

# **MEETING OF THE PARLIAMENT**

Thursday 25 May 2006

Session 2

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# Scottish Parliament

*Thursday 25 May 2006*

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

## Parliamentary Bureau Motion

**The Deputy Presiding Officer (Murray Tosh):** Good morning. The first item of business is consideration of business motion S2M-4447, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during Stage 3 of the Police, Public Order and Criminal Justice (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended, other than a suspension following the first division in the morning or afternoon being called, or otherwise not in progress):

Groups 1 to 6: 40 minutes

Groups 7 to 10: 1 hour and 25 minutes

Group 11: 1 hour and 55 minutes

Group 12: 2 hours and 55 minutes

Groups 13 to 19: 3 hours and 25 minutes—[*Ms Margaret Curran.*]

09:16

**Alasdair Morgan (South of Scotland) (SNP):** I do not want to speak against the motion but I would like to point out one slight problem. It is difficult to get such motions considered fully and agreed in the short time between all the amendments being lodged and people actually understanding what they are about. However, we have ended up in a situation in which debate on group 12, for which one hour is allocated, will in effect be split over the question time and lunch interval. The second half hour for group 12, along with the half hour allocated to groups 13 to 19, will be taken in the hour slot this afternoon.

It would have been quite possible, and certainly not inconsistent in terms of contrasting amendments, to consider groups 13 to 19 in the half hour slot in the morning and to consider group 12 during an uninterrupted full hour in the afternoon. I think that it would have been much better to have a concentrated period of debate on the subject covered by group 12.

I accept that it is too late to change the motion now, but I ask the Minister for Parliamentary Business to bear the point in mind for the future.

**The Deputy Presiding Officer:** I will treat that point as if it were a point of order. What you suggest would not accord with current practice, because we have to deal with all the amendments by following the running order. The way in which to address the point would be to raise it with the Parliamentary Bureau and ask the clerks to consider a possible procedure for dealing with it. The bureau would then be able to decide whether it wanted to change the procedures or not. For the moment, what has happened is unavoidable.

*Motion agreed to.*

## Police, Public Order and Criminal Justice (Scotland) Bill: Stage 3

09:17

### **The Deputy Presiding Officer (Murray Tosh):**

The next item of business is stage 3 proceedings on the Police, Public Order and Criminal Justice (Scotland) Bill. I will start by making the normal announcements about the procedure to be followed. This morning, we will deal with amendments to the bill. We will move to the debate on the motion some time in the afternoon.

For the first part, members will know that they require the bill itself—SP bill 46A, as amended at stage 2—the marshalled list of all amendments and the agreed groupings. The first division this morning will, as normal, trigger a five-minute suspension. Divisions will operate as normal thereafter.

### **Section 2—Duty to establish and maintain the Agency**

**The Deputy Presiding Officer:** Group 1 is on the Scottish crime and drug enforcement agency and the police complaints commissioner, and dissemination of information. Amendment 130, in the name of the Deputy Minister for Justice, is grouped with amendments 136 to 138 and 155.

**The Deputy Minister for Justice (Hugh Henry):** These amendments set out in more detail the circumstances in which information may be disclosed by and to the Scottish crime and drug enforcement agency and the police complaints commissioner.

Amendments 137 and 138 will enable the agency lawfully to disclose any information that it obtains in the exercise of its functions to any person in the United Kingdom or elsewhere for certain permitted purposes. The amendments also enable any person lawfully to disclose information to the agency for use in the exercise of its functions.

Amendment 130 inserts certain subsections of what was section 17 into section 2, to make it clear that it is a function of the agency to disseminate information that it holds to a list of specified persons, at its discretion.

Amendment 136 removes section 17 from the bill to avoid any duplication in the provisions on the disclosure of information. This change is consequential on amendments 130, 137 and 138.

Amendment 155 is a general provision to allow the police complaints commissioner lawfully to disclose information to other public bodies or office-holders for the purposes of fulfilling their

official functions or enabling the commissioner to fulfil his or her functions. It also allows persons lawfully to disclose information to the commissioner to enable the commissioner to fulfil his or her functions. The provision will ensure that there is no unintended bar to the kind of disclosure of information that will be necessary for the commissioner or another public body or office-holder to fulfil their functions effectively.

The onward disclosure of information that has been disclosed by the agency or the commissioner will be subject to restrictions. The information cannot be disclosed without the consent of the relevant body.

I move amendment 130.

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

We have no problems with the amendments in group 1, but I have a question about the disclosure of information by the agency or the commissioner. Will the minister clarify the position on any possible onward disclosure by other bodies? Once the agency or the commissioner has passed on information to another body, will either of them be able to control further onward disclosure of that information to third parties?

**Colin Fox (Lothians) (SSP):** My question is along similar lines. I seek clarification of amendment 130, which will make it possible for the SCDEA to pass on information to various bodies. Paragraph (n) of the new subsection that amendment 130 seeks to insert in section 2 will allow information to be passed on to “the Scottish Administration”, which I take to mean the Scottish Executive. Does that mean that the Scottish Executive—or the state—will have access to DNA records for its own purposes as a consequence of such information being passed on to it by the SCDEA?

**Stewart Stevenson (Banff and Buchan) (SNP):** I would welcome it if the minister could confirm that paragraph (p) of the new subsection that amendment 130 seeks to insert in section 2, which will allow the information to be shared with

“any other person who is engaged outwith the United Kingdom”

in carrying out similar activities, will not result in the blanket sharing of information with regimes such as, for the sake of argument, that in North Korea?

**Hugh Henry:** I can confirm that, under that proposed change, there will be no such blanket disclosures. The imposition of conditions will be considered.

Colin Fox asked about DNA, but I am not clear about what he was driving at because certain conditions apply to the use of, and access to, the DNA database. Scottish ministers could not simply

access that information for whatever purpose they wanted. Not only are Mr Fox's fears misplaced, I am not sure that they are relevant to the context in which he raises them.

In relation to the onward transmission of disclosed data, any organisation that had information disclosed to it would be subject to the usual legal constraints, which are clearly defined. Information would be passed on only within a specific context and there would be clear legal safeguards on when it could be used.

*Amendment 130 agreed to.*

### **Section 3—Duty to provide the police support services**

**The Deputy Presiding Officer:** Group 2 is on the Scottish police services authority's functions in relation to part V of the Police Act 1997. Amendment 131, in the name of the minister, is grouped with amendment 132.

**Hugh Henry:** Amendments 131 and 132 relate to the definition of one of the police support services that the authority will be under a duty to provide. Section 3(2)(d) will impose a duty on the authority to carry out the functions of the Scottish ministers under part V of the Police Act 1997 other than those that relate to the making of regulations or orders on ministers' behalf. The amendments seek to clarify that the authority will be under a duty to carry out only the functions that are delegated under section 121 of the 1997 act. Section 3(8) of the bill will amend section 121 of the 1997 act to make it clear that the authority may perform functions under part V of the 1997 act other than those that relate to the making of regulations or orders. We seek to remove that exclusion from section 3(2)(d) because it is no longer necessary as a result of the link to section 121.

I move amendment 131.

*Amendment 131 agreed to.*

*Amendment 132 moved—[Hugh Henry]—and agreed to.*

### **Section 4—Strategic priorities of the Authority**

**The Deputy Presiding Officer:** Group 3 relates to the head and the deputy head of the agency. Amendment 15, in the name of the minister, is grouped with amendments 16 to 64, 178, 66 to 69, 179, 70 to 99, 182, 100 to 103 and 105 to 129. I take it that you will not address each amendment in turn, minister.

**Hugh Henry:** If you insist, Presiding Officer, I will speak to each one individually.

We listened carefully to what the Justice 2 Committee said about the status of the director of

the Scottish Drug Enforcement Agency. When I gave evidence to the committee, I set out a number of reasons why I considered the rank of deputy chief constable was appropriate. I hope that that, along with my written response to the committee on the same matter, gives the committee some reassurance that the bill creates clear and modern arrangements for accountability and corporate governance under which the director will enjoy a very close relationship with the eight chief constables in Scotland—one that is based on mutual interdependence.

However, when I wrote to the committee earlier this month, I acknowledged the views of the committee, and of Jackie Baillie in particular, and undertook to lodge the necessary amendments to change the title of the post of director to that of director general in recognition of the status of the post. Unfortunately, the renaming of the director, and the renaming of the deputy director as the deputy director general, necessitated an extensive number of amendments.

Schedule 2 to the bill makes provisions for the first director general of the SCDEA to be the person who is, on commencement, the director of the Scottish Drug Enforcement Agency. Amendments 178 and 179 amend schedule 2 to make provision for the first deputy director general to be the person who is, on commencement, the deputy director of the Scottish Drug Enforcement Agency.

Amendment 182 is necessary to ensure that the provisions in schedule 2 enable anything that is authorised by the director general to be done by any other member of the agency, if so authorised by him. The provision does not extend to authorisations for property interference under part III of the Police Act 1997 or to authorisations for intrusive surveillance under the Regulation of Investigatory Powers (Scotland) Act 2000. Those authorisations concern highly sensitive surveillance techniques that can be authorised only by a chief officer. The specific arrangements for the authorisation of those activities in the director general's absence are set out the relevant pieces of legislation.

I move amendment 15.

**The Deputy Presiding Officer:** I call Colin Fox.

**Colin Fox:** I withdraw my request to speak, Presiding Officer. The minister has answered the question that I was about to ask.

**Mr David Davidson (North East Scotland) (Con):** I welcome the minister's acceptance of the views of the Justice 2 Committee. He has responded very fairly to all the views that were expressed. I welcome the change.

*Amendment 15 agreed to.*

### **Section 9—Liability for wrongful acts of certain constables seconded to the Authority**

**The Deputy Presiding Officer:** Group 4 relates to staff of the authority and the agency. Amendment 133, in the name of the minister, is grouped with amendments 134, 135, 170 to 174, 176, 177, 180, 181 and 183 to 187.

**Hugh Henry:** The amendments in the group relate to various provisions for the appointment of members and staff to the authority and the agency.

When we consulted on the bill in “Supporting Police, Protecting Communities: Proposals for Legislation” in February 2005, we sought views on ways in which to enable police officers from outwith Scotland to be able to undertake a period of secondment to the Scottish crime and drug enforcement agency.

The suggestion was met positively and the amendments in the group enable officers from throughout the United Kingdom to be directly seconded to the agency. In particular, the amendments provide that such seconded police officers will have all the powers and privileges of a Scottish constable during the period of their secondment to the agency. That will widen the pool of suitably experienced police officer talent that is available to the agency and will be of benefit both to the agency and to the wider UK police community. Where necessary, we are working with our counterparts in Whitehall to ensure that, where further changes to legislation that is outwith the competence of the Scottish Parliament are required, those will be achieved.

The amendments also relate to the powers of the authority under schedules 1 and 2 to the bill to provide for the terms, conditions and remuneration of constables who are seconded to the authority and of the director general, deputy director general and police members of the agency.

The amendments have two main purposes. The first is to make it clear that, in exercising its own powers, the authority must act within the framework of any powers that are exercised by Scottish ministers under the bill, once enacted, in respect of the terms and conditions of seconded constables or police members of the agency.

The second purpose is to allow the authority, if it wishes to do so, to set terms and conditions and to determine remuneration for its staff by reference to provisions that are made from time to time by or under regulations that the Scottish ministers make in respect of constables who serve in the police forces. That will enable the authority to keep the arrangements for seconded constables and police members of the agency aligned with those that apply to constables in police forces.

I move amendment 133.

*Amendment 133 agreed to.*

*Amendments 134 and 135 moved—[Hugh Henry]—and agreed to.*

09:30

### **Section 10—Grants**

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

### **Section 12—Members of the Agency**

*Amendments 17 and 18 moved—[Hugh Henry]—and agreed to.*

### **Section 13—Strategic priorities of the Agency**

*Amendment 19 moved—[Hugh Henry]—and agreed to.*

### **Section 14—Annual plans of the Agency**

*Amendments 20 to 24 moved—[Hugh Henry]—and agreed to.*

### **Section 15—Annual reports of the Agency**

*Amendments 25 to 27 moved—[Hugh Henry]—and agreed to.*

### **Section 16—General functions of Director of the Agency**

*Amendments 28 to 30 moved—[Hugh Henry]—and agreed to.*

### **Section 17—Disclosure of certain information by the Agency**

*Amendment 136 moved—[Hugh Henry]—and agreed to.*

### **Section 19—Scottish Ministers’ power to modify section 18**

*Amendment 31 moved—[Hugh Henry]—and agreed to.*

### **After section 19**

*Amendments 137 and 138 moved—[Hugh Henry]—and agreed to.*

### **Section 19A—Direction by Director of the Agency**

*Amendments 32 to 37 moved—[Hugh Henry]—and agreed to.*



## **Section 20—Liability for wrongful acts of police members of the Agency**

*Amendments 38 to 47 moved—[Hugh Henry]—and agreed to.*

## **Section 21—Regulations relating to the Agency**

*Amendments 48 and 49 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** I now have to turn lots of pages in my script to reach group 5, which is on the requirement to consult on regulations relating to the authority or the agency. Amendment 1, in the name of the minister, is grouped with amendments 175 and 188.

**Hugh Henry:** The Scottish ministers' powers to make regulations in section 21 are modelled on the enabling powers in section 26 of the Police (Scotland) Act 1967, but the bill does not currently place an obligation on the Scottish ministers to consult the Police Advisory Board for Scotland in the same way as they must consult it on regulations that are made under section 26 of the 1967 act. Amendment 1 addresses that gap and ensures a consistent approach throughout the Scottish police service.

Similarly, the Scottish ministers have powers to modify the provisions in the 1967 act, and amendments 175 and 188 ensure that the use of such powers must also be subject to prior consultation with the Police Advisory Board for Scotland.

I move amendment 1.

**Mr Maxwell:** I welcome the amendments, which will fill a gap. It is vital to have a statutory duty to consult the board on regulations that relate to the authority or the agency. I am glad that the Executive has addressed the gap.

*Amendment 1 agreed to.*

## **Section 30—Interpretation of Chapter 1**

**The Deputy Presiding Officer:** Group 6 is on joint boards and police authorities. Amendment 2, in the name of the minister, is grouped with amendments 3 to 8, 12 and 13.

**Hugh Henry:** The amendments in the group are purely technical amendments that are intended to tidy the various references in the bill to the eight Scottish police authorities and the joint police boards. They are simply intended to make the drafting more consistent and do not change the meaning of the provisions in question.

I move amendment 2.

*Amendment 2 agreed to.*

*Amendments 3 and 4 moved—[Hugh Henry]—and agreed to.*

## **Before section 31**

**The Deputy Presiding Officer:** Group 7 is on the role of the ombudsman in police complaints. Amendment 139, in the name of Jackie Baillie, is grouped with amendments 140, 145, 143, 144, 146 to 154, 156, 209 and 194.

**Jackie Baillie (Dumbarton) (Lab):** I absolutely believe in the need to have an independent police complaints commissioner. Having a body that can satisfy the public that complaints against the police are being investigated thoroughly and independently is critical. The amendments that I have lodged do not seek to change that principle in any way.

I acknowledge that the Executive has a genuine desire to adopt a rights-based, transparent approach to complaints, irrespective of the institution. However, the danger is that we are about to create more institutional clutter, which common sense says we should avoid.

General concern is felt throughout the Parliament about the fact that the number of commissioners seems to have mushroomed and that, to all intents and purposes, some commissioners lack accountability. The Finance Committee is working to examine and review the number of commissioners, but the concern today is about the overlap between the proposed independent police complaints commissioner and the Scottish public services ombudsman. The committee took evidence on that at stage 1, and the matter was considered in the stage 1 debate in the chamber and at stage 2.

I want to highlight three areas of substance for the minister. First, the police are already within the ombudsman's jurisdiction. The ombudsman can investigate a complaint of maladministration or service failure. Therefore, we are talking about clear duplication. It has been suggested that there will be protocols between various agencies and the proposed commissioner, but I simply note that such protocols probably already exist between those agencies and the ombudsman. We are in danger of recreating something that we already have.

Secondly, I highlight the procedures that cover civilian staff who are employed by the police. Those staff are not officers and are subject to a separate disciplinary procedure. Their circumstances are more like those of staff whose work is already covered by the ombudsman.

Thirdly, in these days of efficient government, organisations with similar back-office and service functions have opportunities to share.

I want to remind members of a little bit of the Parliament's history. We created the Scottish public services ombudsman in 2002 because we rightly wanted an open, accountable and easily understood complaints system that—most important of all—had the trust of the Scottish public. At that time, we merged the work of four ombudsmen to create a one-stop shop so that where people could complain would be clear, they would not be faced with institutional clutter and there would be no confusion about or barriers to making a complaint. The tragedy is that we sometimes forget the sensible approach that the Parliament has taken by creating more commissioners to deal with complaints.

Our partnership agreement commits us to having an independent police complaints commissioner, and this suite of amendments does exactly that. We should not reinvent something that we already have. We were right in 2002 to introduce the clarity that is involved in having a one-stop shop for complaints in the Scottish public services ombudsman, and that approach is right now. It is efficient and would deliver an independent police complaints commission in Scotland.

I move amendment 139.

**Mr Kenny MacAskill (Lothians) (SNP):** I sympathise with the debate on the size of government, on which Jackie Baillie commented. We have debated the issue before: members of all parties have discussed the proposed Scottish commissioner for human rights and the possible superfluity of tsars in this country, for example. However, the proposed police complaints commissioner is a distinct case.

That there has been no opportunity for the specific matter to be dealt with has been a gap and a long-running sore in Scotland, if I can put things in that way. The SPSO has served us well. There are other issues that we must address in that respect, but that debate is for another day. If we did not go with the police complaints commissioner, as detailed in the bill, we would not serve well the current SPSO or any person who holds that post in the future; we would also not stick to the agreement that has been made. Let us be clear: numerous parties have signed up to the police complaints commissioner proposals. There is consensus not only among people within the body politic in the chamber but among the police and other parties that that is the way to go. The proposals that have been made have not satisfied the desires of some people and may not work out, but consensus has been reached about where to go.

I have sympathy for the broader ethos of Jackie Baillie's proposals, but we should not seek to try to create smaller government in this case. That battle

is for another day. A distinct position is needed. We should stick to the agreement that has been signed up to not only by members of the committee, but by other organisations and members of the police service.

**Mr Davidson:** It is novel for a Labour member to talk about efficient government. Obviously, we would like there to be efficient government in other areas. However, it is important to see the police complaints commissioner as a special case.

We totally agree with the minister. Members of the public have great concerns about complaints against the police and want to feel confident that they are being dealt with. The minister's proposals mean that such complaints will be dealt with almost in a goldfish bowl. The position is clear: confidence in the system would be certainly helped. The police would also feel more confident in dealing with one office, rather than an office within another office. We support the minister's line.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** It is even more novel for a Conservative spokesman to support the concept of an independent police complaints commissioner, as the Conservatives did nothing to set one up during their years in government.

I appreciate Jackie Baillie's intentions. She is being consistent with the desire that she showed at stage 2 to reduce the number, if not the scope, of commissioners in Scotland. The Parliament has established independent complaints-handling commissioners and will, no doubt, establish others. The debate about amendment 139 is whether the Scottish public services ombudsman is the right body to have the functions that we are establishing today.

It is right that there should be a relationship between the independent police complaints commissioner and the ombudsman, but I do not think that they should be one entity. Perhaps the most persuasive, if subtle, arguments against what is proposed in amendment 139 were made indirectly by the ombudsman herself when she outlined her views on the establishment of the Scottish legal complaints commission to the Justice 2 Committee recently. The ethos of the ombudsman is inquisitorial dispute resolution. Although that is not always inconsistent with a body that can find guilt and impose penalties, I think that the emphasis is different.

Like the Scottish legal complaints commission, the police complaints commissioner will be able to make disposals where he or she finds fault and to issue reports and make recommendations. The current ombudsman was very clear about how she sees the role of the ombudsman's office. The character of that body, which wishes to work with

public agencies in Scotland to improve services, would be altered if it was made a specific complaints-handling and oversight body for one sector of the public services—the police—and not others. For example, there would be a lack of clarity in the public's mind about there being a general ombudsman's office that has specific police complaints-handling capability and the ability to make appropriate disposals in relation to, for example, a chief police officer but not a chief executive of a health board.

I am afraid that Jackie Baillie's amendments would create more confusion, not less; therefore, I will not support them.

**Mr John Swinney (North Tayside) (SNP):** Without wishing to contradict the views that were expressed recently by members on the Scottish National Party front bench, I say that I have considerable sympathy with the points that Jackie Baillie has raised. They relate to some general questions that the Finance Committee is considering in detail. There is growing agreement in the Parliament that Parliament needs to reflect seriously on the climate, atmosphere and infrastructure that we have created, over the years, in relation to the role and activity of the ombudsman sector.

Some of the issues that are surfacing today also surfaced in our consideration of the Scottish Commissioner for Human Rights Bill. They are issues that Parliament will have to reconsider in a strategic way. As a consequence of a range of different and distinctive decisions that we have taken, all for good reasons, we are now faced with an infrastructure that is too complicated for members of the public, too burdensome, too bureaucratic and—something that we should always think about—too expensive for the taxpayer.

I refer members to the revised financial memorandum to the bill. In paragraph 269 on page 46, the Executive sets out its belief that the police complaints commissioner for Scotland should have seven members of staff at a distinct location and should incur running costs of around £700,000. That brings the total running costs of the organisation to £1 million. We could say that, in the grand scheme of the £28 billion expenditure of the Scottish Executive, £1 million is not so much. However, £1 million here and £1 million there—which is increasingly what costs in the ombudsman sector are amounting to—soon adds up to a formidable amount of expenditure to which we must be careful about committing ourselves in this exercise.

I am disappointed that the financial memorandum makes no mention of the sharing of services. There is no talk in the financial memorandum about the fact that some of the staff

who are currently employed by the Scottish public services ombudsman could carry out investigatory work on behalf of the police complaints commissioner, meaning that there may be no requirement for us to employ seven additional complaints investigators to consider issues on behalf of the Scottish police complaints commissioner. Those people could be based within the ombudsman's office and could either be seconded or contracted to undertake some of the investigatory work on the police complaints commissioner's behalf.

09:45

If the Government deems Jackie Baillie's proposition that the Scottish public services ombudsman could carry out the police complaints commissioner's function to be unacceptable and believes that we must have a named commissioner, we could strip back the proposal simply to employ a named commissioner—one individual, who might cost us something in the order of £70,000 to £80,000—and use the existing Scottish public services ombudsman infrastructure to carry out some of the day-to-day operational and investigatory activities that the commissioner would have to undertake. Even if we do not accept the whole of Jackie Baillie's proposal, that type of approach would give us a more efficient system that was simpler to understand and provided much more value for taxpayers' money. There is an efficiency argument in the points that have been raised about the financial memorandum, and the Government needs to reflect on that.

**Jeremy Purvis:** Notwithstanding John Swinney's views on efficiency, shared services and shared buildings, does he understand that there may be differences in the ethos or scope of commissioners' work, which can range from complaints handling and making appropriate disposals if fault is found, with the role of an ombudsman, the emphasis of which is on working with public sector agencies to develop better services, as the Justice 2 Committee heard last week from the current Scottish public services ombudsman? There may be disparity if the ombudsman was able to make such disposals in only one area of public service.

**Mr Swinney:** Perhaps I have not made my position sufficiently clear: I am saying that, if we do not accept Jackie Baillie's proposal in its entirety, we could accept the need to appoint a distinct police complaints commissioner for Scotland—an individual officer-holder. However, we do not need to create a separate bureaucracy that would end up costing us perhaps an extra £900,000 when the Scottish public services ombudsman's office could be contracted to deliver the ethos that I readily accept the police complaints commissioner for

Scotland might need to pursue. That approach would deliver efficiency and the different climate that Jeremy Purvis talks about.

In his speech, Mr Purvis made points about the evidence that the Scottish public services ombudsman gave to the Justice 2 Committee on the proposed Scottish legal complaints commission. The ombudsman made the fair point—which I understand that she also made in written evidence during the Justice 1 Committee's consideration of the Scottish Commissioner for Human Rights Bill—that there is potential for functions to be duplicated, which would raise jurisdictional issues about where an individual should go if they had a complaint about a particular aspect of a public service or the police.

We must be careful that we do not clutter up the jurisdictions that we consider and end up with a situation in which not one commissioner but two or, heaven forbid, three commissioners could examine the same aspect of public policy. None of us in the Parliament can honestly put our hands on our hearts and say that we have created an architecture that is so well defined, so simple and so clearly compartmentalised that it does not create confusion in the public mind. One of the strongest points that Jackie Baillie made in speaking to her amendments was that the decision to establish the Scottish public services ombudsman was taken to simplify the architecture of government in Scotland. Seven years into devolution, after having created numerous different commissioners, we will have to revisit that architecture—the Finance Committee is doing that—because we have made it too complicated and congested and it costs too much money.

I hope that there is an emerging parliamentary consensus around those points. I am very sympathetic to the points that Jackie Baillie has raised.

I hope that in his closing remarks the minister will say something about the Government's perspective on paragraph 269 of the financial memorandum, because it raises big issues—not of money, but of duplication and congestion—with which Parliament is obliged to deal.

**Colin Fox:** Jackie Baillie is right to highlight the public's real concerns about how complaints against the police are currently handled. In the partnership agreement, the Executive committed itself to establishing an independent police complaints commissioner. In my view, that recognised the fact that the public feel that they are not well served by the current complaints handling system. Jackie Baillie's amendments highlight the need for full accountability, an easily understood complaints system—which we do not have at the moment—and to avoid institutional clutter. She argues that the Scottish public

services ombudsman would be better placed to provide that than the Scottish police complaints commissioner. Her amendments divulge a core fear that the current proposals for a Scottish police complaints commissioner are inadequate. There is a fear that the commissioner will be toothless and that their powers will not enable them to address the real concerns that exist.

In my view, Jackie Baillie's amendments are a move in the wrong direction. Rather than being vested in the ombudsman, the powers of the Scottish police complaints commissioner should be augmented to include not just the powers of the ombudsman but the services, roles and functions of Her Majesty's chief inspector of constabulary in this regard. Jackie Baillie seeks to restrict the powers of the Scottish police complaints commissioner, because she feels that there is duplication and the ombudsman service is her preferred option. In my view, there is something to that. She is concerned about bureaucracy, but between the three organisations involved there are nowhere near enough powers to address the concerns that exist among the public.

Of course there should not be three bodies with roles in police complaints handling. There should be one body that is serious about addressing the issue, because time after time the public have made it clear in their consultation replies to the Executive that they are looking for a system in which they have full confidence and for a single gateway that is truly independent. They are looking for a system that takes serious police complaints handling away from the police altogether and, at the same time, ensures that decent police officers have nothing to fear from a Scottish police complaints commissioner with full powers to address such complaints. The bill was supposed to strike that balance, but instead it misses a huge opportunity to address the public's fears about the current set-up and their desire for a system in which they have confidence and that is accountable and easily understood, so that they know where to take their complaints in the first instance.

The Executive is milking the cow by accepting the need for a commissioner but, in effect, its proposals kick over the bucket. In that respect, the bill fails the public, because its provisions do not go far enough. Jackie Baillie's amendments are absolutely right to stress the need to have one organisation with proper, full powers that is accountable to and trusted by the public, but in my view the aim should be to enhance the role of the Scottish police complaints commissioner, rather than to have three roles, as is the case at present.

**Hugh Henry:** This has been an interesting, useful and informed exchange. It will be useful if I remind members why we are establishing the

office of commissioner. The commissioner will oversee how police bodies in Scotland handle complaints, will provide support and guidance and, critically, will be an independent body to which dissatisfied complainers can turn. A number of members have emphasised why we need such a body. There is a public expectation that complaints should be seen to be handled appropriately, effectively and objectively. I believe that the work of the commissioner will lead to increased public confidence in the handling of police complaints.

The functions could not readily be carried out by an existing office-holder. All members have recognised that police complaints are different from other types of complaint and require a distinct approach that takes account of those differences.

I understand fully the point at which Jackie Baillie is driving, ably supported by John Swinney. It is true that a debate is emerging about how commissioners operate, their relationship with Parliament and how they relate to the public. I noted John Swinney's points about the work that is being carried out by the Finance Committee and I do not want to prejudice that developing debate. However, notwithstanding my sympathy for some of Jackie Baillie's points, her amendments are not the best way to address those concerns. As Kenny MacAskill said, it is a matter for another day.

I give John Swinney an assurance that we fully intend to adopt a shared services arrangement. He ably made the point that certain services could be provided jointly with other agencies and there is no reason for duplication. I hope that that possibility is considered in all that we do. I also hope that costs will be offset by the more efficient handling of complaints within police forces but, as John Swinney correctly said, we need to be careful about how we use scarce public resources to best effect.

Jackie Baillie's points are indeed relevant to a wider discussion, but points made by all members emphasise clearly that the Parliament is committed to the establishment of an independent police complaints commissioner. We are doing that in the most appropriate way. It is for Parliament to return to the matter and to others as it deems appropriate in future.

**Jackie Baillie:** I thank John Swinney for his helpful comments, which are not necessarily good for his career, but good for the debate. I hope that ministers will take away his practical suggestion to consider the numbers employed by the proposed independent police complaints commissioner.

John Swinney's other comments have considerable merit. One can have an independent police complaints commissioner with a distinctive role within the ombudsman's office. The ombudsman already has a specialist role,

operates in complex areas and deals with health, housing, local government, police and a range of other public bodies. In lodging my amendments, I want to create a one-stop shop that is transparent and simple for the ordinary people we represent to understand and a single complaints body, independent of the police, that is easy to access.

I recognise the emerging parliamentary consensus on the need to reconsider the number of commissioners. I accept that we need to do that in a holistic way. For that reason, I will withdraw amendment 139 in anticipation of future changes from the Parliament.

*Amendment 139, by agreement, withdrawn.*

### **Section 31—The Police Complaints Commissioner for Scotland**

*Amendment 140 not moved.*

### **Section 34—"Relevant complaint" and "person serving with the police"**

*Amendment 145 not moved.*

### **Section 32—Examination of manner of handling of complaint**

**The Deputy Presiding Officer:** Group 8 is on the handling of police complaints by the appropriate authority. Amendment 141, in the name of the minister, is grouped with amendment 142.

**Hugh Henry:** Amendments 141 and 142 enhance the commissioner's ability to help police organisations to deal effectively with complaints. If a complainer keeps taking a complaint back to a police organisation, it would be useful for that organisation to be able to refer the matter to the commissioner. If satisfied that the organisation has taken reasonable steps to address the complaint before referring it, the commissioner will be in a position to bring the matter to a conclusion. That will help to avoid police time being spent fruitlessly on the same issue.

I move amendment 141.

10:00

**Mr Maxwell:** The minister has gone some way towards explaining the practical processes that would be involved in what the amendments propose, in particular how the commissioner would deal with the case of an individual who complains repeatedly. However, when I read amendments 141 and 142, I was slightly unsure about how they would operate in practice. I thought that there was a typographical error in amendment 142, where it refers to whether the appropriate authority

"has taken reasonable steps to deal with the complaint."

I expected the word “not” to come before “taken”, which would mean that the commissioner would get involved when “reasonable steps” had not been taken rather than when they had been taken.

Will the minister comment on whether my interpretation is correct? If not, what happens if no reasonable steps have been taken? The minister seemed to say that if reasonable steps have been taken, the commissioner will get involved in the process. If nothing has been done to deal with a complaint, does that mean that the commissioner will have no role in a complaint-handling review?

**Hugh Henry:** It is important to clarify that what we propose will not remove the ability of a complainer to take a complaint to the police complaints commission. We are talking about situations in which an individual has persisted in making complaints to a police organisation but has never approached the police complaints commission. Our proposal will give the police the opportunity, if they have already carried out investigations and believe that they can go no further, to refer the complaint to the commissioner, who will consider the complaint and decide either that there is further work that the police body could carry out and so send the complaint back or that reasonable steps have been taken, the procedure has been exhausted and they will now look at it and come to a conclusion. That will be the case even if the complainer has never referred the complaint to the independent police complaints commissioner.

*Amendment 141 agreed to.*

*Amendment 142 moved—[Hugh Henry]—and agreed to.*

*Amendment 143 not moved.*

### **Section 33—Duty of Commissioner not to proceed with certain complaint handling reviews**

*Amendment 144 not moved.*

### **Section 35—Appointment of person to reconsider complaint**

*Amendment 146 not moved.*

### **Section 36—Reconsideration of complaint: duties to keep persons informed**

*Amendment 147 not moved.*

### **Section 37—Power of Commissioner to discontinue reconsideration**

*Amendment 148 not moved.*

### **Section 38—Final reports on reconsideration**

*Amendment 149 not moved.*

### **Section 38A—Appropriate authority in relation to a complaint**

*Amendments 50 to 53, 5 and 6 moved—[Hugh Henry]—and agreed to.*

*Amendment 150 not moved.*

### **Section 39—General functions of the Commissioner**

*Amendment 151 not moved.*

### **Section 40—Reports to the Scottish Ministers**

**The Deputy Presiding Officer:** Amendment 195, on the police complaints commissioner and reports to the Parliament, is in a group on its own.

