

**MEETING OF THE PARLIAMENT**  
**COMMITTEE OF THE WHOLE PARLIAMENT**  
**MEETING OF THE PARLIAMENT**

Thursday 15 June 2006

Session 2

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## Scottish Parliament

Thursday 15 June 2006

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

### Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill (Emergency Bill)

**The Deputy Presiding Officer (Trish Godman):** The first item of business is consideration of motion S2M-4536, in the name of Cathy Jamieson, that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be treated as an emergency bill.

09:15

**The Minister for Justice (Cathy Jamieson):** I wish to move that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be considered under the procedure for emergency legislation. I will briefly outline why I consider that it is important that this short but critical piece of legislation should be handled under those exceptional procedures.

The need arises because Scotland's senior judge, the Lord President of the Court of Session, has been ill for some time and there is no indication of when he will return. Under the present law, a number of important functions may be carried out by the Lord President alone. His extended absence is already causing difficulties for the administration of the courts. The second most senior judge, the Lord Justice Clerk, has asked ministers to take early action to deal with this gap in our law. The only way in which we can remedy the situation is to legislate to put beyond any doubt the fact that the Lord Justice Clerk may act in place of the Lord President during the Lord President's incapacity.

If the Parliament allows the bill to be dealt with under the emergency procedures, I will explain the background in more detail in the debate that will follow. However, for the time being, I think that it is important to put on record the fact that we are proposing a commonsense set of provisions that will deal with the immediate situation before us and will ensure that there is no disruption to the orderly conduct of business in the courts. I should add that the senior judiciary has been consulted about the bill, that it is entirely content with what ministers are proposing and that it agrees with the need for an urgent solution.

I move,

That the Parliament agrees that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be treated as an Emergency Bill.

*Motion agreed to.*

## Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S2M-4542, in the name of Cathy Jamieson, that the general principles of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be agreed to.

09:18

**The Minister for Justice (Cathy Jamieson):** I thank members for allowing the bill to be considered under the procedures that enable legislation to be passed swiftly. I acknowledge the co-operation of the various political parties in the chamber.

The bill is short, but it concerns an important measure. The aim of the bill is to ensure that there is no disruption to the smooth running of the courts or other aspects of public administration when either or both of the two most senior judges are unable to carry out their duties owing to ill health or when one of the posts is vacant. The judges in question are the Lord President of the Court of Session and the Lord Justice Clerk.

I do not want to dwell unnecessarily on the background, but it might be helpful to remind ourselves of the circumstances that the First Minister outlined in his statement on 1 June.

As members will be aware, the Lord President is currently unable to carry out his duties, owing to ill health. There is no firm date for his return to duty. In the meantime, the Lord Justice Clerk is presiding over the courts. The uncertainty about when the Lord President will return is causing some difficulty because, as the law stands, the Lord President alone may take certain actions and make certain decisions, and the functions of the Lord President extend quite widely.

In addition to matters concerned with the operation of the courts, the Lord President has a range of important responsibilities in other areas of public administration. For example, there is a statutory requirement to consult the Lord President before a recommendation is made by the First Minister for the appointment of a sheriff, and it is the Lord President who appoints the members of the tribunal that investigates questions about the fitness of part-time sheriffs. Acting with the Lord Justice Clerk, the Lord President also has important functions relating to the investigation of misconduct by full-time sheriffs.

It is also a traditional role of the Lord President to recommend persons for appointment as Queen's counsel. The Lord President alone has

responsibility for appointing people to a range of tribunals, and he or she is also the rule-making authority for a number of tribunals and bodies. As there is no mechanism for such functions to be carried out other than by the Lord President, his or her absence for any length of time has the potential to be disruptive. I am sure that members agree that such disruption is not acceptable to those who use our tribunal systems, for example, or who otherwise rely on the Lord President fulfilling the functions that are placed on his judicial office. The measures in the bill offer a straightforward, commonsense way of filling the gap in our law.

I assure members that, in preparing the bill, we have fully respected the independence of the judiciary. We are committed to that fundamental constitutional principle, and the measures that we propose have the support of the Lord Justice Clerk and other senior judges. Equally, and for completeness, I should say that our proposals do not affect the First Minister's power under the Scotland Act 1998 to set up an independent, judicially led tribunal to investigate any question of fitness for office; nor do they affect the important role that the Parliament has when the report of such a tribunal is laid before it.

As I said, the proposals in the bill are straightforward. Two basic situations are covered: vacancy, and incapacity owing to ill health. Although the pressing need is to deal with the present and most unfortunate incapacity of the current Lord President, Lord Hamilton, the bill includes provisions to deal both with the incapacity of the Lord President and the Lord Justice Clerk and with those offices being vacant. That will ensure that the bill's effectiveness will not be undermined by unforeseen circumstances.

I will outline some of the basic principles of the bill; there will be an opportunity to consider points of detail later today. The basis of the provisions is that, when the Lord President is incapacitated or the office is vacant, the Lord Justice Clerk, who is the second most senior judge, will carry out the Lord President's functions. It is important to note that the Lord Justice Clerk will not become the Lord President, but he or she will have the legal authority to carry out functions that fall to the Lord President under the law. While the Lord Justice Clerk is doing that, the functions of the office of the Lord Justice Clerk will be carried out by the senior inner house judge.

When the offices of Lord President and Lord Justice Clerk are both vacant, or when both are incapacitated due to illness—if such an unfortunate situation arose—the structure of our proposals will ensure that their functions can be carried out by the senior and second most senior inner house judges respectively.

I turn to the circumstances that would trigger the provisions. We do not consider it necessary to make provision for any special procedure in the case of a vacancy. A vacancy in one of the judicial offices arises when something definite occurs. The office holder might give notice of an intention to resign from a given date. Indeed, that is what happened when Lord Cullen retired—he gave notice that he would retire from office on 25 November 2005. Had the provisions in the bill been in force at that time, they would have been triggered when the vacancy arose. On 26 November, the Lord Justice Clerk would have had the power to carry on the functions of the Lord President until the new Lord President took up office.

A person's inability to carry out the duties of office owing to ill health is, of course, a different matter. It is here that we have been most careful to avoid anything that might be considered interference with the independence of the judiciary. The bill therefore provides that incapacity will be determined by the most senior judges—that is, the judges of the inner house. At least five of them must be satisfied that there is incapacity and must sign a declaration to that effect. The Lord Justice Clerk must be among those who sign the declaration. When the judges' declaration is received by the First Minister, the powers to act under the bill will take effect.

The end of the process will be triggered in a similar way. Five judges need to be satisfied that the incapacity has come to an end. They need not be the same five judges who signed the initial declaration, although, again, their number must include the Lord Justice Clerk. That approach means that the serious step of certification is carried out by our most senior judges, in whom we have the utmost confidence. Members will wish to know that the proposed approach to certification has the senior judges' support.

I should also say that although we have not consulted on the provisions in the bill, we consulted on the underlying principle in our wider consultation on reforms to the judicial system. Respondents to that consultation broadly supported a provision that would allow the Lord Justice Clerk to undertake the Lord President's functions during temporary incapacity and at any time when the office was vacant. I am therefore confident that I present to Parliament proposals that those who have dealings with our judicial system will welcome.

We would do our citizens a significant disservice if, during times of illness or vacancy, there were no way to perform the functions that have—rightly—been entrusted to our most senior judges. We need to fill the gap in the law without delay. I therefore hope that members will agree that the

bill offers a simple and effective remedy that fully respects the independence of those whom it concerns. I commend the bill to Parliament.

I move,

That the Parliament agrees to the general principles of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill.

09:25

**Mr Kenny MacAskill (Lothians) (SNP):** I thank the minister for her eloquent explanation of the bill. The Scottish National Party fully supports the action that the Executive has taken. Some things in life and in legislation cannot be foreseen; they simply happen. Some situations could be surmised, but if that were always done, we would legislate daily for issues that might never arise and the Parliament would be unable to get on with its day-to-day business.

The situation is rather unfortunate. Perhaps we have simply been fortunate in the past. Given the history of the office of Lord President and the actions of some of their lordships in years gone by, perhaps it is simply by the grace of God that such a situation has not arisen before. However, it has now arisen, which is unfortunate for Lord Hamilton and his family and for the administration of justice, and we require to address it.

Legislation is needed expeditiously, so we fully support the Executive's action to take the appropriate steps. The consultation that would normally happen on a bill could not take place, but full consultation has taken place and no suggestion is made that any political party or, more appropriately, anybody who is on or involved in the judicial bench feels aggrieved or has had no opportunity to participate.

As I said, speed is of the essence. The circumstances have arisen and it is important to keep the show on the road. To an extent, we have had a similar experience in our day-to-day lives in the Parliament with the beam incident and the problems that arose from that. It is essential that the administration of justice continues, just as the administration of the Parliament and the functioning of the legislature continued because expeditious action was taken. In the circumstances, we are more than happy fully to support the Executive's action and the bill.

09:28

**Margaret Mitchell (Central Scotland) (Con):** The offices of the Lord President and the Lord Justice Clerk are the two most senior in Scotland. The Lord President is the head of the Court of Session—Scotland's superior civil court—and the Lord Justice Clerk is the next most senior judge.

Those two judges plus 32 senior colleagues make up the Court of Session. Judges in the Court of Session are also judges in the High Court of Justiciary—the superior criminal court—whose head is the Lord Justice General, an office that is held by the Lord President. The Lord Justice Clerk is the next most senior judge in the High Court.

It is clear that those two offices are hugely important to our justice system and to the efficient running of our most senior criminal and civil courts. Crucially, the judicial business that is undertaken in those courts depends on the ability of the powers and duties that are attached to those offices to continue to be exercised in unforeseen circumstances.

The bill is necessary because of how current legislation stands and the current Lord President's unexpected incapacity. Under current legislation, provision is made for the Lord President's depute—the Lord Justice Clerk—to fill any vacancy temporarily and to carry out some of the Lord President's duties, but no provision is made for the Lord Justice Clerk to carry out the Lord President's statutory duties. It is therefore not only eminently sensible but essential for the Parliament to address the situation through the emergency legislation.

In effect, the bill does four things. First, it provides a catch-all provision that will ensure that, if the Lord President becomes incapacitated or if a vacancy arises, all the various statutory powers and duties that are attached to the office of Lord President are transferred to the Lord Justice Clerk temporarily, together with existing powers that are automatically conferred on him, until the vacancy is filled by a permanent appointment or the Lord President is deemed by a majority of his fellow judges in the inner house of the Court of Session no longer to be incapacitated.

A further provision puts in place a mechanism to empower senior judges to take action when the need arises by issuing a declaration as a result of at least five judges of the inner house of the Court of Session, including the Lord Justice Clerk, deciding that the office of the Lord President is vacant, or that the office holder is incapacitated or is no longer incapacitated. That declaration is to be intimated to the First Minister, who in turn passes it to the Scottish Parliament's Presiding Officer. The bill also makes provision to deal with the domino effect created by the office either of the Lord President or of the Lord Justice Clerk becoming vacant, or the respective office holders being incapacitated.

Crucially, the bill maintains the independence of the judiciary, which is a vital cornerstone of the justice system, by empowering judges in the circumstances outlined to take action free from ministerial interference. The Scottish Conservative

party therefore has no hesitation in supporting the general principles of the bill.

09:31

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** The Lord President's extended illness is a source of regret. As Kenny MacAskill said, we are in the fortuitous position that, since the creation of the office of Lord President, which, as is stated in the consultation paper "Strengthening Judicial Independence in a Modern Scotland", dates from

"the institution of the College of Justice in 1532",

we have not needed legislation on the post either in the old Scots Parliament or since, but we do now.

The consultation document rightly states that the role of the Lord President

"is largely undefined in statute."

It also states that

"We do not consider this an entirely appropriate arrangement for a devolved Scotland, or one that gives the judiciary a fully effective structure within which to modernise and develop itself in the interests of those it serves."

The document states that there is an intention to confer

"on the Lord President in statute certain powers and responsibilities."

In that context, if there is extended incapacity because of ill health, it is right that the Parliament responds to requests from the judiciary when there is clearly a need for action.

The First Minister made a good statement that outlined some of the difficulties that we face in relation to the smooth operation of our justice system. The Minister for Justice outlined those again today. The Lord President carries out important functions, so it is important that we have a response to either an extended inability to carry them out due to ill health or a vacant position.

The bill is measured and is a good response. I welcome the fact that it limits the definitions and retains the independence of the judiciary. One could question why such legislation has not been needed before. The Executive had, of course, asked that question when consulting on the proposals that were set out in the consultation document. It seems slightly ironic that we probably cannot proceed with the consultation process on reforming the position of the Lord President because the Lord President is unable to respond to the consultation.

The bill may benefit from a sunset clause or a statement of intent from the Executive on its intentions in bringing forward legislative proposals

in the wider context of the role and position of the Lord President. It would be helpful for the Parliament to get clarity from the minister with regard to whether the provisions in the bill will be extant when that further legislation is brought forward, or whether they will fall and be subsumed into wider legislation. That said, the Liberal Democrats will support the general principles of the bill today.

09:34

**Gordon Jackson (Glasgow Govan) (Lab):** I suppose that I should begin with a declaration of interest. I am—some people will be surprised to learn this—a practising member of the Faculty of Advocates. That makes me technically eligible for the office of Lord President—I have to say that we do not get much more technical than that.

I have one problem in speaking in the debate: there is little to say. This unanimity is fabulous. I was, however, attracted to a comment that was made in both the policy memorandum and the minister's speech that the bill is in no way an attack on judicial independence. I liked that, particularly given the present climate, as anything that emphasises judicial independence is to be welcomed. If I am honest, I suppose that that is because most people in the legal profession are a wee bitty worried about the whole subject. I do not think for one minute that the Executive operates in bad faith. I know that Cathy Jamieson, Hugh Henry and, indeed, the Lord Advocate, value the principle of judicial independence. I am not hinting otherwise.

I do not agree with all the comments that were made recently by, for example—to name no names—retired judges. Their attack on the judicial appointments system is not well founded. We need to bear in mind the fact that, in the past, Colin Boyd could have appointed anyone, including himself, if the mood had taken him—*[Interruption.]* He says that that would not be a bad thing.

