanced, nutritious meals for their children and to encourage an active lifestyle. I believe that a more wide-ranging education programme needs to be more readily available to parents before a child is born.

I totally agree that breastfeeding gets children off to the best possible start and should be encouraged wherever possible. Public health nurses, midwives and other nursing staff are well placed to offer advice and information to parents and their children on how to adopt a healthier lifestyle. Good food need not be expensive to provide, if people know how to budget and cook. Parents need to be shown how to do that.

My granny used to buy a cheap cut of meat, to boil it in a pan to make soup, to serve it cold for two days and to make stovies on the final day. That sort of thing did not cost a lot of money and she brought up a family of 10 healthily on it. Young mums do not know how to do that. Perhaps we should show them how.

Supporting families and communities to live in a healthier way requires a community development approach and it can take time to succeed. Schools, too, have a part to play in reinforcing the healthy message. However, I do not think that that should be done through Government direction. Schools, with the agreement of parents, should be free to choose how best to deal with the issue, which might be by banning vending machines that sell junk food or by increasing the amount of physical activity for each child and employing more sports and PE teachers.

The role of school nurses should be supported further, so that they can give effective advice on public health issues. The Royal College of Nursing's school nursing survey found that nine out of 10 school nurses do not have the time to do the amount of health education with children that

they wish to do. That problem must be addressed. Primary care health professionals also need more time and motivation to deal with the obesity problem in children.

The alarming increase in childhood obesity that is now apparent—some children who are not even old enough for school are obese—means that there must be a greater drive to educate those who are responsible for children, particularly parents, at the earliest possible opportunity. It takes time for cultural change to develop, but I agree with Elaine Smith that in Scotland today we have no time to lose. We must, as a nation, look at the whole picture and tackle the problem coherently.

17:21

Eleanor Scott (Highlands and Islands (Green)): I am happy to speak in the debate and to support Elaine Smith's motion. I will not repeat the chilling statistics about the recent increase in childhood obesity to which other members have referred. Instead, I will consider what we should be doing to reverse the situation. I agree with what members have said. After all, obesity stems from two basic things: eating the wrong food or the wrong quantity of food and being insufficiently active.

The food side is well recognised and I feel that the problem is being tackled to some extent, although the effects of that approach have yet to be felt. The Executive's hungry for success programme for school meals is a step in the right direction. I would like that to be taken further.

I would also like all schools to aspire to participate in the food for life programme that the Soil Association promotes. It stipulates that 75 per cent of the food served in a school must be unprocessed, that 50 per cent must be locally sourced and that 30 per cent must be organic. The programme promotes a better food culture through food education that is not just about cookery, but about understanding where food comes from. Young people are much more likely to eat healthy food if it is tasty and of good quality. We need to grow a generation that can cook food and not just watch cookery programmes on television.

The other side of the equation is the level of activity—it is generally recognised that our children are insufficiently active. The problem is that the measures that are proposed to tackle it are underresourced or inherently insufficient. For example, there is agreement that kids do not get enough PE in schools, but the reality is made clear by the situation that we have in the Highland Council area. Some MSPs, including me, visited Hilton primary school in Inverness recently, where we heard from pupils that all their visiting teacher time for drama, art, music and PE is being cut.

On 28 January, Highland Council stated that it is facing its worst budgetary position since the Conservatives were in power in the mid-1990s. They are not my words, but those of senior councillors. In detailing its budget cuts, Highland Council added:

"But the biggest educational cut will be £1m taken from the budget for visiting educational specialists, such as music, art and PE teachers who teach in the primary sector."

Our understanding of the problem has not meant that we have resourced the solution.

I have another problem with our approach. When we talk about encouraging children to be more active, we tend to focus on relatively formal activities such as PE in schools, team sports and access to the facilities of a leisure centre, but that can never be enough to tackle the problem. Injecting a few hours a week of activity into an otherwise sedentary lifestyle will not cure unfitness and obesity.