**Colin Fox:** The proposal to establish an independent police complaints commissioner arose from the Executive's response to widespread views that in-house complaints handling is no longer fit for purpose and simply does not enjoy the public's confidence. Therefore, the question arises whether the Executive's proposal has come up with the right balance.

In the partnership agreement, there were plans for the introduction of a truly independent, trusted, transparent and accountable system for handling complaints against the police. Members recognise that the mood for such a transparent and accountable system is plain and overwhelming. However, what the bill proposes, which amendment 195 seeks to change, is that the police will continue to deal with investigations in the first instance through an in-house system. In his earlier remarks, the minister highlighted the fact that the commissioner will oversee how the police deal with complaints in-house and may consider requests from people who are dissatisfied with how the police have handled their complaint. I am happy to highlight again that we are talking about non-criminal matters and that complaints in relation to criminal matters will still be handled by the Crown Office and Procurator Fiscal Service.

The commissioner may consider requests from people who are dissatisfied with the outcome of the in-house system's handling of their complaint. In such cases the commissioner may ask the police to reconsider the complaint, but he may also choose not to do that. A key consideration is what power the commissioner will have to force the police to reconsider a complaint. As members have said, the commissioner will share many functions with the Scottish public services ombudsman and Her Majesty's inspectorate of constabulary.

We should be clear about this: the police will still be the first organisation to which someone must go if they have a complaint against the police.

After that, the person could go to the commissioner, who might or might not help them. The commissioner might help them by asking the police to think again, but a big question mark remains over what the commissioner could do if the police did not review the complaint. How many cases will the commissioner be able to order to be reviewed at one time? What powers and resources will he have? What will he be able to do if he thinks that the police are dragging their feet on an inquiry? Those are important questions about the role of the proposed police complaints commissioner for Scotland.

The Parliament's responsibility to consider whether the public can have confidence in the new system underlies those questions. What will the public think of the new system, compared with the current arrangements? We run a real risk that the public will think that the Executive is not sincere about setting up systems for handling complaints against the professions and the police. The public expect change and if the changes that they seek are not made, they will continue to press the Parliament for those changes. The bill will not go down well with the public if people think that the Parliament is protecting the police from legitimate complaints. The public are entitled to expect the highest standards of public service and democratic accountability of the people who serve them, including the police.

Against that background, amendment 195 would require the commissioner to report to the Parliament and not just to ministers, which would allow the Parliament to consider the progress that had been made. Given the understandable and legitimate concerns of the public about the handling of complaints against the police, amendment 195 would ensure that the Parliament could thoroughly and properly examine the commissioner's work and the effectiveness of the measures in the bill. We would be able to see for ourselves what progress was being made and whether public concerns were being addressed. The provisions in amendment 195 are necessary in an open, accountable, democratic system for handling complaints against the police.

I move amendment 195.

**Mr Maxwell:** I understand the reasoning behind amendment 195. Colin Fox is attempting to ensure that the process will be as open and accountable as possible. However, he fundamentally fails to make his case on accountability, for a number of reasons. First, any report that is laid before the Scottish ministers is then laid before the Parliament. The fundamental point is that it is for the Parliament to hold ministers to account. How could we do that if we removed the line of accountability by requiring the proposed

commissioner's report to be laid before the Parliament and not ministers?

Section 31(2) provides:

"The Commissioner is to be an individual appointed by the Scottish Ministers."

If amendment 195 were agreed to, a commissioner who had been appointed by the Scottish ministers would report to the Parliament, so the Parliament would have no role in holding ministers to account for the appointment of the commissioner. In effect, the approach in amendment 195 would break the link between the accountability of ministers for the commissioner's appointment and their accountability for the commissioner's report.

There is a straightforward problem with having an amendment that would leave out section 40, but not amending section 31(2)—that would be a mistake. Ministers will publish the commissioner's reports and lay them before Parliament. Parliament's duty is to hold ministers to account on that basis. Unfortunately, amendment 195 is the wrong approach.

**Mr Davidson:** I am surprised by amendment 195, because, as Stewart Maxwell rightly said, the Parliament's function is to hold ministers to account. The ministers who will be held to account are the Minister for Justice and the First Minister. The Minister for Justice is responsible for the bill and will be responsible for the working of the legislation once the bill is enacted. To let ministers off the hook as if they did not exist would be another extension of the quango culture, which the Conservatives certainly do not support. It is vital that the police complaints commissioner and the minister have a close working relationship—that is the essence of the matter. The commissioner's reports will come to the Parliament, so we will have a chance to examine what they say and what action, if any, the minister has taken. That is surely the correct democratic role for the Parliament.

If the minister is prepared to accept amendment 195, I would like him to explain clearly why he does so and why he sees no pitfalls in it.

**Hugh Henry:** I confirm that the Parliament will be kept informed about the matter, because we will be required to lay before the Parliament the commissioner's annual reports on the carrying out of his or her functions, which is a common arrangement with public bodies. As Stewart Maxwell and David Davidson laid out, amendment 195 would undermine fundamentally the need for ministerial accountability to Parliament. To an extent, I can understand the amendment because, when people start from the perspective of suspicion and conspiracy, they have no confidence in anything that anyone does. However, amendment 195 would not allow anyone to make progress.

In some of Colin Fox's remarks in speaking to his amendment, he sought, perhaps unintentionally, to undermine the positive move of establishing a police complaints commissioner. I hope that he will withdraw his amendment.

**Colin Fox:** On that issue, I point out that I welcome the establishment of a police complaints commissioner for Scotland. I take issue with what the minister said about my remarks being based on suspicion and conspiracy; rather, they are based on a real anxiety among the public that legitimate complaints—let us accept that the public have a right to make legitimate complaints against the police—should be handled properly. If the minister is saying that he believes that a widespread feeling exists among people that such complaints are handled properly at present, we are at odds with each other. The essence of amendment 195 is the need for the Parliament to have an examinatory role and to be able to investigate the commissioner's effectiveness and the extent to which the operation lives up to the suggestions that the minister and the bill make.

I am happy to accept the minister's assurances that the Parliament will be kept fully informed about the commissioner's performance in carrying out his duties and that we will have opportunities to assess and investigate that. With that assurance, I am happy to seek agreement to withdraw amendment 195.

*Amendment 195, by agreement, withdrawn.*

*Amendment 152 not moved.*

#### **Section 41—Provision of information to the Commissioner**

*Amendment 153 not moved.*

#### **Section 42—Power of Commissioner to issue guidance**

*Amendment 154 not moved.*

#### **After section 42**

*Amendment 155 moved—[Hugh Henry]—and agreed to.*

#### **Section 43—Interpretation of Chapter 2**

*Amendments 7, 8 and 54 moved—[Hugh Henry]—and agreed to.*

*Amendment 156 not moved.*

#### **Section 46—Constables engaged on service outside their force**

10:15

**The Deputy Presiding Officer:** Group 10 is on the application of sections 59 to 63 of the Police

Act 1996 to certain offenders. Amendment 157, in the name of Hugh Henry, is grouped with amendment 193.

**Hugh Henry:** Amendment 157 amends the Police (Scotland) Act 1967 to clarify the circumstances in which constables who are engaged in specified categories of relevant service, including service with the authority, are to be treated as if they were members of a Scottish police force for the purposes of representation by the Scottish Police Federation. Amendment 193, although substantial in length, makes consequential amendments to the arrangements that are set out in sections 59 to 63 of the Police Act 1996 as regards the Scottish Police Federation, the Police Negotiating Board for the United Kingdom and the Police Advisory Board for Scotland.

The amendments simply insert appropriate references to the authority and agency into the existing provisions of the 1996 act in relation to those three bodies and ensure that constables who are seconded to the authority and police members of the agency are put on a similar footing to constables serving in police forces in that regard.

I move amendment 157.

*Amendment 157 agreed to.*

#### **After section 69**

**The Deputy Presiding Officer:** Group 11 is on knife crime. Amendment 159, in the name of Charlie Gordon, is grouped with amendment 160.

**Mr Charlie Gordon (Glasgow Cathcart) (Lab):** Knife crime is a major public health hazard in our country. The extent of the crime of possession of knives or similar offensive weapons is reflected in a complex series of tables contained in answers to parliamentary questions in recent years, but what they add up to is a major culture of young men in Scotland carrying blades. It is a complex cultural phenomenon, requiring a multi-agency response, as exemplified by Strathclyde police's violence reduction unit. One cannot have led Glasgow City council for six years, as I did, without being painfully confronted by the evidence of the blade culture that is prevalent in my beloved home town.

Glasgow has had similar challenges in the past. In the 1950s, it took exemplary sentences issued by Lord Carmont to stop a razor-slashing culture that was growing in the city. In the 1960s, when I was a teenager in Glasgow, I remember the sporadic terror wreaked in the city centre's dance halls by gangs intent on recreational violence. Today's challenge is a much larger one. Every weekend, hundreds of young Scottish men dress to go out and carry a blade as if it were a fashion item. We have an average of one knife homicide a



week: the tragic apex of hundreds of stabbings a year and thousands of cases of carrying blades. Two years ago, in Glasgow, I suggested that we might end up with so-called mandatory custodial sentences for possessing blades unless we could reverse that blade culture by other means. Last autumn, in the Cathcart by-election, I called for stiffer sentences for knife crime, more police powers to arrest suspected blade carriers and for a raised age limit for knife purchasing. I congratulate the Executive on the fact that all three issues are reflected in the bill. I am also delighted by the knife amnesty and by the deployment of 1,000 new metal detectors, purchased by the Executive for the police.

Amendment 159 reflects firearms legislation, in that it would provide for custodial sentences for possession of a blade unless there were exceptional circumstances. I note that the Justice 2 Committee does not support so-called mandatory sentences, although I note also that the Association of Scottish Police Superintendents advocated such sentences in its evidence. Subsequent to my lodging amendment 159, the Lord Advocate has issued new guidelines to courts and fiscals on knife crime. It did my heart good to read them.

Anyone caught with a knife will be arrested and held in custody. Bail will be opposed where there are previous knife or violence-related convictions. Cases will be referred to higher courts if there are similar previous convictions, which means that tougher sentences are likely. Prosecutors will seek curfew and exclusion-zone type conditions to be attached to sentences.

The *Edinburgh Evening News*—not a newspaper that I normally read, I confess—headlined the Lord Advocate's new guidelines:

"Jail term for anyone caught carrying knife in new blitz".

I would like to make that headline a reality, if we believe that that is what it will take to reverse this appalling blade culture. However, I do not want to cut across the unity—perhaps the near unanimity—in this chamber on the measures that are proposed in the bill, along with the measures taken by the Lord Advocate and the Justice Department to assist the operational deployment of the police in dealing with knife crime. However, the issue of mandatory sentences is not necessarily going to go away, and I will be interested to hear the minister's response.

I move amendment 159.

**Colin Fox:** As Charlie Gordon and others have said in this chamber on many occasions, the horrific and shameful record of knife crime and the possession and use of knives in Scotland today is a serious and on-going debate. I commend all the efforts of those throughout Scotland and in the

chamber to engage with the issues that confront us in dealing with this scar—no pun intended—on our society. I am happy to put on the record my support for the amnesty that was launched this week throughout Britain. I believe that it has a role to play. It encourages people to bin the knife and save a life—probably their own.

Of course, we all have to be sombre and serious and recognise that our record is poor and that the progress that we are making is nowhere near good enough in dealing with the problems of young men who go out carrying. Despite the best intentions and efforts of many of the professionals—I pay tribute to them—in recent months and years in trying their best to deal with the problem, we are not making sufficient progress.

I believe that those members who argue for longer sentences for the possession and use of a blade are well intentioned, but I do not share their faith in that approach. We have seen it fail again and again. Sentencing policy will not make the difference and bring about the changes that those members seek. I understand and share their frustrations, but I do not believe that the necessary change in young men's beliefs and attitudes will be achieved via that route.

We all know that most of the young men who carry knives are inured to the threat of this or that sentence. They know that it is illegal to carry a knife and still they do it. Amendment 160 seeks to turn our attention in another direction that will have better prospects of success in the long run. It involves defeating the problem at its roots rather than dealing with the outcomes.

As Charlie Gordon and others have said, when we look at the facts and figures, we begin to appreciate the signals that are being sent. Why is the problem so much more embedded in Glasgow and the west of Scotland? Why is it that the young men who go out determined to get steaming drunk on Lothian Road in Edinburgh, or in so many other parts of Scotland on a Friday and Saturday night, and who end up in a fight at the taxi rank do not resort to pulling blades on one another to anywhere near the same degree as is done in Glasgow?

We know—the police would back this up—that we are dealing with a problem that is about more than just sentencing policy. We are dealing with a societal problem of culture and behaviour. We need to get inside the heads of young laddies who think that it is cool to carry a blade. They think that it is hard. They think that it makes them big. However, it does not. It makes them wee and timid. Their inadequacies are exposed to every last one of us by the fact that they need to hide behind a 5in steel blade because they do not have the life skills and ability that the rest of us have to

avoid getting into such senseless, stupid and dangerous positions in the first place.

As the minister knows, I lodged a similar amendment at stage 2. I accept that I presented the amendment at stage 2 in opposition to the Executive's proposals to double the length of sentences for possession and use of a knife. I still have no faith in sentencing, but I present amendment 160 today not in opposition to sentencing policy—despite my qualifications about it—but as a way of allowing the courts another option that gets inside the head of teenage laddies. We all know that such teenagers will not get any better if they are locked up in Barlinnie, where they tell stories and pass time with other knifers. Amendment 160 offers the court the opportunity, where appropriate, to use probation to send the offender for counselling to persuade him to break the cycle and drop the knife. I commend amendment 160 in my name.

**Jeremy Purvis:** During stage 1, the Justice 2 Committee heard depressing evidence about the scale and consequences of violence with knives in Glasgow. Charlie Gordon has repeated that evidence eloquently and members have heard the dreadful statistics. In 2005, there were 72 murders with a knife in Scotland and, in 2003, there were 193 attempted murders with a knife in Strathclyde alone. We are already seeing the impact of John Carnochan's violence reduction unit, which is doing an excellent job, but our task as a Parliament is to respond to the issue and to lead to the solutions.

The two options that we are being given are the mandatory prison route and, it would seem, the almost mandatory non-prison route. Amendment 159, in the name of Charlie Gordon, is wrong because it does not allow flexibility for a first-time offender or someone who has simply been stupid in carrying a knife but would not do it again if they were cautioned by the police or given some other type of disposal. However, there will be occasions when custody is absolutely the right approach. For the serial offender and for those who pose a real threat to society by their conduct in carrying a knife, prison is the route. Colin Fox is absolutely right to say that we need to address the underlying issues, but the option in many cases must be a mix of custody, community sentencing and counselling as well as programmes to address the offending behaviour of the individual. Like other Liberal Democrats, I do not support making mandatory sentences for knife offences equal to those that are imposed for firearms offences, but I am persuaded of the need to have sentencing for such offences more aligned with sentencing for firearms offences.

On 8 December, I asked the First Minister whether he would support amendments to the bill

at stage 2 to make sentences for possession of a knife tougher and more on a par with those for gun crime and also to address the underlying reasons why too many young men, as Charlie Gordon said, go out on a Friday or Saturday night carrying a dangerous weapon. His reply at that time was encouraging:

"I will be interested to see those amendments. The approach to tackling knife crime, gun crime and violence in Scotland needs to be comprehensive. It needs to cover tougher sentencing and higher-profile policing, particularly on the streets of our city centres at night. It must also ensure that we change the culture, particularly among young people. ... That will need to be backed up by higher-profile policing and by tougher sentences through the courts."—[*Official Report*, 8 December 2005; c 21600.]

I lodged an amendment at stage 2 that would have introduced a new type of disposal called a custody and behavioural order, which would have allowed courts to be flexible in sentencing by allowing a mix of custody, community and rehabilitative programmes within a window of 18 months for offences that are tried in the summary courts and for a maximum of seven years for sentences in the sheriff court or High Court. I had thought that the custody and behavioural order was entirely consistent with what the First Minister said, but Labour MSPs voted against my amendment.

Despite the figures on gun crime—in 2005, there were 72 murders with a knife in Scotland whereas Executive figures show that the number of murders with firearms during 2004-05 was eight—Jackie Baillie spoke against my amendment at stage 2. She said:

"it might have the ... effect of causing young men to decide to run around with guns instead of knives because the penalty is identical."

Hugh Henry said:

"I worry that we might send out a message that those carrying a gun will be dealt with in the same way as those carrying a knife."—[*Official Report, Justice 2 Committee*, 28 March 2006; c 2149-50.]

He felt that much tougher sentencing for knife crime would mean more gun crime. I simply do not agree.

The forthcoming sentencing bill will, I hope, allow us an opportunity to revisit this very important issue. I hope that, in proposing tougher but better sentences for knife crime, we will get the support of the Scottish National Party, which voted against it, the Conservatives, who voted against it, and Labour, which voted against it. After all, as the Executive's own consultation paper on knife crime said,

"These continuing high levels of knife crime represent an ugly and destructive aspect of our society and are totally unacceptable."

10:30

**Mr Maxwell:** As Charlie Gordon said, mandatory sentencing was considered by the Justice 2 Committee at stage 2. It was not supported.

Mr Purvis is right to talk about the flexibility of the courts in choosing the appropriate sentence on a case-by-case basis. If an individual—mistakenly, of course—puts a knife in their back pocket and goes out with it on a Saturday night, and is then approached by the police and found to have a knife, they should be dealt with appropriately, but not necessarily placed in custody for a substantial period of time. That would be the wrong thing to do; the right thing to do would be to give an appropriate sentence, not a mandatory custodial sentence.

**Jeremy Purvis:** Can Mr Maxwell foresee a situation in which someone, on their third offence of carrying a knife, could be given an appropriate disposal of four years in prison and three years of community sentence?

**Mr Maxwell:** The sentence for a repeat offender should be different from the sentence for somebody who has been caught for the first time—that is a normal part of sentencing procedure. However, it is not for me to say what the appropriate sentence is; that is up to the sheriff or the judge. They can put people behind bars, or they can give out community sentences, as appropriate. That is their role and responsibility.

As he mentioned, Jeremy Purvis's amendments were rejected at stage 2. It was quite right that they were rejected; seven years was far too long a sentence. This is not about the length of the sentence but about the appropriateness of the sentence. If Mr Purvis's amendments had been successful, people could have gone to prison for longer for carrying a knife in public than for raping somebody. The sentence has to be appropriate. This is not about being tougher and tougher on one particular crime, while ignoring the fact that each crime has to be considered relative to all other crimes.

**Jeremy Purvis:** Will the member take an intervention?

**Mr Maxwell:** Not at this stage.

I was glad that the Justice 2 Committee supported my amendments on summary justice; a doubling of the sentence from six months to one year was agreed. I know that the Executive intended to introduce that change in a summary justice bill, but it was appropriate—given that we were doubling the sentence on indictment cases—that we should deal with summary cases at the same time. I was glad that that happened.

The bill contains a number of welcome changes, including the raising of the age and the doubling of

the sentences. However, as many have said, there is the question of culture—the fact that it has become the norm for young men to go into town on a Saturday night while carrying a weapon. Once those young men have had one or two drinks, it is all too easy for them to get into trouble and use that weapon. If they were not carrying a knife, there would be a fist fight. That is bad enough, but knives lead to serious assaults and, in many cases, fatalities.

The knife amnesty is to be welcomed, as are the reporting system pilots in Glasgow and Paisley. At stage 2, I lodged an amendment seeking to make it mandatory that hospitals reported to the police. There is evidence of a clear break between what doctors in hospitals know about the level of knife carrying and what the police know. The deputy minister accepted that point and talked about the pilots that were then just starting up. I hope that those pilots are successful and that they are spread across the whole of Scotland. The police will have to have full information if they are to be allowed to do their job properly.

I welcome the work of the violence reduction unit, which is doing a marvellous job, and I am glad that its work will be rolled out further. In addition, I welcome the Executive's conversion to the use of metal detectors. As the *Evening Times* has reported, I have campaigned for the use of hand-held metal detectors in Glasgow.

**The Deputy Presiding Officer (Trish Godman):** You should be thinking about winding up.

**Mr Maxwell:** It is important that a range of measures are used to tackle knife crime. That is the appropriate way to go, rather than to make custodial sentences mandatory.

Given that the courts already have the flexibility to do what Colin Fox proposes in amendment 160 that they be enabled to do, frankly I do not think that it is necessary to amend the bill in that way. We will not support amendment 159 or amendment 160.

**Mr Davidson:** Charlie Gordon highlighted the problems of knife crime extremely well—especially those that are faced in Glasgow—and raised a number of important points. Although the purchase of knives from legitimate outlets obviously needs to be tackled, back-street transactions are a bigger problem. The amnesty is to be welcomed. The pilot use of metal detectors that has been going on in some cities for some time has been extremely successful.

There will be a sentencing bill and, in the view of the Conservatives, it is not for us to fiddle with the courts' discretion. It is important that the courts understand what is going on, but I am sure that the Lord Advocate gives guidance to which the

courts—and those who work in them—pay attention. It is up to them to decide which of the various available disposals is appropriate.

In Aberdeen, there has been a successful trial involving taxi rank wardens, the deployment of which has almost eliminated any kind of disturbance, never mind a fight that escalates to the point at which someone takes out a knife, which tends to happen on bank holidays and at Christmas, for example. That has been a good trial.

Amendments 159 and 160 are misplaced. We need to consider proper proposals in the sentencing bill. The issue must be examined thoroughly; we should not just take a pot shot at the problem by bolting on a few provisions to the Police, Public Order and Criminal Justice (Scotland) Bill. We must recognise that knife crime is a major problem that must be dealt with by handing out very stiff sentences that are appropriate to the circumstances in which a knife has been used or possessed—even possession entails a risk. We believe that the courts must keep their discretion, so we will not support amendment 159 or amendment 160.

**Mr MacAskill:** I say to Colin Fox that I believe that sentencing policy matters. I accept that knife carrying is a cultural malaise in Scotland, but it would be remiss of us if we did not use all the powers that are available to us to send out a message that it is unacceptable—not just to politicians, but to the people of Scotland—to carry a knife and that someone who does so is likely to face a jail term.

Charlie Gordon was correct to point out the cultural problems that exist. I accept that, under the proposal in amendment 159, custodial sentences would not be mandatory, but would be handed out except in exceptional circumstances. Although I oppose mandatory custodial sentences—I will explain why—I think that it is unnecessary to legislate for the imposition of custodial sentences except in exceptional circumstances because, frankly, that is how we should expect our courts to deal with the matter. As Charlie Gordon said, the Lord Advocate has handled the issue correctly.

Sentencing matters. Charlie Gordon highlighted its effectiveness in dealing with razor gangs. It was also effective in the 1980s when there was a specific problem with armed robberies of bank vehicles. Quite draconian sentences were suddenly brought in, which caused a disparity between the sentences that people would have received in 1979 and those that they received for the same crime in 1980. That was a necessary measure to address a specific problem in society.

I do not believe that mandatory custodial sentences are necessary. Such an approach is

wrong. We have the right to expect that custodial sentences should be the rule rather than the exception because we have a problem and stiffer sentences are necessary to resolve it. However, that does not mean that custodial sentences should be mandatory. We should expect more from our judiciary and our sheriffs, who we are paying more and training better than ever before. They should reflect what is wanted not simply by MSPs, but by the people of Scotland. However, the older I get, the more I believe that we are well served by the judiciary—although perhaps that is just part of the aging process and a result of the fact that friends with whom I used to practise are now on the bench.

The final reason why I think that custodial sentences should not be mandatory is that the Lord Advocate has emphasised that discretion will be used. Most members will have been contacted by constituents who have been worried about wearing a sgian-dubh at weddings or carrying a Swiss army knife for occupational purposes. The police will use their common sense. However, we all know of instances when common sense goes out of the window. We cannot have here the United States of America's "three strikes and you're out" policy, which means that someone could go to prison for life for stealing a piece of pizza. We cannot have the situation where somebody who should have known better but, for whatever reason—an act of stupidity, perhaps—ends up in court and a mandatory sentence is imposed by the sheriff.

We should have a greater trust in our judiciary. We should accept that the Lord Advocate has expressed the desire to tackle this through the forces and systems that we have available and that there is a general consensus in Scottish society on the issue. Those words and that consensus should mean that the end result of carrying a knife will be that the person will face a custodial sentence as the rule rather than the exception. It is unnecessary to state that in the bill, as Charlie Gordon proposes.

**Bill Aitken (Glasgow) (Con):** I listened carefully to what Charlie Gordon said and I agree entirely with 95 per cent of it. However, as David Davidson said, the Conservatives cannot support the principle of mandatory sentencing. Speaking personally, I find it surprising when someone with a previous and analogous conviction is not sentenced to detention. Indeed, in many instances, a custodial sentence is appropriate even for the first offence, although that is a matter for the presiding sheriff.

Of course, in Glasgow, the history of knife crime is one of a move towards more realistic sentencing. At one stage, all such cases were sent to the district court. The consequence of that was

that everybody pled not guilty and it often took some nine months for the case to come to trial. What happens now—and I am greatly reassured by a number of the Lord Advocate's recent comments—is that these cases are fast tracked. The person should be kept in custody, appear in the custody court and a trial diet should be set for the earliest possible date.

Young people have short memories. The vast majority of those who offend in this type of case are young. There is therefore no point in proceeding with a prosecution nine months after the alleged incident. It should also be remembered that these trials should be kept fairly simple: in most cases, we should be talking about two Crown witnesses and one defence witness. There is no reason why such cases cannot be fast tracked.

As Kenny MacAskill rightly said, our sheriffs show a greater degree of realism nowadays. Certainly, they are very well paid and their training has improved. However, there is still a mindset among sheriffs, some of whom find it difficult to relate to those who come before them. Sheriffs from the douce terraces of the new town or Pollokshields can find it hard to imagine what Renfield Street or Union Street in Glasgow are like at one o'clock on a Saturday or Sunday morning. It would be educative for some of their lordships and ladyships to go out on those nights—not necessarily clubbing or discoing—and to walk the streets and see what happens. That might concentrate minds quite wonderfully. As Charlie Gordon says, there is a very serious problem out there.

Even if the legislation that the Executive has in the pipeline goes through—we will certainly support much of it—the impact of any sentencing will be mitigated considerably by the facts of completely unearned early release and the one third discount in respect of pleas. By my arithmetic, a sentence of 12 months is cut immediately to eight months in respect of the plea and is then subject to 50 per cent remission, which takes it down to four months. It may well be that, because the Minister for Justice's view is that part of a sentence should be served in the community, the sentence will be reduced to two months. That is hardly a deterrent.

However, I am greatly encouraged by what the Lord Advocate has said recently. We should wait and see what the effect of that will be. Charlie Gordon's amendment 159, well intentioned as it undoubtedly is, should not obtain the support of the Parliament today.

**Stewart Stevenson:** I heard earlier in the debate—it was said sotto voce—a scary suggestion of how to deal with these offenders. It appears that Karen Gillon is volunteering to gie them a cuddle.

10:45

**Karen Gillon (Clydesdale) (Lab):** I was suggesting that that was in line with Mr Fox's solution.

**Stewart Stevenson:** I think that Ms Gillon's solution might be extremely appropriate.

Times change—Charlie Gordon referred to the culture of the razor in Glasgow in the 1950s. I used to go out every Friday night with a 9in blade, but I was a boy scout and that was the night when I went to the boy scouts with my dagger on my belt for gutting a rabbit or cutting a piece of wood from a tree as a walking stick. However, we must abjure such behaviour in today's culture.

Many people still legitimately carry blades of one sort or another. People who work in a factory gutting fish have the sharpest blades—they wear chain-mail gloves to ensure that they do not cut off more than a couple of fingers in a shift. Fish workers personally own their blades and might pop into the pub on the way home while carrying a blade. A mandatory sentence might inadvertently catch such people.

**Phil Gallie (South of Scotland) (Con):** Does Stewart Stevenson not realise that a safeguard exists for people who can show that carrying such blades is permissible? It is important to retain that.

**Stewart Stevenson:** Phil Gallie is absolutely correct; I accept his point, which I was going to make. That applies equally to agricultural workers who carry a heuk or a scythe home and to butchers who carry their knives. When fishermen come off a boat, the first port of call is often the pub on the way home. Inadvertently, people may compound offences.

I am saying simply that we have a complex set of interlocking things that happen in society. For example, the problem with guns is not legally held guns but illegally held guns. That shows the limitations of legislation if we do not tackle the underlying cultural issues that cause young men—by and large, it is young men who are involved—to carry knives inappropriately. Other members have effectively made the point that if we do not tackle the culture, legislation will be of limited value.

I support what is in the bill, which moves the situation on. However well intentioned Charlie Gordon is and however well informed he is by experience in Glasgow, amendment 159 would add nothing to help the peace. As for what Colin Fox proposes, we can do it already.

**Jackie Baillie:** I have no doubt that the amendment in the name of Charlie Gordon has provoked a stimulating and thoughtful debate. If the Parliament does not support his contention, I hope that the debate will continue, because the problem of knife carrying is endemic in Scotland.

Most members have considered the seriousness of the issue in the speeches, but there is aye one, Presiding Officer. I refer to the astonishing and illiberal speech by Jeremy Purvis, which was big on rhetoric and small on reality. He is so convinced of his approach that he evidently must have brought amendments back to the chamber, but where are they? I do not see them. No evidence on Jeremy Purvis's proposal was given at stage 1. To be frank, several committee members think that his proposal was dreamed up on the back of an envelope. Stewart Maxwell is right: Jeremy Purvis's proposed amendments would mean that we considered rape to be a lesser crime. The issue is far too serious to play politics with.

**Jeremy Purvis** rose—

**Jackie Baillie:** I will not give way, because Mr Purvis would not take an intervention from me. There are courtesies in the chamber.

Perhaps the Liberals' Jeremy Purvis should join the real world and consider the real experience of the communities that some of us represent.

**Hugh Henry:** The debate has been useful. It has highlighted our concern about a significant problem in many parts of Scotland and more particularly in the west of Scotland. It is clear from the measures that are proposed in the bill and from the comments that the Lord Advocate made this week that we take knife crime seriously.

It would be remiss of us—indeed, we would be failing in our duties—if we did not respond to the type of situation that Charlie Gordon has described. Amendment 159 has enabled all parties to put on the record their detestation of knife crime and their determination to ensure that those who carry knives are effectively dealt with.

Kenny MacAskill and Charlie Gordon raised important issues. In Scotland, the concept of the judiciary's independence is important—David Davidson mentioned that—but we also want judges to know what we have said in the chamber in passing legislation so that, in making independent decisions, they are aware of the context in which it has been passed and can reflect on the seriousness with which we, on behalf of the public, have reached a considered view. That is why it is right that we give out clear messages in the bill and in other measures that we are taking.

Our participation in this week's knife amnesty should be seen as a public expression of our determination to do something about the problem. We are not pretending that the knife amnesty will be a solution by itself; we want people to have a debate and to think about and reflect on what is happening. We want them to know that the knife amnesty is a public expression and warning of

what is to come. The police have made it clear that, once the knife amnesty ends, severe and significant measures will be taken against those who carry knives. We support the amnesty—there has not been, as Stewart Maxwell suggested, some kind of conversion—and we have committed resources for the purchase of 1,000 new hand-held metal detectors, which will be deployed throughout Scotland and particularly in areas with the worst problems.

We have proposed measures in the bill to double the maximum sentence for carrying a knife in public or in a school from two years to four years. The bill will also remove current restrictions on police powers of arrest for such offences. We want all such offenders to be taken directly into police custody. There are new stop-and-search measures to allow the police to tackle such problems more effectively. The Lord Advocate has announced tough new guidelines for prosecuting knife crimes under which repeat offenders will be held in custody and, where appropriate, prosecuted before a sheriff and a jury, which will enable sheriffs to impose a more severe punishment.

**Phil Gallie:** I have a question for the minister about situations in which individuals can be held in custody. I recall that there are issues relating to bail for more serious crimes, and that courts must consider and perhaps grant it, irrespective of the seriousness of the crime. How can we ensure that individuals who have been taken into custody because they have been carrying a knife are not given bail?

**Hugh Henry:** Whether bail is granted will remain a matter for the sheriff. We are currently considering wider bail and remand issues, which we expect to debate in the Parliament. This week, the Lord Advocate made it clear that he expects procurators fiscal to oppose the granting of bail in circumstances in which a person has been convicted previously of carrying a knife or has a record of serious violent offending. The Lord Advocate's commitment to ensuring that bail is restricted is clearly on the record but, ultimately, decisions will be for sheriffs.

**Jeremy Purvis:** On the theme of considering wider issues, will the minister confirm that the proposed sentencing bill will be an opportunity to reconsider the sentencing proposals? The amendments in my name were not agreed to at stage 2, but does he agree that a longer debate is needed? Bill Butler said that he welcomed my good intentions in lodging amendments and Jackie Baillie said that she acknowledged my intention to move the debate on.

**Hugh Henry:** Yes, the proposed sentencing bill will be an opportunity to reflect on the way in which sentencing in general is carried out. As I

understand it, Jackie Baillie's concern was not so much about the proposals that Jeremy Purvis made as about the context in which he introduced them into the debate today. That is a matter between Jackie Baillie and Jeremy Purvis.