Having a more open system is hardly a ground for criticism. The problem is that, although no one would seek to undermine judicial independence, that can happen in society in an almost incremental way, particularly if there is the sort of press pressure that operates here. Last week—or this week—one newspaper ran a front page that had a picture of eight judges on it. Basically, the paper was calling for the judges to be sacked because each of them had passed a sentence with which the newspaper disagreed. At least one of the judges—again, I name no names, but he will know who I am referring to—could hardly be described as soft by any standards whatsoever. He would be insulted by the very suggestion.

On reading the article, I found not the slightest indication that the writer had in front of him a full, detailed and balanced view of why the judges did what they did. However, the effect of the piece was to undermine public confidence in the judiciary. That is why I keep saying that I am glad that Cathy Jamieson emphasised that we will never do that.

**Stewart Stevenson (Banff and Buchan) (SNP):** I welcome the fact that Gordon Jackson is contributing to the debate. Given his experience, I ask him to comment on one of the bill's provisions. The Lord Justice Clerk has to sign both the declaration of incapacity—which is fine—and the lifting of the declaration. The provision gives the Lord Justice Clerk a veto: he can say, "The Lord President remains incapacitated until such time as I say otherwise." Is that a proper provision, given that he could be the person who succeeds to the office on the Lord President demitting it?

**Gordon Jackson:** I think that we will leave that one to the minister. As always, Stewart Stevenson has thought of something that never occurred to me. I suppose that he is saying that, once the Lord Justice Clerk gets in, we might never get him back out again. I am not quite sure about that; I am sure that it would not happen.

In talking about judicial independence, I am not suggesting that judges should be put on a pedestal and given undue reverence. By way of balance, I should say that I have spent most of my adult life trying to knock judges off their pedestal.

Someone once said—it was a judge who said it—that judges are like chimpanzees: the higher they climb, the more you see of their less attractive features. Of course, some judges are better than others. However, it is vitally important that, even though judges get it wrong from time to time, we maintain a respect for the office and not just the people. Unless we do that, the whole of society will be the poorer.

**Phil Gallie (South of Scotland) (Con):** Will the member take an intervention?

**Gordon Jackson:** I am sorry, but I am almost finished.

**Phil Gallie:** It is on that point.

**Gordon Jackson:** All right.

**Phil Gallie:** I acknowledge much of what Gordon Jackson says about the independence of the judiciary. However, for the justice system to work, the overall perception of the public is all important. Where there is a growing perception of dissatisfaction, would he care to comment on whether the problems that are facing judges have been made by this and other Parliaments?

**Gordon Jackson:** The system is good; it is just that a balance needs to be struck. Of course, we need to have public confidence in the judiciary, but if newspapers undermine that confidence in a way that is blatantly not always honest and fair, it is difficult to strike that balance. [*Interruption.*]

I worry about the way in which judges are serviced, in a manner of speaking. It is obvious that a modern judiciary needs proper levels of staffing. I know that others, including the dean of the Faculty of Advocates, have said that the judiciary should have the structure of an independent service; it should not be part of the normal civil service structure. I make a declaration on the point: I have a great deal of sympathy for that viewpoint.

The whole structure has three branches: the Executive, the legislature and the judiciary. That separation is important. The Parliament's staff are separate from the Executive civil servants. Every parliamentarian thinks that that is a good thing and would object if the situation changed. We should perhaps apply the same consideration to the judiciary. If the new judicial system needs staff, we should think about how they can be provided in a way that maintains that independence. That is just a wee thought. [*Interruption.*]

I support Cathy Jamieson's declaration about the independence of the judiciary. I echo what she said, but I suggest that we need to ensure that that independence is properly maintained.

**The Deputy Presiding Officer:** I remind members that mobile phones must be switched off and not just kept on silent. Someone's phone is interfering with the sound system.

09:40

**Lord James Douglas-Hamilton (Lothians) (Con):** I strongly support everything that Gordon Jackson has just said.

I declare an interest as a non-practising QC. Indeed, I became an advocate a few months after Arthur Hamilton, who is now Lord President of the Court of Session. On what is in some ways a sad day, it is right that we should wish Lord Hamilton, who has always been known for his conscientiousness and dedication, a full and speedy recovery.

As the minister said, the bill will fill a gap in the law. It will provide a necessary safeguard to make certain that, in the best public interest, the courts have the highest standards. It is therefore also right that we should wish the Lord Justice Clerk, Lord Gill, and his colleagues every success in the challenges that lie ahead. When I was a law student at the University of Edinburgh, Lord Gill

was a teacher of law there. His enormous ability was, and remains, well known.

Those of us who have been or are Scottish lawyers are very proud of Scotland's legal system. As both the minister and Gordon Jackson have confirmed, we are also proud of the independence of the judiciary.

This will not be the first time that we have supported emergency legislation in the public interest when issues have needed to be addressed, and we are glad to do so again today.

**The Deputy Presiding Officer:** I call Maureen Macmillan to be followed by Colin Jackson.

09:42

**Maureen Macmillan (Highlands and Islands) (Lab):** As others have done, I wish the Lord President well and a speedy recovery. The Lord President represents the majesty of the law in Scotland. He is the spokesperson for the judiciary. His role in appointing judges and members of tribunals and in approving the rules of certain bodies guarantees the independence from the Government of those individuals and bodies.

In past times, of course, the Lord President was the Government. One thinks of Lord Stair and Forbes of Culloden. The latter's residence was situated quite close to where I live now. Forbes of Culloden was such a good friend of the Government that he was given the Ferintosh concession, whereby he was allowed to distil whisky on his land without paying duty on it. That ruined the whisky trade for all other distillers in Scotland, but Burns was very fond of Ferintosh whisky and celebrated it in his poetry.

Although the Lord President was in past times a very powerful person in the Government, I doubt that many people on the number 33 bus, or any other bus—apart from those who come up from the new town to Parliament House—have any idea of who the Lord President is or what he does. However, without that office, civic Scotland would be a very different beast.

What surprises me as a layperson is that, given the Lord President's importance and the fact that the office has existed since the 16<sup>th</sup> century, we do not have structures already in place to deal with the incapacity of the Lord President. In gentler times, things could be managed in an ad hoc way, but that is not possible today.

I welcome the bill. I am sorry that the Lord President's illness has caused it. It would have been better if the bill had been introduced when there was no pressing need for it, but we need to act now.

The bill will provide a seamless chain of command and has been approved by their lordships. It will put into the hands of the inner house judges the responsibility of declaring the Lord President's incapacity and the power to restore him to office. That is as it should be. I support the bill.

**The Deputy Presiding Officer:** It is clearly too early in the morning for me. I now call Colin Fox.

09:44

**Colin Fox (Lothians) (SSP):** Presiding Officer, you must have confused me with another sprinter.

I apologise to the Minister for Justice for missing her opening remarks in the debate—I was taking my kids to school—but I am grateful to the Scottish Executive, the Minister for Justice and the First Minister for their contact with the party leaders. We have been kept informed of developments and plans at each stage of this unprecedented situation, which has arisen through the unforeseen illness of Lord Hamilton—or, as Lord James calls him, Arthur.

Today's proceedings seem to me remarkable in many ways, perhaps none more so than the fact that Parliament is capable of having debates on stages 1, 2 and 3 of a bill on the same day. That shows what can be done when the Parliament really applies itself with haste, a sense of necessity and across-the-board agreement.

Other members have declared a personal interest, so I confess that, having spent the past three weeks in the Court of Session, I almost felt like applying for the Lord President's job myself. Perhaps a workers' judge on a worker's wage is a slogan that has some attraction. Perhaps the court is a place in which working people actually get justice. However, I will move on to the substance of the bill.

On the incapacity of the Lord President, it is hard to believe that a situation such as this has never arisen since 1532. The need for a bill in Parliament when one person gets ill surely throws into sharp relief the need to modernise the system of judicial appointments and structures that we have. I am sure that the whole procedure looks archaic indeed to outsiders.

I am grateful for the papers that the Executive and the Scottish Parliament information centre have provided on the bill. On examination, it appears to be perfectly logical. I admit that that is not always a good guide when dealing with the law or the workings of the judiciary, but it seems to me that the plan for the Lord Justice Clerk to step up when the Lord President is incapacitated and for the other eight judges of the inner house to take on their responsibilities likewise has clear logic behind it.

Heaven forbid that all 10 judges of the inner house should be struck down. We must keep them out of the same building, off the same bus and away from the same function, to be on the safe side; otherwise, we will be looking at a root-and-branch, modernising overhaul of the system, which I suspect would take longer than a day in the Parliament.

I am assured and reassured that the procedure of informing Parliament through the five inner house judges and the Lord Justice Clerk making a declaration to the First Minister and the Presiding Officer is sufficient to ensure that there is close contact between the judiciary and the Parliament. There are clearly important issues around the judiciary's independence from the Executive, but I believe that the bill continues to safeguard its position. In keeping with the atmosphere of unanimity, the minister will be glad to hear that the Scottish Socialist Party supports the bill.

09:47

**Pauline McNeill (Glasgow Kelvin) (Lab):** I support the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill and I, too, extend my best wishes to Lord Hamilton. I thank Lord Gill for the work that he has done in carrying out Lord Hamilton's work in the meantime.

It is always welcome to have consensus break out in the chamber, particularly as consensus is important for a bill of this nature. I do not know whether many members can think back to the only other piece of emergency legislation with which the Parliament has dealt. I know that Hugh Henry knows the answer because I was at a quiz night with him when the question came up. I honestly struggled to remember the name of the bill. I will take an intervention from anyone who can remember it, but not from Hugh Henry.

I believe that we have had a healthy relationship with the judiciary over the years of the Parliament's existence. As Gordon Jackson said, this is a timely opportunity to set the record straight on how the Parliament views the independence of the judiciary. Cathy Jamieson was right to lay out clearly that we are committed to the independence of the judiciary and that we always have been. However, that is not to say that politicians do not have a view on the importance of the Judicial Appointments Board for Scotland. At some time, that subject must be brought to the chamber for parliamentary scrutiny because it is one of the few areas on which there has been no ministerial statement of any kind—I look forward to that.

The Judicial Appointments Board for Scotland is important to the work of the Parliament because it allows us to scrutinise what has been happening

in the appointment of judges in the past few hundred years. Most of us want to see more women and more people from other types of background on the bench. The hope is that a procedure will bring that about, but that must be tested at some point in the future.

Margaret Mitchell ably set out the four main areas in the bill, but as this is stage 1, it is legitimate to ask particular questions. I want to be clear about the process for the five judges who will sign the declaration. Who will trigger the process? Will it matter which five judges of the inner house contingent sign the declaration? Are we expecting judges to set out their own procedure for determining what incapacity is? How long can incapacity go on for? Is there a trigger point? If the five judges are also to determine when a judge is no longer incapacitated, what processes do we expect them to undergo to make that determination? In other walks of life, we would expect there to be some medical or expert advice on that, and I cannot think why judges should be any different. I am not saying that that is for us to set out, but I want to be certain that, when we agree to the bill today, we have a clear understanding of what will happen next.

I welcome the debate and support the bill.

09:50

**Mike Pringle (Edinburgh South) (LD):** The situation is unprecedented. I, too, pass on our best wishes to Lord Hamilton and hope for his speedy recovery. Kenny MacAskill and others mentioned the ancient post of Lord President. It is 474 years old and, like other members, I am somewhat surprised that we have not faced such a situation before. Perhaps that says something for the diet in our modern age, for which we all perhaps suffer more. Sadly, one of my bed-and-breakfast guests collapsed this morning, which is why I was late.

My colleague Jeremy Purvis referred to the consultation, “Strengthening Judicial Independence in a Modern Scotland”. It seems somewhat surprising that the Executive has been considering the problem. Perhaps the point that Stewart Stevenson made about whether the Lord Justice Clerk should be the person who signs the Lord President off and on again can be taken up during the consultation.

Gordon Jackson—we can all see why he is a QC—said that the bill is not an attack on judicial independence, and I agree. It is vital that the judiciary be entirely independent from us.

Colin Fox started well by being called Colin Jackson. Perhaps he has been jumping hurdles in the Court of Session. He did not mention the New Club as one of the places we should prevent the inner house judges from all being in at once. Perhaps he could add that to the list.

Pauline McNeill is entirely right. She asked the questions that others might be thinking about, and it is important that we get the answers to them.

I support the bill entirely. This occasion must be almost unique in that everybody in the Parliament is united. Perhaps we will see more such unity in future.

09:53

**Bill Aitken (Glasgow) (Con):** There is little to divide us on the issue, but it is perhaps worth while recording that, technically speaking, the difficulties did not start in the 16<sup>th</sup> century. My understanding is that the positions of Lord President and Lord Justice General have been held by the one person only since 1830. However, the problem is unprecedented, although my historical research indicates that, in the 1950s, the then Lord President, Lord Cooper, suffered a stroke, which was obviously tragic for him but, as he had the capacity to resign, no difficulties occurred.

We can all have 20:20 vision in hindsight, but it is a pity that the drafters of the Court of Session Act 1988 did not simply add, after the words “Lord President”, “whom failing, the Lord Justice Clerk”, which would have left us without any problems. I am no longer required to be a student of actuarial science, but it seems to me that any circumstances in which the Lord President and the Lord Justice Clerk were simultaneously out of the frame would be unusual. To some extent, the bill seems to take a belt-and-braces approach. However, accidents happen, as we know.

Many of the Lord President’s functions are non-urgent and the present situation has not caused any difficulties so far. However, it is worth recording that, in his capacity as Lord President, Lord Hamilton was responsible for the initiation and preparation of all subordinate legislation by the Court of Session in the form of acts of sederunt. It is not too far fetched to suggest that there might have been a difficulty sooner or later—knowing our luck, probably sooner—if we had not acted.

I flag up the fact that the Constitutional Reform Act 2005, which is United Kingdom legislation, refers to consultations involving the Lord President and the Lord Chief Justice of England. The minister knows about that issue, as I have already mentioned it to her officials. She should ensure that her officials speak to somebody down south to obviate any problems that might arise in that respect.

There is not a lot to be said about the bill. We are greatly encouraged by the minister’s commitment to judicial independence, which, as members have said, is one of the cornerstones of

Scots law. The day when that is interfered with would be a sad one. The minister can rest assured that if there is any departure from that principle, we will not be slow in highlighting the difficulties that might arise. We will defend the principle robustly, but we will not delay the passage of the bill in any way.