The core problem is that we have built communities in which it is difficult for a child to be active in their everyday life. By that, I mean that we have made it difficult for them to walk to school, to run an errand to the local shop, to cycle to friends or to play spontaneously in the immediate neighbourhood. That difficulty was highlighted recently in a speech by the Prince of Wales and a 2001 report by the British Medical Association, which stated:

"Opportunities for spontaneous play may be the only requirement that young children need to increase their physical activity."

Unfortunately, that is just what most young people do not have. Streets are now for cars rather than people and there is no expectation that children should be able to play there.

Play areas that meet the needs of children are few and far between. Either open space is over-manicured and organised—and although it may be okay for accompanied toddlers, it presents no challenge to older children and is of little interest to them—or it is waste ground that is likely to contain hazards to which children should not be exposed.

Ken Macintosh has lodged a motion—one that I wish I had written myself—that says that children should have

"a safe, accessible and challenging play environment";

and article 31 of the United Nations Convention on the Rights of the Child talks about

"the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child".

For all too many children in modern Scotland, that important right is not being met. Until it is, our children's fitness and health will continue to suffer.

17:25

Euan Robson (Roxburgh and Berwickshire)

(LD): It is interesting to return to a subject for which I had some responsibility until recently. I recall the early days of the hungry for success programme, which I believe has been and can continue to be a success. However, I never thought that it would provide instant solutions. It was a programme that had to be sustained for many years. It has been successfully developed and I hope that that will continue.

Secondary schools are only now actively and thoroughly engaged in the programme; initially, the emphasis was on primary schools. It is also welcome that the programme has been extended to nursery education and informal playgroups. I recall visiting a playgroup as minister and finding that children were extremely enthusiastic about finding out about other types of food. Yes, there have been other initiatives. Fresh fruit in schools has proved a success, and the installation of cool water fountains has been very important in the everyday life of schools. However, we must continue to change and improve the programmes that we offer.

Recently, I was in Drumlanrig primary school in Hawick, where we had a farmer's breakfast—and very good it was too. However, the kitchen staff explained that, unfortunately, the children were no longer all that interested in bananas. Providing bananas is very easy; they are just cut in half and given to the children. But if it is bananas, bananas, bananas and bananas, it gets a little repetitive. Much of the work of hungry for success involves continuous application and ingenuity. We must tell children about the variety of fruit available, and we must explain where food comes from and how it is prepared.

A key element of hungry for success was the integration of food education into the curriculum. It was essential that that should happen—and there are good examples of it happening. Some months ago I visited Leith primary school. Not only was the dining room decorated in a way that was attractive to children—posters explained which types of fruit were which and where they came from—but classroom lessons reinforced the information, explaining more about the production of fruit and all other types of food, and explaining how food was good for us and how particular types of food were important in our diet. Integration into the curriculum is very important.

The other side to hungry for success is physical exercise. That is why the Executive—in my time, certainly—was committed to the recruitment of 400 PE teachers. I believe that that target has still to be reached. It was not a target that could be achieved instantly but it was an important one. There were also sports co-ordinators and plenty of

initiatives to do with walking to school. Eleanor Scott is entirely correct to say that how we design our communities these days militates against activities that a number of us probably participated in when we were young. Planning has an important role to play. Problems of childhood obesity should be addressed in all portfolios in whatever way is appropriate.

Childhood obesity is also increasing because nowadays voluntary organisations, sports clubs and so on are perhaps less able to provide the same services for young people. The Parliament should address the contribution that such organisations can make to the overall effort.

Hungry for success placed a lot of emphasis on a sensible and sustained contribution by local authorities, and I think that people welcomed the fact that Her Majesty's Inspectorate of Education was given the specific role of reporting on its progress. I am sure that the Scottish Executive Education Department will continue to monitor HMIE's comments in that respect. Nevertheless, the Parliament must reinforce to local authorities the message that it is unacceptable to reduce provision in these areas and to stick with a pattern that lacks innovation or initiative. It is essential that local authorities address the issues and take forward hungry for success.