As Jackie Baillie outlined, the reason why the amendments in the name of Jeremy Purvis were rejected at stage 2 was not lack of determination on the part of Labour members of the committee—nor, indeed, on the part of SNP members or Conservative members. The committee clearly took the view—which is shared by the Parliament today—that something significant had to be done to tackle knife crime. I understand that those amendments were rejected because the committee did not consider their content and what they proposed to be relevant, effective or the best way forward. The issue was, therefore, one of principles rather than some members trying to be seen to be tougher than others. I have no doubt that we will return to that debate.

Amendment 159 has triggered a useful discussion and Charlie Gordon has reflected an anger that is felt by many members. Frank McAveety, for example, has highlighted the problems in Glasgow on a number of occasions. I understand the anger not just of the politicians but of the families whose lives have been turned upside down because a son or someone else in the family has been a victim. I understand the anxiety of those who fear for the safety of their sons or grandsons when they go out in our towns and cities at weekends, and it is right that we should do something about it in the bill.

Many good arguments have been advanced as to why the case has not yet been made for mandatory sentencing, given its implications and consequences. However, Charlie Gordon made an important point. When we pass legislation, we should not simply leave it and regard it as the finished product; we should continue to reflect on whether the legislation is having the desired effect. Is it making a difference on the streets of our towns and cities? If the bill, the measures from the Lord Advocate and the signal that is going out to the judiciary are not having the effect that we hope that they will have—if people are still foolishly and wantonly carrying knives—then Charlie Gordon is right: the Parliament must consider what else we need to do, even though we might, at the moment, consider further measures unpalatable. Although we are determined to return to the bill in that way if necessary, I hope that we do not have to do that. I hope that the measures that we agree today will have the effect that we think that they should have.

I will not dwell on amendment 160, in the name of Colin Fox. The same amendment was dealt with at considerable length by the committee at stage

2. The committee rejected it then and I see no reason for Parliament to return to it now. I hope that Colin Fox will not move amendment 160, but if he does, I hope that Parliament will oppose it.

**Mr Gordon:** It has been a good debate on an important moral issue. In my opening remarks, I said that this is a complex phenomenon that requires a multi-agency response. Colin Fox caricatured the intention behind my amendment. Colin Fox's position appears to be that the people who carry knives are mainly poor youngsters who need counselling. Well, back in the 1960s, the gang members who chased me along Sauchiehall Street were quite prosperous apprentices—as I was, back then—in a period of relatively full employment. As I said earlier, they were hell-bent on recreational violence. Plenty of middle-class schoolboys in Scotland today are walking around with blades in their pockets, so let us not be too simplistic.

11:00

**Pauline McNeill (Glasgow Kelvin) (Lab):** Many members have talked about the culture of knife carrying among young men. That culture exists, but there is evidence that some girls are also carrying knives. I know that because I represent the city centre of Glasgow. We should not overlook the fact that some girls are also carrying knives.

**Mr Gordon:** Pauline McNeill is right about that and it has been going on for a long time. The standard operational method in the Glasgow dance halls of the 1960s was that, because the boys were searched by the bouncers, their girlfriends carried the weapons in their handbags.

Colin Fox mentions counselling. It must be part of a multi-agency response, but I say to him that if I encounter a stabbing victim who is lying on the pavement, my first thought is not that the person who did it needs my help.

I am pleased by the minister's response and the Lord Advocate's new guidelines, which were issued after I lodged amendment 159. I am also pleased that, yesterday in the House of Commons, the Prime Minister, Tony Blair, left the door open for the type of approach that I advocate to be introduced south of the border if that is what it takes to tackle a similar problem there.

After this excellent debate, the Parliament must close ranks and send out a strong message. There are strong new provisions in the bill that, along with the amnesty, the metal detectors that are being supplied to the police and the Lord Advocate's guidelines, will enable us to send the blade-and-booze boys a clear, strong message that they are drinking in the last-chance saloon.

Kenny MacAskill said that we should perhaps expect more from the judiciary. Senior colleagues have impressed on me, as a rookie parliamentarian, that I must not be too hard on the judiciary and that the legislators must never completely fetter the judiciary's discretion. That is probably true, although I note that in a completely different context—a civil context—a senior member of the judiciary seeks to lecture us through the media on how we handle other matters.

Knife carrying is too important an issue for us to nod the bill through and think that the problem will go away. We must monitor and review the effectiveness of what we do. Sheriffs too can sometimes drink in last-chance saloons.

*Amendment 159, by agreement, withdrawn.*

*Amendment 160 moved—[Colin Fox].*

**The Deputy Presiding Officer:** The question is, that amendment 160 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. As this is the first division, there will be a five-minute suspension.

11:04

*Meeting suspended.*

11:09

*On resuming—*

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

**FOR**

Byrne, Ms Rosemary (South of Scotland) (SSP)  
Fox, Colin (Lothians) (SSP)  
Martin, Campbell (West of Scotland) (Ind)

**AGAINST**

Adam, Brian (Aberdeen North) (SNP)  
Aitken, Bill (Glasgow) (Con)  
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
Baillie, Jackie (Dumbarton) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Ballance, Chris (South of Scotland) (Green)  
Ballard, Mark (Lothians) (Green)  
Barrie, Scott (Dunfermline West) (Lab)  
Boyack, Sarah (Edinburgh Central) (Lab)  
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)  
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)  
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
Fabiani, Linda (Central Scotland) (SNP)  
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
Finnie, Ross (West of Scotland) (LD)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Gallie, Phil (South of Scotland) (Con)  
Gibson, Rob (Highlands and Islands) (SNP)  
Gillon, Karen (Clydesdale) (Lab)  
Glen, Marlyn (North East Scotland) (Lab)  
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)  
Ingram, Mr Adam (South of Scotland) (SNP)  
Jackson, Dr Sylvia (Stirling) (Lab)  
Jackson, Gordon (Glasgow Govan) (Lab)  
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kerr, Mr Andy (East Kilbride) (Lab)  
Lamont, Johann (Glasgow Pollok) (Lab)  
Livingstone, Marilyn (Kirkcaldy) (Lab)  
Lochhead, Richard (Moray) (SNP)  
Lyon, George (Argyll and Bute) (LD)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macdonald, Lewis (Aberdeen Central) (Lab)  
Macintosh, Mr Kenneth (Eastwood) (Lab)  
Maclean, Kate (Dundee West) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Martin, Paul (Glasgow Springburn) (Lab)  
Marwick, Tricia (Mid Scotland and Fife) (SNP)  
Mather, Jim (Highlands and Islands) (SNP)  
Matheson, Michael (Central Scotland) (SNP)  
Maxwell, Mr Stewart (West of Scotland) (SNP)  
May, Christine (Central Fife) (Lab)  
McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
McCabe, Mr Tom (Hamilton South) (Lab)  
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
McFee, Mr Bruce (West of Scotland) (SNP)  
McGrigor, Mr Jamie (Highlands and Islands) (Con)  
McMahon, Michael (Hamilton North and Bellshill) (Lab)  
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
McNeill, Pauline (Glasgow Kelvin) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Morgan, Alasdair (South of Scotland) (SNP)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Mulligan, Mrs Mary (Linlithgow) (Lab)  
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
Murray, Dr Elaine (Dumfries) (Lab)  
Neil, Alex (Central Scotland) (SNP)  
Oldfather, Irene (Cunninghame South) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)  
Peattie, Cathy (Falkirk East) (Lab)  
Petrie, Dave (Highlands and Islands) (Con)  
Pringle, Mike (Edinburgh South) (LD)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Radcliffe, Nora (Gordon) (LD)  
Robison, Shona (Dundee East) (SNP)  
Robson, Euan (Roxburgh and Berwickshire) (LD)  
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
Scott, Eleanor (Highlands and Islands) (Green)



Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 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 3, Against 108, Abstentions 0.

*Amendment 160 disagreed to.*

#### **Section 72A—Powers to take data and samples from persons subject to notification requirements**

**The Deputy Presiding Officer:** Consideration of group 12 amendments will be split between this morning and this afternoon. Group 12 is on taking DNA and other samples from certain persons. Amendment 208, in the name of Bill Butler, is grouped with amendments 196 to 198, 161, 199, 162, 200 to 207 and 14.

**Bill Butler (Glasgow Anniesland) (Lab):** Amendment 208 and the others in the group relate directly to an issue that I raised with the minister at stage 1 and about which I lodged amendments at stage 2. I asked the minister during evidence taking whether the police should be given powers to take DNA samples from persons who are subject to a risk of sexual harm order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. Ministers had already agreed that amendments should be made at stage 2 to give the police powers to take and retain a DNA sample from a person who is subject to the notification requirements of the sex offenders register if such a sample does not exist. My concern was and remains that a loophole will exist unless appropriate amendments are made.

During stage 2, I lodged amendments that I hoped would require those who are subject to risk of sexual harm orders to provide DNA samples to the police. After hearing the minister's comments, I did not move the amendments on the sound bases of their being technically deficient and the Executive being willing to look further at the proposals if I lodged technically resilient amendments at stage 3.

The class of persons from whom it is proposed that samples be taken in this case differs from

registered sex offenders. A person who is subject to an RSHO will not necessarily have committed an offence, although in many cases he will have. However, the purpose of an RSHO is to protect any child from harm and the order would be obtained only if it appeared that the person had engaged in sexually inappropriate conduct with, or in the presence of, a child. In such circumstances, there is merit in the proposals in amendment 208 and the other group 12 amendments in my name. The purpose of taking such samples is to prevent and detect serious crime, namely the commission of sexual harm against children. The taking of DNA samples and their retention during the period of the order fits in with the overall policy and intention behind the RSHO scheme and is therefore neither excessive nor disproportionate in its intended effect. I hope that members will agree that my amendments are proportionate and necessary. I ask for Parliament's support and hope that the Executive will also agree to my amendments.

I move amendment 208.

**Hugh Henry:** There are a number of significant amendments in the group, but I will deal first with amendment 208. I fully support what Bill Butler said and what he seeks to do. He has identified a loophole that we believe it is important to close. The additional powers would allow the police to take and retain DNA and fingerprints from people in Scotland who are considered by the courts to pose a danger to children. The provisions would also give the police the power to take data from individuals who are subject to risk of sexual harm orders in England, Wales and Northern Ireland and who have moved to Scotland.

I emphasise that the taking and retention of DNA and fingerprints raises European convention on human rights issues about the right to privacy, particularly because a person does not have to commit an offence to be made subject to an RSHO. I believe that the measures can be justified as being necessary for crime prevention and the protection of others, especially children, if a court has determined that an individual poses a risk to society.

11:15

Bill Butler's amendments also contain a number of safeguards that make them proportionate. For example, the police would be unable to use reasonable force to take prints and samples and any data that were taken would have to be destroyed when a person was no longer subject to an RSHO. The provisions would help to protect the public and they can be justified in ECHR terms, so we give them our whole-hearted support.

I turn now to Paul Martin's amendments. We support his amendment 207, which represents a sensible balance between those who believe that the police should retain all the DNA that they take and those who argue that police powers to keep DNA should be limited. The focus on violent and sexual offences is welcome, given the seriousness of those offences. It would only be helpful for the police to hold the DNA of those who were proceeded against for serious offences but who were not convicted. That would involve cases in which a person had been arrested and the procurator fiscal thought that there was sufficient reason for a charge to be laid, although a conviction was not obtained, for whatever reason.

**Stewart Stevenson:** Will the minister give way?

**Hugh Henry:** I will give way in a second.

We can imagine circumstances in which a charge is made and taken to court but a conviction is not obtained. Sometimes a case collapses and sometimes witnesses are intimidated and a case is unable to proceed. It might be useful to retain DNA in cases in which the police believe that an imprisonable offence was committed but no conviction has been obtained.

**Stewart Stevenson:** I thank the minister for giving way. I accept his comments about Bill Butler's amendments. The important aspect is that the court determines that a person presents a risk to the public, as the minister stated.

However, in the case of amendment 207, which the minister supports, no such determination would be made and the person whose DNA would be retained would have no legal recourse to object to its being retained. Is that situation likely to be compatible with ECHR and to fulfil the requirements that the minister said Bill Butler's amendments had to meet, and with which I agree?

**Hugh Henry:** Yes. Having considered the matter, we believe that amendment 207 is ECHR compliant. Indeed, the position in England and Wales, which is more extensive than what is proposed for Scotland, was deemed by the House of Lords to be ECHR compliant. I know that that is being challenged further in the European courts, so it will be a matter for them to determine. However, as the law in this country stands, what is proposed is ECHR compliant.

We believe that the more limited, more focused and more proportionate proposal from Paul Martin is worthy of support. The police may believe a person is a risk and arrest them because of a suspicion, and the procurator fiscal may believe that there is sufficient reason to proceed with the case. If such a case were to collapse for whatever reason or the person was not convicted, there would remain good reasons for the police wanting to retain any DNA.

Paul Martin has added further safeguards in that samples would be retained only for three years. If the police wanted to retain them beyond that time, they would have to go to a sheriff, who would be able to make a determination on that. We believe that those safeguards are important. Indeed, even those such as GeneWatch UK, which is opposed to proposals in England and Wales for the retention of samples, say that the Scottish Parliament is taking a much more thoughtful approach and that amendment 207 acknowledges that there may be carefully justified exceptions in respect of which the police could benefit from keeping DNA profiles on the database for longer. GeneWatch said to the Justice 2 Committee that there could be circumstances in which the DNA of violent and sexual offenders might well be retained.

**Mr Jim Wallace (Orkney) (LD):** On the answer that the minister gave to Stewart Stevenson, if the European Court of Human Rights overturns the decision of the House of Lords in the case to which the minister referred, will he undertake to have the Executive look carefully at that judgment and to consider afresh some of the issues that we are debating today?

**Hugh Henry:** We absolutely will—that goes without saying. Not only would we have to reflect on the decision but we would need to consider carefully whether the law in Scotland was sufficiently different to justify our continuing with our approach.

**Bill Aitken:** For information, will the minister describe how a risk of sexual harm order is obtained in England? It is a tricky point.

**Hugh Henry:** That is a different issue. I am talking about amendment 207, which was lodged by Paul Martin; I have dealt with risk of sexual harm orders and I cannot go into detail about how RSHOs are obtained in England. As I said, if an RSHO in Scotland was, because of concern about their potential to commit a sexual offence, applicable to a person who had come to Scotland, DNA could be taken from that person. If an RSHO order had been imposed in England on a person who subsequently came to Scotland, we would want to take DNA from that person.

Amendment 207 is proportionate and focused and represents a helpful contribution to a serious matter. We did not accept Paul Martin's proposal at stage 2, which was to retain the DNA of all people who are arrested for imprisonable offences in order to bring the approach in Scotland into line with that in England and Wales, but amendment 207 represents a more appropriate approach.

We will oppose Paul Martin's amendments 204 and 205 and hope that he will not press them, although we understand what he was driving at in

lodging them. He has raised a serious issue about which many people are concerned. Sometimes people who are under 16 and who have committed violent or sexual offences are dealt with by the children's hearings system rather than by the courts, for whatever reason. The amendments highlight the problem that arises because the police cannot retain DNA samples from young people who have been dealt with by the children's hearings system and are not charged with or convicted of a violent or sexual offence. Amendments 204 and 205 would create significant problems for the children's hearings system. However, in lodging the amendments Paul Martin has highlighted an issue that is worthy of serious consideration. I am sure that other members will express the same concerns and I will report those concerns to Peter Peacock, the Minister for Education and Young People, because we need to reflect on the matter when we consider how the children's hearings system works.

**Stewart Stevenson:** Members on the Scottish National Party benches are somewhat baffled. We would be happy to support amendments 204 and 205 because they would provide—in slightly different ways—the safeguard of a sheriff having to be satisfied with the approach. Therefore the interest of the person whose DNA was to be retained would be represented in a decision about whether to retain samples. However, amendment 207, which the minister supports, provides for no representation on behalf of the person whose DNA would be retained. Will the minister expand on that?

**Hugh Henry:** I have dealt with amendment 207. We are not opposed to the principle behind amendments 204 and 205, but the amendments would cause practical difficulties for the children's hearings system. As I said, I will take the matter back to Peter Peacock. When we consider the children's hearings system we must explore how we deal with young people who are involved in violent or sexual offending.

I give a commitment to Paul Martin and Parliament that we will consider the matter. However, amendments 204 and 205 would not have the desired effect and, more important, could cause more problems. The youth justice improvement group, which deals with the risk management of young violent and sex offenders, is doing considerable work on the issue. Its proposals, which are to be published in July, will impact considerably on that group of young people. I want to wait and see what the suggestions are. We will return to the issue.

**Mr Davidson:** Members are a little confused. Will the minister comment on the principle of storing the DNA of non-convicted people, by which I mean those who are not found guilty? The

minister seems to be a little vague on that and I would like a specific answer. Does he believe that only people who have been prosecuted successfully should have their DNA stored?

**Hugh Henry:** I thought that I was clear about that but, for the avoidance of doubt, I repeat that we support amendment 207. At present, DNA can be taken from people who are arrested for an imprisonable offence, but it is destroyed if they are not convicted. Under Paul Martin's proposal, which we support, if a person is arrested and then charged—which means that the police and the procurator fiscal will have considered the matter—but is then found not guilty, or the case collapses for whatever reason, their DNA will be retained for up to three years. It will be possible to retain the DNA beyond that period, but only on application to a sheriff. Members should be under no illusion: we support amendment 207, which is clear and proportionate and will be beneficial.

I turn to the amendments in the group that are in my name. Under section 72A, the police will be able to take DNA and fingerprints from a registered sex offender who is arrested or detained for an offence that relates to the sex offenders register, provided that the police do not already hold those data. Amendment 161 will enable the police to take DNA and fingerprints from a registered sex offender who is arrested or detained under suspicion of committing any offence. Amendment 162 will make it clear that, if the police decide to exercise their powers under section 72A when a registered sex offender is arrested or detained in custody for any offence, the police must explain that fact to the offender.

A section in the Criminal Justice (Scotland) Act 2003 accidentally removed the requirement on the police to destroy DNA samples that are taken by mouth swab if the person is not convicted. Amendment 14 will correct that mistake. I make it clear that, despite that oversight, the police have continued to destroy DNA samples that are taken by mouth swab from persons who are not convicted. If Parliament agrees to amendment 206, which is in the name of Paul Martin, I will not press amendment 14 because the police would therefore be able to retain all DNA that they take from suspects. However, if amendment 206 is not agreed to, I will press amendment 14 in order to correct the oversight from 2003.

**Paul Martin (Glasgow Springburn) (Lab):** I will speak to my amendments in the order that they are set out in group 12. Amendments 204 and 205 would give police authorities a right to retain the DNA of juveniles who are dealt with through the children's hearings system. Those retention powers would be in line with my proposals in respect of adults. It is important to acknowledge that some of the offences that could be involved

are serious and include rape, murder, child abduction, indecent assault and other grotesque crimes that are reported in our communities. I believe that tackling and detecting those crimes requires a proactive and forensic approach.

As I said, amendments 204 and 205 are in line with my proposals in respect of adults. However, I acknowledge the challenges that the minister set out and the complexities of integrating the proposals with the children's hearings system. I understand the technicalities that would be involved in delivering amendments 204 and 205.

11:30

I ask the minister to reflect on the concerns of many communities throughout Scotland that we should detect at an early stage juveniles who are a serious threat to society, not only for the sake of their communities but for those individuals. An opportunity to do so would prevent the difficulties that are experienced in communities as a result of the behaviour of those juveniles. The retention of DNA would enable us to detect such individuals.

At stage 2, I lodged an amendment that was similar to amendment 206 and which would have given police authorities the power to retain the DNA of all those who are arrested or detained on suspicion of an arrestable offence. That would bring us into line with current legislation in England and Wales. As we have heard on many occasions, there are issues concerning the effectiveness of the legislation. Despite the challenges to the figures that have been set out by the Home Office, one offence being prevented is not one offence too many. If it is disproportionate, that is a chance worth taking.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Is Paul Martin seriously suggesting that the DNA samples of people who have been found by their peers in a jury trial to be completely innocent of any charge should be held indefinitely by the police?

**Paul Martin:** I will come to the issue that Mike Rumbles fairly raises.

The issue of civil liberties has been tested by the law lords. I agree with Lord Steyn who, in a House of Lords ruling, made it clear that retention of samples does not breach the right to privacy that is enshrined in the European convention on human rights. The key point that Lord Steyn made is that even if it did, it would

"not affect the appellants unless they are implicated in a future crime, by a DNA sample found at the scene."

For too long, Parliament has tried to balance civil liberties and the rights of victims. I remind members that victims are also innocent members of society. I make no apology for presenting the case of victims or potential victims.

In view of what happened to my stage 2 amendment, I fear that amendment 206 will not get the agreement of Parliament. After reflecting on the concerns that were raised constructively by members at stage 2, I have lodged another amendment—amendment 207—which focuses on those on whom criminal proceedings have been instituted for a relevant violent or sexual offence. Those alleged offences include rape, murder, child abduction and lewd and libidinous behaviour. I hope that that clarifies the question that was raised by Bill Aitken.

I have considered the concerns that have been expressed in respect of people who have not been charged with a crime but have had their DNA retained. Again, amendment 207 will apply only to those on whom criminal proceedings have been instituted. Concerns were also expressed about the period of retention of DNA. I have chosen to allow a period of three years, with the proviso that the chief constable could apply for an extension of up to two years.

**Patrick Harvie (Glasgow) (Green):** On the point about the order to extend the time period and to delay the destruction date by up to two years, I notice that the decision to grant an order can be appealed but there is nothing in the amendment to ensure that such an appeal would be notified to the person whose sample was in question. Is that covered by some other aspect of the bill? If not, surely that person would have no practical ability to appeal such a decision.

**Paul Martin:** There will have to be some clarification of the point that Patrick Harvie raises about notification of the individual. The bill is ECHR compliant and I understand that it contains provisions that will allow that to happen.

**Bill Aitken:** I am sorry; I have come to this issue quite late in the proceedings. There are some problems with amendment 207's proposed new section 18A(5) of the Criminal Procedure (Scotland) Act 1995. On the basis of subsection (5), the chief constable would make the application for retention of the DNA and the sheriff would have to make a determination on that application. Can Paul Martin tell me how he envisages that process working? Would the person who is subject to the application have the opportunity of making a case before the sheriff? Would evidence be taken on oath?

**Paul Martin:** We have to be careful when entering into the area of police intelligence and the information that can legitimately be shared. My understanding is that there will be an opportunity for such an appeal to take place. That will have to be clarified, but I have laid out the framework that would allow that process to take place.

Perhaps amendment 207 does not go as far towards protecting the rights of victims as I want,

but I believe that it would mean progress in the right direction. I do not believe that amendment 207 would result in an erosion of civil liberties; rather, it would ensure that everyone in society would have a right to civil liberties, including victims.

**The Deputy Presiding Officer:** A considerable number of members wish to speak in the debate and I have the choice of giving one member three minutes to speak or suspending for three minutes and continuing in the afternoon. It would be unfair to give someone three minutes now when everyone who speaks this afternoon might get five. However, if any member really wants to have those three minutes, they can have them; they are up for grabs. If not, I will suspend the meeting.

11:37

*Meeting suspended.*

11:40

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### General Questions

##### Acute Hospital Services

**1. Karen Whitefield (Airdrie and Shotts) (Lab):** To ask the Scottish Executive what steps it is taking to ensure that planned changes to acute hospital services are carried out in a strategic manner. (S2O-9961)

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** We made clear in "Delivering for Health" that changes to acute hospital services delivery must be consistent with the principles of the national framework for service change as laid out in the Kerr report. Any proposals for change that come to ministers for approval will be judged on that basis.

**Karen Whitefield:** Does the minister accept my serious concerns about the potentially damaging impact that downgrading Monklands hospital's accident and emergency unit could have on the ability of Glasgow royal infirmary and Wishaw general to provide high-quality accident and emergency services? Will he examine whether, as is my belief, Lanarkshire NHS Board is wrong to state that it will be able to prevent large numbers of patients who currently go to Monklands from going to Glasgow royal infirmary despite the fact that, even at rush hour, the journey time to GRI is substantially less than the journey time to Wishaw general or Hairmyres hospital?

**Lewis Macdonald:** I am certainly aware of Karen Whitefield's views and concerns on the matter. A consultation on the particular issues relating to cross-boundary flows was part of the wider consultation that was recently completed in Lanarkshire. Karen Whitefield can rest assured that, when the board's proposals finally come to me, I will consider the extent to which the consultation on those matters met the requirements that we laid out, which are monitored on our behalf by the Scottish health council.

**John Scott (Ayr) (Con):** Is the minister satisfied that Ayrshire and Arran NHS Board has adequately assessed the strategic needs of accident and emergency patients in south-west Scotland in its proposal to downgrade the accident and emergency unit at Ayr hospital, which would leave no accident and emergency unit between Dumfries and Crosshouse hospital in Kilmarnock?

**Lewis Macdonald:** As John Scott will be aware, Ayrshire and Arran NHS Board has decided to consider those matters further in conjunction with its consideration of provision for planned care. Clearly, that is the basis on which its report will come to ministers and the decision will be made on the basis of that joint consideration.

### **Partnership Agreement (Education)**

**2. Derek Brownlee (South of Scotland) (Con):** To ask the Scottish Executive which of its partnership agreement targets relating to education will not be met by 2007. (S2O-9924)

**The Minister for Education and Young People (Peter Peacock):** None.

**Derek Brownlee:** That is, I am sure, good news.

The partnership agreement refers to improving attainment. How does the minister reconcile what he has just said with the statement in "The Futures Project: Trend Analysis Papers 2006", which was published this week,

"That the attainment of the poorest performers ... has not improved at all"?

**Peter Peacock:** The attainment figures overall have risen substantially and they have risen significantly since the Tories left office. For example, the score for reading at secondary 2 is up by 20 percentage points and the average increase in five-to-14 test results is 9 percentage points. We have seen a gradual improvement in highers results and a continuing improvement in standard grades. The education system is performing well overall.

However, I readily acknowledge—in fact, the Executive has drawn attention to the problem—that the performance of the group of pupils at the bottom of the system who are performing least well has not improved at the rate that we would like but has remained static. That is exactly why we are radically reforming our curriculum and producing new skills for work courses. We are doing a range of things to better engage and motivate those young people in our schools so that they join the rest of our pupils in the rising trends to which I referred.

**Fiona Hyslop (Lothians) (SNP):** Head teachers have said that they will not be able to achieve the reduction in class sizes to 20 pupils in English and maths. Is the minister listening to the head teachers or is he ignoring them?

**Peter Peacock:** I listen to head teachers all the time and I reassure them that we will provide all the staff whom we said we would make available. Recruitment into our programme to train maths teachers is up by 116 per cent and recruitment into our programme to train English teachers is up by 145 per cent, which will help to achieve class

size reductions. That does not take into account all the external recruitment that we are doing. People want to come to teach in Scotland, because they recognise that we have a strong education system and that we are committed to teacher development. We are absolutely confident that we will meet our targets.

### **National Health Service (Costs for Treatment Abroad)**

**3. David McLetchie (Edinburgh Pentlands) (Con):** To ask the Scottish Executive what the implications are for the national health service in Scotland of the European Court of Justice ruling in the case of Mrs Yvonne Watts and how many persons resident in Scotland have since 1999 requested reimbursement of costs incurred in respect of operations undertaken in other member states of the European Union. (S2O-9977)

**The Minister for Health and Community Care (Mr Andy Kerr):** I apologise in advance for what will be a fairly long answer.

The ruling of the European Court of Justice in the Watts case will affect the NHS throughout the United Kingdom. We are therefore working with the other UK health departments to develop systems to manage requests for elective hospital treatment overseas in a way that is consistent with EU law. We will issue guidance to NHS boards as soon as possible.

I welcome the court's clarification that no one should consider going abroad for treatment without discussing it with their NHS board, as they cannot assume that their costs will be met. Critically, they need to establish whether the treatment that they want is available on the NHS; if it is not, the court's ruling will not apply. People cannot argue undue delay in accessing a service that the NHS does not provide. People should also be clear about how much the NHS will refund. It may meet only the equivalent cost of the UK NHS treatment, and it might not always meet travel costs.

People also need to be aware that the local regulators will be responsible for care, hygiene and safety standards, not the UK regulators. Perhaps most important of all, they need to agree with their local board the arrangements for when they come back to Scotland and the arrangements for what will happen if anything goes wrong.

Finally, to our knowledge no one who is resident in Scotland has sought reimbursement of costs from an NHS board in circumstances similar to those of Mrs Watts.

**David McLetchie:** I thank the minister for his full and comprehensive answer. As referred to in the exchanges last week between the First Minister

and Miss Goldie, perhaps treatment abroad is no longer

"one of the best-kept secrets".—[*Official Report*, 18 May 2006; c 25807.]

Does the minister agree that it is a national disgrace that we are unable to treat patients in our NHS within a reasonable time, which leads some of them to go abroad for operations to relieve their pain and suffering? Has it occurred to the minister that, if the health service in France can provide hip operations for all the French men and women who need them, as well as for refugees from our own NHS, such as Mrs Watts, we might have some lessons to learn on how to organise and provide our health services?

**Mr Kerr:** That is a typically right-wing view, which I am sure is not shared by many in this chamber. The Conservative party consistently talks down our NHS, and it is doing so on the day we have announced that no in-patient is waiting more than six months, no out-patient is waiting more than six months, waiting for heart treatment investigations is down, waiting lists are down and we have the lowest ever number of in-patients and out-patients who are waiting more than 18 weeks. We are on track to deliver more in the near future.

Mr McLetchie's question concerned hip operations. Hip replacements are up by 25 per cent and knee replacements are up by 77 per cent. Those statistics should reassure Scottish patients that our health service is delivering. They should not listen to the Tories.

**John Swinburne (Central Scotland) (SSCUP):** If a person is self-employed, they can get tax relief when they purchase a computer or a motor car, but if they cannot continue their work because they need a double hip operation—which costs £10,000—they do not get tax relief. Will the minister approach the Westminster Government on that issue?

**Mr Kerr:** With due respect to the member, no, I will not. We have to address any long-term waits in the health service and deliver on them. Yesterday, I met a patient from Edinburgh who was over at the Golden Jubilee national hospital and whose wait was three and a half months for a complete knee replacement. That is an example of the actual experiences of people in Scotland. We are delivering, but I acknowledge that we must do more. This is all about clinicians' judgments on how people are treated in the health service. Fifty-three per cent of people do not wait at all and 70 per cent of people do not wait longer than three months. Our health service is delivering. However, I am not complacent. More needs to be done.

The case that Mr McLetchie raised relates to 2003, but our health service has been transformed since 1997 and it is delivering for Scottish patients.

**Shona Robison (Dundee East) (SNP):** The minister mentions clinicians' judgments. Is he concerned about the comments made by ear, nose and throat surgeon Clive Davis, who said that clinicians have been asked to defer cancer cases so that patients who need to have their wisdom teeth removed can have the operation done on time? If he is concerned, will he institute an inquiry into whether such practices are common within the health service? What will he do to ensure that such practices never happen again?

**Mr Kerr:** I was reassured by the clinician's comment that the clinicians involved said that their clinical judgment was superior to any requests made by managers—if the suggestions of such requests are true. Members can rest assured that immediately after the press interview we spoke to the clinician involved to get clarification on what I consider to be the unsubstantiated claim made on the radio today. We will seek clarification and I will investigate. It is not acceptable that clinicians' judgment should be overruled by any manager in the health service. To my knowledge, that has not been the case. At the moment, the claim is unsubstantiated. An investigation began at 8.16 this morning.

## Alcohol

**4. Janis Hughes (Glasgow Rutherglen) (Lab):** To ask the Scottish Executive what progress it is making in changing attitudes towards alcohol. (S2O-9940)

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** The findings from independent social research show that there is some positive movement in attitudes towards binge drinking and greater recognition that excessive consumption can have negative consequences. We are clear, however, that if we are to achieve a fundamental shift in attitudes towards alcohol, there is a good deal still to do.

**Janis Hughes:** I know that the Executive is conducting a pilot project on test purchasing of alcohol. How will that work be evaluated? Within what timescale does he envisage that the scheme will be extended, should it prove to be successful?

**Lewis Macdonald:** The pilot will be conducted over a 12-month period from this summer until the summer of next year. It will then be evaluated independently to assess the extent to which the procedures proved to be fit for purpose. If they prove to be fit for purpose, there will be nothing to prevent us rolling them out. However, we must wait for the results of the evaluation before we determine when and where we want to extend the use of the procedures to other police force areas.

### **Long-acting Reversible Contraception**

**5. Susan Deacon (Edinburgh East and Musselburgh) (Lab):** To ask the Scottish Executive what steps it is taking to extend the provision of, and enable women to make an informed choice about, long-acting reversible contraception in accordance with the National Institute for Health and Clinical Excellence guideline published in October 2005. (S2O-9934)

**The Minister for Health and Community Care (Mr Andy Kerr):** The national sexual health strategy makes it clear that the Executive expects the full range of contraceptive methods, including long-acting reversible contraception, to be made available to women, who will be facilitated to make an informed choice.

**Susan Deacon:** Does the minister share my concern that too many women in Scotland are not being offered the choice of long-acting contraception, such as three-monthly injections or three-yearly implants, which offer many women safer, more convenient and more reliable methods of contraception than, for example, the daily combined contraceptive pill? Does he agree that extending access to long-acting contraception could help to greatly reduce the number of terminations that take place in Scotland, of which there are currently 12,500 each year? Will he take steps to ensure that women throughout Scotland have a wider choice of contraception sooner rather than later?