09:56

**Mr MacAskill:** The debate has been consensual, which shows that members realise the importance of having an independent judiciary. We may disagree on aspects of our society or on how we operate our economy, but we accept that the independence of the judiciary transcends party politics. Bill Aitken and Gordon Jackson made significant comments on that. The minister has clearly made certain that that independence will not be altered, as her speech, on which Gordon Jackson commented, and the bill show. We will have on-going debates in the Parliament about more specific matters, but the bill does not impinge on those issues.

I was struck by Gordon Jackson's comment about the requirement for the civil servants who deal with the judiciary to be independent. His comment about the Parliament's situation was apposite. We would be appalled if our parliamentary staff were simply an adjunct to the civil service in Victoria Quay. I recall meeting one of the founding fathers of the Republic of Estonia and asking what advice he could give Scotland. He said that we should get control of our civil service because, if the civil service in the former Soviet republic of Estonia had not been prepared to stand independently, Estonia would now be part of the Russian Federation. An independent civil service is important for any body or country. Gordon Jackson's comments about the civil service for the judiciary are important—it should be given the flexibility to look after what we all acknowledge is a body that must be separate from and above politics.

We commend the Executive for moving swiftly on the issue since the First Minister addressed the matter in a statement to the Parliament. The unforeseen circumstance that we are in is to be regretted, most of all by Lord Hamilton, who was promoted to an office to which he had doubtless aspired for some time but in which he has regrettably been unable to serve in recent times. I hope that he will be able to return to his office, but we must ensure that the administration of justice continues. The Executive is correct to use the opportunity that the bill provides to cover a few other circumstances that may occur. As I said earlier, we cannot legislate for all unforeseen circumstances, but when some arise, it is appropriate to take cognisance of other

circumstances that may occur. We give our full support to the Executive on the bill.

09:59

**Cathy Jamieson:** I thank members for taking part in what has been a useful and consensual debate. I hope that the fact that we have tried to be open and transparent and have kept party leaders up to date with the process—as Colin Fox and others have mentioned—has helped. We have given members the information that has enabled them to support the general principles of the bill. It is heartening to hear so many good wishes from members—I am sure that they will be passed on to Lord Hamilton. I intend in no way to compromise the independence of Lord Gill and the senior judges who have acted in the meantime by saying that Parliament acknowledges the additional responsibilities that they have taken on.

I will pick up on a couple of points that have been made during the debate. Stewart Stevenson, Mike Pringle and others referred to the possibility of someone having a veto and asked whether it would be correct for the same person to be involved in declaring incapacity and signing things off at the end of the process.

Pauline McNeill mentioned processes and procedures, which we have considered. It would be wrong to set out a process or procedure in the bill. We have tried to ensure that we introduce legislation that, in essence, gives the senior judiciary the responsibility and power to take action. We have to trust that it will be able to do that in a common sense way. I cannot imagine a set of circumstances in which senior judges would take decisions that were not evidence based or would not consider a range of options before coming to a conclusion.

**Pauline McNeill:** I agree whole-heartedly that the bill should not determine the process. The minister is correct to say that we should trust the judiciary. I just want to clarify whether the judiciary will agree a process. It would concern me if there was no process at all. Will the minister confirm that the judiciary will determine its own process and we will know that it exists?

**Cathy Jamieson:** Yes. Pauline McNeill makes a valid point. Of course there needs to be a process. The point that I was making is that by not setting it out in the bill we are, in essence, asking the judiciary to take charge of the process and ensure that it is appropriate.

On the possibility of a veto, we considered what would happen if the judges took a decision that the Lord President did not agree with. If that situation arose, it would be open to the Lord President to seek a judicial review of the position.

**Stewart Stevenson:** I apologise for bringing this up, but I think that it is better to do so now than later. I want to raise a related point about the drafting of the bill. The bill provides for a situation in which both the Lord President and the Lord Justice Clerk are simultaneously incapacitated. Under section 1(3)(a), the Lord President is not considered to be incapacitated until the declaration of incapacity has been made by five judges, which has to include the Lord Justice Clerk, except when he is incapacitated. In the event of the Lord Justice Clerk being incapacitated, there is a matching requirement, in that his incapacitation can be determined only when the Lord President has signed the declaration. If both are incapacitated, it does not immediately seem possible to have either declaration signed, because each depends on the remaining capacity of the other. Is the minister entirely satisfied that in providing that apparently sensible interlock, she has not created a situation of recursion, the definition of which for us in computers was, “see recursion”?

**Cathy Jamieson:** We are attempting to take a belt-and-braces approach, as Bill Aitken described it. I hope that we will not find ourselves in a situation in which both the Lord President and the Lord Justice Clerk are incapacitated as Stewart Stevenson described, but I will reflect on that between the end of stage 1 and stage 2 to ensure that we have the drafting correct.

I am aware that there has perhaps been concern about whether we have the drafting right in relation to who the most senior judge to follow on from the Lord Justice Clerk would be. In the present circumstances, we do not have two senior judges who were appointed on the same day at the same time, so there would be logical succession. I offer Stewart Stevenson reassurance on that point, because I know that he is interested in it. I will certainly reflect on the drafting.

**Mr Jim Wallace (Orkney) (LD):** The minister and others have talked about taking a belt-and-braces approach. I perfectly understand why such an approach should be taken and endorse it. However, the bill is very specific—it says that “at least 5 judges” must reach an agreement. Given that one of the judges is incapacitated, five judges would clearly constitute a majority, but it is clear that the size of the inner house could be increased by order so that five judges might not be a majority. Can that matter be addressed when the wider legislation comes forward in due course?

**Cathy Jamieson:** Jim Wallace has raised a valid and important point. We picked the number five so that a majority would be required. The judiciary having to decide that the Lord President is not in a position to act is a serious matter and it is right and proper that a majority should be

required to agree to a decision. However, we will reflect on the wider point about the number of judges in the inner house in any future legislation.

I trust that the Presiding Officer does not require me to speak until general question time. I am relieved to see her shaking her head. I do not want to prolong the debate unnecessarily.

Again, I thank all members for their contributions to the debate, in which all parties have had an opportunity to restate the importance of the independence of the judiciary. I do not want to dwell on the matter, but it is important to reflect that principle in the bill—it has certainly been reflected in what I and other members have said this morning. The independence of the judiciary is fundamental to the process. We want to ensure that we can take effective action to keep the show on the road—I think that that phrase has been used—without interfering with the correct separation of the judiciary’s work from that of the Executive and the Parliament.

I expect that there will be amendments to consider later in the day but, in the meantime, I simply thank members for their support and co-operation and trust that we will be able to get through the business in good time this afternoon.

**The Deputy Presiding Officer:** The question is, that motion S2M-4542, in the name of Cathy Jamieson, on the general principles of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament agrees to the general principles of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill.

10:07

*Meeting suspended.*

11:40

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### General Questions

##### Methadone

**1. Susan Deacon (Edinburgh East and Musselburgh) (Lab):** To ask the Scottish Executive what steps it is taking to ensure that the prescription and dispensing of methadone take account of patients' social factors, such as employment, in accordance with existing guidelines. (S2O-10194)

**The Minister for Health and Community Care (Mr Andy Kerr):** Decisions on prescribing and dispensing methadone are taken by individual prescribers in the context of the current United Kingdom 1999 guidelines, "Drug Misuse and Dependence: Guidelines on Clinical Management" and of any local health board protocols and policies. There is no specific reference to social factors such as employment in the guidelines. The guidelines on supervised consumption may be relaxed if the patient is stable and the prescriber is satisfied that compliance will be maintained. That allows the prescriber to consider social factors when deciding on what basis methadone should be prescribed and dispensed. Scottish Executive officials will be participating in the forthcoming update of the UK guidelines, and that will provide an opportunity to consider their scope more widely.

**Susan Deacon:** The guidelines to which the minister refers indicate the importance of methadone being made available at a time that allows the patient to work. I am sure that we are all aware of concerns around this issue, and that we recognise the legitimate issues regarding child safety in particular. Will the minister ensure that, in considering policy and practice in this regard, we recognise the vital role that methadone can play in enabling many individuals to enter and hold down employment? Does he recognise the importance of consistency with the Executive's employability framework, which was published this week? Will he ensure that each individual's needs are taken into account in deciding how, when and where methadone is prescribed and dispensed?

**Mr Kerr:** I absolutely agree with the member's view that methadone is a critical aspect of our approach. Like all health services, its prescription should be designed around the needs of the user. We should be more flexible in allowing people to

go to work and fully participate in society. That underpins our methadone programme. If a user is stable and compliant and if methadone can be dispensed to them in a way that enhances their employment opportunities, I believe that that aids rehabilitation and results in what we all want, which is that person getting back into society and not being reliant on methadone. I will happily take up the matter and consult health board chairs and chief executives to ensure that, like all services in the health service, methadone services are designed around the needs of the user. If it is appropriate—if the patient is stable and compliant in relation to methadone use—we will seek to work with them to ensure that they gain full employment.

**Margaret Mitchell (Central Scotland) (Con):** Can the minister outline what action the Executive is taking to establish exactly how many people in Scotland are prescribed methadone?

**Mr Kerr:** We are working on the matter now. The current estimate is that about 19,200 people are on methadone programmes, but we want to investigate that figure further, in relation not only to the global number, but to the other factors concerning those who are currently receiving methadone. That research will contribute to our work in reviewing the UK policy, and it will allow us to pursue further a number of our agendas, including that around hidden harm, with the aim of ensuring that no one is at risk of methadone abuse—or indeed of finding themselves in situations similar to those that have applied in recent tragic cases.

##### Out-of-hours Health Care

**2. Mr John Swinney (North Tayside) (SNP):** To ask the Scottish Executive what account it takes of the views of members of the public when designing the out-of-hours health care service. (S2O-10174)

**The Minister for Health and Community Care (Mr Andy Kerr):** The design of out-of-hours health care services is a responsibility that transferred to national health service boards on the introduction of the new general medical services contract. The National Health Service Reform (Scotland) Act 2004 places a duty on NHS boards to involve the public in service redesign. In addition, each community health partnership needs to maintain an effective and formal dialogue with its local communities through public partnership forums to ensure the systematic, continuous engagement of local users and carers in determining priorities and the quality of the services that are delivered to local people.

**Mr Swinney:** The minister will be aware that the first NHS appeals panel to decide that a general practitioner should be permitted to opt out of

providing 24-hour medical cover—against the wishes of the health board—made that decision in the remote Rannoch and Tummel area in my constituency. Does the minister share my concern that, while the panel considered evidence from the health board and the GP practice involved, it undertook no meaningful consultation with the local community? Does the minister agree that that contravenes the standards of consultation that he has set for boards and which he enforces? As a result of that, will he order a re-examination of this flawed decision, which is putting at risk the safety of patients in my constituency?

**Mr Kerr:** The member has, quite correctly, raised this matter in a number of different ways on a number of occasions and I share some of his concerns.

Tayside NHS Board represented the community view as part of its evidence to the appeals panel. Therefore, I would not like to say that the views of the community were not heard. In my view, the board took those arguments to the appeals panel as part of its rationale for not wishing to allow the general practitioner to remove the service, which is what ended up happening. However, I am concerned about the principle that allows the appeals panel, in taking evidence, not to take it from the community. I am more than happy to consider that matter in relation to these cases in the future.

I am in constant contact with the chair of Tayside NHS Board, Mr Peter Bates. We continue to discuss this matter and if any learning can be applied across Scotland as a result of this matter, that will be done.

I am more than happy to take up the matter of communities being involved in the appeals process and to report back to the member.

**Mrs Nanette Milne (North East Scotland) (Con):** In the 2005 social attitude survey of the health service, the public expressed a low level of satisfaction with NHS 24, which plays a crucial role in the out-of-hours arrangements. What is the minister doing to improve that perception? Will he go further in developing the localised system of mini-centres that, I believe, will help to improve response time and patient relations and satisfaction levels?

**Mr Kerr:** I am not sure where the member has been for the past 12 months but I have to say that the revolution that has taken place in the service that is provided by NHS 24 is evident. It performed extremely well under great pressure at the Christmas and new year period. Similarly, over the Easter weekend when NHS 24 was again the front line of our national health service, it provided a high-quality service.

Part of the process has involved dealing with the out-of-hours co-location issue in relation to the small, satellite facilities. That has improved the service, as has the bringing together of professionals at a local level. However, I would also say that the fact that the NHS board chairs and chief executives are now more integrally involved in the planning of NHS 24 has increased its performance radically.

I know from looking at my mailbag—and I assume that the member will know from looking at hers—that the performance of NHS 24 in relation to first response to the call and proper completion of the call has improved radically. I am happy to give the member some reports on that matter.

### Schools (Healthy Eating)

**3. Janis Hughes (Glasgow Rutherglen) (Lab):** To ask the Scottish Executive what progress it is making in promoting healthy eating in schools. (S2O-10200)

**The Minister for Education and Young People (Peter Peacock):** The Scottish Executive is making good progress in promoting healthy eating in schools, principally through its hungry for success programme.

**Janis Hughes:** I am sure that the minister is aware of examples of good practice in some schools. For example, pupils in Burgh primary school in my constituency have set up a scheme called groovy smoothies, which makes healthy, fresh-fruit smoothies twice a week to help pupils increase their fruit consumption. Can the minister assure me that the Executive will use such examples of good practice to ensure that other schools can benefit from healthy eating initiatives?

**Peter Peacock:** The primary school that Janis Hughes mentioned is doing exactly the kind of work that we want to happen in many primary schools. The intention of the hungry for success programme, with all the co-ordinators and other staff who are employed in relation to it, is that such best practice can be shared with other schools. I am glad to say that the kind of programme that Janis Hughes mentioned is becoming much more common across Scotland, because we are making a great deal of progress in our primary and secondary schools towards changing the eating habits of the nation. We have much further to go, however, and I am more than happy to mention any examples of good practice to any school that I visit.

**Robin Harper (Lothians) (Green):** Is the Executive content that the latest figures show that only 18 per cent of children are eligible for free school meals while, shockingly, the percentage of children in poverty is now 23 per cent? Will ministers use their powers under the Education

(School Meals) (Scotland) Act 2003 to extend eligibility for free school meals to at least all those children who are living in poverty?

**Peter Peacock:** Robin Harper raises an important point. Notwithstanding his point that it might be possible to extend entitlement, one issue that confronts our school meals service is that those who are entitled to free school meals are not taking them up. That is related to poverty in our society.