17:31

Frances Curran (West of Scotland) (SSP): I welcome the fact that Elaine Smith has secured the debate and commend her for not letting these issues go. She got her Breastfeeding (Scotland) Bill through the Parliament; now she has taken up the campaign on behalf of pre-school and school-age children. We need to keep making a racket about these matters, because we are already seeing the warning signs. The figures for obesity are getting higher year after year. This is a crisis, which is why, as Elaine Smith said, we need an overarching strategy.

We are up against powerful vested interests that want those obesity figures to go up and up. Fast food companies such as McDonald's, Coca-Cola and KFC spend £1 billion a year in advertising alone—and they are advertising to our kids and young people. Those companies want kids to eat more; to eat bigger portions; and to pester their parents to take them to those restaurants more often. We must be clear about what we are up against; £1 billion is about five times the budget for this Parliament. We should not simply concentrate on what families and children eat.

We should not blame only big companies like McDonald's. We need a culture change and a clear policy that sends a signal to the rest of the country. When I come out of Buchanan Street bus

station and see a hoarding on the Blue Lagoon advertising the fact that it sells 300,000 sausage suppers every year—as if it were saying, “Come to us; we've got good-quality sausage suppers”—it makes me wonder whether we are making any progress. Outside schools in Lanarkshire there are signs advertising back-to-school meal deals with a sausage roll, doughnut and can of juice for only £1.20. If we really need a culture change, why have we not banned the advertising of junk food? Norway did it years ago. There is no junk food advertising on Norwegian television or on its children's programmes. What is the problem with doing the same in this country?

In this country, however, McDonald's was brought into the Parliament the other week and everyone gets to go to Hampden for Coca-Cola's seven-a-side primary schools tournament. Why are we involved in such things? We need to send out the political message that such activities are unacceptable and, in fact, are the height of hypocrisy. The money that the companies spend on those events to hook our children in is buttons compared with their £1 billion advertising budget, and the Scottish Parliament should not get involved with them.

As not one of our policies is making an impact on childhood obesity figures, we need to take some bold steps. There has been some progress with the hungry for success programme, but fewer than half of all schoolchildren eat the healthy school meals. As Jamie Oliver made clear, the challenge is to get the healthy food off the plate and into the stomachs. When more than half the schoolchildren are not eating the healthy meals, we need bold measures. The figures show that when children are free to eat what they like, the incidence of obesity goes up.

I do not mind nostalgia or memories of simple food and granny's cooking. Every night when I was a child, I ate meat and two veg—but my mammy didnae work. Women these days work. I do not remember the last time that I cooked a dinner for five nights in a row and put it on the table. That sort of thing just does not happen any more, which is why giving our schoolchildren free, healthy school meals not only is good for them but gives us peace of mind.

That measure would be an enormous boost for working women everywhere. The BMA made the point in its briefing that obesity starts in childhood. We in the chamber are not exactly all svelte; obesity is a wider issue. However, creating a cultural change must start with the children. Given that, I expect that everybody will support the healthy school meals bill when I lay the final proposal for it in the week beginning 20 February. I will be coming round to see members. Let us make a change.

17:35

Margo MacDonald (Lothians) (Ind): Like Elaine Smith, I start by thanking and congratulating the Executive on its efforts so far. However, I pose the same question that she did: is the Executive doing enough? And I give the same answer: no.

I appreciate the difficulties involved in tackling childhood obesity and I know that ideas are being considered, but let us start with the PE promises that Euan Robson referred to. One in five children in Scotland receives the requisite amount of PE as defined by the Executive. That figure is abysmally low. The reasons for that low figure are in some cases complex, but easy to understand in others, particularly in the primary schools. The primary school timetable is cluttered, and it needs to be decluttered if we are serious about having fitter children. We also need to ensure that primary school teachers are either motivated or properly trained to fill in for PE classes, and I have discussed that matter with the Minister for Education and Young People. We should consider emergency measures, such as drafting in PE assistants. I can tell the minister where to get them, because I have been to see them and have talked to their curriculum organisers. It is possible to draft in assistants, and if we are serious about our children's health, we will do that.