**Mr Kerr:** I am sure that the member is aware that the national sexual health advisory committee was set up to tackle some of the issues that she raises. Its work is continuing and I look forward to receiving a response from the professionals involved about the advice that they will give to ministers. As part of that process, the NICE guidelines will continue to be reviewed.

I understand the point that the member makes. We face big challenges, especially in relation to the statistics on abortion that she mentioned. The provision of long-acting reversible contraception is part of our strategy. I am waiting for the response from the national sexual health advisory committee's working group so that I can ensure that we do better in the advice and treatment that we give to women on the NHS.

**Eleanor Scott (Highlands and Islands) (Green):** Given what the minister said about long-acting reversible contraception, will he confirm whether the Executive is committed to the principle that contraceptive services must be centred around women's right to choose whether and how to control their fertility?

**Mr Kerr:** That is the approach that we continue to adopt. The whole point of the national sexual health advisory committee—which is highly

inclusive, in that there are many voices round the table—is to ensure that that approach continues to be adopted.

### **Glasgow Housing Association (Stock Transfer)**

**6. Tricia Marwick (Mid Scotland and Fife) (SNP):** To ask the Scottish Executive what recent discussions have taken place with Glasgow Housing Association regarding the second-stage transfer of its housing stock. (S2O-9976)

**The Deputy Minister for Communities (Johann Lamont):** We are clear that our commitment to second-stage transfer is absolute and the setting up of a ministerial progress group is a reflection of our commitment and of the importance that we attach to that process. We continue to work closely with GHA to find a way through the process of delivering second-stage transfer. In addition, I have regularly been meeting other key partners—including Glasgow City Council and the local housing organisations—to ensure that they are fully involved in progressing second-stage transfer.

**Tricia Marwick:** The GHA claims that a financial black hole is preventing second-stage transfer. Has the minister seen any evidence to support that claim or does she believe that GHA is stalling for its own reasons? Does the minister share the frustration and anger of tenants that the promises that were made to them before the ballot have not been kept? Will she indicate when she expects the first transfer to take place?

**Johann Lamont:** We have invested £1.6 billion in Glasgow for its housing stock transfer. Whatever the issue, it is not one of a financial black hole. Stock transfer is a huge opportunity for the people of Glasgow, and it is one that people accepted. Indeed, the challenge for all of us who are involved in the process is to ensure that the financial commitment that we have made translates into the very best deal possible for GHA tenants. All the members of the ministerial progress group on second-stage transfers and all those whom I have met in Glasgow and who are involved in the issue are determined that the needs of tenants should be at the centre of all of this. We will work on the financial issues to ensure that second-stage transfer is delivered.

I am clear that there is a commitment to second-stage transfer. There is an issue about the way in which the process is taken forward, but the issue is not one of finance. Obviously, we are developing the pilots. We are keen to see them progress quickly. Once we have learned the lessons that are to be learned from the pilots, we can go forward with further transfers. We do not have an exact timetable for the pilots because we are determined to get them right. That will ensure



that the process goes forward as speedily as possible.

**Mr Charlie Gordon (Glasgow Cathcart) (Lab):** Further to the considerable progress and investment that has been made, does the minister acknowledge that the GHA, in moving forward on second-stage transfers and other matters such as the modernisation of its factoring policies and practices, must avoid the pitfall of taking the approach that nothing can be done until everything can be done?

**Johann Lamont:** Absolutely. In our dialogue with the GHA, Glasgow City Council and those who have given a lifetime commitment to making housing work at the local level, we are keen to ensure that second-stage transfer is taken forward. Huge amounts of investment should not lead to paralysis; investment is not a barrier. Stock transfer is a huge challenge, but I am sure that the GHA is up to the challenge. The Executive is also up to the challenge of supporting the GHA in taking forward this work.

**The Presiding Officer (Mr George Reid):** Question 7 has been withdrawn.

#### **Glasgow Housing Association (Evaluation)**

**8. Bill Butler (Glasgow Anniesland) (Lab):** To ask the Scottish Executive what its evaluation is of the progress that Glasgow Housing Association has made to date in meeting its stated objectives. (S2O-9932)

**The Minister for Communities (Malcolm Chisholm):** I am delighted that tenants are now beginning to feel the benefit of the step change in investment that was promised at transfer, with £291 million having been spent to date. Tenants are clearly at the heart of the decision-making process through the local management arrangements that have been put in place, but we are determined to see quick progress on second-stage transfer, which remains an absolute commitment and a key part of the solution for Glasgow's housing. We will continue to work closely with all the key partners to ensure that it is delivered.

**Bill Butler:** I accept the Executive's good intentions and commitment. However, does the minister agree that the GHA needs to make much swifter progress towards second-stage transfer and community ownership? Does he also agree that its present approach conveys a worrying impression of drift and inaction? Furthermore, will he take the appropriate action to ensure that the GHA takes the necessary measures and that it does so speedily? Will he investigate whether Communities Scotland, which monitors the effectiveness of GHA's spend, is satisfied—or not—with that spend?

**Malcolm Chisholm:** I assure Bill Butler that the issue is right at the top of Johann Lamont and my agendas. As Johann Lamont described in her answer to the previous question, we have regular meetings with Communities Scotland and many of the partners in Glasgow. Clearly, we take a very close interest in the matter. We are determined to drive forward second-stage transfer and to do so as quickly as possible.

We are as disappointed as Bill Butler is that second-stage transfer has not taken place as quickly as it was originally envisaged. We are determined to make up for that. At the same time, we should acknowledge the considerable investment that has been made in Glasgow. In my initial answer I indicated the figure involved—I am sure that Bill Butler and others know the many details. I mentioned the £291 million that has been spent over the past three years, which compares well with the £65 million and £75 million respectively that were spent in the two years before transfer. A further £150 million will be invested this year.

**Ms Sandra White (Glasgow) (SNP):** Will the minister admit that the GHA transfer has been an absolute shambles? Apart from second-stage transfer not going ahead, people are being asked for £6,000 or £7,000 to pay for repairs—elderly people in the Knightswood area have been given 12 months to pay that. The GHA has built no new houses for rented accommodation and some houses—particularly the Winget houses in Carntyne—still await a pilot scheme that was supposed to start two years ago. Will the minister admit that it is a shambles and do something about it?

**Malcolm Chisholm:** It is outrageous that £291 million of investment should be called an "absolute shambles". Sandra White would be better served by maintaining a sense of balance. Much has been achieved, but there is a lot more to do. Nobody is more determined to press ahead with that than Johann Lamont and me.

Of course, it is partly a matter of investment. Johann Lamont mentioned the £1.6 billion, which includes resources to deliver 6,000 new homes for tenants who will lose their houses through the GHA demolitions. Second-stage transfer is the immediate priority this year. An enormous amount of work is going on: a financial team was established and a short-term working group is trying to resolve some issues. I expect and we are determined to see early progress on that most important issue.

## First Minister's Question Time

12:01

### Cabinet (Meetings)

**1. Nicola Sturgeon (Glasgow) (SNP):** To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-2311)

**The First Minister (Mr Jack McConnell):** At the next Cabinet meeting, we will discuss several issues and particularly the Minister for Justice's proposals for the sentencing bill, which we intend to introduce in Parliament this summer.

**Nicola Sturgeon:** As the First Minister knows, he is responsible for tackling poverty and inequality. In the light of that, what views did he express on the Scottish Executive's behalf to his colleagues in London about today's proposal to increase the state retirement age?

**The First Minister:** I do not believe that we have made formal proposals, as pensions are a reserved matter, although there are implications for public services in Scotland and people who work in the public services could be directly affected.

Of course we engage regularly in discussions with United Kingdom Government ministers about pension systems in the public sector, of which there are several. Those discussions continue. I hesitate to say it, in case I am wrong, but the Minister for Finance and Public Service Reform may even have been involved in further discussions yesterday when he was in London.

**Nicola Sturgeon:** The Scottish Executive and the London Government have a joint ministerial committee on pensioner poverty, so it is absurd if the Executive has not expressed a view.

Is the First Minister aware that today's announcement about the retirement age will mean that everyone in Scotland who is aged 47 or under will have to work longer to get their pension? I refer the First Minister to the strategic audit that he published on Tuesday, which showed that health inequalities are as wide as ever. The average male life expectancy in Glasgow is just 69 years, which is five years less than that in Scotland as a whole, and the average life expectancy in Scotland is three years less than that in England. As the First Minister said on Tuesday, those gaps are widening. When people in Scotland enjoy fewer years of retirement than people south of the border, does he agree that it is wrong to propose an increase in the retirement age in Scotland?

**The First Minister:** I will make three brief comments. First, I sympathise with Margaret

Curran, who is clearly affected by the proposals and is a bit exercised about that. Secondly, the Scottish National Party has distorted my speech on Tuesday. I said not that gaps were widening between Scotland and elsewhere but that within Scotland gaps between some of the richest and poorest areas were widening, although they are narrowing in other places.

Thirdly, Ms Sturgeon may well have alternative proposals for state pensions. I recall from last year that the SNP's most recent proposals were to remove all the support for the poorest pensioners and ensure that Government support did not target them, then to spread those resources among all pensioners, thereby increasing the gaps between the poorest pensioners and better-off pensioners directly and immediately.

If Ms Sturgeon ever aspires to hold Government office in any way, she will not be able to avoid the hard questions about how we in this country—like people in other countries—prepare for an aging population and ensure that our pension system is appropriate for that. Decisions on such matters may be taken elsewhere, but they must be debated in Scotland. While considering such matters, we must continue to support pensioners through the best central heating and energy efficiency systems in the UK, the best bus pass system—which allows pensioners throughout Scotland to travel throughout the land—and free personal care. Such support means that Scottish pensioners have the best services in the United Kingdom.

**Nicola Sturgeon:** Is not the First Minister again talking absolute nonsense? The SNP supports a citizens pension that will be funded by reforming the unfair system of tax relief.

The First Minister dodged the question yet again. He did not say whether he agrees with increasing the retirement age. We seem to have a First Minister who can make pronouncements on the football team that he will support during the world cup, but who cannot say what his view is on the future of pensions in Scotland.

Is the First Minister aware that, in 20 areas of Scotland, life expectancy is lower than the current retirement age? Must we not tackle the huge inequalities in Scotland in respect of health and life expectancy before we start to talk about raising the retirement age? Is not this a classic case of a Scottish problem that needs a Scottish solution? Instead of simply toeing London's line, why will the First Minister not speak up for Scotland on such an important issue?

**The First Minister:** Getting so many clichés into one question must be desperately hard. The reality is that we must ensure that we have a system in Scotland that targets support to

pensioners who need it. Rather than what the SNP proposes, we have a pension system that supports the pensioners who most need Government support. The SNP proposes to take money from the poorest pensioners, distribute it more widely and widen the gap between rich and poor pensioners. The Scottish National Party's policy is wrong for Scotland and it would be wrong for elsewhere in the UK.

**Nicola Sturgeon:** The First Minister has still not answered my question. Does he believe that when life expectancy in 20 areas of Scotland is lower than the current retirement age, the retirement age should be raised? He has refused to answer that question.

I remind the First Minister that he said in a speech on Tuesday that

"to achieve a more successful, fairer and confident Scotland ... we need to take responsibility for ourselves".

I agree. Taking responsibility for ourselves means being independent. Does he agree that if pension reform proposals took any account of Scottish circumstances, we would not be contemplating an increase in the retirement age at this time—yes or no?

**The First Minister:** Nobody in Scotland is fooled by the image that the SNP has portrayed of an independent Scotland in which no difficult decisions or hard choices would have to be made, no one would lose out and everybody would somehow get more. If the SNP were in Government in Scotland, under its plans money would be taken away from the poorest pensioners to be spread more widely, which would ensure that the gap between poorer and richer pensioners would widen rather than close. That is the reality of the SNP's policy. The SNP cannot criticise anybody for considering the hard issues and trying to come up with solutions until it is honest and truthful about its own policies.

### Prime Minister (Meetings)

**2. Miss Annabel Goldie (West of Scotland) (Con):** To ask the First Minister when he will next meet the Prime Minister and what issues they will discuss. (S2F-2312)

**The First Minister (Mr Jack McConnell):** I expect to speak to the Prime Minister soon, when we will no doubt discuss many issues.

**Miss Goldie:** Yesterday's announcement that 341 of the 3,300 abortions that were carried out on teenagers in Scotland last year were carried out on under-16s was described in the press today by Scotland's chief medical officer, Harry Burns, as "disappointing". His response is not surprising, because reducing the number of unintended pregnancies is one of the main objectives of the

national strategy to improve sexual health. Does the First Minister agree that such deeply worrying figures require a rethink of the whole strategy?

**The First Minister:** The figures are not only disappointing—they are distressing. Going through such a procedure at such a stage in their lives must have a lasting impact on the many young people in question. I agree absolutely with the serious way in which Annabel Goldie approaches the issue. I hope that, from time to time, we can deal with such issues on a cross-party basis, looking seriously at the evidence and the challenges that face us.

I agree that there is a need to improve sexual health services and to ensure that a clearer policy is implemented locally throughout Scotland. The national sexual health strategy provides the opportunity for that. There is a need for all those who are involved in the services and those who have some influence over the services to take up the messages that are contained in the strategy as well as the recommendations on direct services.

That means giving young people the space and confidence to say no to sexual activity if they choose that road, or if they want to choose that road but feel that they are under too much pressure to do so. I believe that that message has not been made clear enough in the past in our schools or in our health service. Our sexual health strategy gives others the opportunity to be more consistent. I hope that, in pursuing that issue and others, in the months and years ahead, the Parliament can take a lead that young people in Scotland will follow.

**Miss Goldie:** Is it not the case that the strategy is failing? The figures speak for themselves. Most people will find the number of teenage abortions shocking and believe that something has gone terribly wrong when girls as young as 11 are becoming pregnant. Given that frightening trend, not to examine the whole way in which we deal with teenage pregnancy and sex education would be totally irresponsible. I accept the need to inform young people about sex, but there must be a balance. Is it not time that we sent out far clearer messages about the dramatic, life-changing consequences that can arise from premature sexual activity?

**The First Minister:** I agree absolutely with Annabel Goldie's analysis, but I do not agree with her conclusion. We rewrote the sexual health strategy and published a new strategy last year because we were concerned that the previous strategy was not delivering the improvements that we sought quickly enough. There has been a reduction in the number of teenage pregnancies in Scotland over the past six years, which is to be welcomed, although that is not yet enough. In the new strategy that was published last year, the

messages were clearer than they have been for two decades or perhaps longer.

Young people need to be supported in making positive choices about their lifestyles. They need to be supported in resisting the peer pressure and the pressure from the media and entertainments industries and elsewhere to be more involved in sexual activity than they want to be at that age. There are a range of reasons why children as young as 11 and 12 find themselves pregnant. It is partly a problem of parental guidance not being given; it is partly because they are let down, occasionally, by the social services; and it is partly due to the lack of consistent implementation of a sexual health strategy that should contain not only access to contraceptive and other services, but—crucially—a clear message that young people can hear, believe in and move forward with.

**Miss Goldie:** I listened with care to the First Minister's response. Whatever the revised strategy may be, surely one message is missing. Given the fact that the number of abortions in Scotland that are given to girls who are under the age of consent has risen, in a year, by 32 to 341, will the First Minister at least consider funding pilot studies to examine the effects of a strong message discouraging premature sexual activity?

**The First Minister:** I am sorry to be repetitive. I know that it is sometimes difficult, in these question-and-answer sessions, to change questions that have been prepared in advance. I say with all sincerity to Annabel Goldie that the new strategy was published in 2005 and that the statistics that she is quoting are from 2005. It is difficult to change the habits that have been developed over a generation—perhaps longer—to ensure that fewer young women in Scotland become pregnant and have abortions, but that should be our clear policy objective. That is why we produced a new strategy last year.

The new strategy is clearer than any strategy has been for a very long time about the need to discourage sexual activity among young people. I hope that every social work department, every school and all the doctors and others who work with young people have read the strategy and heard that message, which it gives out loud and clear. If we are to reduce the number of young people who are becoming pregnant and the number of teenage abortions, it is essential that the message gets through to young people and that they believe we mean it.

**Karen Gillon (Clydesdale) (Lab):** I take the First Minister back to pensioners' needs and, in particular, the central heating programme. Will he explain to me why the Eaga Partnership told me yesterday and is telling pensioners daily that the current central heating programme is closed to new applications until August at the earliest? Will

he assure Parliament and the public that that is not the case and that pensioners can register now? Will he ensure that Eaga's shameful actions are taken into account during the tendering process for the management of the new contract and borne in mind when the Executive allots it?

**The First Minister:** Having recently not only considered the issue as First Minister but inquired into the same point from my constituency interest, I understand the following to be the current position. First, a new contract is in preparation. It will run from September or, at least, the decision will be made then. Secondly, the current contractor has reached the limit of the number of systems that it can change under the existing contract because of recent demand. However, I make it absolutely clear that we have instructed Eaga, as our contractor, to take the details of all those who apply to it in the meantime to ensure that the new contractor will have their details and can move quickly to provide them with central heating systems. There should be no reason whatever, locally or nationally, for the contractor not to note applicants' details. If Karen Gillon is having a problem in that regard, I am sure that the Minister for Communities will be happy to take it up with the company.

#### **Secretary of State for Scotland (Meetings)**

**3. Robin Harper (Lothians) (Green):** To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-2322)

**The First Minister (Mr Jack McConnell):** I meet the Secretary of State for Scotland regularly to discuss a range of issues of importance to Scotland.

**Robin Harper:** This week, in a keynote speech in Stirling, the First Minister laid out his vision for the future. Sadly, those of us who expected the most serious challenge that faces us—climate change—to be addressed were disappointed. Does the First Minister agree that it was a serious omission to barely mention or address climate change in his speech?

**The First Minister:** No, because that was not the purpose of the speech, as I explained during it. If Robin Harper has not seen the speech, I would be happy to send him a copy. In the speech, I said that its purpose was not to discuss climate change but to lay out what I thought was most important in relation to Scotland's overall performance, not only in economic terms but as a society in relation to our opportunity to bring people together and to close the gaps between those who are falling behind and those who are doing well. It was also to lay out my belief that education, skills and learning are central. That is as true in tackling environmental issues such as climate change and

building a sustainable Scotland as it is in building economic growth and ensuring that we tackle poverty at the same time.

**Robin Harper:** Last night, millions of people saw our most trusted and respected celebrity, David Attenborough, tell us why, after years of consideration, he now believes that climate change is the most serious issue that faces us. The First Minister has said many times that sustainability should be incorporated into Executive policy across its areas of responsibility, so I expected—we have a right to have expected—that sustainability would be addressed in the speech.

The First Minister has committed us to 20 years of possible road, rail and air traffic expansion—sorry, road and air; not rail, I am sad to say—[*Laughter.*] There is a serious point to be made. The First Minister has committed us to 20 years of possible road and air traffic expansion policies that will seriously undermine all the other climate change-busting policies that he could possibly produce. Does he agree that his policies do not add up and do not make sense? Huge sums of money are being spent on air and road traffic and tiny sums are being invested in reducing climate change.

**The First Minister:** I refer Robin Harper to a speech that I made in February 2002, shortly after becoming First Minister, when I put the environmental concerns that he mentions and sustainable development at the centre of the Executive's strategy. I remind the member that, since that time, Scotland's waste recycling rate has gone from being one of the lowest not only in Europe, but in the world, to being significantly higher. Our use of renewable power has seen us not only secure a better target than anywhere else in the United Kingdom, but make progress towards that target that means that we may reach it ahead of time.

We have taken action in a variety of areas to secure greater environmental justice in Scotland's most deprived communities. There are now more than 2,000 eco-schools in Scotland—a higher proportion than almost every other country that supports the eco-schools movement. We now spend consistently more than 70 per cent of our transport budget on public transport. For the first time in a generation, we are opening new rail lines in Scotland. On climate change, there has been a 10 per cent reduction in our greenhouse gas emissions from the 1990 Kyoto baseline, at a time when the Scottish economy grew by 29 per cent—an admirable achievement in anyone's book. It is time that the Scottish Green Party celebrated and welcomed that, said "Well done" and helped us to go further.

## Renewable Energy

**4. Sarah Boyack (Edinburgh Central) (Lab):** I draw members' attention to my entry in the register of members' interests.

To ask the First Minister how the renewable energy strategy will benefit communities and help to improve the health and well-being of Scotland's population. (S2F-2317)

**The First Minister (Mr Jack McConnell):** The increased use of renewable energy is one of the most important ways in which society can combat the effects of climate change. However, renewables are good not just for the scope that they offer to reduce greenhouse gas emissions. They also offer benefits to our economy in local manufacture and much-valued employment in communities. In respect of energy security, they offer the prospect of helping to reduce our nation's dependence on imported oil and gas.

**Sarah Boyack:** I welcome the excellent progress that has been made towards meeting the Scottish Executive's renewables targets for 2010. Does the First Minister agree that, if we are to meet our targets for 2020, to tackle fuel poverty, to create Scottish jobs and to avoid reliance on energy sources that leave a legacy of toxic waste for generations to come, we need to increase significantly our investment in marine power, microgeneration, biomass, hydrogen technologies and energy efficiency?

**The First Minister:** There has been much activity in the area to which the member refers. Yesterday we launched our clean energy strategy, which sets out not only a continuation of the policies that the Executive has pursued but, crucially, new and significant investment of £7.5 million in biomass, which the Deputy First Minister mentioned. There will also be a significant increase in the resources that are available for microrenewables, further studies into the development of offshore wind power and further support for the marine energy industry. We in Scotland can grow all those areas. We can benefit not only Scotland but many other places as a result. We should continue to improve and invest in those technologies, so that we build for the future.

**Richard Lochhead (Moray) (SNP):** Does the First Minister agree that, in the medium to long term, greater emphasis on renewables could lead to lower energy bills for Scottish households? I bring the First Minister back to this week. What is his message to Scottish Power, which yesterday—the day on which it announced the huge profits that it has made—warned that its hard-pressed customers face an increase in their electricity and gas bills in the future? Does he agree that, if that increase goes ahead, even more thousands of

Scots could be plunged into fuel poverty? What is he doing about the matter?

**The First Minister:** The member raises a number of different issues. I will try to run through them all quickly.

**The Presiding Officer (Mr George Reid):** The question was a bit wide of renewables.

**The First Minister:** To see increased use of renewables, we need consistently to support the generation of power from renewable sources. It would be helpful if one or two members who are not very consistent on the subject, such as Mr Lochhead, were a bit more consistent. It is important that we send a very strong message to the energy companies, some of which are making a large profit at the same time as they are increasing domestic bills—unfairly, in my view. I want those companies to take their responsibilities seriously, and I want consumers to choose the options that are best for them.

On Mr Lochhead's final point, I make it absolutely clear that we are committed to energy efficiency in Scotland not just because it benefits the environment and reduces waste, but because it reduces household bills. Our commitment to energy efficiency measures will continue to be among the very best around.

**Nora Radcliffe (Gordon) (LD):** I welcome the First Minister's last remark in particular. He will agree that fuel poverty desperately affects health and well-being. Does he agree that a cost-effective way of tackling fuel poverty is to improve poor insulation of homes and that money invested in developing techniques of retrofitting insulation to existing homes would be money well spent?

**The Presiding Officer:** That was a bit wide of the question, too.

**The First Minister:** Nora Radcliffe knows much more about those subjects than I do, but I suspect that the answer is yes. Of course it is important that we look at using a variety of techniques and energy sources for homes, as well as ensuring that the energy used is held for as long as possible in those homes through energy efficiency measures.

## Economic Competitiveness

**5. Jim Mather (Highlands and Islands) (SNP):** To ask the First Minister—with whom we share ambitions for higher economic growth—what steps the Scottish Executive will take to address the fall in Scotland's rating in the table of economic performance in the latest IMD "World Competitiveness Yearbook" from 40<sup>th</sup> to 51<sup>st</sup>—of 61 nations—and why he considers that these steps will improve Scotland's rating. (S2F-2314)

**The First Minister (Mr Jack McConnell):** To correct the impression that is created regularly by Mr Mather, I inform members that Scotland's overall position in the IMD "World Competitiveness Yearbook" in 2006 has improved from 36<sup>th</sup> in 2004 to 30<sup>th</sup> in 2006. That is a positive improvement in anybody's book.

However, we wish to continually improve Scotland's economic performance and that is why we are investing in infrastructure, in Scotland's universities and in skills.

**Jim Mather:** I give the First Minister 10 out of 10 for bravado. He will note in that same yearbook that the gap between the United Kingdom and Scotland remains wide—there is no level playing field. The First Minister has often offered to debate with us that level playing field and I now return the offer to debate it with him anywhere, any time, in front of a representative audience—although perhaps he heard that Bristow Muldoon lost a similar debate by 23 votes to two last April. Is that why he will not debate the matter? When can we have that debate?

**The First Minister:** I hesitate to say it again, but Jim Mather has two options when he gets up out of bed in the morning. He can either celebrate Scotland's successes and feel good about the country that he lives in, or he can talk them down, denigrate and misrepresent them. Unfortunately, he chooses the latter option far too often.

Jim Mather asked about a world competitiveness survey, but he did not mention that that survey contains four aspects. On Government efficiency, we have improved from 39<sup>th</sup> place to 30<sup>th</sup>. On business efficiency, we have improved from 36<sup>th</sup> to 26<sup>th</sup>. On infrastructure, we have improved from 28<sup>th</sup> to 26<sup>th</sup>. Given the impression that we sometimes have of Barcelona and Catalonia, it is perhaps surprising that our overall performance placement is better than theirs.

Mr Mather does not come to the chamber and quote those positive statistics. He does not quote the *Financial Times FDI* magazine, which recently named Scotland the best region in the whole of Europe for human resources. He does not mention that in a recent worldwide survey of scientists, Glasgow and Dundee were both placed in the top five universities in the world for science. This Parliament should be about celebrating Scotland's successes, recognising our weaknesses and then investing in the right areas to ensure that Scotland succeeds in the future. I only hope that some day Jim Mather will help us to do that.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Given the figures published yesterday that showed that foreign investment in Scotland has fallen by 95 per cent since Labour came to power, does the

First Minister believe that that is his fault or the fault of his Liberal Democrat deputy?

**The First Minister:** Again, that is not true, but we would of course expect no more from the Tories. The reality is that, for the five years for which investment is judged, Scotland is holding its share despite the problems that we had in electronics between 1999 and 2001, and we are now growing our share again. When we are attracting investment and jobs into this country and making the incentives work, it does not help for the Tories, who would be quick to criticise if we were not offering incentives for companies to come to Scotland, or other members of the Opposition to describe them as bribes, as Mr Neil did recently when Morgan Stanley agreed to bring hundreds of jobs to Glasgow.

Let us get a bit of consistency from the Opposition. Let us support investment in Scotland, give people the right incentives and, when they come, tell them that they are welcome and celebrate the fact that they are here.

#### **E Coli**

**6. Euan Robson (Roxburgh and Berwickshire) (LD):** To ask the First Minister whether there is a higher prevalence of outbreaks of E coli in Scotland than in the rest of the United Kingdom. (S2F-2329)

**The First Minister (Mr Jack McConnell):** Scotland has more cases of E coli 0157 per head of population than England and Wales, and Northern Ireland. I am told that extensive research has been done into why that is so and that the indications are that a more rural population and differences in detection may be contributing factors. However, we continue to monitor the situation.

**Euan Robson:** I thank the First Minister for his response. Does he think that we need to know more about causation? If so, is it time for an Executive-led research programme?

**The First Minister:** As I have said on other issues, not least on multiple sclerosis, the Executive is open to proposals when there is a belief among members or others that more top-quality research is required in certain areas. Decisions to support research are, of course, made by those who are responsible for the relevant budgets—the chief scientist makes such judgments independently but on behalf of us all. I believe that more research could well be required into the reasons for the current situation, but the most immediate issue for us is to ensure that we tackle the issue and that people have the right guidance across Scotland to keep the incidence of this particular problem at the lowest level possible.

**The Presiding Officer:** That concludes questions. Members should now go to the steps of the garden lobby for the photograph for the annual report. It will not take more than five minutes.

12:32

*Meeting suspended until 14:15.*

14:15

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Enterprise, Lifelong Learning and Transport

##### Ferry Services (Tendering Process)

##### 1. Mr Alasdair Morrison (Western Isles) (Lab):

To ask the Scottish Executive whether it can provide an update on the Caledonian MacBrayne tendering process. (S2O-9954)

**The Minister for Transport and Telecommunications (Tavish Scott):** We hope to identify tender lists and to issue invitations to tender for both the tendering exercises shortly. In parallel, good progress is being made with the restructuring of Caledonian MacBrayne to enable the tendering to proceed.

**Mr Morrison:** The minister is aware of the desire on South Uist, in my constituency, for a ferry route to be established between Lochboisdale and Mallaig. His predecessor as Minister for Transport—and now boss—Nicol Stephen, is also aware of that. Will the minister do his utmost to ensure that that new route forms part of the tender document that is to be published shortly? I am sure that the minister, along with everyone else in the Parliament, I hope, will have welcomed the historic development last week, when South Uist Estates passed into public ownership. There is no doubt in my mind that having a shorter ferry journey between Lochboisdale and the mainland will greatly benefit islanders and tourism and other businesses. Will the minister agree to meet me, Ronald Mackinnon, who is the councillor for Lochboisdale, and representatives of the now community-owned South Uist Estates, who I am sure will happily reinforce what I have just called for?

**Tavish Scott:** Mr Morrison makes a persuasive argument, and I would be delighted to meet him and his colleagues to take those matters forward. As he knows, the consultation on the specification has concluded. Many comments were submitted, including some relating to the particular issue that Mr Morrison is highlighting now. We will make progress on the matter when we produce the final specification. A meeting of the kind that Mr Morrison proposes would be useful in that regard.

**Jim Mather (Highlands and Islands) (SNP):** Once the Caledonian MacBrayne tendering process has been completed, will the minister

produce a comparative report on the various tendering processes, explaining any inconsistencies in the tenders and in the different levels of subsidy or levels of service between the NorthLink, Clyde, west coast and Campbeltown to Ballycastle routes? If not, why will such a report not be forthcoming?

**Tavish Scott:** I am not quite clear about what Mr Mather is arguing for. If he is arguing for a comparative breakdown in the costs and subsidies applying to each individual route, he must also, by definition, be moving towards the territory of arguing for the unbundling of the west coast services. I had thought that that was not the Scottish National Party's position. We all know the dangers of such an approach. Mr Mather will need to be cautious. Indeed, he might wish to explain his position to people on the west coast, who have a strong understanding of why the Government listened to the persuasive argument in favour of the complete bundle and argued that case to Europe, ensuring that that is what now applies.

**Mr David Davidson (North East Scotland) (Con):** In light of Western Ferries dropping out of the tender process, just as Irish Continental Group withdrew from the northern isles tender last year, does the minister agree that the private sector has lost all faith in the Executive's ability to conduct a fair and transparent tendering process? In the interests of fair competition, will the minister take this opportunity to renounce Nicol Stephen's comments of 10 December 2004? He then said:

"We have to make sure that, if we are forced by Europe, we have the very best prospect possible of CalMac winning"

the tender.

**Tavish Scott:** No, and no. I will not take one step back from ensuring a very positive tendering exercise. If commercial organisations or businesses decide that they do not wish to be part of the exercise as it moves forward, that is a matter for them. My officials met representatives of Western Ferries recently to consider the issue; lessons can of course be learned on both sides, not just on the side of Government.

Furthermore, Audit Scotland has reported on the matter. The processes are being, and will continue to be, properly scrutinised. The Parliament also holds ministers to account for that. To suggest, as Mr Davidson does, that no one has faith in the process might reflect the position of the Conservatives, but it is not the position of anyone else.

##### Tramline (Funding)

**2. Margo MacDonald (Lothians) (Ind):** To ask the Scottish Executive whether it will undertake to underwrite any funding gap in respect of the



planned tramline that is integral to the development of the Edinburgh waterfront project. (S2O-9921)

**The Minister for Transport and Telecommunications (Tavish Scott):** The Scottish Executive will not underwrite any funding gap associated with the proposed Edinburgh tram network. I can confirm that, as I stated to Parliament on 16 March, we have agreed to contribute £375 million plus inflation. I expect that to be a contribution of £450 million to £500 million towards the capital cost of the tramline from Ocean Terminal to Edinburgh airport. Our commitment to funding is dependent on the production of a robust final business case by the City of Edinburgh Council.

**Margo MacDonald:** I, too, think that a robust business case should be presented to the Executive. Before the minister knocks me back again, I will tell him that I am confident in the council's ability to raise the funds under its own steam. However, given that the tramline is an integral part of a much-needed development, will the Executive agree at this stage not to knock back a request for funding in the contingency that there is a shortfall?

**Tavish Scott:** I hope that Margo MacDonald accepts that I have sought to be entirely consistent in my desire to ensure that all our capital transport projects hit their budgets and timescales and that we deliver what we agreed with the promoters. Parliament has scrutinised that in its consideration of private bills. I understand the important arguments that have been made about Granton by Margo MacDonald and others in Parliament and elsewhere. However, we must achieve the project that the Parliament has committed to achieving. There is nothing to prevent future consideration of further stages of a tram network in the city.