We are considering a range of options as part of our consultation on a bill that we propose to introduce. We do not need new powers in that bill to extend entitlement, for the reasons that Robin Harper set out, but we are considering a range of options for how we might—I stress “might”—be able to increase entitlement for particular groups at particular times. However, the important thing in the short term is that we ensure that those who are currently entitled to free school meals take up their entitlement. That is why, in the bill, we will place on local authorities a duty to promote the uptake of free school meals.

#### Young People Leaving Care

**4. Mr Frank McAveety (Glasgow Shettleston) (Lab):** To ask the Scottish Executive what percentage of young people leaving care are not in employment, education or training, broken down according to whether the last care placement was in (a) foster care, (b) residential care or (c) a children’s home. (S2O-10208)

**The Minister for Education and Young People (Peter Peacock):** At 31 March 2005, 59 per cent of care leavers who were receiving aftercare support and whose economic status was known were not in employment, education or training. That is unacceptable. That is why, earlier this week, we announced a full strategy to tackle the issues around those who are not in employment, education or training, including looked-after children.

**Mr McAveety:** I am alarmed that almost two thirds of young people leaving care are not in education, employment or training. Does the minister share my view that young people in care are our most vulnerable young people in Scotland and that anything that can be done to reduce the figure of 59 per cent would be welcome? Does he agree that it is appropriate to focus resources for NEETs—that is the acronym for those who are not in education, employment or training—on individuals who are in care?

**Peter Peacock:** Frank McAveety is right to suggest that the figure is unacceptable. I said that it is unacceptable in my answer. This is one of the biggest challenges that we have in our education system. We know that, historically, educational

outcomes for young people who are looked after by the state in one way or another—whether they are in foster care, in residential care, living with their own family while under a supervision order or in another setting—are significantly poorer than the outcomes for the remainder of the population. That is why we are trying to focus more action on looked-after children through our NEET strategy.

I am chairing a group that brings together Executive officials, Her Majesty’s Inspectorate of Education, the voluntary sector and local authorities to examine how we can turn around our performance in relation to that group of young people. We are investing some £6 million in pilots to work with them in different ways and to try to unlock the solutions to the problems. We are investing in young people who are leaving care by giving them experiences at the Columba 1400 centre in Skye and we are working with Lord Laidlaw through the Laidlaw Youth Project to try to give young people who leave care the skills and attributes that they need to get employment.

I understand that Duncan McNeil is commissioning an all-party group of members to consider the NEET strategy and to support the Executive’s work on that. I hope that that will include a focus on looked-after children.

**Scott Barrie (Dunfermline West) (Lab):** In spite of the best efforts of those who are involved in the care and education systems, outcomes for those who are in public care stubbornly remain poor. Does the minister agree that some vulnerable young people are inappropriately left at home rather than becoming looked after? If we are to improve the life chances of those youngsters, it is vital that we have a properly joined-up care and education system so that outcomes are dramatically improved and we make a real difference, rather than the situation being equally bleak whether the child is left at home or placed in public care.

**Peter Peacock:** Scott Barrie raises an important point. He has a depth of understanding of the issues because of his background. The group that I am chairing, which brings together interests from the care sector, the education sector and the voluntary sector, is specifically considering how we can remove the impediments to improving performance in the area; how we can change procedures; and how we can raise our expectations—and those of the agencies and people who work with them—for that group of young people. We want to ensure that nobody in our society is left behind. That is a major challenge and victory will not be won overnight, but we are determined, in time, to turn things around and the matter will get more and more attention.

## Affordable Housing

### 5. Richard Baker (North East Scotland) (Lab):

To ask the Scottish Executive how it ensures that local authorities implement plans to provide affordable housing. (S2O-10190)

**The Minister for Communities (Malcolm Chisholm):** The Housing (Scotland) Act 2001 places on local authorities a statutory requirement to assess housing needs in their areas and to produce local housing strategies to address those needs. Those strategies inform the allocation of funding through Communities Scotland for the development of new affordable housing. If a housing needs assessment says that affordable housing is needed, the local authority should translate that need into planning policy, to gain affordable housing contributions from private housing developments.

**Richard Baker:** Does the minister share my concern that, in Aberdeen, developers are being allowed to buy themselves out of their commitment to provide affordable housing on new developments through commuted payments that might never be used to provide affordable homes? Does he agree that there are no barriers to ensuring that such developments include affordable housing now? Does he share my concern that Aberdeen City Council's administration should put into action its stated intention to provide more affordable homes?

**Malcolm Chisholm:** Affordable housing is needed in Aberdeen, so I am concerned that the council there has not translated that into planning policy to gain affordable housing contributions, as described in my previous answer. That is a very important tool that councils have; we introduced planning advice note 74 last year to facilitate its use. The council should take action on those lines.

As the question was about Aberdeen, I point out that an announcement will be made next week of record investment in the Grampian area for new affordable housing. I remind members that I made an important announcement a few weeks ago about Communities Scotland helping the acquisition of the site of a disused paper-mill in Aberdeen, which will provide 360 affordable homes.

As John Swinney is in his place, I take the opportunity to correct something that he wrote this week. Communities Scotland is part of my department and I am directly responsible for its policy and strategic actions.

**Murray Tosh (West of Scotland) (Con):** Does the minister consider that it would be useful for councils to include housing association developments for rent in their biennial housing land supply audits? Will he consider issuing guidance to councils to require them to do that?

Will the minister consider requiring those audits to be submitted to the Executive, so that he can monitor the emergence and maintenance of an adequate land supply for housing association developments for rent?

**Malcolm Chisholm:** I am extremely concerned about land supply for affordable housing, which is why I will chair an affordable housing group, which will meet in the near future. We shall certainly consider the issues to which Murray Tosh referred, as well as all the other issues that are relevant to the acquisition of land for affordable housing.

**Alasdair Morgan (South of Scotland) (SNP):** Given that the ability to connect to mains sewerage is one of the main obstacles to the development of affordable housing and other housing in rural areas, is the minister happy with the progress that Scottish Water is making on developing its plans for quality and standards III?

**Malcolm Chisholm:** Scottish Water has just produced its delivery plan, which is an important step forward. I have expressed several times my dissatisfaction hitherto, but we know of the new significant investment that the Executive will make from this year for the next eight years. I am sure that that will address substantially the issues about which Alasdair Morgan is understandably concerned.

## Education (Guidance)

### 6. Derek Brownlee (South of Scotland) (Con):

To ask the Scottish Executive how many pages of guidance on education have been issued to schools and local authorities since 1999 and how many pages have been withdrawn. (S2O-10188)

**The Deputy Minister for Education and Young People (Robert Brown):** The requested information is not held by the Scottish Executive.

**Derek Brownlee:** That is disappointing, because the Government in England and Wales holds such information. How on earth can the minister manage the paperwork and bureaucracy that are passed on to schools and local authorities if he cannot even tell us how many pages of guidance are in force?

**Robert Brown:** Education is not about producing and counting pages of guidance. I can imagine few less productive tasks for Government officials than that, and I seem to recall that, under the Conservatives, counting lamp posts under their job creation schemes was an issue.

More seriously, the central point is that the Executive is concerned to reduce unnecessary bureaucratic pressures on teachers. The McCrone settlement laid the basis for that and the curriculum review is aimed partly at freeing space for teachers to teach. We are promoting the better

use of technology and the number of support staff in our schools has also increased substantially—for example, the number of classroom assistants has increased by 4,000 since 1999. That goes a long way towards giving the proper support effectively and dynamically, rather than the sort of academic exercise that Derek Brownlee proposes.

**The Deputy Presiding Officer (Trish Godman):** Before First Minister's question time, I welcome a delegation in the gallery from the National People's Congress of China. [*Applause.*]

## First Minister's Question Time

12:00

### Prime Minister (Meetings)

**1. Nicola Sturgeon (Glasgow) (SNP):** To ask the First Minister when he will next meet the Prime Minister and what issues they will discuss. (S2F-2357)

**The First Minister (Mr Jack McConnell):** I was not going to make any introductory comment, but on the way into the chamber I met Matthew Rowe and Laura Gorman, who are at the Parliament today with Kate Maclean. They are the members of the Scottish Youth Parliament for Dundee West. I welcome them to the Parliament.

I met the Prime Minister recently and I plan to meet him again soon.

**Nicola Sturgeon:** I am happy to echo that welcome.

Is it not the case that today's proposal by the Labour-Liberal Executive to introduce variable top-up tuition fees in Scotland is a clear breach of its commitment not to do so?

**The First Minister:** No.

**Nicola Sturgeon:** It is interesting that the First Minister should answer in that way. I am not surprised that he does not want to expand on his answer. I remind the First Minister of precisely what the Labour-Liberal coalition agreement says:

"We will not support the introduction of top-up tuition fees."

The statement could not be clearer, but today that promise is being broken by the introduction of variable top-up fees for certain students here in Scotland.

However, it is not the first Labour promise on tuition fees that has been broken, is it? In 1997, Labour said that it would not introduce tuition fees at all, but it did. In 2001, Labour said that there would be no top-up fees in England, but there are. Today, despite saying in the coalition agreement that he would not do so, the First Minister is imposing variable top-up fees here in Scotland. Is it any wonder that those who recognise that this is the thin end of the wedge will not believe the First Minister when he says that it is not?

**The First Minister:** First, we are not introducing variable top-up tuition fees, we have no intention of doing so and it will not happen as long as I am First Minister. Students in Scotland, the families of potential students in Scotland and people who need to see more medical staff in our health service in Scotland will be interested to know that members of the Scottish National Party—of all

people—think that it would be acceptable to have a system that would disadvantage Scottish students in the years to come. A clear recommendation has come from the Calman report and from other places that we need to take action to secure the places of Scottish students, who are more likely than students from south of the border to stay in Scotland and work in our health service. Today's measures are practical, down-to-earth measures that will achieve that. For the SNP to oppose them is probably the most anti-Scottish thing that it has ever done.

**Nicola Sturgeon:** The First Minister initially said that he is not doing it, then he got up and justified why he is doing it. I remind the First Minister of what his higher education minister, Allan Wilson, said two weeks ago:

"We have no evidence that suitably qualified Scottish students are being denied access to or are unable to obtain places in Scottish higher education institutions".—[*Official Report, Enterprise and Culture Committee*, 30 May 2006; c 3121.]

Applications from English students for medical places are down this year. The First Minister's argument is spurious. Is it not the case that if young folk in Scotland are finding it harder to get to university, the reason for that is mounting student debt? Is the First Minister aware that the average debt of a graduate who leaves university this year is £11,000 and that £2,000 of that is down to the graduate endowment, or back-door tuition fee, that he and his colleagues introduced? Instead of increasing front-door tuition fees for English students, should not the First Minister get rid of the back-door tuition fees with which—thanks to his Labour-Liberal Government—Scottish students are still burdened?

**The First Minister:** First, I make it clear that I am proud that this Administration and this Parliament not only abolished tuition fees but at the same time reintroduced proper bursaries for Scottish students who need them. We will build on that in the years to come.

Secondly, I make it clear that we are not introducing top-up tuition fees in Scotland. That will not happen. However, we will protect the interests of the Scottish health service and the interests of Scottish students who want to study in our medical schools. We want to preserve the number of Scottish students who study in our medical schools. It is because of the announcement of that last year that, as Ms Sturgeon suggests, applications from English students are down.

If we had not made that announcement, the financial incentive of a £9,000 saving for students from England who come to Scotland to study at our medical schools would have remained as an incentive and many more of them would have

come forward. For the SNP to oppose this measure, and therefore to demand a disadvantage for Scottish students and a disadvantage for the Scottish health service, is shameful. The SNP is wrong; it is anti-Scottish in its approach and its members should withdraw their objection this afternoon.

**Nicola Sturgeon:** Yet again, the First Minister says in one breath, "I'm not introducing top-up fees," and in the next breath says, "Here's why I'm introducing top-up fees." [*Interruption.*]

**The Deputy Presiding Officer (Trish Godman):** Order.

**Nicola Sturgeon:** Who said, "Education is a right, not a privilege to be paid for"? That was the First Minister, back in the days when he had principles. Who said, "It's time to get rid of the graduate endowment"? That was the Liberal Democrat Deputy First Minister just last year—the same person who is responsible for introducing top-up fees in Scotland in the Parliament today. Is it not a real shame that the rhetoric of the First Minister and his deputy—both of whom, let us not forget, benefited from free education—is simply not matched by their actions? In anybody's language, is that not sheer and utter hypocrisy?

**The First Minister:** Apart from my commitment to social justice and fairness, my one abiding principle, as the First Minister of Scotland, is to stand up for Scotland. Clearly, Ms Sturgeon does not share that principle. I will do the right thing for Scottish students and the Scottish health service.

There is absolutely no doubt that our medical schools are among the very best in the world. People travel to them from North America, Europe, Asia and further afield—and, of course, from elsewhere in the United Kingdom. Those medical schools will be under pressure if this one, single measure is not introduced today. That is why, this afternoon, we will put first the interests of Scottish students and the Scottish health service, which is where the vast majority of Scottish medical students will work. That the SNP has been so anti-Scottish in its opposition to the measure is something that will stay with it for a very long time.

### Cabinet (Meetings)

**2. Miss Annabel Goldie (West of Scotland) (Con):** To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-2358)

**The First Minister (Mr Jack McConnell):** Among other issues, at next week's meeting of the Cabinet we will finalise the statement on the legislative programme for the remainder of the Parliament that we intend to make to Parliament in advance of the summer recess. As promised, the

programme will include a sentencing bill to abolish automatic early release.

**Miss Goldie:** A triumph for the Tories. [Laughter.]

I am sure that the First Minister was as shocked as I was to hear about the sad case of the seven-year-old boy who collapsed at his school in Inverness after taking methadone. In March, following the tragic death of Derek Doran from methadone, I asked the First Minister whether he could tell me how many people are currently prescribed methadone, how long they have been on it and how many of them look after children. Is the First Minister any further forward in answering those questions?

**The First Minister:** I have three things to say to Miss Goldie. First, if there had been devolution back in 1993, we might not have allowed the Tories to introduce automatic early release. Let us celebrate the fact that we are finally correcting the error.

Secondly, I share Annabel Goldie's dismay at the news of the illness of the seven-year-old boy. The reasons for his illness are not yet absolutely clear. I caution against commenting on the news until all the reports have been duly considered. However, the possibility that the boy was affected by methadone identifies the fact that that remains a serious problem in Scotland. We are addressing the problem in partial measure by the report that we published last month. We will take the actions that are required to protect children where drug-abusing parents—either their own or others'—are likely to impact on their opportunities in life.