There is a great need for home economics teachers. Few people are aware that so little home economics is taught. I am not talking about turning the heel on a sock; we do not need to do that. I know that Frances Curran does not turn the heels on her socks. However, we could do with the cookery and nutrition content of what used to be home economics in schools. Home economics should be aimed not just at pupils but at teachers, who, as Frances Curran says, do not have the time themselves to cook and who may actually have to learn to cook. A generation has missed the tradition of mothers passing on how to make a good pot of soup or mince. Is mince politically correct now?

Emergency measures could be taken to connect up the voluntary effort that Euan Robson referred to. On Monday, I took the Minister for Health and Community Care to visit Fala Court, which is a community health initiative in the south of Edinburgh. Fala Court invites local grannies to teach young mothers and others how to cook. We have to look at the community roots level to channel people's practical skills.

Elaine Smith: Does the member agree that we should also be teaching young fathers how to cook?

Margo MacDonald: Not some of the young fathers that I know. I accept the general principle:

of course we should. I did not want to give the impression that home economics or learning how to cook is only for women. However, the community flat in Fala Court also operates a breastfeeding initiative and a buddy support system.

I agree with Frances Curran: there must be free school meals. That is not necessarily to redistribute income; it is to redistribute health. That argument has been made and the effects of that redistribution can be witnessed in action at Bathgate academy and, as Euan Robson said, at Leith primary school, where highly motivated women work in the kitchens. Jamie Oliver recognised that, first of all, he had to get to the people who were preparing and serving school meals. If we inspire them, we will inspire the children. I have seen that for myself—Bathgate academy is recommended.

We need to look at private finance initiative schools, because they are being built without proper kitchens. How can such schools do proper cooking? We need to get school kitchens back. That is not just turning the clock back; it is not just nostalgia. We have to ban food and drink that we consider unhealthy. I mean that—ban it. That means that local authorities will need more money so that schools do not depend on vending machines for some of their spending money. If we are serious about tackling childhood obesity, we cannot dodge hard priority choices that have to be made. Television adverts could be banned—we have banned them for booze, so why cannot we ban them for bad food as well? That could certainly be done before what used to be called the watershed.

I have news for all the members who are here. It is not just us who are falling down on the job. In all European countries—even in Spain, Portugal and Italy, where mamma's home cooking is a daily feature of the culture—children are overweight. I read that Spanish children are deemed to be fatter than ours. We are talking about an international problem in the developed world. Maybe we have found a use for the European Union—perhaps it could do something about banning television adverts for the products of the unsavoury side of the food industry.

I take on board what Frances Curran said. *Mea culpa*—I went to the McDonald's event without realising that it was a McDonald's event; I thought that it was about sport, but it was about McDonald's. I end on that note.

17:40

Robin Harper (Lothians) (Green): I do not know whether I should declare an interest as a member of WeightWatchers, but I will do so anyway.

Following on from Margo MacDonald's final point, I pulled out of the Scottish Parliament football team in 2003 when I realised that McDonald's was making the tournament in which the team was taking part a big advert for itself. I went into the event in all innocence—I must admit that it was great fun defeating Ireland the previous year.

My first point continues what has been said about the big food companies. The processed food that they make accounts for 70 per cent of the value of the food that is sold in this country. As I think that Margo MacDonald said, the progress of those companies is the reason for children getting fat all over the continent. At the very least, we should ensure that the advice that is given on foods is not in minuscule writing; one should not need a magnifying glass to find out how much fat and salt is in a particular food. Companies should not be able to mislead us by giving us a food's sodium content, which is about a third of its salt content, although they seem to be getting away with that. They should be compelled to put health warnings on any food that has a health-threatening proportion of fat, salt or sugar or any combination of the three. We could surely start by doing that. Margo MacDonald is right—eventually, we should ban the sale of such foods in as many places as we can. We have banned smoking in public places, so we could impose a similar ban on unhealthy foods.