### Modern Apprenticeships

**3. Margaret Smith (Edinburgh West) (LD):** To ask the Scottish Executive how it supports young people in finding modern apprenticeship places. (S2O-9982)

**The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson):** As all modern apprentices are employed from the start of their training, the Scottish Executive supports young people in finding an MA place through the information, advice and guidance that are offered by Careers Scotland. There are 34,263 MAs in training, which is well over our partnership commitment to have 30,000 by 2006, which we achieved two years ahead of schedule.

**Margaret Smith:** Obviously, I am delighted about the figures that the minister gave. However, I draw to his attention the experience of one of my

16-year-old constituents, who has applied to 450 employers for a post—he had a college place but could not take up his apprenticeship without finding an employer. One of the arguments that his family put to me was that there had been an influx of skilled workers from eastern Europe, who I believe have a very good reputation for construction work. There might a problem—at least locally—in that the short-term needs of the construction industry are being met by firms employing those workers rather than taking on apprentices. In the medium to long term, a problem might arise with that skills bloc. Will the minister give me an assurance that he will look into the matter to see whether there is a wider problem?

**Allan Wilson:** I am pleased to give the member that assurance. First, I commend her constituent on his effort and ingenuity in contacting so many employers. I genuinely hope that he will be successful in his search.

I believe fundamentally in parity for vocational education with other forms of education and training, as does the Executive, which is why we have expanded the modern apprenticeship programme so quickly and assuredly. There is no limit on places, but the programme is demand led, because it is important to secure employment for the young people as a prerequisite for the consequential training.

No evidence has been submitted to me that the influx of immigrant labour from eastern Europe—or anywhere else for that matter—is having an adverse effect on training opportunities for young people in this country, but I will ask officials to look into that and raise the issue more generally with representatives of the construction industry when I next meet them.

### Bus Transport (Glasgow)

**4. Paul Martin (Glasgow Springburn) (Lab):** To ask the Scottish Executive what measures are being taken to improve bus transport in Glasgow. (S2O-9946)

**The Minister for Transport and Telecommunications (Tavish Scott):** At national level, this devolved Government provides substantial resources to support bus services. In particular, we will pay some £55 million this year directly to bus operators in Scotland through the bus service operator grant. We also resource local government to support bus services. This year, Glasgow's allocation through the local government settlement to support local bus services is over £3 million. The bus regime frees up bus operators to use their commercial judgment in planning bus services and, for Glasgow, it imposes a duty on Strathclyde Partnership for Transport to ensure that bus services meet local needs.

**Paul Martin:** I remind the minister that, under the current non-regulatory scheme, we do not meet local needs. Will he consider some form of regulation similar to that which is in place in the London transport system and consider funding some form of community transport, which I understand has been adopted in other parts of the United Kingdom, to ensure that we deliver a local service and avoid the cherry picking of routes that takes place in Glasgow and the rest of Scotland?

**Tavish Scott:** I understand Paul Martin's concerns with regard to the withdrawal of services, particularly at times that might loosely be described as off-peak but which are pretty important to people in various parts of the area that he represents.

The bus route development grant scheme is investing in Glasgow and other areas of Scotland. A grant of £133,000 has been awarded to SPT for night services from Glasgow city centre to a number of areas. However, I understand Mr Martin's concerns and the importance of examining the regulatory regime to see what improvements we could make under the Transport (Scotland) Act 2001, which introduced the quality contracts and quality partnerships that are available in local areas.

### Environmental Sustainability

**5. Nora Radcliffe (Gordon) (LD):** To ask the Scottish Executive how its Enterprise, Transport and Lifelong Learning Department works to encourage environmentally sustainable practices among businesses. (S2O-9990)

**The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen):** The Executive funds the Carbon Trust and the Energy Saving Trust in Scotland to provide advice and support to businesses to improve energy efficiency and reduce carbon emissions. Our green jobs strategy emphasises the substantial business and employment opportunities that can be secured by taking a more sustainable and environmental approach.

**Nora Radcliffe:** Energy efficiency must be a major component of energy policy. Does the minister agree that all buildings, including business premises, should be properly insulated to prevent heat loss? Further, as the built estate is replaced at roughly 1 per cent a year, does the minister agree that there is a huge business opportunity in the retrofitting of insulation in existing buildings? Will he consider how he can encourage businesses to develop the technology and skills to meet that market in order to deliver the win-win outcome of more green jobs and less wasted energy?

**Nicol Stephen:** I agree with the member. As well as the action that I announced this week to

put further investment behind renewables in Scotland and to shift from generating electricity from fossil fuels to generating electricity from wind, wave and other clean energy sources, we have to do more on energy efficiency. We should not focus solely on the homes of individuals as there is a large wastage of energy in business and industry. Action in those areas could save millions of pounds and create clean, green jobs for the future. The greater the extent to which Scottish business gets involved in that—taking advantage of the opportunities in the United Kingdom as well as the many opportunities around the world—the more the Scottish economy will benefit and the more Scotland will stand out as a nation that is putting sustainability and the environment at the forefront of all of its policies.

**Sarah Boyack (Edinburgh Central) (Lab):** Will the minister investigate the issue of the grants that the Scottish Executive awards? Yesterday, I heard from a constituent who wants to install loft insulation. She wanted to use a recycled product but, unfortunately, that is not supported by the relevant Scottish Executive grant scheme, whereas the more traditional fibreglass option is. My constituent has been left without a real choice because, faced with a bill of either £300 or £600, she knows which one she is going to go for. Can the Executive investigate the matter and do a bit of joined-up thinking by linking the issue of waste and recycling with that of energy efficiency?

**Nicol Stephen:** I will look further into the matter that Sarah Boyack has raised. As she knows, grant funding is available for a range of energy efficiency initiatives. For example, in the north-east of Scotland, the appropriately named SCARF—save cash and reduce fuel—does a lot of good work in exactly the kind of scheme that she has highlighted, providing advice to householders on greater energy efficiency and on how to reduce levels of electricity use and, indeed, bills. After all, energy efficiency makes a big impact on household bills and helps to keep old people, in particular, warm throughout the winter. Such local initiatives are vital.

If, as a result of micro-renewables, more environmentally friendly products become available, I will look again at the nature of the support and ensure that eligibility is extended.

**Alasdair Morgan (South of Scotland) (SNP):** Scottish Enterprise recently pulled out of its promised financial contribution to a waste water handling plant at a shellfish factory in Galloway. I do not expect the minister to know about that incident, but does he have any idea about the number of environmental projects in rural areas that are at risk because of Scottish Enterprise's funding crisis?

**Nicol Stephen:** I am happy to try to provide that information to Alasdair Morgan through Scottish Enterprise. However, at the moment, I am not aware of any projects that are at risk.

### **Life Sciences (Inverness)**

**6. Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** To ask the Scottish Executive what plans it has to encourage increased investment and employment in the life sciences sector in Inverness. (S2O-9916)

**The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen):** Highlands and Islands Enterprise is already investing substantially in life sciences projects in Inverness. For example, it has proposed to invest £15.7 million in the development of the centre for health sciences. In addition, Scottish Development International is discussing with HIE how to increase international activity and stimulate more inward investment in the area.

**Fergus Ewing:** I welcome the minister's response. Given that notice of my supplementary question was given to his office by me yesterday and by *The Press and Journal* this morning, he will be aware that Lifescan Scotland Ltd, formerly Inverness Medical Ltd, is the biggest private sector employer in the Highlands. At the moment, it employs 1,500 people with plans to employ another 150, many of whom would be at the leading edge of research and development.

However, as the minister knows, those excellent plans are threatened by a unilateral notification from the Department of Health in Whitehall that it will cut by 15 per cent the amount paid for this company's product. No company can stand such a cut in revenue overnight without there being consequences. Will the minister publicly state that the Executive deplores and opposes that action and will he make the strongest possible representations to the Secretary of State for Health at Westminster that the move is damaging and the cut excessive?

**Nicol Stephen:** Yes, I am prepared to make representations to United Kingdom ministers. The Scottish Executive must do what it can to support Scottish companies and jobs. I should point out that the document on the new financial arrangements for the provision of, among other things, chemical reagents for primary care is still out for consultation. As Fergus Ewing knows, it was published on 8 May and the closing date for the consultation is 6 June.

The proposal is to implement the price reduction in August. However, paragraph 4.7 of the document says that the Department of Health

"also proposes that this reduction should be implemented such that manufacturers, wholesalers and pharmacy contractors should each be able to make a fair return on the supply of these products to NHS patients."

Exactly how that will be achieved with the proposed 15 per cent across-the-board reduction is one of the questions that I want to explore further.

The Executive takes this issue seriously. After all, the success of Lifescan Scotland, the centre of excellence and other medical developments in Inverness is very important, which is why £15.7 million is being invested in the new centre for health sciences. We want to bring more jobs and further success to Inverness. If that aim is threatened in any way, we will take appropriate action.

### **Road Safety (A82)**

**7. Jackie Baillie (Dumbarton) (Lab):** To ask the Scottish Executive how it will improve road safety on the A82. (S2O-9928)

**The Minister for Transport and Telecommunications (Tavish Scott):** On 19 April, I announced a number of initiatives on the A82 following the completion of the A82 route action plan review. The plan proposes £90 million of improvement works from Tarbet to Fort William over the next 10 years, and Transport Scotland is taking forward the most pressing works.

**Jackie Baillie:** I thank the minister for that response and for the welcome work on the route accident reduction plan. There is a specific problem, though, for constituents of mine accessing the A82 from Barnhill, due to the volume and speed of traffic on the road. I would be grateful if the minister would agree to a meeting between me and Transport Scotland at the location to consider possible solutions. Will he also ensure that the A82, Scotland's main tourist route, remains a top priority for improvement in the national transport strategy and in the investment framework for trunk roads?

**Tavish Scott:** I would be happy to ensure that Transport Scotland undertakes to meet Jackie Baillie to discuss that roundabout and to ensure that remedial work is considered closely to solve the problems that she has identified. I assure her that the A82 overall is an important part of the strategic projects review, which will flow from the national transport strategy. There is now an opportunity, through that consultation, to make the appropriate arguments for longer-term measures that would be beneficial to the route that she describes.

## Justice and Law Officers

### Tayside Police (Retirals)

**1. Mr Andrew Welsh (Angus) (SNP):** To ask the Scottish Executive how many police officers are expected to retire from Tayside police in each of the next five years. (S2O-9974)

**The Minister for Justice (Cathy Jamieson):** One hundred and eighty police officers are expected to retire from Tayside police over the next five years—an average of 36 in each year. Tayside has been allocated £375,000 over the next two years specifically for the recruitment of officers to replace those who are retiring.

**Mr Welsh:** What specific assurances can the Executive give the people of Angus and Scotland that a fully worked out and costed plan is in place to ensure that the expected retirement of police officers is fully met through recruitment, training and retention of replacement police officers? Can she put numbers and a timetable to the plan for remedying the inevitable experience and expertise gaps, to reassure the law-abiding majority of the public that there will be visible and local police officers where they want them?

**Cathy Jamieson:** It is for chief constables to take appropriate action in the various areas. Of course, we have seen an overall increase in the number of police officers and support staff, not just in Tayside but throughout Scotland. As I indicated in my original answer, and as I have said in the chamber and in answer to questions before, we have put in place a plan and allocated the money and it is now down to the forces responsible to ensure that people are brought into those posts.

### Rape (Conviction Rate)

**2. Mr Andrew Arbuckle (Mid Scotland and Fife) (LD):** To ask the Scottish Executive what steps it plans to take to address the low conviction rate for rape. (S2O-9987)

**The Solicitor General for Scotland (Mrs Elish Angiolini):** The legal framework must provide robust protection and reflect the values of modern society. The Executive has asked the Scottish Law Commission to undertake the most comprehensive review ever of rape and other sexual offences. The commission has now consulted on its discussion paper and will report with legislative recommendations in 2007. In October 2004, I asked the Crown Office and Procurator Fiscal Service to carry out a thorough review of the investigation and prosecution of rape and sexual offences. The report of that wide-ranging review will be published imminently. It will define clearly best practice in the prosecution of rape and sexual offences.

**Mr Arbuckle:** Scotland has one of the worst rape conviction rates in Europe, so we need to take action now. Is Mrs Angiolini prepared to consider setting up specialist courts to deal with rape as of now?

**The Solicitor General for Scotland:** Mr Arbuckle will obviously look forward to reading the report of the review, which is about to be published and which gives detailed and careful consideration to the anecdotal information suggesting that we have the lowest conviction rate for rape. He will find, I think, that that statement is subject to variables that mean that it may be inaccurate. As I have told Parliament before, rape is narrowly defined in the Scottish jurisdiction and covers a narrow area of sexual criminality, whereas in other jurisdictions it embraces a huge range of sexual offending, which we are successful at prosecuting in the Scottish courts. It is vital that we take action now. That is precisely what the review aimed to do and I hope that Mr Arbuckle will be pleased with the results and will see that the action that we propose to take is profound.

### Mesothelioma (Legislation)

**3. Pauline McNeill (Glasgow Kelvin) (Lab):** To ask the Scottish Executive whether legislation will be forthcoming in this parliamentary session in response to the concerns raised by mesothelioma victims and Clydeside Action on Asbestos. (S2O-9952)

**The Deputy Minister for Justice (Hugh Henry):** Ministers have profound sympathy for people suffering from asbestos-related illness and for their families. I have met asbestos groups, trade union representatives and Des McNulty to discuss their concerns. They have made a compelling case for change to section 1(2) of the Damages (Scotland) Act 1976. The Executive accepts that legislation is needed to deal with the problem. Although I cannot at this stage give a firm commitment on timing, I assure members that every effort is being made to find a prompt and effective solution.

**Pauline McNeill:** I thank the minister for his positive answer on this very important issue. He will be aware of the recent decision of the House of Lords, which would seem to change the position of asbestos victims under Scots law. It would seem that they may have to pursue all their past employers, whereas up until now they have had to pursue only one jointly and severally. Given that we could pursue several options, will the minister indicate whether that particular issue will be addressed in this session of Parliament?

My second point relates to what the minister has told Parliament about his discussions with Des McNulty, who has a proposal for a member's bill

aimed at amending the Damages (Scotland) Act 1976. Might it be possible to assess the legislative programme and our priorities so that we can give the matter a higher priority?

**Hugh Henry:** I will answer the last point first. I have discussed with the Minister for Parliamentary Business and ministerial colleagues how we can best take the matter forward. That will entail making some difficult decisions about a very full legislative programme, but no one could fail to be moved by the plight of those families. The groups that represent them have made the case very well. There is an understanding within the Executive of the problem and a commitment to try to do something about it. We will continue to reflect on what we can do. Obviously, Des McNulty will pursue his bill with the parliamentary authorities and we will see what comes from those discussions.

Pauline McNeill raised the issue of joint and several liability. We are still reflecting on the implications of the judgment. As Pauline McNeill said, it poses significant questions about the understanding of and the prevailing view on joint and several liability in Scotland. If, once we have had time to consider fully the implications of the judgment, we decide that a change in the law is required to solve the problem, we will consider whether such a change could easily be accommodated in a damages bill—if we managed to find space for such a bill—or whether Des McNulty's bill is sufficiently wide to address the problem.

### Knife Crime

**4. Bristow Muldoon (Livingston) (Lab):** To ask the Scottish Executive what action is being taken to reduce the incidence of young people carrying machetes and other weapons. (S2O-9955)

**The Minister for Justice (Cathy Jamieson):** It is clear that far too many people—particularly young men—view the carrying of knives as acceptable: it is not.

That is why the Police, Public Order and Criminal Justice (Scotland) Bill doubles the maximum sentence for carrying a knife in public from two to four years and increases the minimum purchase age for non-domestic knives from 16 to 18. That is also why the Lord Advocate has announced tough new guidelines on the prosecution of knife crime. The knife amnesty, which began yesterday, will be followed by a police crackdown on knives. That will put to good use 1,000 new hand-held metal detectors, the funding for which I announced last week.

**Bristow Muldoon:** I welcome the various initiatives that are under way, including those that

the minister has announced and those contained in the bill that Parliament is considering today.

I welcome the sections of the Police, Public Order and Criminal Justice (Scotland) Bill that deal with offensive weapons. Does the minister expect penalties at the higher range of the tariff to be imposed if people are found guilty of possessing very serious weapons such as machetes, swords and other instruments that could have no purpose other than to maim or to kill?

**Cathy Jamieson:** It is, of course, for the courts to consider what is an appropriate sentence in particular circumstances, but the Executive has made a commitment that we want to see a reduction in the number of the types of weapons that Mr Muldoon mentions that make their way on to our streets. We are considering the results of a consultation exercise on how best to tackle the problem of the sale of such weapons.

### Dundee Families Project

**5. Cathy Peattie (Falkirk East) (Lab):** To ask the Scottish Executive what contribution the Dundee families project has made to reducing incidents of antisocial behaviour. (S2O-9959)

**The Deputy Minister for Justice (Hugh Henry):** The evaluation of the Dundee families project reported improvements in the behaviour and life skills of three out of five of the particularly troubled and troublesome families that the project actively worked with. The evaluation also identified considerable cost savings because of reduced evictions and homelessness.

**Cathy Peattie:** I understand that there is to be a similar project in Falkirk. I welcome that, but will the minister ensure that health, housing and social work services and the voluntary sector work together to make the project a success? What monitoring will be done to ensure that it meets its targets and its aim of reducing the number of young people who participate in antisocial behaviour?

**Hugh Henry:** I look forward to the project in Falkirk making the same significant and positive contribution to the quality of life in the Falkirk area as the Dundee project made for people in Dundee. Cathy Peattie is right to suggest that integrated working by professional staff with different skills is necessary if the project is to give the relevant support. We need to break down barriers and ensure that everyone pitches in as part of a team effort to support the families.

However, Cathy Peattie is right to pose questions. We need to ensure that the project is effective and that the families demonstrate an improvement, so there needs to be proper monitoring and supervision. Equally, we need to put on record the responsibility of the families

involved to address the behaviour that they are manifesting. They need to show that they are willing to change their ways, because the behaviour that they have demonstrated has a severely adverse effect on the people who live around them. Although professionals, working together, can make a huge difference, the commitment of the families in the projects is absolutely necessary.

### Domestic Abuse

**6. Elaine Smith (Coatbridge and Chryston) (Lab):** To ask the Scottish Executive whether it will ensure that domestic abuse is fully taken into account when action is being taken against violent crime. (S2O-9960)

**The Minister for Justice (Cathy Jamieson):** All violence is unacceptable, including domestic violence. Domestic abuse is fully taken into account in the work that is undertaken jointly by the violence reduction unit, the Executive and its partners to reduce violence more generally.

**Elaine Smith:** Given that research suggests that domestic abuse accounts for 16 per cent of all violent crime and that 45 per cent of female homicide victims are killed by present or former male partners, does the minister agree that, when granting bail or sentencing in cases involving violence, the courts must do more to identify whether domestic abuse is an issue and take steps to safeguard the well-being and safety of the women, children and young people who are affected?

**Cathy Jamieson:** Elaine Smith raises a serious issue. We are well aware of the problems of domestic abuse, particularly where there has been a pattern of offending. That is why a joint protocol has been developed between the Association of Chief Police Officers in Scotland and the Crown Office and Procurator Fiscal Service, under which prosecutors seek to have a remand in custody pending trial where appropriate. Where they cannot justify a remand, they seek special conditions of bail, which might include a condition that the accused person does not reside in the marital home. Prosecutors also seek early diets and ensure that the appropriate support is in place for victims.

I hope that we can continue to build on that work and the wider work that is being done, for example in the domestic abuse courts.

### Football Fans (Behaviour)

**7. Donald Gorrie (Central Scotland) (LD):** To ask the Scottish Executive what steps it has taken to help police and major football clubs to co-operate to achieve the same improved level of

behaviour by fans at away matches as is usually achieved at home games. (S2O-9980)

**The Minister for Justice (Cathy Jamieson):** I want to ensure that football fans can enjoy both home and away matches without rivalry spilling over into bigoted abuse or violence. By working in partnership with the police, we have developed football banning orders, which can be imposed for sectarian offences as well as for other forms of violent and abusive behaviour.

**Donald Gorrie:** The top people in the police and the major football clubs agree that away matches are now the greater problem. Getting improvement there demands co-operation between the away team's management, the home team's management, the police in the home area and the police in the area from which the visiting club comes. Will the minister use her good offices to ensure that they all co-operate and operate a standard and effective policy to reduce this scourge?

**Cathy Jamieson:** As I said, it is important that people are able to enjoy football matches. Rivalry can be friendly, as I experienced most recently last weekend, when Auchinleck Talbot played Bathgate Thistle in my area—I should declare an interest. Everyone enjoyed the match and co-operated with the police.

Wherever a match takes place and whoever is playing, we should ensure that the police work with football supporters and clubs so that people are able to enjoy games without the associated problems of violence during and after matches that there have been in the past.

### Knife Crime

**8. Richard Baker (North East Scotland) (Lab):** To ask the Scottish Executive what action it is taking to reduce the misuse of knives. (S2O-9930)

**The Minister for Justice (Cathy Jamieson):** As I indicated in an earlier answer, I am extremely concerned about the level of knife crime, which is why we have introduced new legislation—in the Police, Public Order and Criminal Justice (Scotland) Bill—the knife amnesty that began yesterday and the measures that the Lord Advocate outlined on Monday.

**Richard Baker:** Given that between June 2000 and June 2005 more than 400 eight to 15-year-olds in Grampian were charged with possession of an offensive weapon, will the minister reassure me that Grampian police will receive an adequate number of metal detectors to screen for knives? Although today's measures are very welcome, will she assure me that education measures and a licensing scheme are being given careful consideration, so that we may address the

dangerous culture of carrying knives and other offensive weapons?

**Cathy Jamieson:** I give Richard Baker the assurance that a licensing scheme is being considered. We are examining such proposals actively at the moment. I want metal detectors to be used in the areas that have had the worst incidence of knife crime. The violence reduction unit and the police assure me that this weekend, which is the first weekend of the knife amnesty, they will be out and about trying to get across the message that people now have an opportunity to bin the blades and that there will be a period of crackdown when the amnesty has concluded.

#### **Substance Abusers (Contraception)**

**9. Eleanor Scott (Highlands and Islands) (Green):** To ask the Scottish Executive what steps its Justice Department is taking to meet its commitment in “Hidden Harm—Next Steps: Supporting Children—Working with Parents” to enable substance abusers, including those in custody, to access contraception and family planning services. (S2O-9996)

**The Minister for Justice (Cathy Jamieson):** The Justice Department is working closely with colleagues in the Health Department to take such work forward. National health service boards are being asked to provide details on the implementation of the national sexual health strategy, including on how substance misusers are able to access contraception and family planning advice. The information will form part of the first annual report on the implementation of strategy.

**Eleanor Scott:** Does the minister agree that Duncan McNeil’s recent proposal to lace methadone with contraceptives would make drug users who access services through the justice system less likely to trust those services or to continue to access them?

**Cathy Jamieson:** I believe that Duncan McNeil cares strongly about this issue. There is no doubt that he, like many of us, has seen at first hand the real problems that arise from drug misuse. It was important that, during the debate in the chamber on “Hidden Harm—Next Steps: Supporting Children—Working with Parents”, we heard a range of views and opinions from Duncan McNeil, Susan Deacon and others who wanted to consider seriously how we can ensure that people get access to appropriate services. I am committed to ensuring that when people come into contact with the justice system, we use every opportunity we can find to get them into the appropriate treatment and rehabilitation and to provide the services that they need. We should also make it clear that we expect people to take their responsibilities seriously and to participate in programmes where they are offered.

**The Presiding Officer (Mr George Reid):**  
Question 10 is not lodged.

## Police, Public Order and Criminal Justice (Scotland) Bill: Stage 3

*Resumed debate.*

14:55

**The Deputy Presiding Officer (Murray Tosh):** Before resuming proceedings on group 12, I inform the chamber that, given the number of members who wish to speak to the amendments, I propose under rule 9.4.8A(c) of the standing orders to extend the time limit for this section of the debate on group 12 by 20 minutes, which means that the debate must end no later than three hours and 15 minutes after stage 3 proceedings commenced. Thereafter, I will be minded at an appropriate point, of which I shall advise members, to accept a motion from any member under rule 9.8.5A of the standing orders to extend the final deadline set out in the timetabling motion by 10 minutes. If that motion is agreed to, a minimum of 20 minutes will be available to debate groups 13 to 19 and the debate on the motion to pass the bill is likely to be reduced from one hour to 50 minutes.

I will advise on any restrictions to speaking times when members' requests to speak appear on my screen.

**Bill Aitken:** Paul Martin and, to some extent, Bill Butler, inadvertently presented us with a bit of a dilemma. We have debated a number of important principles. The first was child and personal protection; the second was the presumption of innocence; and the third was the basic argument about civil liberties and how they affect the investigation of crime.

It is decidedly unfortunate, to say the least, that the matter has been dealt with in this manner. Had the amendments been considered by the appropriate committee, there would have been much more time for measured and considered debate. Evidence could have been introduced that might have persuaded people one way or the other. At the 11<sup>th</sup> hour and 55<sup>th</sup> minute, however, we are presented with a bit of a dog's breakfast.

**Hugh Henry:** To be fair to Paul Martin, he brought his substantive amendment to the committee at stage 2 when there was a full discussion. I took from what he said this morning that the amendments that we are debating today come from further deliberation on and consideration of what was said at stage 2. Bill Aitken seems to suggest that we add another stage to the parliamentary procedure.

I will clarify a point raised by Bill Aitken and others this morning about application to the sheriff.

Subsection (5) of the proposed new section that amendment 207 would insert in the Criminal Procedure (Scotland) Act 1995 states that the process is one of "summary application", which is an existing form of civil court procedure set out in the summary application rules that apply to a number of civil court procedures. The rules set out in detail the process of application and include provisions for notification and participation of all parties. The person whose DNA is under consideration would therefore have the opportunity to make their case.

**The Deputy Presiding Officer:** I will give you another three minutes, Mr Aitken.

**Bill Aitken:** Thank you, Presiding Officer.

The minister made a helpful intervention and I take the point that Paul Martin is having another go at something that failed at stage 2. It would still have been greatly preferable had the matter been subject to more measured consideration.

I will go through the amendments, starting with Bill Butler's amendment 200, which proposes that persons who are subject to risk of sexual harm orders should also be subject to the provisions that he proposes today.

To reiterate something that I said when we debated the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, persons who are subject to an RSHO have not been convicted by a criminal court, so they should be entitled, like everyone else, to a presumption of innocence, albeit to a limited extent. In fact, amendment 200 would effectively reduce the level of protection that such persons are due through the presumption of innocence, which is not acceptable.

15:00

**Bill Butler:** Will the member take an intervention?

**Bill Aitken:** I am short of time, so I ask Mr Butler to make it quick.

**Bill Butler:** I thank Bill Aitken for taking the intervention. I do not follow what his concern is with regard to amendment 200. The amendment's provisions would allow DNA samples, fingerprints and any information deriving from them to be destroyed once the individual concerned was no longer subject to an RSHO. The principle was conceded in the 2005 act.

**Bill Aitken:** I am still not particularly happy, but I will move on to Paul Martin's amendments on the implications for children.

As has been rehearsed in the chamber often, the way in which we deal with youth criminality is somewhat different from how we deal with adult



criminality. Those who are convicted—in inverted commas—by the children's panel are not subject to a criminal conviction. In that sense, I doubt whether Paul Martin's proposals are compliant with ECHR recommendations and strictures. If a youngster is charged with a serious sexual offence such as rape, the offence would have to be indicted in the High Court; if the offence was of lewd and libidinous behaviour, it would have to go to a sheriff and jury court, which is appropriate—we have no problem with that. The procurator fiscal and the reporter must decide where such cases go. However, no such cases should go to a children's hearing until after conviction, when the presiding judge would require to take advice from the children's panel as to the eventual disposal of the case. Frankly, what Paul Martin proposes would be a serious departure from the normal judicial process; the circumstances would arise only when there was such a mis-marking of the papers that the case did not go before a solemn court.

**The Deputy Presiding Officer:** Can you be brief, Mr Aitken?

**Bill Aitken:** Paul Martin's amendment 206 also refers to people who have been acquitted by a court. If a person has been acquitted, they are innocent under the law. What he proposes is that, although they are innocent, the same strictures should apply to them as would apply in the event of conviction. That is certainly not acceptable.

**Stewart Stevenson:** This is a complex set of amendments and we have all tried our best to understand the full implications of them. It is passing strange that amendment 207 is the only one that we are contemplating supporting that proposes no process by which an application would be made to retain DNA. Amendments 204 and 205 relate to youngsters who accept that they committed a crime—amendment 205 relates to circumstances in which the sheriff provides a determination of the facts that leads to the view that the child supported a crime.

Every amendment in this group makes provision for a way of going forward, but amendment 207 makes no provision for a sheriff to intervene, except in narrow circumstances. After three years, if—and only if—the chief constable seeks an extension to the three-year limit, there would be a process of involving the sheriff to decide whether the retention period could be extended for two more years.

Of course, amendment 207 covers sexual and violent offences, but it does not need to cover sexual offences at all. If someone appears before a court and ends up without a conviction, that is precisely the circumstance in which it would be appropriate and desirable, on public policy and fairness grounds, for an application to be made to

the court for an RSHO. The defendant would be represented at the hearing and there would be an opportunity for their DNA to be retained.

No similar order applies in relation to violent offences, and to that limited extent discussion of amendment 207 is justified. However, the trouble is that amendment 207 provides the wrong answer to the problem. If we think that, for public safety reasons, the DNA of non-convicted violent offenders should be kept on record, we should introduce an order that is analogous to the RSHO and provide for a hearing at which it could be argued that, notwithstanding the fact that the person had been found not guilty—

**Mike Rumbles:** I am curious about the member's reference to "non-convicted violent offenders". Will he explain what he means?

**Stewart Stevenson:** I withdraw the remark, which was a slip of the tongue. I thank the member for drawing the matter to my attention. I should have said, "non-convicted accused". I am glad that people are paying attention.

The key point is that amendment 207 would provide for the retention of people's DNA without there being any court involvement.

There are 24 Paul Martins in Glasgow. What if the wrong one was lifted? When he appeared in court, the first witness would say that the accused was the wrong Paul Martin, but under amendment 207 the wrong Paul Martin's DNA would be retained. The good news is that there appears to be only one Jeremy Purvis in Galashiels, so at least he will not be subject to the same risk.

**Colin Fox:** It seems that Paul Martin's central argument—[*Interruption.*] I will continue when members are ready.

**The Deputy Presiding Officer:** Order.

**Colin Fox:** Paul Martin suggests that the retention of DNA samples from millions of people will help to solve crimes and enable the police to eliminate people from inquiries and home in on suspects far more quickly and effectively. I am sure that all members understand his motivation for lodging the amendments in the group.

However, Paul Martin was present when the Justice 2 Committee heard evidence that the outcome that he seeks is unlikely to be achieved by the approach that he proposes. When the committee took evidence on the impact of adding to the national database substantial numbers of innocent people—who might not have been charged with a crime, let alone convicted of one—we were told that there is no basis for the expectation that crimes would suddenly be solved as a consequence.

Paul Martin bases much of his case on the Home Office report, "DNA Expansion Programme

2000-2005: Reporting achievement". However, the report indicates that in 2004-05 the number of crimes that were detected using the DNA database fell, despite the fact that 124,347 people who had been arrested but not charged or convicted had been added to the database in the previous year.

The success of the database in crime detection is determined largely by the number of DNA profiles that are collected at crime scenes and not by the number of profiles that are taken from individuals at police stations. That is a fact. It is also a fact that the likelihood of matching a DNA profile from a crime scene to a profile taken from an individual has not significantly increased during the past three years, despite an increase in profiles on the database from 2 million to 3 million during that period. It is also a fact that only 0.35 per cent of crimes were detected using DNA profiles in 2004-05—the same percentage as in the previous three years. The facts do not back up Paul Martin's case because, as he knows, the vast majority of crimes are committed by repeat offenders, whose DNA is already in the system. DNA cannot be easily detected at most crime scenes.

In his remarks, Paul Martin appeared to suggest that he will not move his amendments, with the exception of amendment 207. However, amendment 207 is based on the same arguments as his other amendments in the group and represents the thin end of the wedge. The approach in amendment 207 suggests that it is okay for people who are charged with but not convicted of sexual offences to be added to a permanent database, but it is not okay for other people to be added to the database. That is a dangerous road to go down.

Paul Martin's proposals to add innocent people to a national database would have serious and dangerous consequences. In effect, samples could be added to the database on the whim of a police constable. At present, one in three black men is on the existing database. Paul Martin refuses to accept that profiles should be held for only a specific period, as happens at present. During stage 2, the minister told the Justice 2 Committee that the Executive's position was that voluntary DNA sampling would continue, that people could withdraw their consent at any time and that the samples would be destroyed if a person was not convicted. I want to know whether the minister stands by that view.