Thirdly, I turn to the questions that Annabel Goldie posed back in March and that she poses again today. As she now knows, the number of people in Scotland who are on methadone is about 20,000; the figures are becoming clearer all the time. We do not hold figures centrally on the individual care plan programmes of each of those individuals. I suspect that it would not be right for us to hold such information, as it should be managed locally and will always be confidential between patients and medical staff. However, as I have said before, I agree with Miss Goldie that every individual who is on such a programme should be taking a planned approach with a view to becoming drug free. As far as I am aware, that is not the case with every such programme in Scotland, but it should be the case and we are working towards ensuring that it is the case. I intend, if at all possible, to do that on a cross-party basis.

**Miss Goldie:** In the recent case in Inverness, the authorities seem to be at a loss to explain how the child got hold of the methadone—if such it is—

but we know that such risks can exist in the school environment.

I made my previous request for information because it is important that we establish whether the licensed distribution of methadone presents difficulties through accident, negligence or whatever. We need more information so that we can pinpoint where methadone has come from and also identify any children who might be at risk.

Does the First Minister agree that methadone is a highly addictive and potentially dangerous drug? Does he agree that, if the essential information that I have requested becomes available, it should be given in confidence to schools so that they are aware of any children who are potentially at risk?

**The First Minister:** We have said very clearly—this is increasingly the case in Scotland as a result of the actions that we have taken—that vulnerable youngsters who are in that position or similar situations should be clearly identified within the schools system and senior staff should be identified as responsible for their care and attention. That new measure has been introduced within the past five years and it is important for the relationship between schools and other authorities in managing youngsters who are either formally looked after or vulnerable in other ways.

I caution again that I received this information only five minutes before coming into the chamber, so I did not have a chance to find out whether anyone intended to ask a question on the issue and to alert them in advance, but I am told that the reports on the boy in Inverness are inconclusive at this stage. Therefore, we cannot assume that the illness that has affected him is a direct result, or even any result, of methadone.

I agree with Annabel Goldie that we need to be clearer about those who are on methadone care plans and that they must form part of the system, but we must also be clearer that there are other routes to becoming drug free. Methadone should be a route to become drug free, not a permanent state, but other routes must also be pursued. That is precisely why we have increased, in quite dramatic fashion, the number of rehabilitation places that are available in Scotland to secure the drug-free lifestyles that people want. That is also why we need to persist with our efforts to reduce the number of people who take drugs in Scotland and, in particular, the number who inject drugs. The numbers are coming down, but it is important that we continue to work on that.

**Miss Goldie:** I am partially encouraged by the First Minister's response.

In the wider environment in which it is given, methadone is often referred to as part of a harm-reduction strategy. I accept that there may be legitimate doubt about the circumstances of the

young boy in Inverness, but the incident reminds us of the dangers that this drug presents to wider society if it is inadvertently, negligently or improperly distributed beyond prescribed users. Establishing the facts is surely a first step, but we must also move Scotland away from an overreliance on methadone. Therefore, I repeat the call that I have made many times before and ask the First Minister whether, as has happened in England and Wales, he will establish a central directory containing details of every available treatment and rehabilitation facility in Scotland—whether state funded or in the voluntary sector—so that we can at least offer drug addicts the maximum opportunity to end their addiction.

**The First Minister:** When I watched Annabel Goldie's speech at her party's Scottish winter conference, I did not do so in anticipation of comments that she or Murdo Fraser might make later. At that time, I did not pay particular attention to what the future might hold, but I was interested in her proposal. We offered discussions with the Minister for Justice to take forward some of Annabel Goldie's suggestions, including the idea of a directory. I understand that that proposal was discussed in the meeting that Annabel Goldie had with the Minister for Justice and that Cathy Jamieson has given an undertaking to consider the proposal as a matter of urgency.

The idea is sensible. If it can be done practically, we will do it. I hope that it and other measures, taken on a cross-party basis, can help us not only to reduce the number of people in Scotland who rely on drugs and to continue to increase the number of people who are caught for trading in drugs, but to ensure that those who are already addicts are more successfully taken away from their addiction to achieve a drug-free lifestyle.

**The Deputy Presiding Officer:** I call Euan Robson on a constituency matter.

**Euan Robson (Roxburgh and Berwickshire) (LD):** In the light of yesterday's announcement of the closure of two small community hospitals in Coldstream and Jedburgh in my constituency, will the First Minister reflect on whether the Health Department's decision was in line with the Kerr report? Further, will he impress on NHS Borders the need to develop national health service provision in both towns and to engage constructively with nursing home providers to establish respite and palliative care and slow-stream rehabilitation services locally?

**The First Minister:** First, the decisions that the Minister for Health and Community Care confirmed yesterday were in line with the Kerr report. That was not the minister's report, of course, but the report by Professor David Kerr, which has been welcome and supported, as I

understand it, by most, if not all, parties in the chamber.

Secondly, there are clearly difficult issues, particularly in relation to the perception of the services that are available, when these difficult decisions are made. However, we need to move from a situation in which services are so dispersed that we lose medical staff because they cannot develop their specialism to the right extent, and in which people do not get the care that they require in or as near to their local community as possible. More and more forms of emergency care in particular are available and appropriate to be delivered more locally—that is precisely what will happen in this case. At the same time, we are ensuring that the more difficult specialist work that is required is able to be handled by specialist staff in the proper locations.

On the other issues that Euan Robson raised, the Minister for Health and Community Care will be happy to look into them and discuss them further with him.

### Secretary of State for Scotland (Meetings)

**3. Shiona Baird (North East Scotland) (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-2372)

**The First Minister (Mr Jack McConnell):** I meet the secretary of state regularly to discuss issues of importance to Scotland.

**Shiona Baird:** Will the First Minister join me in congratulating the renewables industry, which is set to produce 18 per cent of Scotland's electricity by the end of next year, meeting the Executive's target three years early?

**The First Minister:** Yes. When I first started to push up our targets on renewables—which subsequently were pushed up even further, I think, by my colleague Mr Finnie—there were those in Scotland who said that it was impossible to meet them and that we were being over-optimistic. There are those, of course, who opposed many of the measures that we introduced or supported to help us meet that target. They will be remembered for that and for their inconsistencies. I hope that the Greens remember them, too, in any discussions that they might be having. *[Laughter.]* The success with which we have moved in this direction, with the right energy policy for Scotland, should spur us on even further.

**Shiona Baird:** I thank the First Minister, but I had hoped that he would give a little bit more praise to the industry. It is a question of giving praise where it is due. I am sure that the First Minister will share my delight at the industry's projection that the majority of Scotland's electricity can be generated from renewables by 2020. Does

he agree that, regardless of waste issues and energy reviews, that projection demonstrates that renewable electricity can more than replace the electricity that currently is generated by Scotland's nuclear power stations?

**The First Minister:** I think that we have to make these decisions in a very measured way. We have to ensure first that we continue to maximise the energy that is produced in Scotland from renewable sources, but we also need to ensure that we have a secure energy supply in Scotland for both families—[*Interruption.*] Scottish National Party members can shout and not care about families if they like, but the energy supply to the homes of Scots is an important subject, as is the energy supply to Scottish business. The energy review needs to take account of all those factors.

That said, I believe that we can go further. I congratulate the industry on its efforts. The efforts of the industry in Scotland have been outstanding. The efforts of, and the enterprise that is shown by, those who are still emerging in the industry are equally outstanding. In fact, only last week, Shell's national livewire awards recognised a company from Lanarkshire that is involved, I think, in marine energy technology and recognised that that company is ahead of its competition throughout the rest of the United Kingdom.

I believe that we can go even further in marine energy, in which we have a massive natural resource, and in micro-renewables, in which we have significantly more potential than is currently recognised. I hope that the Parliament and this devolved Government will continue to lead the way in partnership with the industry.

**Alex Neil (Central Scotland) (SNP):** On a completely different subject, will the First Minister join me in welcoming the members of Lanarkshire health united? Does he agree with them and Tom Clarke, his colleague, that it would be folly to close any accident and emergency unit in Lanarkshire? Does he, like me, deplore the letter from Dr John Reid to Lanarkshire NHS Board calling for the closure of the accident and emergency unit at Hairmyres hospital? Does the First Minister not agree that Lanarkshire needs three accident and emergency units and that the health board should act accordingly?

**The First Minister:** I am always happy to welcome people from Lanarkshire to the Parliament. I think that they would welcome Alex Neil's comments a bit more if he had submitted his own response to the consultation in Lanarkshire when it was taking place.

## Water

**4. Christine May (Central Fife) (Lab):** To ask the First Minister what discussions have taken

place on the future of water provision in Scotland. (S2F-2360)

**The First Minister (Mr Jack McConnell):** There are continuing discussions between the Executive and industry stakeholders about providing customers with high-quality water services at the lowest reasonable cost. Our plans will increase the standards for customers, reduce leakage and ensure that Scottish Water provides strategic capacity where it is required to support new housing and economic developments throughout Scotland. All of that will be achieved with average charges falling in real terms when they are rising by an average of 18 per cent elsewhere.

**Christine May:** I remind the Parliament that I am a Scottish Labour Party and Co-operative Party MSP.

Does the First Minister agree that it is imperative that Scottish Water remains in public ownership, and that there are many forms of public ownership, including co-operative and mutual models, that enshrine democratic ownership and control? Does he also agree that if, in future, there is any requirement to change the way in which Scottish Water operates, it will be important to maintain a level playing field? Will he guarantee that resources will be made available to ensure that the feasibility of a range of common-ownership models, including the mutual option, is fully explored and understood?

**The First Minister:** The current significant improvements in Scottish Water's work—the improvements that have been made over recent years and those that are clearly in the plans for its next programme—show its success under its current form of ownership and management. At the same time, it is important that we continue to press ahead with changes to ensure greater efficiencies, speedier delivery and better customer relationships than there are even now.

There are no current plans to change Scottish Water's status and no current plans for a review. I certainly hope that, should anybody undertake a review, they would consider the mutual option as well as all the others.

**John Scott (Ayr) (Con):** The First Minister will be aware of the House of Lords report that draws attention to the lack of planning for the adequate provision of potable water in England and Wales. Does he agree that we also need to address that matter, as Scotland might be able to help provide water for the rest of the United Kingdom and, indeed, the rest of the world if we plan for it now?

**The First Minister:** The significant change to Scottish Water's programme will ensure that the ambitions of this devolved Government, local authorities and private companies in Scotland to expand housing provision can be fulfilled by

expanding the water and sewerage network appropriately. That is an important change. It has been welcomed and we intend to deliver it. It is also important that Scotland continues to set very high standards in the co-operative relationships that must exist between housing development and water services development.

I will leave the subjects of our relationship with the English water companies, the supply of water in England and the potential for the sale of water from north to south for debate another day.

**Rob Gibson (Highlands and Islands) (SNP):** The First Minister is happy with the structure of Scottish Water at present, but is he happy that customers pay 86p of every £1 that Scottish Water spends on capital developments? Is he prepared to enable Scottish Water to have far greater borrowing powers in the market within the public sector?

**The First Minister:** The figures that the Scottish National Party uses on this matter have not been proven by anybody, apart from those who are close to the party, so they must be taken with a serious pinch of salt. The reality is that Scottish Water has introduced greater efficiencies. Its price increases are significantly less in real terms than they were previously and in relation to price rises elsewhere in the United Kingdom. The current arrangements for Scottish Water have improved efficiency and delivery, but the body needs to go further, which is the point that I made earlier. However, the arrangements will not be improved by the regular calls from the SNP for less money to be available to Scottish Water. We have had various calls over the years from Mr Mather and others to freeze water charges and therefore to make less money available for the sort of important developments that SNP members, particularly Mr Swinney, call for regularly.

#### **Tuition Fees (Part-time Students)**

**5. Alasdair Morgan (South of Scotland) (SNP):** To ask the First Minister what discussions the Scottish Executive has had in respect of tuition fees for part-time students. (S2F-2364)

**The First Minister (Mr Jack McConnell):** The levels of tuition fees for part-time students in Scotland are not regulated by ministers and are therefore a matter for individual institutions. However, ministers have frequent formal and informal discussions with principals and directors of Scotland's higher education institutions and colleges covering a wide range of issues. As part of our funding-of-learners review we are examining existing support for part-time students.

**Alasdair Morgan:** Does the First Minister agree that having fees for part-time students but not for full-time students is a form of discrimination

against part-time students, who often have no other option in pursuing their education? Earlier this week, an Executive spokesman said that consultation on the issue will continue during 2006. Is the First Minister prepared to go a step further and commit to making a decision on the matter this year?

**The First Minister:** We will make a decision when the review is complete and when we have had a chance to analyse all the evidence. That is the right way in which to make policy. We do not have a system in Scotland in which everybody who is a part-time student pays fees, because people can apply for fee waivers, depending on their income. Of course, many part-time students fall into the appropriate category. It would be wrong to suggest that all part-time students in Scotland pay fees, because the fee-waiver system works to the advantage of those who need it most. However, it is important to remember that everything costs money. If we abolished the system entirely, that would have a cost. If that is what the Scottish National Party proposes, it must be honest about that during next year's elections. It should say which budget the money would come from in the education system, which college courses would have to go to pay for the measure and which other matters might be affected.

#### **Children (Early-years Support)**

**6. Iain Smith (North East Fife) (LD):** To ask the First Minister how the Scottish Executive will improve support for children in their early years. (S2F-2368)

**The First Minister (Mr Jack McConnell):** We are taking forward a range of policies to improve services for children in their early years. In particular, we are increasing support for sure start Scotland, further increasing funding of the child care strategy and working on improvements in the quality of services through the review of the early-years and child care workforce. The Education Committee's report on early years has made an important contribution to the debate on future policy development. Ministers are considering its recommendations.

**Iain Smith:** I am glad that the First Minister acknowledges the importance of the Education Committee's report. I recognise the work that the Executive is doing to improve early-years facilities in Scotland. The committee's report highlights particular concerns. Does the First Minister agree that Scotland must have an early-years sector that provides the highest-quality pre-school education and care; that sound services can enhance children's development and later educational attainment and identify and support vulnerable children and families; and that the sector can help to combat poverty, promote social inclusion and

support the continuing growth of the economy? Does the First Minister agree that the single most important factor in improving quality in the early-years sector is raising skill levels in the workforce? In that light, when is the Executive likely to publish the results of the review of the early-years workforce?