Christine Grahame and Eleanor Scott mentioned the school curriculum and activity. Part of the problem is lack of activity. Rather than concentrating solely on PE, we should provide opportunities for children to be active while they are in school. It is essential that pupils have an afternoon of activity a week; that happens in some schools, but it used to happen in them all.

Norway is an example of a country that has got things right. There, primary school teachers are compelled by law to take their class out—not just for an hour once a week, but for a whole day every week. That attitude to activity is improving the health of young children in Norway.

Christine Grahame: I do not want to go down the nostalgia route, but sometimes it is not necessary to reinvent the wheel. Does Robin Harper recall that children at primary school used to go on school camps? The teacher would take the pupils away for a week and give them various vigorous activities. That was good for the children physically, emotionally and psychologically.

Robin Harper: I was coming to that. The member is quite right. If we take Lothian region as a prime example, 20 years ago every secondary school had an outdoor activities teacher. There are now two full-time teachers of outdoor activities left in the whole of Scotland. That is the extent to

which organised outdoor activities in schools have declined. I know that I keep making that point in the Parliament, but I will continue doing so until something happens.

Access to informal play space is important, but I fear that nothing in the new Planning etc (Scotland) Bill will lead to more access to such space. Rather than designing in informal play space, we are letting it slip away. In fact, with some public-private partnership schools, such space is being designed out. It is not enough to say that we are building little hard pitches somewhere else to make up for the spaces that are being destroyed. A recent survey showed that throughout Scotland we have lost to building and development the equivalent of 100 football pitches in amenity and community space. That is not good enough. We must do better to give children access to play space.

I congratulate Elaine Smith on her motion.

17:46

The Deputy Minister for Health and Community Care (Lewis Macdonald): I, too, congratulate Elaine Smith on securing an important debate on the challenge of Scotland's growing levels of childhood obesity and how we can improve our children's health prospects. Scotland is experiencing a rise in obesity, but it is important to recognise that, as members have said, Scotland is not alone in that. Population surveys from throughout the globe have shown an increase in obesity in the past 20 years.

Nanette Milne commented on the statistics that the NHS information services division released in December, which illustrated that 20 or so per cent of our 12-year-olds are classified as obese. That report was accompanied by a summary of reference data that were collected between 1978 and 1990 from 11 distinct surveys of children in England, Scotland and Wales, which illustrated how much things have got worse since that time. However, the report did not show a different scale of problem in Scotland compared with that in the rest of the United Kingdom, although some commentators misinterpreted the comparison and concluded that Scotland had the fattest children in the world. That is not the case, although we certainly have a serious problem.

We can draw more accurate comparisons using the results of the health surveys of England in 2001-02 and of Scotland in 2003 and the international comparisons of childhood obesity for countries that participate in the health behaviour in school-aged children study. All those studies suggest that obesity rates for young people in their early teens in Scotland are comparable with those in England and lower than those in several other

countries. Of course, we accept that the rates in Scotland are serious, but our problem is neither unique nor significantly worse than the problem in comparable countries. However, we face a large-scale and serious obesity problem that continues to grow.

As has been said, childhood obesity has huge health implications for later life as well as economic implications for our health service and national productivity. That is why obesity is emphasised as a priority in the action plan "Improving Health in Scotland: The Challenge", which was launched in March 2003 and provides the strategic framework for what we need to do. The World Health Organisation has stressed the importance of preventing obesity through combined action to tackle the problems of lack of physical activity and poor diet. As Elaine Smith said, the WHO has strongly commended Scotland for its preventive approach to what the organisation recognises is a growing global chronic disease.

It is clear that most children become obese because of their lifestyles, which is why we take a prevention-focused approach to childhood obesity. Across departments and tiers of government, we support individuals and their families to make gradual lifestyle changes that involve both food and physical activity.

Christine Grahame: I am glad that work is being done across departments. What interaction does the minister have with the Minister for Communities on the issue, given that poverty and deprivation are strongly linked to childhood obesity?