In evidence to the Justice 2 Committee, it was suggested that, rather than the Scottish Parliament following the example of England and Wales, England and Wales should follow Scotland's example and have a voluntary system under which people can withdraw consent at any

stage and samples are destroyed if a person is not convicted. Dr Helen Wallace of GeneWatch UK has said:

"The lesson from England and Wales is that blanket permanent retention of DNA from innocent people does little to solve crime and instead reduces public trust in police use of DNA."

I will oppose any amendment that Paul Martin moves during the debate.

**Pauline McNeill:** We should be cautious about changing the law to allow the retention of DNA samples as a matter of principle. The argument about whether we should make the change rests on whether the evidence suggests that, by doing so, we will be able to tackle serious crime better. Colin Fox said that there is no evidence for that, but I have seen recent statistics from England and Wales that show that changes similar to those that are proposed here have affected the crime clear-up rate to a great extent. Those who promote the changes must persuade members that they will make a difference. That is how I will decide how to vote on the issue. From what I have seen so far, I am predisposed to supporting the move to a degree.

In Glasgow recently, a young officer asked for a voluntary swab in a minor case of breach of the peace, which led to the discovery that the offender was also the suspect in a murder case. Evidence exists of a connection between minor offences and more serious ones. However, I seek assurances on the issue. First, if we expand the DNA database to include suspects or those who are involved in criminal proceedings, no inference whatever should ever be drawn from the existence of someone's DNA on the database. I need a cast-iron assurance on that. Secondly, we must also ensure that there are appropriate safeguards on the storage of DNA. It is important that we get an assurance from ministers on that if we are to proceed with the changes.

I support Bill Butler's amendment 208. The Parliament debated risk of sexual harm orders when we considered the Protection of Children and Prevention of Sexual Offences (Scotland) Bill—Bill Aitken mentioned that earlier. The risk of sexual harm order is a far-reaching provision. It has always been my view that, in agreeing to it, we were at the outer edge of the Human Rights Act 1998, although I believe that the measure is proportionate. I draw the Parliament's attention to the issue because, if we are to go that bit further, as amendment 208 proposes, we need to know that we are already on the edge. I whole-heartedly supported risk of sexual harm orders, but there may be cases in which a person who is subject to such an order has not been convicted in a court of law. Under Bill Butler's amendment 208, a person who is subject to a risk of sexual harm order and

who has not been tried in a court of law could have their DNA sample retained. I have thought about that and, as I said, I believe that, although the measure is proportionate, we are at the outer edges of the Human Rights Act 1998.

We should be cautious about making changes—the case has to be made for any change. It is also important to take stock of where we are and how we do things. Amendment 208 may be within the confines that are imposed by the Human Rights Act 1998, but we should know that, if we agree to it, we will probably reach our outer limits in that respect.

15:15

**Jeremy Purvis:** I simply point out to Bill Aitken that a neutral Scottish Executive consultation paper asked all these questions last year. With regard to Colin Fox's point, it is interesting to note that GeneWatch UK does not oppose amendment 207, although it opposes other amendments in Paul Martin's name, on the basis that

"The amendment recognises that there may be some carefully justified exceptions where the police could benefit from keeping some DNA profiles longer on the Database."

We can make one of two choices today: we can go down the route of the UK Government in England and Wales, in which the DNA and fingerprints of anyone arrested or detained on suspicion of having committed an offence can be kept by the police for ever, regardless of whether they were prosecuted or convicted; or we can take a proportionate, limited and targeted approach that does not reduce civil liberties.

There are a small number of reasons why the arguments used to support amendment 206 are flawed. First, Paul Martin wants to bring us into line with England and Wales. In its evidence to the Justice 2 Committee, the Human Genetics Commission asked that England and Wales should be brought into line with Scotland. The DNA database has expanded hugely in recent years, from 2 million in 2002-03 to 3 million in 2004-05, but GeneWatch UK told us that only 0.35 per cent of crimes were detected by DNA evidence. Detections have not increased by a third in the way in which database entries have.

**Paul Martin:** Will the member give way?

**Jeremy Purvis:** I would like to give way, but time is limited. I appreciate the sincerity with which Paul Martin has debated this issue, both in committee and in the chamber.

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aims about crimes being solved have to be viewed carefully. Many members have suggested that crimes have been solved, when in fact there has merely been a match on the database, not a

prosecution. Furthermore, the Home Office has estimated that only 49 per cent of DNA matches lead to a detection and that only half of detections lead to a conviction. However, we do not and cannot know how many convictions have come about purely as a result of DNA evidence.

The Home Office has not been proportionate, because the database can be used for research purposes. As Colin Fox said, almost a third of all black men in England and Wales have been entered on the database. However, we can move forward proportionately, through the limited power for the police to retain the profiles and samples only of those prosecuted for a violent or sexual offence, and then only for three years, after which those profiles and samples must be deleted or there must be an application to a sheriff for an extension. Why three years? In relation to reoffending, we know that the proclivity is to do so within three years. The intelligence officer in the police division would retain the case files of an acquitted person and information about the offence, not so that they can be prosecuted again, but because the information is useful for police purposes. That is existing practice. On acquittal of offenders such as those outlined in amendment 207, the police will treat the case as an open case and therefore will retain the information.

Parliament should reject amendments 204 to 206 but accept amendment 207. The main reason why the SNP seems to be opposed to amendment 207 is that there is no automatic application to a sheriff. I ask the SNP to consider that, in some cases of the type that the amendment refers to, the police already automatically retain the information as intelligence under the authority of an intelligence officer in a division. Under amendment 207, an appeal to the sheriff principal will be possible.

On ECHR issues, the House of Lords judged that the English and Welsh system was proportionate. However, that judgment is being appealed because of the potential misuse—or use—of the database for research purposes.

Amendment 207 is targeted, proportionate and does not reduce civil liberties. Ultimately, it allows the correct use of DNA, which can be a valuable tool in protecting our communities.

**Mr Davidson:** A basic tenet of Scots law is that someone is presumed innocent unless proven guilty. I am afraid that keeping the DNA of a person who is found not guilty is a total contradiction of those fundamental beliefs.

Why should some innocent people have their civil liberties and human rights eroded when the majority have theirs protected? This move would be compromise par excellence—it does nothing other than make a mess of understanding

innocence and guilt. There is a clear division: if we offer protection, we have to extend it to all innocent people or to no one at all.

Some of the amendments that we are discussing have been past the Justice 2 Committee in one form or another, and they did not receive support for a variety of reasons. One or two members might have sat on the fence because they felt that they did not have enough detail, and I do not argue with the position that they took.

Bill Butler's amendments would allow DNA to be taken from individuals who are subject to a risk of sexual harm order. Persons subject to such an order are not convicted criminals because it is a civil order. If the facility outlined in the amendments was made available, it might discourage the prosecution of offenders. Additionally, if someone presents a danger to the public, surely the Crown has a duty to prosecute them and lock them away if they are found guilty, rather than put them under a civil order. It almost sounds as if we want a second bite, should we be unable to get the evidence to put away someone who we believe is guilty. That raises questions about the way in which prosecution is handled.

Paul Martin's amendments 204 and 205 worry me because they seem to assume that children's hearings are a court of law. If a youngster is involved in a particular activity, it might not be their fault; they might be the innocent victim of something that has happened to them at home, for example. That is a flaw in the amendments. If someone who is under the age of 16 commits a serious sexual offence, they can be prosecuted in the adult courts. If that happened and they were found guilty, it would be fair enough to store their DNA.

On amendment 207, there is another question about the burden of proof. Why should the police keep on record for three years the DNA of someone who has been proved not guilty of an offence? That is what the court system is about and we have to have confidence that the court system produces the correct results. There is a risk that people who want to volunteer their DNA will be frightened to come forward in case there is an accident with their DNA. For example, someone might happen to go through a particular building at the wrong time and leave fingerprints at a crime scene. It would be like the paperboy delivering papers with gloves on in case they touch someone's door handle—

**The Deputy Presiding Officer:** One minute.

**Mr Davidson:** We have to eliminate uncertainty and get confidence in the system. We have to have safeguards that protect liberty and individuals' rights.

Paul Martin has said on television and in the committee that everyone should be on the database. Therefore, I do not understand why he is going for the compromise that is evident in his amendments. Either he believes in what he says or he does not.

**Paul Martin:** Will the member give way on that point?

**Mr Davidson:** I do not think that I can. Presiding Officer, I will happily let Mr Martin in if he responds to that point.

**The Deputy Presiding Officer:** I cannot give you any more time, Mr Davidson.

**Mr Davidson:** In that case, I think that I have said enough.

We are very concerned and are still waiting for clarity, particularly from the minister. It has been helpful for the minister to come back to the issue at stage 3, but I am not swayed by the arguments on the amendments.

**Mr Maxwell:** When we approach this group of amendments, we have to consider them all individually because there is a wide range of options before us. There are also a number of basic questions that have to be answered before we decide whether to support the amendments or not.

I turn to Bill Butler's amendments on retaining the DNA of people who are subject to risk of sexual harm orders. We have to ask some questions. Has there been a threat? If there was no threat, no risk of sexual harm order would have been put in place. Has the process been gone through? Yes. Are there checks and balances in the system? Yes. Are civil liberties protected? Yes—they are protected by the process. What is the purpose of the amendments? They seek to close a loophole. Once those questions have been asked and answered, it is clear that we should support the amendments. I congratulate Bill Butler on seeking to close that loophole through lodging his amendments. We will support them.

I move on to Paul Martin's amendments and start with amendments 204 and 205. The same questions have to be asked about them. If a child or person under the age of 18 is found guilty of an offence that would, had the offender been 18 or over, have resulted in retention of the offender's DNA, should that DNA be destroyed or not retained just because the offender is under 18? The answer is that it should not. Has a threat been identified? Yes. Has a process been gone through? Yes. Amendments 204 and 205 would provide a three-step process, which would involve the children's panel, the principal reporter, the chief constable of the area in which the offence is supposed to have taken place and a sheriff. It

seems to me that the amendments would provide a legitimate process to establish that there is a threat.

In the case of amendment 205, the child offender has put up his hands, admitted his guilt and accepted the grounds of referral. Frankly, if the offender accepts the grounds of referral and it is clear that due process has been gone through, it is equally right that we should close the loophole so that the DNA of under-18s who have been involved in such activity will be retained because they are a threat. It is entirely reasonable to do that.

Amendment 206, however, is a completely different type of amendment. We should ask the same questions about it as we asked about the previous amendments. Has a threat been identified? No. The amendment would result in retention of DNA samples of everyone regardless of their guilt or otherwise. Does the amendment provide a process? No—retention would apply to everyone. Does it provide checks and balances? No, it does not. Would civil liberties be protected? No they would not; the DNA of everyone who was arrested for an imprisonable offence would be retained, which is not acceptable.

The purpose of amendment 206 is not to close a loophole but to move us down the road of having a DNA database of everybody irrespective of their guilt or otherwise. That is an unacceptable move. Throughout history, every totalitarian state and police state has said, "If you have nothing to hide, you have nothing to fear."

**Paul Martin:** Will the member give way?

**Mr Maxwell:** Sorry—I have less than a minute.

I do not believe that that is acceptable in a free and democratic country such as Scotland.

Much the same arguments apply to amendment 207. Does the person pose a threat? No. The person has been found not guilty and has been cleared of the offence, or the case has collapsed. If the case has collapsed and there is reason to believe that the person was involved in such a crime, people could apply for a risk of sexual harm order. If such risk is established, the person's DNA can be retained; otherwise, the person should go free and there is no reason to retain their DNA. Does amendment 207 provide checks and balances? No. There would be no right of appeal, and the process would be automatic. As soon as the process had started, the person's DNA would be retained irrespective of the outcome of the case, even if—as Stewart Stevenson pointed out—the wrong Paul Martin was standing in the dock.

The purpose of amendment 207 is to take us down the road towards retaining every DNA

sample. Paul Martin said so this morning and he said so in press interviews this week. That is its purpose, but there is no logic to it. The amendment is unacceptable. Also, if we agree that people's DNA should be retained if they are a risk, it makes no sense to retain it for only three years. Why would we retain the DNA for only three years if the person has been identified as a risk to society? That makes no sense.

If the Liberal Democrats support amendments 206 and 207—it is clear that they will—they should change their name before someone sues them under the Trade Descriptions Act 1968. They are certainly not a liberal party if they support such illiberal views today.

**Jeremy Purvis:** And keeping the DNA of kids for life is?

**The Deputy Presiding Officer:** Order.

**Marilyn Livingstone (Kirkcaldy) (Lab):** I am pleased to be able to contribute to today's debate. I support the amendments in the name of the minister and Bill Butler. However, I will confine my limited time to speaking to amendment 207 in the name of Paul Martin, which seems to have caused a bit of controversy today.

As many members know, I convene the cross-party group for survivors of childhood sexual abuse. I say to David Davidson that, having discussed the retention of DNA, the group does not believe that the principle of being innocent until proven guilty would be jeopardised. The retention of DNA samples and profiles relates more to the gathering of intelligence and the task of solving crimes.

**Paul Martin:** I clarify that 198,000 DNA profiles would previously have been removed. From among those profiles, there have been 88 murders of innocent members of the public, 45 attempted murders of innocent members of the public and 116 rapes of innocent members of the public.

15:30

**Marilyn Livingstone:** As I said, we believe that the retention of DNA is about deterring and solving crime. My cross-party group is in favour of the protection of innocent people, but we really need to look at the balance on this issue.

In the interests of ensuring some consistency and of preventing offenders from escaping notice, there must be similar powers on both sides of the border. There is considerable disquiet about the low level of convictions for sexual offences, especially in cases of historic childhood sexual abuse. The proposed measures could improve clarity in such cases.

As the minister and Paul Martin have said, the House of Lords has concluded that the proposed measures would not contravene the European convention on human rights. They would be of advantage to the police and to those who are already on the sex offenders register, in that time would not be wasted on calling in all known past offenders for questioning when a sexual crime was committed. The measures could avoid time wasting and unnecessary harassment for all concerned.

There is evidence to support the case for early intervention, as the cross-party group in which I am involved has heard on many occasions, particularly in relation to sexual offences. That evidence shows that serious sexual offending can be prevented with support and counselling, which could stop behaviour escalating to the most serious sexual offences. We must take all the steps that we can to prevent such behaviour. I ask Parliament to consider very seriously its decision on amendment 207, which is in the name of Paul Martin and which I believe—with the safeguards that Paul has outlined and that the minister has clarified for us—is sensible, balanced and proportionate, and which I think will help to protect the innocent.

**Mike Rumbles:** I will focus on amendments 206 and 207. For the benefit of Stewart Maxwell, I point out that the Liberal Democrats are against keeping DNA samples indefinitely against the will of people who have been found innocent or whose case has not come to trial. A person is either innocent or not. We cannot have a new category of law for people whom we do not like the look of and decide that, even if their peers on a jury acquit them of any crime, we can keep their DNA for all time. That is simply unacceptable in a modern liberal society.

Labour MSPs such as Paul Martin and Marilyn Livingstone clearly have no scruples about including law-abiding people on the police database. If the Labour Party wants to have a major database of our citizens' DNA, let its members say so, instead of trying to create one by the back door. Thank goodness the Labour Party's writ in Scotland does not run unfettered, and that the draconian and authoritarian measures that have been implemented in England—which amendment 206 would make the rule in Scotland—are not being implemented here. In marked contrast to the draconian approach that has been adopted by the Labour Party in England, here in Scotland, DNA will be retained only for a limited time, having been taken from people against whom the procurator fiscal has decided, on the basis of the evidence, to take proceedings for sexual and violent offences.

**Stewart Stevenson:** Will the member take an intervention?

**Mike Rumbles:** I do not have time.

**Stewart Stevenson:** Give an example.

**The Deputy Presiding Officer:** Order.

**Mike Rumbles:** The fact that amendment 206, like amendment 207, is in the name of Paul Martin is somewhat bizarre. I would like to think that reason has taken hold of Paul, but I somehow do not think so. If it was left to Paul Martin and his Labour Party colleagues, there is no doubt that we would not be debating amendment 207, but arguing about against yet another authoritarian measure. Thank goodness for coalition politics in Scotland and for the fact that such a measure will not be supported by MSPs today.

I have heard that the Labour Party is likely to return to such a proposal in its manifesto for next year's elections. I sincerely hope so. If it does, I believe that the people of Scotland will reject it, as I believe Parliament will when amendment 206 is put to the vote later today. In my view, amendment 207 is a balanced step forward in the fight against sexual and violent crime and in the fight to protect our liberties, including the liberty of the innocent citizen to be free from interference by the state. Labour Party MSPs such as Paul Martin have shown us that we must ever be vigilant against an overpowerful state—against an overpowerful Government interfering in the affairs of law-abiding people.

If I am lucky enough to be re-elected by the voters of West Aberdeenshire and Kincardine next year, I will not support any future Executive that seeks to support the contents of amendment 206. I am sure that we will reject it today, just as I am sure that the people of Scotland will reject it if the Labour Party is daft enough to put it in its manifesto for next year's election.

**Mr MacAskill:** Mr Rumbles has shown yet again that the Liberals are prepared to put the partnership before their principles. The Tories commented on the importance of convictions. We have supported the risk of sexual harm orders. In our society, there is a small minority of people who have not been convicted of a crime but who we know have a propensity to commit serious and dangerous actions against individuals. We would be neglecting our duty if we did not seek to take action against them. We have to balance their rights with the protection of our society. Thankfully, we are talking about a small minority of people, but they do not conform to the normal rules of engagement to which other members of society conform. Whether that is because they are sociopathic or psychopathic, we have to deal with them as a different and separate category. We fully support Bill Butler and his amendments.

The minister and Jeremy Purvis bandied about the point that they have the support of GeneWatch

but, in fact, they quoted Miss Wallace's letter selectively. When I spoke to her earlier this week, she made it clear that GeneWatch does not support Paul Martin's amendments. Those members should have spoken to Miss Wallace before they claimed to have her support.

I turn to Paul Martin's amendments 206 and 207, which we believe would undermine fundamentally the relationship between the citizen and the state. We, as a legislature, have an obligation to punish the guilty, but we also have a responsibility to protect the innocent, which is where the amendments go awry. Of course victims have rights, but so do ordinary citizens who do not commit offences. We have to balance those rights.

**The First Minister (Mr Jack McConnell):** Will Mr MacAskill respond to the point that Marilyn Livingstone and Paul Martin made, which was that DNA retention frees the innocent as well as convicting the guilty?

**Mr MacAskill:** I do not believe that DNA retention exculpates people in that manner. If someone who has neither been convicted of an offence nor had imposed on them a risk of sexual harm order—which would disclose that they had a propensity to commit such an offence—does not have the right to challenge a position or to put their viewpoint, the system is fundamentally undemocratic. The Liberal Democrats might be prepared to lie supine before the authoritarian Big Brother tendencies of new Labour, but the Scottish National Party is not. The approach to identity cards and the drive by the Home Office towards an almost totalitarian state are fundamentally wrong.

We get the policing that we deserve. We have to have co-operation and the good citizen has to be encouraged to co-operate. Law and order cannot be dealt with simply by the professionals, whether sheriffs, the judiciary or the police. If people will not report crime or testify in court, our democratic and judicial systems will break down. We have to maintain the fundamental balance between the citizen and the state. The individual citizen gives rights to the state. I say to Mr McConnell that the fundamental difference between the Scottish National Party and new Labour is that we believe that the citizen has rights and cedes powers to the state. Unlike the Conservatives, we believe that there is such a thing as society, but we do not believe that the state has in every instance the right to dictate what individuals do. The Executive's view of where it seeks to take Scotland is fundamentally undemocratic and will damage the innocent people in our society, as well as everybody else.

**The Deputy Presiding Officer:** I remain concerned about the time and I am conscious of the fact that the minister spoke at the beginning of

the debate on this group, but if he requires to put points on the record, I am prepared to give him a short opportunity to do so.

**Hugh Henry:** Pauline McNeill asked about inferences from the presence of DNA on a database. I assure her that absolutely no inference will be drawn from the presence of DNA on a database. An innocent person has nothing to fear from having their DNA kept on a database. As the First Minister said, that can help to clear someone of a crime. Furthermore, if a person's DNA suggests that they have been at the scene of a crime, it does not automatically mean that they are guilty; rather, it gives them an opportunity to clear their name.

**Alex Neil (Central Scotland) (SNP):** Will the member give way?

**Hugh Henry:** No, thanks.

It is worth saying, however, that people are convicted because of the use of DNA. Today, doubts have been cast on the validity and value of DNA sampling. However, the Farah Noor Adams murder in Glasgow was cleared up by the existence of a DNA sample that had been randomly taken from someone for another purpose. The murder of an old woman in Maryhill was cleared up by the use of DNA. DNA sampling works and is proven to work. No one has any cause to fear it.

Pauline McNeill asked for assurances in relation to storage. There are secure facilities and a limited number of people have access to that database. I guarantee that the DNA storage facilities are exceptionally sound—

**Alex Neil:** Like the fingerprint storage facility?

**The Deputy Presiding Officer:** Order, Mr Neil.

**Hugh Henry:** There has been no recorded incident of DNA being stolen or misused. The DNA that we are talking about using, from a limited number of people, will sometimes make a big difference, as Paul Martin and others have suggested.

Kenny MacAskill is right to raise the issue of rights. People in society have rights, but people in society have nothing to fear from the use of science connected to DNA. However, on the subject of rights I must say that although people in wider society have rights, so do the victims of violent and sexual crimes. I know whose rights I want to protect when it comes to helping those people, helping to prevent crime and helping to solve crime.

**Bill Butler:** This has been a serious debate on complicated issues. People have spoken passionately and frankly about how they feel and have, with a few exceptions, done so in a way that

was to the point and not idiosyncratic. Those who are idiosyncratic have made themselves known; I do not think that I need to say any more about them.

I am grateful for the support of the Executive and almost all the other parties for the amendments in my name. I still hope that Bill Aitken and David Davidson will change their minds about the proposals.

I emphasise that the purpose of a risk of sexual harm order is to protect children from harm and that the order will be obtained only if it appears to the bench that a person is engaged in sexually inappropriate conduct with, or in the presence of, a child. As Stewart Maxwell said, it is a proportionate preventive measure, there is a process that must be gone through and safeguards are built in.

The effect of my amendments would be that the police will be able to take and retain the prints and samples of anyone in Scotland who is subject to an RSHO. However, they also provide that any DNA samples and fingerprints and any information that derives from them must be destroyed when the individual is no longer subject to an RSHO.

**Alex Neil:** Will the member give way?

**Bill Butler:** I am sorry, but I do not have time.

With those assurances, I hope that the Conservatives will change their minds and support the amendments in my name. I believe that they will close an unintended loophole, are proportionate and do not conflict with the ECHR. On that basis, I ask for the support of all of my colleagues.

I thank Paul Martin for lodging his amendments, which has allowed us to discuss the complicated and serious areas that they deal with. For the record, I point out that in England and Wales the increased retention of DNA of unconvicted people has led to profiles being linked to 10,754 offences, many of which have been serious. I accept that GeneWatch's figures contradict that, but I feel that there has been too much assertion and not enough evidence on both sides to allow us fully to go in the direction that Paul Martin has proposed. As a result, I remain unconvinced about most of Paul Martin's amendments.

That said, I am convinced that Paul Martin's amendment 207 represents a focused, reasonable and proportionate compromise. I feel that the proposal to retain DNA for a prescribed number of years in certain specified circumstances and with any extension in that respect requiring the police to go before a sheriff for determination—I am glad that the minister clarified that matter—contains enough reasonable safeguards. As Pauline McNeill said, the provision is on the outer limit, but

I believe that it is just within that limit. On that basis, I hope that members are able to support amendment 207.

This good debate has, in the main, shown Parliament to be a mature and responsible body. We should now go to the vote.

15:45

**The Deputy Presiding Officer:** The question is, that amendment 208 be agreed to. Are members agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Adam, Brian (Aberdeen North) (SNP)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (Ind)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)



Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 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)  
 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)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 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)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 91, Against 16, Abstentions 0.

*Amendment 208 agreed to.*

*Amendments 196 to 198 moved—[Bill Butler]—and agreed to.*

*Amendment 161 moved—[Hugh Henry]—and agreed to.*

*Amendment 199 moved—[Bill Butler]—and agreed to.*

*Amendment 162 moved—[Hugh Henry]—and agreed to.*

*Amendment 200 moved—[Bill Butler].*

**The Deputy Presiding Officer:** The question is, that amendment 200 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (Ind)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 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)  
 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)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Ballard, Mark (Lothians) (Green)  
 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)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 92, Against 17, Abstentions 0.

*Amendment 200 agreed to.*

*Amendments 201 to 203 moved—[Bill Butler]—and agreed to.*

#### **Section 72C—Information about release: power to require giving of specified information**

**The Deputy Presiding Officer:** Amendment 163, in the name of the minister, is grouped with amendments 164 and 9.

**Hugh Henry:** Amendments 163, 164 and 9 will make some slight changes to sections 72C and 72D.

Amendments 163 and 164 will make technical amendments to section 72C. The amendments will enable regulations that are made under section 96 of the Sexual Offences Act 2003 to make different provision for different purposes. It may be that that the basic information about a registered sex offender that should be given to the police differs from the information that is given to other specified persons, or that different information may be given to specified persons when an offender is released from prison or hospital as opposed to when an offender is transferred.

Amendment 9 will amend the definition of “sexual offence” in new section 96A of the Sexual Offences Act 2003 to include references to the offences at paragraphs 59A to 59C of schedule 3 to that act, which were inserted by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

I move amendment 163.

**Bill Aitken:** The amendments in this group are unobjectionable and my party will support them.

*Amendment 163 agreed to.*

*Amendment 164 moved—[Hugh Henry]—and agreed to.*

#### **Section 72D—Police powers of entry and examination of relevant offender’s home address**

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

#### **After section 72D**

**The Deputy Presiding Officer:** Amendment 204 is in the name of Paul Martin.

**Paul Martin:** Not moved.

*Amendment 204 moved—[Stewart Stevenson].*

**The Deputy Presiding Officer:** The question is, that amendment 204 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### **For**

Adam, Brian (Aberdeen North) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)

Lochhead, Richard (Moray) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Maclean, Kate (Dundee West) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Brownlee, Derek (South of Scotland) (Con)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 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)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (Ind)  
 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)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)

McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Swinburne, John (Central Scotland) (SSCUP)

**The Deputy Presiding Officer:** The result of the division is: For 24, Against 84, Abstentions 1.

*Amendment 204 disagreed to.*

**The Deputy Presiding Officer:** Amendment 205 is in the name of Paul Martin.

**Paul Martin:** Not moved.

*Amendment 205 moved—[Stewart Stevenson].*

**The Deputy Presiding Officer:** The question is, that amendment 205 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Maclean, Kate (Dundee West) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)

McFee, Mr Bruce (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Brown, Robert (Glasgow) (LD)  
 Brownlee, Derek (South of Scotland) (Con)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 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)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (Ind)  
 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)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morrison, Mr Alasdair (Western Isles) (Lab)

Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Swinburne, John (Central Scotland) (SSCUP)

**The Deputy Presiding Officer:** The result of the division is: For 24, Against 85, Abstentions 1.

*Amendment 205 disagreed to.*

**The Deputy Presiding Officer:** We have clawed back a little bit of time, but as a precautionary measure I am, as I announced earlier, minded to accept a motion from any member under rule 9.8.5A to extend by 10 minutes the final deadline as set out in the timetabling motion.

*Motion moved,*

That, under 9.8.5A, the time limits for groups 13 to 19 be extended by 10 minutes.—[*Ms Margaret Curran.*]

*Motion agreed to.*

#### Section 74—Power to take fingerprints to establish identity of suspect

**The Deputy Presiding Officer:** Group 14 is on the power to take fingerprints to establish a suspect's identity. Amendment 165, in the name of Colin Fox, is the only amendment in the group.

**Colin Fox:** The discussion on amendment 165 inevitably takes on some of the flavour of the previous debate on DNA profiling. The remarks that members have made about the presumption of innocence also apply to amendment 165.

The bill proposes to introduce mandatory fingerprinting of suspects. Those are people who have not even been charged with—far less convicted of—a crime, but they will now be obliged to provide fingerprint evidence to any police officer who asks for it. Currently, we take people's

fingerprints when we charge them, but the proposals under section 74 will mean that they could be taken from anybody to identify them.

My amendment 165 seeks to remove section 74. A rubicon is being crossed, because we will treat the innocent in the same way as we treat the guilty. In the debate on DNA, some members highlighted that ordinary citizens who do not commit crimes have nothing to fear from rights being taken away. I look forward to those comments also being made on this measure.

We should leave aside the obvious uncertainty that there now is in the Scottish criminal justice system in the light of the Shirley McKie case and the question of whether fingerprints can be used definitively to identify people.

The evidence given to the Justice 2 Committee at stage 1 questioned whether reasonable grounds for suspicion on the part of a police officer would be based on objective intelligence and information about the behaviour of individuals or whether it might instead be based on an individual's age, race or sex. It seems to me that, as with DNA samples, the police will stop people whom they do not like and build up a fingerprint database of them. As I said previously, that is why one in three black men in Britain is now in a database, despite the fact that they make up less than 3 per cent of the total population.

I move amendment 165.

**Mr Maxwell:** At stage 2, I shared some of the concerns that Colin Fox has outlined. My concerns related to the destruction of fingerprints and the length of time that that might take. I lodged some amendments on the issue at stage 2. However, I am glad to say that clarification was provided by the minister at stage 2 and we were given reassurances about how and how quickly fingerprints would be destroyed. That was reasonable. Once the issues were explained at stage 2, I was happy to accept the situation. Where Colin Fox is—with all due respect—going wrong is that he fails to recognise that times move on and technology moves on. The ability to take fingerprints remotely and to ensure that police officers can work efficiently and effectively and make good use of their time seems to me to be a higher priority than some of the issues that Colin Fox raised in his speech. Given that clarification on the destruction of fingerprints where necessary was made at stage 2, we will not support amendment 165.

16:00

**Hugh Henry:** The purpose of section 74 is to enable the police to use mobile fingerprint readers to establish whether somebody is who they say they are. Mobile fingerprint readers will allow

officers to do that quickly, effectively and without needing to take the person to a station for fingerprinting, which is resource intensive and time consuming for the officer and the individual.

Furthermore, mobile fingerprint readers will help the fight against crime by enabling police officers to ascertain quickly whether people are suspected of other offences and whether there are outstanding warrants against them. As Stewart Maxwell said, we need to enable police forces to use new technology to best effect for the purposes of preventing and solving crimes. Section 74 gives the police the powers to do that, and it would not be in the interests of effective policing to remove it from the bill.

I hope that Colin Fox will withdraw his amendment, given what was said not only today but at stage 2. If he does not, I ask the Parliament to oppose it.

**Colin Fox:** I insist on my right to press my amendment. There is a principle here. The minister talks about the need to use roadside technology. That is fine—I am all in favour of technology. However, as things stand, we take fingerprints if we charge people. We are having the same debate that we had earlier on DNA. As far as I am concerned, it is not appropriate to take the fingerprints of people who have not been charged with an offence.

**The Deputy Presiding Officer:** The question is, that amendment 165 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Fox, Colin (Lothians) (SSP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Martin, Campbell (West of Scotland) (Ind)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Sheridan, Tommy (Glasgow) (SSP)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 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)  
 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)

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)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (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)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Petrie, Dave (Highlands and Islands) (Con)  
 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)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)

Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 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 11, Against 95, Abstentions 0.

*Amendment 165 disagreed to.*

#### **After section 74**

*Amendment 206 not moved.*

*Amendment 207 moved—[Paul Martin].*

**The Deputy Presiding Officer:** The question is, that amendment 207 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### **For**

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 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)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (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)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)

McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 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)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Brownlee, Derek (South of Scotland) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Cunningham, Roseanna (Perth) (SNP)  
 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)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (Ind)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)

White, Ms Sandra (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 63, Against 44, Abstentions 0.

*Amendment 207 agreed to.*

#### Section 84—Assistance by offender: review of sentence

**The Deputy Presiding Officer:** Group 15 is on offenders assisting investigations and prosecutions. Amendment 166, in the name of the minister, is grouped with amendments 167 and 168.

**Hugh Henry:** Amendment 166 is purely technical. It adds a new subsection at the end of section 84 that makes it clear that someone who has been fined can be regarded as still serving a sentence if the fine has not yet been paid in full. As currently drafted, section 84 states that a sentence can be referred back to court only

“if ... the offender is still serving the sentence”.

It is not clear whether that would catch fines, many of which do not have a set period for payment by instalments but simply fall due in total as soon as the sentence is passed. Amendment 166 places the matter beyond doubt.

Amendment 167 is also purely technical. We have had cross-party support for a rigorous approach to confidentiality when an offender gives information about an offence other than the one for which he is on trial. Confidentiality is in the interests of justice and it is necessary to protect the individual. However, it is clearly important that the lower courts should be able to pass text information to the High Court when an appeal to which that information is relevant is lodged. Amendment 167 makes it clear that nothing in the confidentiality requirement in section 87(3) stops the first-instance court disclosing that information to the High Court when a relevant appeal is lodged.

Amendment 168 substitutes an expanded version of section 87A for that which was inserted at stage 2. It makes detailed provision for confidentiality in relation to information that is given by an offender under section 87 when an appeal is made to the High Court to which that information is relevant. This is also a technical amendment that does not reflect any change in policy. The principle remains that the protection afforded to an offender by confidentiality should apply during appeal provisions as it did during first-instance provisions. The new provision simply ensures that all forms of appeal or reference back to the High Court and all stages of an appeal are covered by appropriate confidentiality requirements.