**The First Minister:** The Minister for Education and Young People tells me that the results will be published soon. I hope that his definition of soon and Mr Smith's definition of soon are similar. I am sure that the minister will be prepared to discuss the matter with Mr Smith following questions today.

It is important that we strive to improve the skills and career opportunities of those who work in the sector. Many committed people work in the sector, particularly younger and older women, who perhaps did not have full access to the educational opportunities at school that many of us enjoyed. With further qualifications and career development, those individuals could play a more significant role in the sector.

I am keen that we not only consider the overall range of services in the sector and continue to maintain our massive expansion of nursery education in these years of devolution, but ensure that those who work in the sector have fulfilling careers, that they are able to give all their potential to the young people whom they look after every day and that those young people—particularly those from disadvantaged backgrounds—have the best possible start in life.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** On the theme of investment in education, does the First Minister agree that the recent Her Majesty's Inspectorate of Education report for St Andrew's secondary in the east end of Glasgow demonstrates that good leadership, partnership with parents and pupils and a commitment to excellence in achievement can, even in one of the most disadvantaged parts of Scotland, provide a quality of education that enables pupils to maximise their opportunities? Margaret Curran and I, and the staff at St Andrew's, extend a warm invitation to the First Minister to see at first hand the quality of work at that remarkable school.

**The First Minister:** The Minister for Parliamentary Business is shouting from the sidelines how proud she is of the school, because it is in her constituency, rather than Mr McAveety's.

I share Mr McAveety's sense of pride in the school and its achievements. It is a school that, according to many of the indicators, people might expect to be performing below the average. That is not an acceptable expectation for schools in Scotland, no matter which communities they are

located in. St Andrew's secondary shows exactly what can be achieved through strong leadership, great teachers and support staff, the active engagement of parents and, of course, the hard work, dedication and ambition of the pupils themselves. I am sure that we all want to congratulate them and any other schools in similar circumstances that are striving to realise the ambitions of the parents and pupils and to ensure that those schools have just as good a chance to succeed as any other in Scotland.

**Alex Neil (Central Scotland) (SNP):** On a point of order, Presiding Officer. I am sure that the First Minister will want to correct a factual inaccuracy. He said that I did not submit evidence on the accident and emergency review in Lanarkshire. If he checks the record, he will see that I was a signatory to the written evidence presented by Lanarkshire health united—[*Interruption.*]

**The Deputy Presiding Officer:** Order.

**Alex Neil:** We will need to excuse the ignoramuses.

I have also submitted oral evidence directly to Lanarkshire NHS Board. I will accept the First Minister's apology.

**The Deputy Presiding Officer:** I am not responsible for the answers of the First Minister. However, Mr Neil, you have had the opportunity to put the matter on the record.

**The First Minister:** On a point of order, Presiding Officer. I am sorry, but that was a direct challenge and it deserves a response. With tens of thousands of pounds of parliamentary expenses, an office support staff and all his experience, if Alex Neil could not write his own letter to Lanarkshire NHS Board he should be ashamed of himself.

12:34

*Meeting suspended until 14:15.*

14:15

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Justice and Law Officers

##### Scottish Criminal Record Office

**1. Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** To ask the Scottish Executive whether it will supply all the information requested by the Justice 1 Committee in furtherance of its inquiry into the Scottish Criminal Record Office. (S2O-10228)

**The Minister for Justice (Cathy Jamieson):** We have made it clear that we wish to be as helpful as possible to the committee and have already supplied a substantial amount of information. I am in discussions with the convener of the committee to see what further information we can provide that will satisfy the committee, while preserving the important legal principles that I have previously set out.

**Mike Rumbles:** I hope that the minister agrees that the objective of the inquiry must be to get at the truth. Surely the committee must see all the information that it needs to see. Could the minister consider asking the committee to take the information that is requested from her in private session, so that only committee members are aware of all that information? We must get to the truth in the inquiry.

**Cathy Jamieson:** As I am sure members are aware, and as I set out in my statement some time ago and in the subsequent debate, there are a range of opinions on the issue. The committee's remit is to scrutinise the action plan that SCRO has provided to ensure that we have a fingerprint service that is fit for the 21<sup>st</sup> century. As I said, I am in discussions with the committee convener. I do not want to say anything further until those discussions have been concluded, but I will be in further contact with the convener in order that we may come to a satisfactory arrangement that allows the committee to have access to the information that it requires.

#### Knife Amnesty

**2. Marlyn Glen (North East Scotland) (Lab):** To ask the Scottish Executive how successful the knife amnesty has been across Scotland. (S2O-10197)

**The Minister for Justice (Cathy Jamieson):** The current knife amnesty in Scotland has raised

public awareness and has provided a valuable opportunity for those who carry a knife to change their ways. Formal figures on the number of blades handed in will be available in the coming weeks. I again remind the chamber that even one less knife on the street potentially means one more life saved.

**Marlyn Glen:** I look forward to the release of the formal figures to which the minister refers.

Given that self-defence is often the reason that young people give for carrying knives, does the minister believe that the safer cities initiative can play a substantial part in reducing the number of knives on the streets? Can she outline any plans to back up the present campaign with further educational programmes and/or publicity?

**Cathy Jamieson:** Marlyn Glen makes a valid point. We know that legislation and the amnesty are not the only solutions to the problem. We must get at the reasons why people feel that they must carry knives. We have consistently made it clear that the notion that someone should carry a knife for protection is at best misguided, and at worst dangerous. A number of initiatives are in place. We hope that the violence reduction unit will take further work into various communities across Scotland. The educational opportunity that Strathclyde police, Glasgow City Council and the East End Community Arts Project in Glasgow offer is a positive example of how the medium of drama can be used to involve young people actively in considering the issues around knife carrying for protection and, I hope, to help them to change their ways.

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** Like other members in the chamber, I am pleased to hear about all the work that is being done to tackle the problem. Does the minister agree that prevention is always better than cure and that, alongside the efforts to get knives off the streets, we need to stop them getting there in the first place? Will she put pressure on online auction sites such as eBay to ban users from trading in the terrifying array of weaponry that budding psychopaths can buy with a few clicks of their mouse?

**Cathy Jamieson:** I am very aware of the interest that Duncan McNeil has taken in this subject and understand that he has written to eBay. After learning of his interest in the matter, I followed it up, and my understanding is that although eBay does not allow the sale of numerous items, a number of questionable items, including some knives, are still sold. Of course, eBay should behave responsibly. I understand that it has information on its website that makes it clear that it is an offence to sell knives to people under 16 and lists a number of items that are not permitted for sale. I wish Duncan McNeil well in

his efforts and I will continue to work with him in that regard.

### Judicial Independence

**3. Karen Whitefield (Airdrie and Shotts) (Lab):** To ask the Scottish Executive whether it accepts the independence of the judiciary. (S2O-10220)

**The Minister for Justice (Cathy Jamieson):** Yes. We believe that judicial independence is of fundamental importance to the protection of individual rights in this country and we try to practise what we preach in that regard. The High Court reforms introduced from April 2005 had the effect of giving judges a greater role in the management of cases. Proposals in the consultation paper "Strengthening Judicial Independence in a Modern Scotland" are also aimed at giving the senior judiciary more responsibility for the disposal of business generally and for the training, welfare, deployment and conduct of the judiciary.

**Karen Whitefield:** I did not expect the minister to say anything else. Does she agree that the independence of the judiciary is a fundamental principle of our judicial system; that Parliament has responsibility for setting the framework within which judges make decisions about sentencing; and that the public need to believe that the sentence is consistent and commensurate with the crime that has been committed?

**Cathy Jamieson:** Karen Whitefield makes a number of valuable points. As Gordon Jackson suggested during this morning's emergency legislation debate, we have to guard against confusing the independence of the judiciary with the responsibilities of the Parliament. It is, of course, Parliament's responsibility to set the framework, but at the end of the day, judges must make up their minds on individual cases based on all the facts that are placed before them. It would be wrong of politicians to interfere in a way that undermines that principle.

Having said that, it is important to recognise that the public want to understand the sentencing framework. They also want to understand why judges have made particular decisions, which is why we have taken steps to ensure that judges are able to explain their decisions.

It is absolutely the case that we agree with the principle of consistency in sentencing, which is why we have asked the Sentencing Commission for Scotland to produce a report on that.

**Des McNulty (Clydebank and Milngavie) (Lab):** I recognise that the matter of judicial appointments needs to be considered carefully and ultimately legislated on.

However, I draw the minister's attention to the urgency of tackling the problem of mesothelioma sufferers and sorting out their damages claims. Hundreds of people are affected by the condition, but with every week that passes, people are losing their entitlement to receive compensation before they die. When looking at the scheduling of legislation over the coming year, I ask the minister to reconsider the pattern of judicial legislation to see whether we can find a slot for a bill to sort out that problem before next May.

**Cathy Jamieson:** As Mr McNulty will understand, I am not in a position today to outline a legislative programme for the coming year. However, he will be aware that mesothelioma sufferers who suffer as a result of the current system, which is not awarding them damages, are of particular concern to me. I give him an assurance that I will look very closely at what it might be possible to do and that I will continue to work with him closely on the matter.

### Conviction Rates (Rape and Other Sexual Offences)

**4. Patrick Harvie (Glasgow) (Green):** To ask the Scottish Executive what progress it is making in improving the conviction rates for rape and other sexual offences. (S2O-10240)

**The Solicitor General for Scotland (Mrs Elish Angiolini):** The Crown Office and Procurator Fiscal Service this week published its report of the review of the investigation and prosecution of rape and sexual offences. In the financial year 2005-06, 150 cases of rape were prosecuted and convictions for rape were achieved in 35 per cent of cases. The conviction rates for other sexual offences, where consent is not a pivotal issue, are significantly higher.

The review concludes that concerns about the low conviction rate will be tackled effectively only by a review of the law, supported by the concerted efforts of people throughout the criminal justice system and the wider community in Scotland.

**Patrick Harvie:** I thank the Solicitor General for her reply to my question. Obviously, it had been lodged before she made her statement yesterday, which I think was welcomed by the whole chamber.

As far as conviction rates are concerned, the Solicitor General acknowledged in her statement that the proposed measures were not a panacea and that rates were affected by many complex factors. Given that acknowledgement, how does the Executive intend to assess the effectiveness of its new proposals with regard not only to individual cases but to the bigger picture over the course of years?

**The Solicitor General for Scotland:** I should point out that, with regard to the matter that Parliament discussed yesterday, the prosecution service is independent from the rest of the Executive. It is intended that annual statistics will be kept of conviction rates in cases that have been reported by the police.

The Executive will look carefully at the Scottish Law Commission's recommendations and will introduce legislation if it feels that that is required. However, as far as this matter is concerned, the impacts are more readily measurable now than they ever have been.

### Enhanced Disclosure

**5. Brian Adam (Aberdeen North) (SNP):** To ask the Scottish Executive whether it considers that non-conviction information held by the police should be supplied as part of an enhanced disclosure. (S2O-10169)

**The Minister for Justice (Cathy Jamieson):** We must remember that the fundamental principle behind the disclosure process is the protection of children and vulnerable adults. Enhanced disclosures are available only in limited circumstances, including applications for posts that involve working with such groups. As part of the enhanced disclosure process, chief constables have the discretion to provide Disclosure Scotland with relevant non-conviction information for inclusion on a certificate, which allows employers to base employment decisions on conviction and any relevant non-conviction information held by the police.

**Brian Adam:** Does the minister share my concern that non-conviction information—which is quite often referred to as intelligence—has not been assessed by anyone other than chief constables? Does she agree that, unless there are exceptional circumstances, such information should be disclosed to applicants for jobs that involve working with children and vulnerable adults? Will she consider whether disclosing such information to applicants might increase any risks to children and vulnerable adults? Finally, will she think about introducing an appeals mechanism to ensure that this matter is assessed not only by the police?

**Cathy Jamieson:** I am glad that Brian Adam recognises that we must do our best to protect children and vulnerable adults. Of course, in the past, there was much criticism that information had not been passed on and therefore did not show up when the relevant disclosure checks were made. If an individual wishes to challenge information on a disclosure certificate, he or she can write to the chief constable, and there are further controls under the Data Protection Act 1998. I know that Mr Adam has written to me on

this matter, and I am happy to provide him with full details, which he can pass on to anyone who has a particular concern.

### Justice Policy

**6. Jim Mather (Highlands and Islands) (SNP):** To ask the Scottish Executive what overarching measures it is using to monitor the effectiveness of its justice policy. (S2O-10175)

**The Minister for Justice (Cathy Jamieson):** We are taking forward a programme of widespread reform to our criminal justice system that is aimed at targeting the causes of crime; reducing reoffending; modernising the courts and the legal system; and, ultimately, improving the quality of life of communities across Scotland. The Scottish Executive Justice Department undertakes a full programme of analytical work to evaluate the effectiveness of its policies.

**Jim Mather:** What other departments and agencies are working with the Scottish Executive to reduce the overall reoffending rate? How are their contributions measured and evaluated, and which of them is making the most significant contribution?

**Cathy Jamieson:** Mr Mather has asked a number of questions, and I will do my best to provide a clear response.

We set up the national advisory board on offender management partly to bring together a range of experts with experience of working with offenders. I met the board earlier this week. One of the issues on the agenda was the question of performance management and how we can ensure that not only in Executive departments but in local authorities, health boards and everywhere else, we set targets that are not simply numerical targets for the sake of it but which have some meaning in terms of improving performance.

### Domestic Abuse (Security Equipment)

**7. Mrs Mary Mulligan (Linlithgow) (Lab):** To ask the Scottish Executive what security equipment is available to those who have experienced domestic abuse to allow them to remain in their homes. (S2O-10216)

**The Deputy Minister for Justice (Hugh Henry):** There is no specific requirement made by the Scottish Executive for the provision of security equipment to those who have experienced domestic abuse. However, significant funding is made available through the community safety award programme and the violence against women fund for use by local partnerships and individual projects, a number of which will make use of personal security equipment such as personal alarms. In addition, there are specific

projects that aim to make people's homes more secure.

**Mrs Mulligan:** I am aware of the work by the minister's colleagues to support the establishment of refuges, but on a recent visit to a women and children's unit at West Lothian Council, I was told that if the family home could be made safe, most women would find it easier if they and their children could remain there. Will the minister therefore ensure that local authorities and other agencies are aware of the availability of funds and equipment and, more important, that women are aware that that is an option that could be made available to them?