Lewis Macdonald: There is interaction between the Health Department and the Development Department and several other departments because, in delivering for health, we have made it clear that tackling the health issues of deprived and disadvantaged communities is critical, in relation to obesity and other health improvement challenges.

We want our schools to become, among other things, health-promoting environments for our children, and we can be proud of the part that hungry for success has played in achieving a whole-school approach to food and health. Supported by nutrient standards, that programme ensures access to good-quality nutritious school meals for our children. That is the right priority for school meals policy in tackling obesity. Indeed, Jamie Oliver, who has already been mentioned, pointed to hungry for success as the right road for others to follow.

We are finalising guidance to restrict the sale of full-sugar soft drinks in the public sector, with particular emphasis on children's environments

such as schools and leisure centres. A comprehensive programme of action is in place to increase levels of physical activity. I acknowledge the points that have been made, but we are trying to ensure that, by 2008, at least two hours of good-quality physical education will be available to each child every week.

Margo MacDonald: I was interested in the minister's reference to restricting the sale of unhealthy fizzy drinks in the public sector. In local authorities—certainly in the City of Edinburgh Council—the health and leisure function is now contracted out to a private company. If members go to the royal commonwealth pool in Edinburgh, they will find a row of about six unhealthy vending machines. Such facilities appear to be public, but they are actually under private control. What do we do about that?

Lewis Macdonald: I agree that we need to look beyond the public sector, but we must start with the public sector because we have powers to act directly in that sector. We want to look beyond the public sector, but we must take a first step. We acknowledge that one step might lead to others, but we need to make a start.

I am interested in what Margo MacDonald and others said about other ways in which we can use the school environment to help us to address obesity, but we cannot wait until children start school. Support is needed at every stage of life from before birth, through early years and into childhood. Elaine Smith was right to emphasise the importance of breastfeeding. I will shortly launch a consultation document as part of the development of an infant feeding strategy for Scotland. I hope all members with an interest will respond to the consultation process. Progress has been made in that area with many hospitals achieving baby-friendly status. I am sure that Elaine Smith will acknowledge that her Breastfeeding etc (Scotland) Act 2005 is one part of a continuum of healthy eating for infants. The consultation on the strategy will invite views on weaning practice and maternal nutrition. We want to ensure wide involvement in promoting healthy and nutritious feeding at all stages of childhood. The consultation will run during breastfeeding awareness week.

A national conference will be held to explore several issues, not least those around the breastfeeding legislation that was passed last year. As a result of consultation, a leaflet has been developed, with some input from Elaine Smith, and pre-tested on those sectors that may be affected by the legislation, such as businesses, public buildings, bed and breakfasts and restaurants. The leaflet will be launched to employers at the same time as the infant feeding strategy consultation.

We must learn from and add to the wider UK, EU and global experience of child obesity. Steps have been taken to ensure that the Scottish experience is reflected in the on-going public consultation on the EU green paper on obesity prevention. The findings and recommendations of that process will be of some interest.

Several members spoke about food labelling and signposting. The Food Standards Agency Scotland and its UK counterpart have done significant work on that. A consultation process is under way on guidance for food manufacturers and retailers on appropriate signposting and labelling for foods.

Scotland is well placed to tackle obesity. Action has been taken locally and nationally to change established patterns in both diet and physical activity. At the treatment end, the NHS in Scotland is keen to offer the best treatment options and support, in line with evidence-based practice.

Our health improvement challenge is the key to the objectives that we have set. As has been said, that must be complemented by sustained engagement with the food industry, processors and retailers, both here in Scotland and beyond, to ensure that they, too, modify their actions to enable consumers to make healthier choices.

There are no short-term fixes—nobody who has spoken this evening has suggested that there are. Instead, there is a long-term agenda, which calls for concerted and sustained action. That action has already started, and it must continue. I have no doubt that we will return to this subject for as long as the growth of obesity threatens the otherwise rising standards in our health.

Meeting closed at 17:55.

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