Further, the new provision makes it clear that the Scottish Criminal Cases Review Commission

can receive text information where that is relevant to its consideration of a case, but that it is under a duty not to disclose the existence or content of that information. Finally, we have substituted the power to make rules of court that was introduced by the amendment at stage 2 with a power for Scottish ministers to make further provisions in relation to the area by an order subject to negative procedure. It is appropriate to have parliamentary scrutiny of any provision spelling out further the processes that are to be followed.

I move amendment 166.

*Amendment 166 agreed to.*

### **Section 87—Sentencing: consideration of undisclosed information**

*Amendment 167 moved—[Hugh Henry]—and agreed to.*

### **Section 87A—Appeals against sentence: undisclosed information**

*Amendment 168 moved—[Hugh Henry]—and agreed to.*

### **Section 93—Subordinate legislation**

**The Deputy Presiding Officer:** Group 16 is on application of the Police (Scotland) Act 1967 to the authority or agency by order. Amendment 10, in the name of the minister, is grouped with amendment 11.

**Hugh Henry:** These amendments are simply tidying-up amendments to ensure that the order-making powers that were introduced at stage 2 are subject to affirmative resolution procedure.

I move amendment 10.

*Amendment 10 agreed to.*

*Amendment 11 moved—[Hugh Henry]—and agreed to.*

### **Schedule 1**

#### **THE SCOTTISH POLICE SERVICES AUTHORITY**

**The Deputy Presiding Officer:** Group 17 is on membership of the authority. Amendment 169, in the name of the minister, is the only amendment in the group.

**Hugh Henry:** Schedule 1 to the bill provides that the Scottish ministers must appoint at least two police force members and at least two police authority members of the Scottish police services authority on the nomination of the relevant representative bodies. The purpose of the amendment is simply to make it clear that if the body in question fails within a reasonable time to put forward nominations as requested by ministers, the duty to appoint at least two

members from the category in question no longer applies. Otherwise, there would be at least a theoretical risk of ministers finding themselves under a statutory duty that they could not discharge simply because the body in question, for whatever reason, had not put forward the required number of nominations.

I move amendment 169.

*Amendment 169 agreed to.*

*Amendments 170 to 177, 55 and 56 moved—[Hugh Henry]—and agreed to.*

### **Schedule 2**

#### **MEMBERSHIP OF THE SCOTTISH CRIME AND DRUG ENFORCEMENT AGENCY**

*Amendments 57 to 64, 178, 66 to 69, 179, 70 to 85, 180, 86 to 89, 181, 90 to 99, 182 to 187, 100 to 102 and 188 moved—[Hugh Henry]—and agreed to.*

### **Schedule 3**

#### **TRANSFERS OF STAFF AND PROPERTY**

*Amendments 12, 13 and 103 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** Group 18 is on transfer of staff and property to the authority or agency. Amendment 189, in the name of the minister, is grouped with amendment 190.

**Hugh Henry:** Amendment 189 makes a minor adjustment to the requirement that paragraph 3(2) of schedule 3 imposes on police authorities and joint boards to consult the authority and the director general of the SCDEA before making a staff transfer scheme. The effect of the amendment is to make it clear that the director general need be consulted only in respect of constables who are being transferred to relevant service with the SCDEA and not in respect of constables who are being transferred to relevant service with the authority.

Amendment 190 inserts a definition of local authority into the bill.

I move amendment 189.

*Amendment 189 agreed to.*

*Amendment 190 moved—[Hugh Henry]—and agreed to.*

### **Schedule 4**

#### **THE POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND**

*Amendment 209 not moved.*



## Schedule 5

### MODIFICATIONS OF ENACTMENTS

*Amendments 105 and 106 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** Group 19 is on minor modifications of enactments. Amendment 191, in the name of the minister, is grouped with amendment 192.

**Hugh Henry:** These minor tidying amendments replace the obsolete references to the Royal Ulster constabulary in the Police (Scotland) Act 1967 with the police service of Northern Ireland.

I move amendment 191.

*Amendment 191 agreed to.*

*Amendments 192, 14, 193 and 107 to 119 moved—[Hugh Henry]—and agreed to.*

*Amendment 194 not moved.*

*Amendments 120 to 129 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** That ends consideration of amendments.

## Police, Public Order and Criminal Justice (Scotland) Bill

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S2M-4268, in the name of Cathy Jamieson, that the Parliament agrees that the Police, Public Order and Criminal Justice (Scotland) Bill be passed.

16:12

**The Minister for Justice (Cathy Jamieson):** The bill has been described by the Association of Chief Police Officers in Scotland as the most radical piece of Scottish policing legislation since 1967. I can safely say that it is at least one of the most important. The level of debate in the chamber today and throughout proceedings certainly shows that.

The bill gives the police the tools and powers that they need to protect our communities from a range of violent and disruptive behaviours. It establishes organisations that will provide police support services and tackle serious organised crime more effectively than ever before. It makes vital improvements to the law on marches and parades and establishes clear statutory powers that prosecutors can use to get criminals to give evidence against their colleagues. The bill will make a real and practical difference.

I hope that the measures are not seen simply in isolation, because they are key parts of our wider strategy to make the most radical reforms to the criminal justice system that Scotland has ever seen. The bill is part of my vision for end-to-end reform of the criminal justice system, so that we can prevent and divert criminal activity; reduce the likelihood of offending and reoffending; and challenge the behaviour of offenders so that they return to peaceful law-abiding ways of life.

I am sure that that vision and my determination are shared by everyone in the chamber. They come not only from my everyday experiences but from those of people throughout Scotland who look to the police and the criminal justice system for help and support, particularly those who are victims of crime. Like other members, I am only too aware of how people's lives are blighted by serious crime and antisocial behaviour in their local communities. As the Minister for Justice, I cannot intervene directly in every case although, like other members, people write and speak to me almost daily about those difficulties. I am absolutely committed to ensuring that the justice system is focused 100 per cent on serving and protecting the public. That means making changes. By harnessing new technology and streamlining organisational structures, we can free

up officers for more front-line tasks. The bill will help us to achieve that.

Establishing the new Scottish police services authority might have seemed at times to be a rather technical matter. The new authority will focus on providing services such as the Scottish Police College, the Scottish Criminal Record Office and the forensic science service on a top-quality national basis. Again, I believe that that will free up police forces' own energy and resources to focus on their core business of operational policing.

I hear people say just how scared they are at times to go out of their houses and on to the streets because of violence, gang fighting or antisocial behaviour in their area. I repeat that there is no excuse for that kind of behaviour, and there is simply no excuse for it to be attached to marches and parades. There is no excuse for those who use marches and parades to indulge in that kind of behaviour and to cause trouble. That is why I was pleased this month to bring together organisations from different traditions, both from the Orange lodge and the republican movement, with the Scottish Trades Union Congress, Strathclyde police, Glasgow City Council and North Lanarkshire Council. For the first time, all those different organisations joined me to sign a declaration pledging to work together to deal with those who turn up at marches and parades purely and simply to indulge in violent, abusive and bigoted antisocial behaviour, which none of us wants to see. The reforms to the law on public processions in the bill will support the aims of that declaration and they are, of course, another key part of our work to reduce the disruption that some marches cause.

We have had a good debate today on proposals to let the police take and retain more DNA than they can at present. I know that we have not always agreed on every aspect of that proposal, but I hope that we can all agree that DNA is a vital tool for the police in solving crimes, catching criminals and, indeed, protecting our communities. As I said earlier, harnessing new technology will free up officer time to focus on front-line duties. I hope that we regard DNA as part of that. I have listened carefully to the arguments about civil liberties and, of course, they are important. DNA is a powerful tool and the police must use it only for appropriate purposes. However, I hope that we all recognise that using DNA technology can solve crimes and make police investigations more efficient and that we can all sign up to that.

I am pleased that Parliament today supported Bill Butler's and Paul Martin's amendments to enable the police to retain more DNA than they can at present. I particularly welcome the focus on violent and sexual offences. We heard powerful

speeches from Marilyn Livingstone and others who consistently represent the interests of victims of sexual abuse. Given the low conviction rates for rape in particular, it is clear that additional DNA retention could be of great help to the police.

I will move on briefly to the issue of knife crime, which I know we all want to be tackled robustly. Last week, as members will know, I announced plans to provide 1,000 hand-held metal detectors to police forces. On Monday, the Lord Advocate announced changes to prosecution guidance on knife crime to deal more effectively with those who persistently carry knives, and yesterday saw the start of our first national knives amnesty to encourage individuals to bin a knife and save a life. Those are all important steps in tackling knife crime, giving the police much-needed new powers to deal with people who carry knives and, of course, increasing the maximum penalties that are available.

I genuinely thank the bill team, the Justice 2 Committee and the Deputy Minister for Justice for their hard work all the way through the process, but especially at stage 2. That hard work delivered improvements to the bill as we took it through the parliamentary process. It has ensured that the bill will give the police and their partners in the criminal justice system the tools that they need to protect our communities. It will ensure that the police are backed up by efficient, effective support organisations. All of that is designed to make our communities safer and stronger.

I move,

That the Parliament agrees that the Police, Public Order and Criminal Justice (Scotland) Bill be passed.

16:19

**Mr Kenny MacAskill (Lothians) (SNP):** I thank the minister for that and I thank the bill team and the Deputy Minister for Justice for taking the bill through Parliament.

I do not wish to rehearse earlier arguments, on DNA retention, which was introduced into the bill by Mr Martin's amendments, because our position is clear—we oppose it. However, we recognise that there is a great deal more in the bill that unites us, so I will concentrate not on matters about which we made our point during stage 3 and to which we will no doubt return as the election approaches, but on matters that unite us, on which there has been a great deal of consensus.

As Bill Butler and others said, we must address changing circumstances and problems. To some extent, the bill is consolidating legislation. It provides for a variety of measures, some of which are new and some of which add to or amend existing provisions. We welcome and are happy to support most of the bill's provisions, apart from the

few matters about which we disagree. For example, the establishment of the Scottish police services authority seems to be sensible. Jackie Baillie and John Swinney commented on the fact that, for a small country, Scotland seems to have a lot of organisations, and it seems sensible to review the organisations that we have. We must balance local accountability for the police, which people want, with the economies of scale that go with living in a small country, and it is sensible to strike that balance by developing shared and joint services, if that is possible. The days when police officers in Whitburn and Harthill wore different uniforms and were dealt with by separate departments are gone. That situation was ridiculous, and we must move on. The Executive is to be credited with addressing the problem.

The Scottish crime and drug enforcement agency is necessary. We live in a global economy, which brings with it global crime. The amounts of money that are at stake mean that criminals are much more sophisticated. The new methods and technologies that benefit the forces of law and order are being used by violent criminals to undermine the law, and we must address new and sophisticated criminal gangs. That is not an indictment of our current police service, which serves us well, but a recognition that some criminal activity is highly sophisticated and must be tackled by professional resources using different skills from those of the beat bobbies and community officers who are essential for our society. We therefore support the SCDEA.

Similarly, we welcome the establishment of the police complaints commissioner for Scotland. Although I would not go as far as to say that the police complaints system has been a running sore, it has generated discontent. The approach does not go as far as some people would like, but it has won the support of people who opposed it when it was first proposed, so we should support and welcome it.

We welcome the approach to banning orders. Many members, from all parties, query why people want to take part in marches in the 21<sup>st</sup> century. Although people have the right to march, communities have a right not to have marches and all the baggage that goes with them thrust down their throats. We fully support the bill's sensible measures in that regard.

Weapons were mentioned. There is a culture problem and we need to take legislative action. I do not remember whether Bill Butler or Charlie Gordon made the point that we must try to reach a consensus on the matter, but knife crime is a gargantuan problem in Scotland and it must be addressed. In a civilised society it is appalling that there is one stabbing homicide per week. We cannot tolerate such a situation.

We support other aspects of the bill. We have put on the record our opposition to Paul Martin's amendments, but that matter is for another day. Not only will the bill advance the interests of law and order in the judicial service and the police; it will make Scotland a better society. We are happy to support it.

16:23

**Mr David Davidson (North East Scotland) (Con):** I joined the Justice 2 Committee at the beginning of stage 2 and I congratulate the clerks and witnesses on their work on the bill. I also acknowledge the involvement and helpful attitude of the Deputy Minister for Justice and the work of past and current members of the committee.

We support the bill because, as Kenny MacAskill said, there is more in it to support than there is to argue about. However, we have placed on record our concern that amendments at stage 3 appear to create two classes of innocence, which will no doubt be challenged in the courts in future. We are very concerned about the retention of DNA samples from innocent people. DNA is an exceptionally good tool for solving crime, but we must consider how tools are used, controlled and regulated.

I hope that the bill will be the start of a process that leads to communities and society being safer and fairer. We must recognise the new forms of international crime. Modernisation and the efficiencies that will be gained from the Scottish police services authority are very welcome. We particularly welcome the SCDEA, because we live in a world of international crime, from which we cannot escape.

We have supported the police complaints commissioner from the beginning, as we supported the bill's general principles at stage 1. The need for the commissioner is a special case. We have talked about efficiency in government and the number of ombudsmen that we have, but it is clear that the public want the police complaints commissioner; we support that.

Football banning orders will bring a semblance of order and take some pressure off the police.

I agree with comments that have been made about the laws on public processions. We must defend individuals' rights of free speech and of movement, but that must be done with regard to the benefits or disbenefits to the communities in which they are active. We have received letters from the Convention of Scottish Local Authorities and from councils that have many marches in their areas, which are desperately worried about whether the proposed £200,000 fund will be adequate. That discussion will run on and I hope

that the minister will provide some relief on that in winding up.

We had a good debate about knife crime, which is a blight on society. It is not all localised in Glasgow—we have such crime in the north-east, too. We are at the start of a debate, which we welcome. In dealing with that terrible problem we must be sure that we implement future regulations with the community's support. We also very much support mandatory drug testing.

In relation to all those matters, we look forward to the sentencing bill, because if we are to change the culture of society, the results of that bill must send clear messages to criminals that we hope will put them off crime and will ensure that they pay the price of their crime. The Conservatives will fight for honest sentencing.

Anything that modernises, supports and funds adequately our police to protect our people and themselves must be supported. Police numbers and adequate funding for the development of police services are for a debate on another day.

I regret that we had the spat about the compromise on amendment 2007, but we have said our piece—I am sorry; I mean amendment 207. I am already in election year. We welcome the bill overall and we will vote for it.

16:28

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Perhaps David Davidson felt like we were discussing amendment 2007.

In the debate on DNA samples, we heard much about principles. The Scottish National Party made much of taking what it claimed was a principled position. It is happy that in some cases in which there is no criminal conviction, individuals' DNA will be retained under the civil procedure for a risk of sexual harm order. The SNP accepted that, although a risk of sexual harm order involves no burden of proof—

**Stewart Stevenson (Banff and Buchan) (SNP):** Of course it does.

**Jeremy Purvis:** A civil procedure does not involve a burden of proof; a sheriff just has to be satisfied. That is quite a distinction.

Mr MacAskill attacked me for misquoting GeneWatch or for not speaking to Helen Wallace, but I have spoken to her three times this week. I also quoted her accurately, and I will do so again for his benefit. On 22 May, she said of amendment 207:

"The Scottish Parliament is taking a much more thoughtful approach than was the case at Westminster ... The amendment recognises that there may be some carefully

justified exceptions where the police could benefit from keeping some DNA profiles longer on the Database."

In voting for amendment 204, SNP members showed that they are happy for the DNA of a child who has not been convicted of a sexual offence and who has only been referred to in an allegation to be kept for life, if the principal reporter is satisfied that the allegation had grounds. Is that a principled position?

**Stewart Stevenson:** Will the member give way?

**Jeremy Purvis:** No.

I will quote GeneWatch again, since Mr MacAskill seems keen that I should do so accurately. GeneWatch said:

"There may be grounds to take DNA from children in some circumstances but these proposals"—

amendments 204 and 205—

"provide no time limits on how long the police can keep this highly sensitive information or how it can be used".

That is why GeneWatch opposed the proposals and why I opposed them.

I have principles. Keeping the DNA of an unconvicted child for life, with no time limit and no limitations on how it can be used—those are principles? Mr Maxwell is shaking his head. Where are the principles in that?

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

The principles are quite clear. The amendment applies to those under-18s who have admitted an offence and accept the grounds of the referral. There is due process through the children's panel, through the chief constable and through a sheriff. There is due process and there is admission. That is the guilty being charged, not the innocent.

**Jeremy Purvis:** I am delighted that Mr Maxwell got on his feet because he has made a complete fool of himself. He was talking about amendment 205, not 204. Amendment 204 is when the grounds are an alleged offence. Amendment 205 is when a principal reporter goes to a sheriff not to determine guilt but simply to approve whether the DNA should be kept for life. The SNP would be satisfied with that. The SNP needs not only to go back and read the amendments but to start at square one with regard to its principles.

There are some positive reforms in the bill. It is a large bill, ranging from the sale of fireworks and reducing violence at football matches to changing the procedures for marches and processions. A positive move in the bill is the commitment to establish an independent police complaints commissioner, which is a long-standing Liberal Democrat pledge. It will give the Scottish public considerable confidence that when they have a complaint about the processes of policing, it will be considered properly and independently. Finally, by

supporting some DNA proposals and rejecting others, the Parliament will be making a significant contribution to criminal justice in Scotland.

16:32

**Stewart Stevenson (Banff and Buchan) (SNP):** I wish to dwell only on amendments 204 and 205. The provisions in amendment 204 will apply where

“the Principal Reporter is satisfied—

- (i) that the ground specified ... is established; and
- (ii) that an offence committed by the child causing that ground to be satisfied is a relevant sexual offence”.

It is rather rich of the Executive to persuade the Parliament that antisocial behaviour orders are relevant to children—no guilt, civil process, civil standard of proof—

**Jeremy Purvis:** Will the member give way?

**Stewart Stevenson:** No.

ASBOs are relevant to children, but a child can be a sexual predator just as an adult can. A child who is a sexual predator needs to be protected and needs to be looked after within the children's panel system. That is self-evident, but there are victims of children as well. We have heard talk of victims; Marilyn Livingstone referred to the victims of sexual abuse. Someone can be abused by a child. Keeping the DNA of an innocent child who has admitted a sexual offence is hardly a greater problem of principle than Jeremy Purvis voting for keeping the DNA of absolutely innocent people who have appeared in court and immediately been identified as not being the right Paul Martin, Stewart Stevenson, Bill Aitken or whoever. In the realpolitik of Scotland, the first time a juvenile sexual offender reoffends undetected because the police did not have access to the DNA of that child from the previous offence, the political price for Jeremy Purvis and his colleagues will be significant and terminal.

16:34

**Colin Fox (Lothians) (SSP):** Perhaps uniquely, the Scottish Socialist Party will oppose the bill at 5 pm. Throughout the bill's parliamentary progress, we have raised many concerns, and it is fair to say that the bill's deficiencies are clearer now, at twenty to 5, than they ever have been before.

The overall thrust of the bill is the belief that we can best tackle crime and disorder by giving police ever more powers, even if that means taking away the civil liberties of those who are convicted of nothing. So be it, they say. They say that innocent people have nothing to fear. Well, they do now, because they will be fingerprinted, DNA tested and banned from football grounds, and their liberties

will be restricted right across the board. I disagree with that approach.

We tackle crime by attacking it at its roots. The Executive has signally failed in that regard because it lacks effort, determination and purpose on its side of the equation. The bill aims to restrict the rights of the innocents. Football banning orders will be served on people who have been convicted of no crime. Public marches will be restricted. People will be fingerprinted on the whim of a police constable. Paul Martin's late amendment is relevant and not out of place in a bill of this character. David Davidson flagged up the fact that we now have two classes of innocence.

For me, a rubicon is being crossed and I fear that Labour will be back to cross others. It has gone for the easy target of sex offenders and it will not stop there. It will go after others on the basis that although they have not been convicted of anything, they can be brought into the system.

The bill fails to deliver on the promise of an independent police commissioner. Jeremy Purvis makes big claims for such a small measure in the bill. With one eye on the widespread lack of faith and public confidence in the present system, the Executive has come forward with a meek and inadequate proposal.

Although I believe that the Executive is more genuine on knife crime, I disagree with an approach that believes that we can simply extend sentences and extend sentences and extend sentences, and somehow that will make the problem go away. We have been extending sentences and the problem is getting worse.

As I said in my contributions on my amendments, taking DNA and fingerprint evidence from people who have not even been charged, far less convicted, is a mistake and I am disappointed that the amendment about DNA was passed. That it sits perfectly easily alongside such other reductions in liberty in the bill is clear to anyone. However, the best way to tackle crime is not to take away the rights and liberties of the innocent, as the bill repeatedly seeks to do. That is to fail justice.

I approached the debate on the bill thinking that it contained small flaws. However, one principle after another has been breached and in all conscience, I cannot support it. The SSP will oppose the bill when it comes to the vote at 5 o'clock. We did that at stage 1, then persevered and lodged our amendments throughout the process, but there are too many flaws in the bill to allow us to support it.

16:38

**Bill Butler (Glasgow Anniesland) (Lab):** I rise to support the motion in the name of the Minister for Justice. As a member of the Justice 2 Committee, I wish to put on record my thanks to the clerking team and the Scottish Parliament information centre for their support.

Anyone following today's spirited stage 3 proceedings will recognise that the bill contains a wide range of measures, some contentious and some not. All aspects of the bill that we have agreed today will support its twin aims of strengthening the effectiveness of the police and improving the safety and security afforded to communities across Scotland. Measures such as the establishment of the Scottish police services authority, which will provide common police services and maintain the new SCDEA, are to be welcomed.

Similarly, the introduction of mandatory drug testing and referral for certain arrested persons is praiseworthy. I believe that the measures that we agreed after a thorough debate on the complex subject of the retention of DNA are necessary and proportionate. They will increase the safety and security of some of the most vulnerable members of our society—that is a good thing.

I welcome the introduction of a new police complaints commissioner for Scotland. That innovation will provide robust and independent scrutiny of the manner in which police forces handle complaints from members of the public. The commissioner's range of powers and duties will improve the standard and consistency of the handling of police complaints across the Scottish police service—that is commendable.

Another aspect of the bill that I want to mention is the introduction of football banning orders, which are dealt with in sections 47 to 65. Although, thankfully, the level of violence and disorder at domestic games has 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, but I believe that they are a practical and reasoned response to the problem of football-related violence and disorder. They will be an effective instrument when they are employed appropriately.

I am content that the provisions to modernise and standardise the arrangements for public processions are, like those for FBOs, fit for purpose. The provisions are not about curtailing essential rights of assembly. On the contrary, they will ensure the fullest possible participation of Scotland's communities in the decision-making processes.

I welcome especially the provisions in the bill to tackle the deeply disturbing and distressing upward trend in knife crime. That trend touches every part of Scotland but is most apparent in Glasgow and the west of Scotland. As one of the committee's witnesses said, the measures have the potential to save life.

I congratulate Charlie Gordon on providing members with the opportunity to debate mandatory sentencing. It is a serious issue, which was dealt with in a serious fashion by members from across the chamber. I remain wholly unconvinced of the efficacy of mandatory sentences, as does the Parliament. I believe that to be the correct view, but I will nevertheless echo the plea that the member for Glasgow Cathcart made in the debate. I wholly acknowledge the independence of the judiciary but, as my constituents would expect, I urge the fullest use of the powers that will now be available to sentencers in the appropriate circumstances. We do not expect to direct the judiciary, but we—and, more important, the public of Scotland—expect it to follow the wise advice of the Lord Advocate.

I commend the bill. It is good law. It presents us with an opportunity to continue to build safer communities across Scotland and I commend it to Parliament.

16:41

**Patrick Harvie (Glasgow) (Green):** The debate on knife crime to which Bill Butler referred was taken seriously by most members, but I was genuinely disappointed by the catcalls that were made by some members, who wanted to caricature the concept that counselling has a role to play. Some members made catcalls saying, "Oh, just give them a wee hug." That was a disrespectful way to treat the contributions of other members. Charlie Gordon spoke of the moral responsibility with which we should address the problem. No member, whatever their view, would have caricatured him as part of the hang-'em-and-flog-'em brigade nor would they have mischaracterised him as wanting to bring back the birch, so it was inappropriate for his colleagues to caricature the approach that was proposed in amendment 160.

I am not a regular at time for reflection, but we heard an interesting observation recently at time for reflection, when we were reminded that

"to every complex problem there is a simple solution—which is wrong."—[*Official Report*, 17 May 2006; c 25643.]

Even though we hear good noises about alternatives to custody, far too often prison remains the simple, easy and wrong solution that politicians reach for.

The other contentious issue that we discussed today is DNA. I came to the newer amendments with a genuinely open mind. If I had heard robust evidence on effectiveness, my mind would have remained open, but I heard no such evidence. Instead, I heard two key arguments in favour of the retention of DNA samples. Some argued, "We are simply on the side of the victim." Others said, "If you have nothing to hide, you have nothing to fear." However, both those arguments could be marshalled in favour of any measure that attacks civil liberties as long as its intention is to protect public safety.

Those two arguments could be used in favour of putting the entire population under permanent 24-hour surveillance. That would be an effective way of reducing crime, but most people, including the victims of crime, want to live in a free society. I have yet to hear any advocate of those two arguments explain why they do not propose to require samples from the entire population to be put on a national DNA database. Such a proposal would abolish the idea of presumption of innocence under the law. The most that any of us would be able to say is that we had not been proven guilty yet. The amendment that was agreed to—amendment 207—does not abolish that presumption of innocence, but it will, I fear, begin to undermine it. It calls on us to initiate a wider debate about the role of DNA testing and surveillance technology in our society.

There are sufficient measures in the bill for me to support the motion to pass it, but some issues that have been raised in the debate require further attention.

16:45

**Paul Martin (Glasgow Springburn) (Lab):** I welcome the wide range of measures that are being introduced under the Police, Public Order and Criminal Justice (Scotland) Bill. I will deal primarily with the amendments that were lodged in my name. The real challenge that the Parliament faces lies in evaluating the effectiveness of the legislation that we deliver. I think that the provisions of amendment 207 will be positively evaluated over time, and that crimes will be detected as a result of DNA that would not otherwise have been held on the database being available. That is how the legislation will be evaluated once it is passed. We face more difficult challenges in evaluating the effectiveness of other legislation that we pass, but the effect of the provisions of amendment 207 will be clear. I look forward to evaluating and debating them in the Parliament. I hope that members—I include myself in this—will withdraw a number of comments that they have made should the measures not prove to be effective.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Will the member take an intervention?

**Paul Martin:** I do not have time. I asked Mike Rumbles to give way to me—I am sorry if that sounds childish.

David Davidson made a point about there being two classes of innocents. I agree with him on that point: one class of innocents is the victims, who are innocent throughout the process, as I set out earlier. The 116 rape victims to whom I referred earlier are innocent. I accept Mr Davidson's point about the innocence of the people who have been accused, but we are not taking that away. We are providing an opportunity for police officers to retain a DNA sample that can be interrogated as part of the database. Those are the two types of innocents I see in the process, rather than those to whom David Davidson referred.

I have carefully examined the websites of all the main parties. They all discuss cutting down on the bureaucracy that police officers deal with. They all talk a good game in that respect. The measures under amendment 207 will cut down on bureaucracy. They will prevent innocent members of the public from being imprisoned and held on remand, as happened in the past, prior to the DNA process being put in place.

We have a good bill, which will provide a more effective means of dealing with crime. I welcome a number of the measures that have been discussed throughout its passage.

16:48

**Donald Gorrie (Central Scotland) (LD):** I will speak mainly on an issue that has not been covered other than in a few words by Bill Butler. There is a defect in our system in that, unless there is an amendment about it, an issue does not get properly discussed at stage 3. Whereas there has been some very good discussion about DNA and knife crime, there was no discussion about football banning orders and marches. I welcome those aspects of the bill. I hope that they will succeed and that they will be properly monitored. However, it is still not clear to me how football banning orders will work and how fans who misbehave at away matches can be properly dealt with. There will have to be a properly worked-out system. Having read the bill, I cannot quite see how it can deal with those situations. I hope that the minister will give proper thought to how to achieve that.

More generally, the fact that the Parliamentary Bureau extended the originally intended time for debate was welcome. However, the time for debate is still not adequate. We need more time to discuss amendments, so that people can give way

to one another without losing time for their speeches, and more time for the final debate, so that more members can contribute. Otherwise, it can appear perfunctory. The fact that we obtained more time was a step forward, but we need even more time in future.

I welcome the bill. There was a good ding-dong on two or three issues. There are many good things in the bill. I hope that we will monitor how it works overall and that it will improve policing and people's behaviour.

16:50

**Bill Aitken (Glasgow) (Con):** It is natural that what divides us should get more attention than what unites us, but we will support the motion to pass the bill at decision time.

I want to highlight a few issues that have not been debated. The introduction of football banning orders is particularly welcome, although I am cynical about the effectiveness of a system that will pick out banned people from a crowd of 60,000, albeit that we have closed-circuit television. I would have preferred for the individuals concerned to be dealt with by a probation order, with a condition that the person subject to it presents themselves at a police office during any major football match.

The public processions provisions are welcome. To many, public processions are an irritant; to others, they are a downright menace. The provisions in part 2, chapter 2 will allow there to be greater control over processions and greater community involvement, which has to be welcome.

We support fully the offensive weapons provisions. It is high time that there was wider recognition of the extent of the problem. Our only difficulty is that we cannot support Charlie Gordon's effort to have mandatory sentences introduced. It is important to underline the fact that, as far as the Conservatives are concerned, the judiciary will always be left with unfettered discretion but, in return, members of the judiciary have to acknowledge that offensive weapons are a real concern and apply their minds to whether they are imposing the appropriate sentences.

The provisions on reductions in sentences for offenders who assist investigations could cause difficulties but are welcome nonetheless. There is much more in the bill to unite us than there is to divide us. We will certainly not impede its progress this afternoon.

16:52

**Mr Stewart Maxwell (West of Scotland) (SNP):** I will pick up where Bill Aitken left off: there is much to unite us in the bill and little to divide us. I

thank the Justice 2 Committee's clerking team and the Scottish Parliament information centre staff, who were extremely helpful throughout the process.

The creation of the Scottish police services authority is an important step forward. The minister described it as technical and administrative and it has not received a lot of attention, but it is an important step forward.

The creation of the Scottish crime and drug enforcement agency received a lot more attention during stage 1 and stage 2. There was a lot of discussion of how such a national agency would fit into the overall police structure. I am reassured that we are placing the agency on a level at which it can tackle crime throughout Scotland and cross-border and international crime and work with colleagues from throughout Europe and the rest of the world on an equal footing. Members of the committee felt that it was important that the title of the head of the agency should reflect that.

The creation of the police complaints commissioner for Scotland is welcome and overdue. There was an argument about whether dealing with police complaints should have been part of another ombudsman's remit and whether the commissioner should carry out completely independent investigations. We have reached a sensible compromise. The public will generally be happier with the complaints process; it will be seen to be independent and when the commissioner is reviewing cases, they will be able to appoint others, outside the police, to investigate if they feel that that is necessary.

The introduction of football banning orders is particularly welcome. Mr Davidson was not involved in scrutinising the bill at stage 1. A number of members of the committee, including Bill Butler and me, went to an old firm game, which was an interesting experience. Bill Aitken said that he was not that keen on the idea of football banning orders, despite CCTV, and that other methods of dealing with the problem could be used. The evidence from England and Wales was clear that football banning orders had been effective there. We should always look to learn from best practice, no matter where it comes from. Football banning orders are an important step forward in public safety.

On public processions, I remain to be convinced that the steps that we have taken will be as effective as many people hope that they will be. I hope that they will be and that they will result in communities feeling more calm and reassured about processions in their area and in the marchers still being allowed to march wherever they see fit, as long as the march does not too greatly upset the communities through which it will go. There is a balancing act to be performed on



this issue. We will have to wait and see how the situation develops in the coming years.

One of the most important debates that we had today was on offensive weapons. It was a good debate and I think that we have moved forward on this issue. A lot remains to be done, but that relates to cultural changes rather than legislative changes.

I welcome the bill and my party will be supporting it this evening.

16:55

**The Deputy Minister for Justice (Hugh Henry):** I wish to thank a number of people as well. I thank the committee for a thorough investigation of the process, particularly during stage 2, when a number of refinements were made to the bill that reflected the views of the committee. That helped to strengthen the bill and I commend the committee for that.

I also want to thank Bill Barron and the bill team, who did a tremendous job in supporting the Minister for Justice and me through a long and complicated process. Sometimes, we underestimated the scope of the bill. We are aware of the huge amount of work that was put into the bill. I would like to pay specific tribute to a young member of the bill team called Ian Ferguson, who I think will go far. Normally, when we say that someone will go far, we are talking about their professional life—I am sure that Ian will go far in that regard too—but, on Saturday, Ian emigrates to New Zealand. I wish him well in his future life. I just hope that there is no truth in the rumour that New Zealand was the furthest away that he could get from Cathy Jamieson and me.