**Hugh Henry:** Local authorities have a responsibility to make people aware of what support is available. Presumably, the women that Mary Mulligan identifies have the support of social workers, and it is incumbent on social workers to ensure that the proper information is made available. There should also be close liaison with the police because it is not simply a question of ensuring that appropriate equipment is installed—where a woman is vulnerable and where there is a potential danger, the police should also be notified. There should be close liaison between social work departments and the police, but the women concerned also need to be given advice and information, and the local police should be made aware that there is a potential risk so that they can respond appropriately.

### Sentencing

**8. Phil Gallie (South of Scotland) (Con):** To ask the Scottish Executive what influence it can have in establishing consistency of sentencing within the judicial process. (S2O-10168)

**The Minister for Justice (Cathy Jamieson):** The independence of the judiciary is a fundamental principle of the Scottish legal system and one to which ministers attach great importance. The role of the Executive and Parliament is to establish an appropriate sentencing framework within which the judiciary operates. The Sentencing Commission for Scotland is reviewing the scope to improve consistency of sentencing and expects to report with recommendations by August. I look forward to receiving its report.

**Phil Gallie:** I thank the minister for that response and for the response that she gave Karen Whitefield on a similar question. However, the public perception is that there is not consistency in sentencing and in the way in which the judicial process is being advanced. In accepting the independence of the judiciary, I point to the situation within the Scottish Parliament, where we establish rules and regulations with which the judiciary must comply.

What can we do to ensure the justice system has free rein to dispense justice in a way that will receive approval from the public?

**Cathy Jamieson:** That was another interesting question from Mr Gallie. I am glad to hear that he supports and upholds the principle of the independence of the judiciary, but as was outlined in this morning's debate, we have to be really careful here. We cannot have independence of the judiciary when we feel like it, but not at other times. We have to be consistent, which is why it is important that Parliament and the Executive work to set the right framework to reassure the public. It is not just about the sentence that is passed in the court; it is also about managing offenders and ensuring that they are less likely to reoffend. That is why we have introduced such a comprehensive package of measures. I look forward to Mr Gallie's support for the measures that we will shortly introduce to deal with a subject that I know is dear to his heart: the ending of unconditional automatic early release.

### Small Claims Courts

**9. John Home Robertson (East Lothian) (Lab):** To ask the Scottish Executive whether it has any plans to change the threshold for access to small claims courts in connection with proposals for the establishment of a European small claims procedure. (S2O-10199)

**The Deputy Minister for Justice (Hugh Henry):** The European Union's proposals are not yet finalised but, irrespective of those proposals, there is a strong case for increasing the threshold for small claims.

**John Home Robertson:** You're telling me.

Does the minister recall giving me a reply on 11 November 2004 that the Executive intended to raise the threshold above the existing level of £750 "sooner rather than later"? That was 18 months ago. I realise that the Executive is up against the vested interests of the likes of Thomson, but is it not ridiculous that Scottish consumers are still subject to such a restriction? Is it not time that we brought the threshold in Scotland up to what it is in other parts of the European Union, and certainly to what it is in other parts of the United Kingdom?

**Hugh Henry:** I cannot disagree with John Home Robertson's view that an inordinate length of time is being taken to resolve the situation. As he knows, it is not simply a question of small claims. Other complicated matters need to be addressed. We have been trying to find a resolution to the matter, and negotiations with a range of organisations have been taking place in order to seek a potential solution. He also knows that the matter has been raised in the Parliament on a

number of occasions—indeed, it was raised before I became a minister—but it has foundered on a lack of parliamentary support. However, I cannot disagree with him about the case for change. It should happen, and I will do what I can to move the issue forward.

## **Enterprise, Lifelong Learning and Transport**

### **Marine Energy**

**1. Nora Radcliffe (Gordon) (LD):** To ask the Scottish Executive what action it is taking to support the development of marine energy. (S2O-10233)

**The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen):** The Executive is currently consulting on changes that might be made to the renewables obligation in Scotland to provide a source of long-term increased funding for wave and tidal schemes. Changes to the renewables obligation will send a strong signal to developers and suppliers that Scotland is the best location for their wave and tidal projects.

We have recently announced £8 million for marine energy developments over the next two years. The money will be used to secure more wave and tidal developments right around Scotland.

**Nora Radcliffe:** I welcome those two practical and sensible ways forward. I invite the minister to join me in welcoming the Scottish Renewables Forum report, which was published this week. It demonstrates that the Executive's target for the percentage of electricity generated from renewable energy will be met three years early and demonstrates the realistic potential for that percentage to rise to more than 50 per cent, with generation coming from a variety of sources, including marine energy.

We have the coastline, the weather conditions and the developed and developing technology. Will the minister assure the Parliament that he is doing all that he can to ensure that the necessary preliminary work is in hand to enable the rapid and continuing expansion of marine energy installations?

**Nicol Stephen:** I am determined to do everything that I can to make Scotland the renewables powerhouse of Europe. We have incredible renewable resources in Scotland and we have a huge opportunity to become the centre of clean energy in the future. We also have some tremendous companies, which are doing great work on renewables projects.

As the First Minister said earlier, when we originally produced our targets of 18 per cent of

Scotland's electricity to be generated from renewable sources by 2010 and 40 per cent by 2020, we were criticised and mocked on the basis that that was simply not achievable. Now we are starting to be criticised because that was not ambitious enough. We have made it clear that the target of 40 per cent for 2020, which we introduced only a couple of years ago, should not be seen as a cap. If it is possible to go further, as the forum for renewable energy development in Scotland and the Scottish Renewables Forum are suggesting, we want to help that to be achieved.

We are very determined to do all that we can to support all forms of renewables in Scotland, including solar power, biomass, onshore and offshore wind energy and marine projects. We believe that Scotland can lead the world, particularly with wave and tidal projects, and that our technology can be exported not just to other parts of Europe but around the globe.

**Murdo Fraser (Mid Scotland and Fife) (Con):** The minister said that we are already ahead of the Executive targets for renewables. As people in too many rural communities know, however, that has been because of the rush to develop onshore wind farms. There are still a huge number of planning applications and public inquiries in the pipeline that remain to be determined. Does the minister agree that it is long past the time for us to start diverting resources and incentives away from onshore wind technology and into marine technology?

**Nicol Stephen:** It has always been our intention to ensure that a balance of renewables is promoted. We must see greater momentum in the marine projects that we know about. We want the Pelamis project and other projects around the shores of Scotland as soon as possible. I am confident that, with the incentives that we are currently consulting on, we will have a new renewables obligation in Scotland by April 2007 and the first projects in the water around the shores of Scotland, providing electricity to the grid, by the summer of 2007. That is good news for Scotland and for clean energy, and it is great news for the companies involved and for the economy of Scotland. The jobs that could be created through renewables and clean energy are significant.

**Rob Gibson (Highlands and Islands) (SNP):** As the minister is keen to do anything to support the development of marine renewables, will he seek full powers over energy development for the Scottish Government? Specifically, will he tell Parliament how soon he expects to see the current Highlands and Islands Enterprise study into the provision of undersea interconnectors to enable energy from marine and land-based renewables from the northern and western isles to reach the urban markets?

**Nicol Stephen:** The Executive has significant powers in relation to renewable energy and it is the Executive that granted the consents for the renewables projects that have taken us so far towards our targets—certainly, for the bigger projects. We want to do more, and the Executive has helped Highlands and Islands Enterprise to fund and promote the study that is now being done. That has been broadly welcomed. I want the whole issue of an offshore grid to be considered carefully, as we will hit grid infrastructure constraints. I would like to see that report in relation to the northern isles as soon as possible.

### **Bus Services (Rural Public Passenger Transport Grant Scheme)**

**2. Chris Ballance (South of Scotland) (Green):** To ask the Scottish Executive whether it is satisfied with the effect that the rural public passenger transport grant scheme of the rural transport fund is having on the provision of rural bus services. (S2O-10239)

**The Minister for Transport (Tavish Scott):** Yes. More than 400 new and improved rural public transport services have been introduced under the scheme. Those are mainly bus services, although some ferry services have also been supported. Related facilities such as bus shelters have also been provided in a number of areas.

**Chris Ballance:** Does the minister recognise that, although some 30 per cent of households in rural areas have no access to a car, only £6 million—0.6 per cent of the transport budget—goes to the rural transport fund? I welcome the increases that there have been in the budget over recent years. Does the minister agree that lack of access to transport leads to social exclusion and that rural Scotland deserves better bus services, which requires a greater share of Scotland's transport budget?

**Tavish Scott:** As someone who lives in a part of rural and island Scotland, I know that it is not just about bus services. I always work hard with local authorities and other organisations that have a role to play in the provision of bus services, which we ensure through several funding formulas. Mr Ballance will appreciate that the funds to which he refers are not the only investment that we make in rural transport in peripheral areas and across local authority boundaries. Particular forms of finance are provided in those ways. He will know that, in Dumfries and Galloway and the Borders, there are 27 community transport projects that are assisted by such schemes. We would be happy to consider, through the national transport strategy, other aspects of the development of the policy. However, at this time, I am focused on ensuring that we achieve the most useful forms of transport investment to make transport provision as accessible as it can be.

**Alasdair Morgan (South of Scotland) (SNP):** Is the minister aware that there is a particular problem in relation to early-morning bus services? I have come across quite a few cases of young people being unable to commute to the nearest town either to partake in further education or to take up a job that has been offered to them. What emphasis, if any, is the minister's department placing on that kind of service, which is vital for the economy and especially for young people who want to get education or jobs?

**Tavish Scott:** I agree that the provision of such services is important. The bus route development grant has a mechanism to allow local authorities to access additional funding to provide services that the commercial sector does not currently provide. I would be happy to consider any examples that Mr Morgan has of areas of Scotland where there are gaps in provision. I take his point that, for young people and an active workforce, we need the best possible range of public transport services. Indeed, that is why we have the bus route development grant.

### **Scottish Planning Policy 16**

**3. Tommy Sheridan (Glasgow) (SSP):** To ask the Scottish Executive what review its Enterprise, Transport and Lifelong Learning Department has undertaken of the impact on employment of Scottish planning policy 16 on opencast coal, in light of the comments by the Deputy Minister for Communities at the meeting of the Communities Committee on 9 March 2005. (S2O-10185)

**The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson):** My colleague the Deputy Minister for Communities has given a commitment to monitor the impacts of Scottish planning policy 16. Impacts are being assessed through the scrutiny of planning applications that are notified to the Executive. I have met industry representatives to discuss those preliminary assessments and other matters, and I am scheduled to meet the Deputy Minister for Communities later this month to consider these issues further.

**Tommy Sheridan:** Since the Deputy Minister for Communities made comments on 9 March 2005 to the effect that if SPP 16 resulted in job losses and a decline in the opencast mining industry, the whole matter would be "put under review", there have been 223 job losses. Between 1 April 2005 and 16 June 2006, 18 miners lost their jobs in New Cumnock, 21 did so in Muirkirk and 23 did so in Cumnock. Across Scotland, 223 miners have been dumped on the dole. Will the minister give a guarantee that the review of SPP 16 that was promised will now be urgently brought forward within a tight timescale? In addition, will he comment on the need to introduce an SPP 16

presumption against consent for any new nuclear power developments?

**The Deputy Presiding Officer (Murray Tosh):** Minister, I think that we will stick to the opencast coal.

**Allan Wilson:** I welcome Mr Sheridan to the debate on opencast coal. It must be a relief from the open warfare that he is considering in the Scottish Socialist Party.

I have been in contact with a number of colleagues in Ayrshire, Fife and Lanarkshire about this matter. I stress that we place great importance on opencast in relation to the creation of local jobs. That is recognised by the explicit confirmation that local jobs should be taken into account by planners when considering whether a proposal offers local or community benefits. There is no equivalent policy in the English guidance.

I am aware of three proposals that have been approved following the publication of SPP 16. That suggests that there is nothing to prevent proposals from going forward if they meet the right local and environmental criteria. However, as I said, I am prepared to keep this commitment under review to ensure that the local jobs that we want delivered are delivered in the opencast mining industry.

**Christine May (Central Fife) (Lab):** As members will know, I chair the informal all-party coalfields group in the Parliament. I look forward to welcoming Mr Sheridan and his party to their first meeting with that group. Does the Deputy Minister for Enterprise and Lifelong Learning accept that coal will be vital as part of our energy mix for the foreseeable future, not least for its potential for clean coal technology? Does he further accept that we must do all possible to ensure that indigenous coal is used and produced, while recognising community sensitivities? Will he accept from me an invitation to a future meeting of our coalfields group so that we can discuss this issue in some detail?

**Allan Wilson:** Yes, yes and yes. I cannot emphasise enough our commitment to having a diverse range of energy sources to provide for our future electricity-generating needs. I believe that coal will continue to play an important part in the diverse range of supply. I would refer the member to the Executive's response to the United Kingdom energy review, in which we placed great emphasis on the future role of clean coal and, in particular, on our desire to see a clean coal demonstrator here in Scotland. I would certainly be pleased to take up Christine May's invitation to attend the next meeting of the coalfields group.

**Karen Gillon (Clydesdale) (Lab):** I, too, welcome Tommy Sheridan's interest in events in my constituency, although I wonder why Rosemary Byrne is not asking the question.

Redundancies are happening at sites that have operated for some time in my constituency and they are not related to SPP 16. What steps will the minister take to support the affected workers to secure alternative employment and ensure that, within the coal industry, training is given to allow people to get into other jobs? Furthermore, will he ensure that people do not advance false arguments about serious issues such as redundancy when SPP 16 did not even affect the opencast sites concerned?

**Allan Wilson:** The latter point is a very good one and I re-emphasise it. Planning policy is but one matter that companies consider when they decide whether to invest in future employment. There are many more important areas that require their attention, not least contracts for supply to the major electricity generators, which are the primary driver of employment in the industry.

That said, we are not complacent about the impact that planning may have on investment decisions, particularly those that are taken in London on future investment in Scotland. We are raising that matter with our United Kingdom counterparts and we are determined to ensure that coal plays an important part in a diverse range of energy supplies for future electricity generation. I give a commitment that the Enterprise, Transport and Lifelong Learning Department and the enterprise network will engage heavily in helping miners who have been made redundant to find alternative employment if there is no related employment in the coal industry in their areas.