I did not intend to comment on the DNA issue, but I must pick up on the point that Stewart Stevenson made. I thought that that was an ill-considered contribution—which is unusual for Stewart Stevenson—and that he might be trying to secure a political fig leaf for himself on the question of DNA. If he had listened—and he can check this in the *Official Report*—he would have heard that I said that I sympathised with many of the points that Paul Martin made in relation to the young people who go into the children's hearings system in situations involving violence or sex offences. However, I also said that what Paul Martin was proposing would not work. The amendments are technically deficient. To give himself some political protection, Stewart Stevenson was asking the Parliament to support a technically incompetent amendment that would not have delivered what many speakers around the chamber want to happen. I gave a commitment to speak to the Minister for Education and Young People. I did so at lunch time and can say that we

will go and look at some of the issues that have been raised in the debate. Not only was Stewart Stevenson at it; he was trying to inveigle us into an incompetent conclusion.

As a number of speakers have said, the bill is a significant piece of legislation. Members across the chamber have expressed their abhorrence of knife crime and their determination to do something about it. Like Charlie Gordon and others, I hope that the bill will make a significant contribution in that regard. However, we are determined that if anything else needs to be done in the future, we will return to the legislation. In addition to the work in relation to the bill and the guidance from the Lord Advocate, the work of the violence reduction unit is already beginning to show some significant results. I wish the unit well.

Others have spoken about football banning orders and parades and marches. Drug testing has not featured in the discussion, but it is a significant issue. Queen's evidence and the need to encourage people to give evidence and the need to reduce some of the waste that exists in the court system are also important issues.

One of the issues that relates, to an extent, to the DNA debate is the issue of dealing with sex offenders. Given the acknowledgment that certain measures need to be taken against people who pose a significant risk to the community, I am glad that Parliament agreed to amendment 200, in the name of Bill Butler. Moreover, I am glad that the Parliament has now accepted the principle that in certain circumstances innocent people's DNA can be retained to protect the wider public. On the other hand, we need to assure people that the provision will be used appropriately and that safeguards will be built into the process.

As Cathy Jamieson said, this bill represents an important part of our wider agenda to reform the criminal justice system. We want to ensure that all its aspects meet our communities' needs, and Parliament can take some satisfaction in the knowledge that it is passing a bill that will make a difference and provide our communities with additional safeguards and protection. I look forward to seeing its direct results not only for the people whom I represent but for communities throughout Scotland.

## Motion without Notice

17:01

**The Presiding Officer (Mr George Reid):** I am minded to accept a motion without notice that business motion S2M-4446, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, proposing a revised timetable for next Wednesday's business on stage 3 of the Animal Health and Welfare (Scotland) Bill, be moved at short notice.

*Motion moved,*

That S2M-4446 be taken at this meeting of Parliament.—  
[Ms Margaret Curran.]

*Motion agreed to.*

## Business Motion

17:01

**The Minister for Parliamentary Business (Ms Margaret Curran):** We have received a request to extend the time for stage 3 consideration of the Animal Health and Welfare (Scotland) Bill. I know that I speak on behalf of all my business manager colleagues when I say that we are keen to accommodate members who wish to contribute to debates. As a result, I move that business start at 2 pm next Wednesday to provide extra time for debate.

I move,

That the Parliament agrees the following revision to the programme of business for Wednesday 31 May 2006—

delete,

2.30 pm

Time for Reflection

*followed by*

Parliamentary Bureau Motions

*followed by*

Stage 3 Proceedings: Animal Health and Welfare (Scotland) Bill

insert,

2.00 pm

Time for Reflection

*followed by*

Parliamentary Bureau Motions

*followed by*

Stage 3 Proceedings: Animal Health and Welfare (Scotland) Bill.

*Motion agreed to.*

## Decision Time

17:01

**The Presiding Officer (Mr George Reid):**

There is one question to be put as a result of today's business. The question is, that motion S2M-4268, in the name of Cathy Jamieson, on 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**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 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)  
 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)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (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)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 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)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 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)  
 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)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**AGAINST**

Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Curran, Frances (West of Scotland) (SSP)  
 Fox, Colin (Lothians) (SSP)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)

**The Presiding Officer:** The result of the division is: For 111, Against 5, Abstentions 0.

*Motion agreed to.*

That the Parliament agrees that the Police, Public Order and Criminal Justice (Scotland) Bill be passed.

**The Presiding Officer:** That concludes decision time.

## Human Trafficking (Prostitution)

**The Deputy Presiding Officer (Murray Tosh):** The final item of business is a members' business debate on motion S2M-3983, in the name of Trish Godman, on the trafficking of impoverished women into forced prostitution in Scotland. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament is seriously concerned over reports that criminal gangs are engaged in the evil trafficking of impoverished women into Scotland, England and Wales who are then compelled, often by threats or use of physical violence and degradation, to work as prostitutes; notes that this is a problem throughout Scotland, but particularly in the west of Scotland; believes that Scotland cannot claim immunity from this unsavoury international sexual trading of poor women from European, Asian, African and South American countries; acknowledges the difficulties involved in tracking down these predatory traffickers in women, but believes that the Scottish Executive, in co-operation with the UK Government and our police service, should do all that is necessary to bring such wrongdoers to court where it is hoped that they will, upon conviction, receive condign punishment.

17:04

**Trish Godman (West Renfrewshire) (Lab):** I thank all the members who signed my motion on the trafficking of impoverished women into forced prostitution in Scotland. We are witnessing a new evil in Scotland and elsewhere in the UK in the form of slavery. Each year, about 5,000 women and schoolgirls are smuggled or trafficked into the United Kingdom and compelled by the most brutal means imaginable to work as prostitutes.

This morning, Norah Summers, the national convener of the Church of Scotland Guild, reported to the General Assembly of the kirk on the issue. She said:

"Human trafficking was the single most significant issue raised by the Church's partners from all areas of the world during a consultation with partner churches last year."

Much needs to be done, and I shall be putting a number of questions to the Minister for Communities in a moment or two.

Thousands of young women and girls have been smuggled into the United Kingdom on treacherous promises of jobs. Almost all of them come from impoverished countries in eastern Europe, Africa and Asia. Some of the criminals who smuggle women and girls into Scotland from eastern Europe are themselves illegal immigrants.

The brutality inflicted upon those defenceless women is sickening. When a man has sex with a girl who is frightened, beaten and intimidated, that is rape. There is no other way to describe it. What kind of animals are these clients? In the main, they

are family men aged between 25 and 50 and on reasonable incomes. I believe that those men should be charged with rape, as that is what they have committed. I am cynical enough, however, to believe that those rapists would get off such a charge in a Scottish court, given the lamentable and disgracefully low conviction rates in our courts for rape. Evil criminals are trafficking impoverished women into Glasgow, Edinburgh and other cities throughout the UK, who are then abused by affluent clients from the leafy suburbs. I wonder how many of those men, apart from being so-called good husbands and fathers, are also churchgoers.

What is to be done? I would like to offer my thanks to the *Evening Times*, the *Daily Record*, *The Herald* and the *Sunday Herald*, and to other newspapers, for their public examination of those evil criminals. It has been known for some time that people trafficking is the third largest money earner in the criminal underworld, following drugs and weapons smuggling. One of my questions to the minister is: what representations have been made to the Westminster Government anent the urgent need for the UK to sign the Council of Europe Convention on Action against Trafficking in Human Beings? Twenty-seven European countries have already signed up; I believe that the UK should be the 28<sup>th</sup>. The minister may say that that is a reserved matter and must be left to Westminster, but I remind him, if he needs reminding, that this Parliament recently voiced its unanimous concern about the one-sided extradition treaty with the United States of America, even though that is a reserved matter.

Signing the convention, which has the support of many organisations and churches, would give immediate succour to ill-treated women. For a start, they would be given a 30-day breathing space and hence would not be immediately deported. The Home Office has allowed Glasgow that breathing space, and I think that that should be rolled out across Scotland. The safety of those women would therefore be guaranteed, and they might also be willing to testify against their criminal bosses and abusive clients. I believe that those brave women who agree to act as witnesses should be treated as vulnerable witnesses when giving evidence in our courts.

The Home Office is reluctant to sign the convention at a moment of mounting controversy over illegal immigration but, as the *Sunday Herald* pointed out, that ignores the compassion that forced Wilberforce to campaign against slavery 200 years ago. Victims should be allowed a period of four to six weeks' residence and, once assessed, should perhaps be granted residence permits. That would, apart from all else, allow them to find work far removed from the sex industry. I ask the minister to tell us what

discussions have taken place with the Home Office and the Foreign and Commonwealth Office concerning women rescued from those evil circumstances in Scotland and their voluntary return to their countries of origin. They must be protected from the threat of being abducted again.

Finally, I want to hear from the minister that he and his colleagues are doing their utmost to provide leadership and assistance to the police and other agencies concerned with those matters. Help must also be given to voluntary organisations that seek to encourage those women to escape from their captors. One of their tasks is surely to persuade such victims that they need not fear the police or the state in Scotland. We, as MSPs, have to demonstrate to trafficked women sex workers that their contemptible clients are not representative of the Scottish people and that the overwhelming majority of Scots offer genuine support and the hand of friendship to those visitors who have been dragged into our country. They deserve nothing less.

17:09

**Margo MacDonald (Lothians) (Ind):** I thank—hardly congratulate, but thank—Trish Godman for bringing the matter to the attention of Parliament.

I believe that the issue is trafficking, not necessarily prostitution. As Trish Godman pointed out, prostitution is the heartrending result, but the issue that must be tackled is trafficking. I applaud Trish Godman's comment about the need for the UK to sign the Council of Europe Convention on Action against Trafficking in Human Beings. We cannot tackle trafficking unless we do that.

I would go further than Trish Godman and say that women who can be persuaded to testify against the gangs who bring them here should be allowed some time to put their lives in order before they are sent back again. As we well know, there are ties that bind from here back to the countries of origin, where the women have family that can be terrorised and so on. It is not good enough for us to say, when a woman is brave enough to testify against the gangs that brought her here, that she should go back after a wee while. She should be allowed to stay if we are convinced that she is of sound character and that she came here with good intentions. We can determine that fairly.

An issue that Trish Godman mentioned, almost in passing, is integral to tackling the problem. She referred to the position of the voluntary and support organisations. They must be funded and supported to the hilt as they are much better and much quicker at reaching the women than anybody else.

I will not add much more. Members will know of my interest in the management of street

prostitution, but I do not see this issue as being about that, because those lassies are not on the street. They are hidden away where people cannot get at them. It is not even the same as women who are working in the indoor sex industry. It is more pernicious and horrible than that and must be tackled differently: it must be seen as a problem of people trafficking.

I thank Trish Godman again for bringing the issue before Parliament.

17:12

**Ms Sandra White (Glasgow) (SNP):** I congratulate Trish Godman on her heartfelt speech. We should campaign vigorously on the issue; I have no doubt that most members of the Parliament do so.

Sex trafficking is one of the most evil and lucrative illegal activities conducted around the globe; it is second only to drug trafficking. The revenues from trafficking are an estimated £5 billion annually.

I will talk about prostitution, which is linked to trafficking. I disagree with Margo MacDonald when she says that the matter is not about prostitution. It is reported that there are 7,000 sex workers in Scotland and 85 per cent of them are believed to be trafficked victims—a majority of them from eastern Europe. Scotland is a target destination for traffickers because of its reputation for tolerating prostitution.

There is a great link between prostitution, sex trafficking, organised crime and the drug industry. I hope to be able to prove to Margo MacDonald exactly what happened in one enlightened country, Sweden, which used to have an open-border attitude towards prostitution. Since Sweden outlawed the buying of sex and decriminalised the selling of sex in 1999, the number of prostitutes in the capital dropped by two thirds and the number of men who bought sex dropped by 80 per cent. Most important, there is a clear correlation between the legislation on prostitution and the incredible drop in trafficking. I will mention some figures.

**Margo MacDonald:** I doubt whether the figures that Sandra White has given refer to the current year. There was a drop in the figures immediately after Sweden criminalised the buying of sex, but the number of those involved in street prostitution has risen again. There are differences among the three main cities in Sweden, as there are among the three main cities in Scotland.

**Ms White:** I thank Margo MacDonald for that information, although whether I believe it to be correct remains to be seen. As far as I can see, I have up-to-date figures.

Only between 200 and 400 trafficked women were in Sweden after the buying of sex was criminalised, whereas Finland had between 15,000 and 17,000 trafficked women. That speaks for itself. It shows what happens when prostitution is targeted. After all, what are these poor women trafficked for, if not for prostitution? They are not trafficked to wash dishes or sweep the streets. They are trafficked for prostitution and the extreme forms of violence that go along with it. We have to address the problem and protect those women. I think that Cathy Peattie might say something about that if she can stay to speak in the debate.

Exhaustive studies done throughout the world show that 92 per cent of sex workers would leave prostitution if they could. That figure refers not just to trafficked sex workers, but to other people who are involved in prostitution. We have to educate men about the fact that prostitution does not exist because women want it to be there. It is an evil trade that exists because men want these types of services. I have evidence—Margo MacDonald might be able to agree with this point—that prostitutes on the streets and in saunas say that, years ago, they were asked for simple sex but that they are now asked to perform the most horrendous acts simply because trafficked women are being brought into this country. Men are using the services of trafficked women and when they go to pay for a prostitute they are asking for the same sort of services. Years ago, they would not have asked for them. There is a clear correlation between prostitution and trafficking. I have no doubt about that.

I congratulate Glasgow City Council on the work that it is doing. I think that Trish Godman mentioned that. The council is doing a fantastic job and other councils should learn from it.

Like Trish Godman, I ask the minister to ask the Westminster Government to sign up to the Convention on Action against Trafficking in Human Beings. It says that we cannot sign up to the convention because it will affect the immigration laws, but the immigration laws are an absolute mess, as John Reid said. While he is considering those laws, we should sign up to the convention and sort out trafficking once and for all. It is an evil, vile trade in which women are used as a commodity and treated worse than animals. We have to put a stop to it, not just in this country but further afield, and one way we can do that is by signing up to the treaty.

17:17

**Elaine Smith (Coatbridge and Chryston) (Lab):** I congratulate Trish Godman on securing this debate.

The trafficking of women into forced prostitution is part of the continuum of male violence against women. It is a widespread manifestation of gender discrimination, inequality and patriarchy. It is part of a multibillion pound global industry that encompasses exploitative commerce, which includes adult and child pornography, prostitution, massage parlours, lap dancing, live sex shows, mail-order brides and sex tourism. Those are basically all violence against women. I would be grateful if, tonight, the minister would update us on the progress of the Scottish Executive's work on developing a strategic approach to all forms of violence against women and children. I think that the waters can sometimes get a wee bit muddled.

The international trafficking of women as sex slaves is clearly a big business. It is tolerated because, like prostitution and pornography, people have been desensitised to it and it has been normalised. We need to change that. Sex trafficking is the third largest underground economy in the world. More than 2 million women and children are sold, conned or forced into sexual slavery every year because there is a demand for those sex slaves. Millions of men think that it is acceptable to exchange money for access to sex—to buy the bodies of women and children and violate and abuse them, or, as Trish Godman said, to rape them. A report today states that £6.6 million is spent on prostitution in Glasgow every year.

The traffickers treat their victims as commodities to be traded for the highest profit. They ought to be punished severely, as the motion says, but the consumers must also be dealt with, not only through severe punishment but through education about the harm that they promulgate.

**Maureen Macmillan (Highlands and Islands) (Lab):** Does the member agree that we should stop talking about sex workers and the sex industry because those terms legitimise what is happening to women?

**Elaine Smith:** Yes. We should stop talking about sex workers. We should talk about women who are used. They do not work as prostitutes. They are used as prostitutes.

Sex with trafficked women is not consensual sex by any stretch of the imagination: it is slavery, torture, abuse and rape and must be treated as such. Sex trafficking is not happening only on someone else's doorstep, it is happening here in Scotland in the 21<sup>st</sup> century. Young women are lured into the nightmare world of abuse and torture by a range of means and for a variety of reasons. Adverts that promise them jobs, money and opportunities abroad can be enough to entice them into the trap that is laid by the traffickers because their economic situation or that of their family is one of extreme hardship. They may be

shown fake visas and false employment contracts and may even be persuaded into a marriage. In the book "Not For sale: Feminists Resisting Prostitution and Pornography", Leslie R Wolfe, a leader in the fight against trafficking in the US, paints a picture of how any of us could be caught in a nightmare web spun by traffickers. She says:

"Imagine that you have left home for a new country and new economic opportunity. You have been brought to this new country by a man or men that you fear or even trust, to work and earn money for your family—only to find yourself imprisoned in a brothel or a sweat shop. Imagine your terror: you cannot speak the language; you fear the local police, who may be complicit in the trafficking; and you legitimately fear arrest, imprisonment and deportation to your home country, where you will likely be ostracised because of the sexual nature of your exploitation."

**Margo MacDonald:** Does the member agree that she drew a distinction in the quotation that she read out, when she indicated that a woman could be trafficked into prostitution in a brothel or into a sweat shop as a machinist? The issue is the trafficking of human beings.

**Elaine Smith:** The point that Margo MacDonald makes tends to muddy the waters. If she reads books such as the one that I have cited and other research that has been done, she will find that women who are trafficked into sex shops—that was a slip of the tongue; I meant to say sweat shops—are probably being sexually abused. The issue is being muddled to some extent. I have no doubt that the women in question are sex slaves.

Currently, those women do not have many rights in the UK and are treated as illegal immigrants who can be detained and deported. I join Trish Godman in her plea for the Government to sign the Council of Europe Convention on Action against Trafficking in Human Beings, to ensure that women are sympathetically dealt with as victims and not as perpetrators. I do not accept that non-genuine claimants may benefit and that that is not acceptable. Without the convention and its associated action, genuine victims are being denied protection, which is unacceptable. In a paper entitled "Hope Betrayed", the POPPY project points out that, in the period between March 2003 and August 2005, 32 women claimed asylum and one was granted it. In 80 per cent of cases, asylum was granted on appeal. I ask the minister to comment in his summing-up on the possibility of setting up a POPPY project for Scotland.

The normalisation of buying and selling sex through prostitution, pornography, lap dancing, massage parlours and so on must be challenged in our society, because it is not normal. It is abuse and violence, with punters seemingly able to buy out a woman's right to say no. That is completely unacceptable. Prostitution and sex trafficking are human rights abuses, whether they are local or

global. I say to Margo MacDonald that the demand for them is one and the same thing. Both are gender-based domination and provide huge financial rewards for the predators, ensuring continued demand and supply.

The answer to the abuse must be to address demand, which is its root cause. Contrary to some myths, women do not have a real choice, but the punters do. Men who use prostitutes must be made accountable through arrest and prosecution and thereby persuaded to choose differently, because they have a choice. We should also educate society as a whole and provide better support and services to victims. I would have liked to address the serious health problems of victims, such as post-traumatic stress disorder, but I do not have time to do that.

In a world where increasingly capitalism is king, it is incumbent on our Government to send a clear message, through legislation and action, that human beings are not for sale.

17:23

**Dave Petrie (Highlands and Islands) (Con):** I thank Trish Godman and congratulate her on raising this vital issue. Slavery has concerned Conservative politicians since our party abolished the slave trade at the beginning of the 19<sup>th</sup> century. It troubles me that now, in the 21<sup>st</sup> century, slavery still exists in Britain, through a comprehensive network of people trafficking. It is undoubtedly a heinous blight not only on the human condition but on our society as a whole.

The imprisonment and exploitation of women in a society they do not recognise, in a culture that is alien to them and that has a language they barely understand, if at all, can only draw the greatest concern from all parts of the chamber. They are among the most vulnerable people in our society and they need our protection. It is not just that the illegal and immoral crime of people trafficking blights our streets; it often leads to associated crimes, such as drug offences, theft and racketeering.

We acknowledge that the Government has taken steps to act. The Nationality, Immigration and Asylum Act 2002, subsequently replaced by the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004, have helped to tighten up the law, criminalising more effectively those involved in people trafficking.

Similarly, operation pentameter has been a step forward in combating the crime: it has allowed Scotland's police forces to work effectively with their counterparts throughout the United Kingdom, often using valuable intelligence that is passed on to them. Although we applaud such measures, it

concerns us that as soon as one group of women is removed, another appears to replace it.

Despite such commitment, Her Majesty's Government still refuses to sign up to the Council of Europe Convention on Action against Trafficking in Human Beings, which was produced more than a year ago. The Government claims simply that it is still considering whether to sign. The convention would provide protection for any victims who have suffered at the hands of traffickers and guarantee 30 days' support, recovery and safe housing. The matter was raised in the House of Lords last July by the Conservative peer Baroness Rawlings, but it has still not been addressed.

**Margo MacDonald:** Does the member agree that there is not enough protection for people who give evidence against professional gangs that organise human trafficking, and that we need to give victims more than 30 days' respite?

**Dave Petrie:** That is up for debate. At least the convention guarantees 30 days' respite. It is at least something. I am sure the matter can be considered at a later date.

Why a Government should focus so much attention on people trafficking without providing the necessary support network for the victims has yet to be explained.

In a speech in January, the shadow Foreign Secretary, William Hague, highlighted people trafficking and described his approach to the matter. He said that it is the responsibility of developed countries to act with the developing world to eradicate the poverty that causes so many people to sell themselves or their children into a life of slavery. That is the modern, compassionate Conservative approach to which we must now turn.

The suffering that is caused by the people trafficking networks in the UK is incomprehensible. We very much support any measures that will break the criminals' grip on their victims and their communities. I hope that recent advances will continue to improve the situation.

17:27

**Rosie Kane (Glasgow) (SSP):** Like other members, I welcome today's incredibly important—and extremely worrying—debate.

I speak from my experience of working with asylum seekers and women who have been victims of traffickers. When I spoke about the subject in Parliament on international women's day, I mentioned Olga, who was brought into the UK by a trafficker who she believed was her boyfriend. He was in fact a lawyer in Russia who duped her and another group of women. She



managed to flee from him, but was absolutely terrified to name him unless she was given leave to remain in the country. Naming him and being returned was the worst thing that could happen to her. Because she did not name him, she was not believed and, sadly, was hastily deported.

In her early 20s, Olga was abused by the scum who trafficked her as well as by the system here in Scotland. She was detained and suffered the fear and indignity of being held at Dungavel. She was cuffed, forced on to an aeroplane and returned to Russia. Penniless and unable to return to her family because the man who tricked and trafficked her would easily find and punish her, she is now somewhere in Russia avoiding that very man and terrified that her only option is to enter prostitution, which would force her back into the cycle all over again—at the age of 24. Her options are few to non-existent and her fears are real. I have not heard from her in a while, which makes me scared about her fate.

As Elaine Smith and others have said, the problem is men's exploitation and brutal treatment of women. It is almost impossible for me to separate trafficked women from prostitutes, even though one group is possibly acceptable whereas the other is a greater worry. This is all about what men do, what poverty forces on women and the chances and choices that women do or do not have. They are all vulnerable women.

Members might know that I spent some time in police cells recently, in relation to protests at Faslane. I was detained in the police cells at Glasgow district court with seven women who were being used as prostitutes. Elaine Smith rightly referred to this: I heard of the ravages of their lives and about the abuse that they have suffered and continue to suffer. They talked and shared their experiences openly because they believe that they must tell everything about themselves and that they do not have any rights at all. There were certainly no women like that in the movie "Pretty Woman". They had suffered great abuse and there were no diamond necklaces for them.

I spoke to a woman this week who came here as an asylum seeker but who, because of poverty, has ended up as a prostitute in Glasgow. She has a criminal record because of that. I have spoken to women from the Philippines who were legitimately brought in by immigration advisers to work in saunas in Edinburgh. I say to the minister—Elaine Smith touched on this—that from Pilton to the Philippines and from Glasgow to Moscow, demand for prostitution is the problem. We must challenge that demand throughout society and challenge the power balance. We must legislate against men, and care for women. We must begin to ensure

safety, choice, empowerment and opportunity for all women.

I thank Trish Godman for bringing this issue to the chamber and giving us a chance to share our experiences and, I hope, start to change things for all those women.

17:31

**Patrick Harvie (Glasgow) (Green):** Like other members, I thank Trish Godman for lodging the motion and congratulate her. I offer apologies on behalf of Shiona Baird. As members may know, she recently suffered a family bereavement. If she were here I am sure she would want to contribute to the debate and extend her thanks, too, to Trish Godman for lodging the motion. Like Trish Godman, I pay tribute to the work that has been done by many newspapers, including the *Sunday Herald*, to investigate the trafficking issue and to expose some of the vile detail.

Trish Godman mentioned that it is estimated that 5,000 women and girls are trafficked into the UK every year. In 2000, the Home Office estimated that there were around 1,400 such women. I do not know to what extent that dramatic increase is due to an increase in the trade in trafficked women or to improvements in surveillance, detection and intelligence. It may be a bit of both, but the fear must be that either figure represents an underestimate.

The issue comes down to the difference between the views of Sandra White and Margo MacDonald. We can recognise that there is a deep connection between trafficking and the most exploitative end of the sex industry—I do not think that anybody denies that—but the trafficking problem is wider than that. As Elaine Smith recognised, people are trafficked for domestic and agricultural labour, casual manufacturing jobs and so on.

**Margo MacDonald:** Cocklers as well.

**Patrick Harvie:** Indeed. Many of those people are also subject to intimidation, violence—including sexual violence—and exploitation.

We should recognise that even if we were able to delete demand for commercial sex from the equation, we would still have an unacceptable, highly complex and difficult problem of trafficking, and that many of the victims of trafficking would be subject to violence, including sexual violence.

I agree with Margo MacDonald that we should argue to go beyond the Council of Europe convention. I do not accept as valid the use of the illegal immigration argument. Frankly, if a few people exploit a potential loophole, as some might see it, and gain permission to stay here, I can accept that. I would not care if some people

exploited that and were able to stay here when they did not deserve to, so long as we could ensure that the people who are subject to the vicious crime of trafficking can stay and are not in fear of deportation.

The fear of deportation, even for people who have a hope of escaping their abusers, who are often referred to as masters—a word that sticks in the throat—is such that people are deterred from accessing services and support. People are afraid that they or their families will become victims of further trafficking and violence if they return home.

I agree with Margo MacDonald that we should go far beyond the terms of the Convention on Action against Trafficking in Human Beings, but I hope that all members agree that it is astonishing and unacceptable that the UK Government refuses even to sign up to the convention and allow people the bare minimum 30-day recovery and reflection period and a few basic support, health care and legal services. I hope that the minister will tell us what discussions he has had with UK ministers on the matter. If he has had no such discussions, I hope that he will do so urgently.

17:36

**The Minister for Communities (Malcolm Chisholm):** I congratulate Trish Godman on securing a debate on the important issue of trafficking for forced prostitution.

Human trafficking is a despicable form of modern slavery and no one should be in any doubt about the fact that the Executive views that form of exploitation as wholly unacceptable—as it does all other forms of sexual exploitation of women, which Elaine Smith, in particular, emphasised. We are determined to challenge the whole spectrum of violence against women, which is the wider context of the debate, although I will focus on trafficking.

Victims of trafficking, who are among the most marginalised groups in society, experience the most horrendous emotional, physical, mental and sexual abuse. I am glad to have an opportunity to reaffirm our view that trafficking is intolerable and that those who perpetrate it should be dealt with severely.

We have already taken action on trafficking. With the support of the Parliament, we introduced a tough new offence that is aimed at sex traffickers. Section 22 of the Criminal Justice (Scotland) Act 2003 provides that it is an offence for a person to be involved in the trafficking into or out of the UK of a person or people for the purpose of sexual exploitation. The maximum sentence is 14 years, which reflects the seriousness of such offences.

**Elaine Smith:** Will the minister comment on the idea that prostitution within the UK is domestic trafficking, which has been highlighted in papers that I have read?

**Malcolm Chisholm:** We regard prostitution as unacceptable and part of the spectrum of violence against women. I do not have time to go into detail about our policy proposals and action on prostitution.

**Christine Grahame (South of Scotland) (SNP):** Will the minister give way? I will be brief.

**Malcolm Chisholm:** I must make progress.

The Crown Office rightly regards trafficking cases as a priority and has provided guidance to prosecutors on making full use of the new anti-trafficking legislation.

I am pleased that, as a result of operation pentameter, which is a police-led, UK-wide multi-agency campaign to combat trafficking for the purpose of sexual exploitation, the first trafficking charges in Scotland have been brought under the 2003 act. The Proceeds of Crime Act 2002 provides another weapon in the armoury, by enabling enforcement agencies to seize the ill-gotten gains of people who profit from trafficking.

It is important not only to deal effectively with the perpetrators of such despicable crimes but to protect and support the people on whom they prey. As a result of operation pentameter, police have rescued four trafficked women. It is essential that they and others like them receive appropriate care.

Elaine Smith asked whether an initiative such as the POPPY project could be set up in Scotland. There is a similar project: as part of our violence against women fund, the Executive is continuing to provide support to a pilot project in Glasgow that aims to determine the need for support for trafficked women. The pilot was set up in 2004 and provides advice and support to women who have been trafficked into Glasgow. It also raises awareness about the nature of trafficking and its impact on women. The project has developed links with other partners in Glasgow, such as the police, social work services and NHS Greater Glasgow, to provide safety, accommodation, health care, legal advice and psychological support. The project has negotiated with Strathclyde police a method of third-party reporting, which enables front-line workers to pass on anonymous information to the police, to assist them in criminal investigations.

**Patrick Harvie:** Will the minister give way?

**Christine Grahame:** Will the minister give way?

**Malcolm Chisholm:** I had better take guidance from the Presiding Officer on how long I have left to speak.

**The Deputy Presiding Officer:** You have some time in hand and I would be happy to extend your time.

**Malcolm Chisholm:** I will take an intervention from Christine Grahame.

**Christine Grahame:** I simply want to ask a question. If the minister cannot answer it, his colleague the Minister for Justice might be able to. How many successful prosecutions have been made under section 22 of the 2003 act, which the Minister for Communities mentioned? That is an important fact to determine.

**Malcolm Chisholm:** I certainly cannot answer that question; the member is right to say that the justice ministers take the policy lead on the matter, although I have a strong interest in it as the Minister for Communities.

**Patrick Harvie:** I appreciate that the minister may deal with this later, but I press him to say something about whether services must be made available wherever they are needed. If the UK Government signed up to the convention, that would be the case; it is not the case at the moment.

**Malcolm Chisholm:** I will deal with the convention in a moment. I will respond at the appropriate point in my speech.

I did not give way in a very good place—I was talking about the successful Strathclyde police pilot project. The information that that project has provided shows the number of women who have been trafficked for commercial sexual exploitation—in Glasgow alone—from Lithuania, Albania, China, Thailand, Sudan, Kenya and Hungary. That this should happen in Scotland today is truly shocking and horrendous.

It is vital to continue to monitor the findings from the project and to ensure that we develop our understanding of the reality of trafficking for women and of their support needs. We should not forget that that vile trade could not exist if there was no demand. It is important to send a clear message to men who pay for sex that they are fuelling a horrendous trade and are, as Trish Godman made clear, guilty of rape.

We are determined to challenge the demand for all forms of commercial sexual exploitation—and for all forms of sexual exploitation more generally—and to work in partnership to combat them.

**Margo MacDonald:** I apologise that my intervention is another about a justice matter. Children and young people can give anonymous testimony and we have set up courts specially to enable that. Could women who have been trafficked give anonymous testimony? The

minister will find that lack of anonymity is why no successful prosecutions have been made.

**Malcolm Chisholm:** The Vulnerable Witnesses (Scotland) Act 2004 covers some of that, but I will draw the matter to the justice ministers' attention, if more needs to be done.

By its nature, trafficking is an international crime that operates across borders and often involves organised crime networks, so partnership working and the sharing of information and intelligence with national and international law enforcement agencies are essential to identifying what is happening and to dealing effectively with those who are involved. That is why we undertook a joint consultation, which closed recently, with the Home Office on proposals for a UK action plan to tackle human trafficking. The plan contains proposals on preventing trafficking at source, on improving law enforcement and on supporting and assisting victims. The convention was raised in the consultation. It is a reserved matter, but I share Trish Godman's views and concerns about it.

The Glasgow interagency trafficking working group broadly welcomed the action plan, but said in its response to the consultation paper:

"An automatic reflection period and the possibility of a short term residence period affording women rights to assistance without the absolute necessity of assisting the police might mean that frontline workers could offer women reassurance about approaching the authorities for help leading to more prosecutions but more importantly providing women with a route out and the protection that they need."

I will discuss the issue with the justice ministers, who take the policy lead. We will consider carefully the views that have been expressed today and by respondents to the consultation exercise and we will feed our thoughts back to Home Office ministers.

I emphasise that the Executive is committed to tackling all forms of violence against women. The debate rightly highlights one particularly abhorrent aspect of such violence and we will continue to work to bring the perpetrators of that violence to book as well as to support those who suffer at their hands.

I will finish by quoting the Glasgow interagency trafficking working group's submission:

"As a destination country, primarily for trafficked women, we have created the demand for this heinous form of exploitation and violence against women. We believe that we have a duty to afford any woman who is fortunate enough to come to the attention of the authorities all of the protection and assistance the state can muster. Focussing on demand reduction, victim protection and prosecutions will be vital to combat this form of 21<sup>st</sup> century slavery."

*Meeting closed at 17:44.*



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