#### **Bus Services (Transport (Scotland) Act 2001)**

##### **4. Mr Kenneth Macintosh (Eastwood) (Lab):**

To ask the Scottish Executive whether the powers established under the Transport (Scotland) Act 2001 have been used effectively to improve bus services for passengers across Scotland. (S2O-10209)

##### **The Minister for Transport (Tavish Scott):**

The Transport (Scotland) Act 2001 gave transport authorities additional powers to improve bus services in Scotland. After a prolonged period of decline, bus passenger numbers have increased in each of the past six years. The total increase is in the order of 10 per cent. However, more needs to be done and, as part of the consultation on the development of the national transport strategy, I have asked my officials to carry out an overview of bus policy.

**Mr Macintosh:** The minister's reply is encouraging. Is he aware of the anxiety that exists across the south of greater Glasgow about access to acute hospital care? Is he also aware of communities such as Uplawmoor in my constituency that have no rail stop and no regular bus service after 6 pm? Does he agree that if we

are genuinely to get people out of their cars and allow young and old alike to access the concessionary or free travel that is now available to them, now is the time—with the establishment of the new regional transport partnerships—to push for greater use of the existing regulatory powers or consider further regulation of bus services?

**Tavish Scott:** Kenneth Macintosh makes a number of important points. Discussions on the provision of primary care services and their accessibility for local people are taking place with my colleague the Minister for Health and Community Care.

Kenneth Macintosh also made a point about particular services, which was rather like the point that Alasdair Morgan made earlier. We are using and encouraging the use of the bus route development grant scheme, which brings some £22 million into bus services. Local authorities are eligible to make applications to that scheme for particular areas that lack the kinds of service that Kenneth Macintosh described. His point about the importance of regional transport partnerships is good. We hope that, in the local and regional strategies that they will produce later this year, they will emphasise the importance of building bus services that meet local need.

### **Institute of Life Sciences**

**5. Helen Eadie (Dunfermline East) (Lab):** To ask the Scottish Executive what discussions it has had on whether an institute of life sciences should be established in Scotland. (S2O-10195)

**The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson):** Ministers and officials have had some correspondence and preliminary discussions since 2004 on the concept. The Scottish Science Advisory Committee is currently arranging a further meeting on the matter, which I hope to attend.

**Helen Eadie:** None of the three medical research institutes, in which much of the leading scientific research takes place, is based in Scotland. If established, a Scottish life sciences institute could play a key role in attracting and retaining the best scientists and act as a magnet for scientific excellence. Scotland has extraordinary scientists and clinicians. The institute could help them to achieve the full potential of their talents. Will the minister give a commitment that either he or the First Minister, or preferably both, will meet the Scottish Science Advisory Committee, the Association of the British Pharmaceutical Industry and me to discuss the proposal to establish the institute?

**Allan Wilson:** I am pleased to give the member that assurance. I agree that Scotland has an

excellent and internationally renowned life sciences sector. As Mrs Eadie said, we need to do all that we can to build on that. The concept of the life sciences institute is a bit undefined at present and we do not have a clear case for its establishment. However, I would be pleased to meet the member and the advisory committee in due course to discuss the proposals.

## Public Service Reform

**The Deputy Presiding Officer (Murray Tosh):** The next item of business is a statement by Tom McCabe on public service reform.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** On a point of order, Presiding Officer. Before the minister starts his important statement, I understand that a document was supposed to be available for parliamentarians to view today. I have checked at the back of the chamber, but the document is not there. The statement is about to begin, but we have not seen that document. That does not augur well for a minister who says that he is trying to run the public services.

**The Deputy Presiding Officer:** The minister may be able to roll up that issue in his statement and cast some light on it. The matter is not for me, but for him.

14:56

**The Minister for Finance and Public Service Reform (Mr Tom McCabe):** I will deal with Bruce Crawford's point straight away before I come to the body of the statement. I was in a parliamentary lift at about 12.45, accompanied by a gentleman with a trolley that was loaded with copies of that document. The covering pieces of paper said that the document was for the Scottish Parliament information centre, that it related to a ministerial statement and was embargoed until the minister stood up. I assure Bruce Crawford that every arrangement was made to ensure that the documents were transported properly and on time.

The purpose of today's statement is to explain how we will take the next steps towards world-class public services. Public services are central to the well-being of the people of Scotland; they are a lifeline in times of need and a platform on which we can build better lives for ourselves—at some time or another, we all depend on them. Effective public services drive our economy and bind our communities. They should be a statement about the kind of society that we want to be. Our ambition is to create public services in Scotland that are exemplars and that can sustain and inspire our citizens. We do not apologise for seeking the continuous improvement that is necessary to achieve that, because we know that the cost of failing to act now will be met by future generations.

I also know that such ambitions are shared in the Parliament and throughout the public services in Scotland. Reform is required to remove barriers that hinder our ability to deliver effective and efficient public services, but it is also essential to encourage the innovation and excellence that will enable our public services to respond to the

changing world in which we live. Just a few weeks ago, the First Minister outlined our Government's futures project and gave us a clear reminder of the pace at which the world is changing through technological, environmental, demographic and social changes. We are in a world of new challenges, but also of new opportunities and a world in which, rightly, the needs and expectations of service users are changing.

If we are to meet rising expectations and cope with the substantial changes that our society will face—whether they are economic or demographic—we must sweep away the obstacles to more cohesive service delivery, no matter what form they take. Many of those challenges and opportunities are faced by other countries throughout the world. I want us to be at the forefront of rising to the challenge, to place Scotland and its citizens in the strongest possible position for the future.

That is why, today, I am publishing a discussion document, "Transforming Public Services: the next phase of reform", which will be followed by a series of dialogue events throughout Scotland. The document sets out what we have achieved so far and raises questions about how we might build on those reforms and drive forward transformational change. I hope that it will provide a helpful basis for discussion among those who use and deliver public services in Scotland. I see this as nothing less than an historic opportunity for communities and those with a stake in their success to help shape the delivery of services that best suit their circumstances. The discussions will focus on generating radical and practical innovations and will further develop, move on and widen the scope of public services. We will take a bottom-up approach to transforming our public services for future generations.

The document covers all public services—local government, health, justice, emergency services, further education, enterprise and more. However, it is not just about the public sector. Reform will include the private and voluntary sectors where they are involved with the delivery of public services.

I make it clear in the document that our approach to the dialogue will be guided by the five principles that the First Minister set out earlier this year. The first is user focus and personalisation, which means putting people at the centre of the design and delivery of public services, enabling them easily to access efficient and effective services, whether they are attending a doctor's appointment, paying their council tax, meeting the social worker or getting access to the police. We also want to ensure that service users have a real influence over how and where services are designed and delivered.

The second principle is quality and innovation. We want Scotland to be a hothouse of innovation, providing quality and effective services that maximise 21<sup>st</sup> century opportunities.

The third principle is efficiency and productivity. We will seek new ways to continue to maximise every pound of public money.

The fourth principle is joining up. If we are to organise services around the user, we need to work more closely together. We need to tackle demarcation at every level and remove statutory and cultural obstacles to joint working.

The final principle is accountability. The money that we spend and the services that we provide belong to the people of Scotland. There must be clear and transparent lines of accountability from service delivery to service user.

We will move forward on the basis of those five principles. We will do so in a way that enhances and builds on the progress made in the delivering for health programme; the efficient government initiative; the teachers agreement for the 21<sup>st</sup> century; the wide-ranging justice reforms; the integration of our tourism networks; the major review of cultural provision; and the 21<sup>st</sup> century social work review and much more.

All that will continue. We want the discussion and dialogue to provide further support and enable the sharing of good practice. From the dialogue, I am confident that we will see substantial changes in how local government organises itself.

Our agenda is much more ambitious than a crude reorganisation. The mistakes of the past were predicated on a vendetta against local government. The successes of the future will be predicated on a comprehensive and objective examination of how all those who serve the public can work smarter together.

It is important to stress that we have engaged in this process not to address a failure in Scottish public services—far from it—but to ensure that their undoubted successes are built on for future generations. We will not drive forward this dialogue with the people of Scotland by prescribing the solutions in advance. Sadly, some have already done so and it will be for them to try to justify their pursuit of a cheap headline.

We will harness the enthusiasm, energy and commitment of thousands of public servants who have been held back for too long. The dialogue that follows the publication of the document will be open and wide ranging and will enable voices throughout the Scottish public services to be heard. Many thousands of committed public servants strive daily to show initiative and strong leadership. We will create the conditions that will make it easier for them to do so.

Many thousands of service users are frustrated by their inability further to influence the shape of Scottish public services. We intend to provide that opportunity. We have no doubt that the document will tap into the enthusiasm for change that already exists. Just a year ago, many said that innovative projects such as the Glasgow pathfinder project could never come to pass. Many would have said that the type of exciting work in Aberdeen and Aberdeenshire, or the developments in Stirling and Clackmannanshire on integrated services would never happen. Today, the dynamism of committed public servants and politicians has proved them wrong. Where innovation and lateral thinking raise their head, we are determined to help.

Last week, I announced a review of regulation and scrutiny arrangements to reduce unnecessary burdens and remove barriers to improvement and change. Tomorrow, I will publish the results of our lean project research, which will enable the Scottish public sector to improve performance by taking what is best and relevant from the private sector. As a result of the document and the dialogue process, we will provide further momentum to those and other changes.

That is exactly what devolution should be about. It should enable us to do what is best for Scotland and not to be afraid to think radically. Banning smoking in public places is a good example of Scotland thinking big and of devolution delivering a life-changing policy. Let us embrace the chance to build on the reforms to our health service, courts and education system and reforms elsewhere and truly drive a public services reform agenda that is right for the people and right for the future of Scotland.

I commend the document to members.

**The Deputy Presiding Officer:** The minister will now take questions on issues that have been raised in his statement. I will allow around 20 minutes for questions.

**Mr John Swinney (North Tayside) (SNP):** I thank the minister for his statement and for the advance copy of it that he made available to me. I have repeatedly called for the simplification and democratisation of the government of Scotland and for radical change to the quango state, and I welcome the statement as far as it goes. However, having listened to the minister and skimmed through the document, I am left with questions. Why could not the document have been published 12 months ago? Why has the process been dragged out as long as it has?

At a time when Scotland has 32 local authorities, 15 health boards, six police boards, six fire boards, 23 other local authority bodies, 23 national health service bodies, 20 local enterprise bodies,

17 executive agencies and 26 non-departmental public bodies, does the minister not accept that to simplify the government of Scotland and make it easier and more efficient to deliver public services, swifter action and more decisive leadership are required, rather than the more-talk approach that he proposes? Does he accept that the Government that he has supported since 1999 has created seven more non-departmental public bodies, seven more executive agencies, seven regional transport partnerships and eight community justice authorities and that it has expanded the quango state so that it now controls more than 20 per cent of Scottish public spending? Does he accept that employment in that quango state has increased by 40 per cent since the Government came to power? Does he accept that the growing size of the quango state is the responsibility of the Administration? I also ask Mr Kerr that question. Does the minister accept that today's announcement is an admission that Labour and the Liberal Democrats have made government in Scotland more complex and have wasted taxpayers' money that could have been invested in our public services and that the Government, far from delivering the promised bonfire of the quangos, has delivered a bonanza for the quango state?

**Mr McCabe:** I enjoyed Mr Swinney's prepared statement. [*Interruption.*]

**The Deputy Presiding Officer:** Order.

**Mr McCabe:** On a point of accuracy, I point out to Mr Swinney that there are 14 health boards, that the Executive has eliminated health trusts and that it has made significant progress with health boards. I also have a point of information for members. When I stood up to speak, there were 129 copies of the document at the back of the chamber.

**Members:** Oh!

**Mr McCabe:** It would be useful to address Mr Swinney's points. The questions that he should have asked are why the Executive is bothering with the dialogue process and why it is going to bother talking to the people of Scotland. The Scottish National Party has already decided what the solutions are. Anyone who reads the national press will know what Mr Swinney's thoughts are on the number of police boards and health boards that there should be and on what should happen to certain local economic development companies. The SNP has pre-decided such things. It would have none of this nonsense about engaging professionals or talking to the general public in Scotland. The SNP has never been in government, but thinks that it knows best. The real questions that Mr Swinney is trying to ask are exactly the reason why he will never be in government. We should deal with the real

questions and examine what needs to be done with Scottish public services.

**Miss Annabel Goldie (West of Scotland) (Con):** I thank the minister for sending me an advance copy of his statement. I would have thought that now was the time for action, not conversation. Over seven years of devolution, we have seen millions more pounds poured into our public services, but no improvement in outcomes. Waiting times and lists are up on 1999, crimes and offences are up on 1999 and many school pupils do not meet the Government's own standards for reading, writing and maths. I know that Mr McCabe is a man of few words, but his statement, entitled "Public Service Reform", is truly remarkable for the absence of any mention of substantive reform. Will the minister therefore consider, as a first step, removing centrally imposed targets in our public services and freeing them up to set their own priorities—priorities that will better reflect the needs of local people and that really will represent bottom-up politics?

**Mr McCabe:** I hope that the dialogue process gets off to a better start than the last two questions from the Opposition parties have done. It is okay for Annabel Goldie just to repeat the same mantra about waiting times, but here in Scotland we are experiencing the best waiting time performance that we have ever had in our national health service. If she is concerned about waiting times, she should tell that to the people who are afflicted by Scotland's three major killers—stroke, coronary heart disease and cancer—because the performance in all those areas is better than it has ever been. The whole purpose of "Transforming Public Services: the next phase of reform" and of the examination of how Scottish public services work is to ensure that services get better and that the people who depend on those services get much more comprehensive services and have an ability to influence the methods of delivery more than they have been able to in the past.

The Conservatives need to get away from the rhetoric that they are determined to engage in and to get involved in the real discussion—a discussion that will make a difference to people's lives and will inspire and invigorate the committed professionals who work in our public services. That is what will make a difference for Scotland and for future generations, and that is what will allow us to compete in an ever-changing world.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** On behalf of the Liberal Democrats, I thank the minister for his statement, for the publication of the discussion document and particularly for the announcement of the dialogue events that will take place throughout the country. If those events produce solutions that do not necessarily say that big is beautiful, but the

reverse—that small is beautiful—will the minister listen to the dialogue in which he engaged with the people of Scotland? We must be interested in local accountability and accountable to local people. If the solution that local people suggest is that small is beautiful, I hope that the minister will listen to their views. Does he accept that that should be the case?

**Mr McCabe:** We are committed to listening to all views that are expressed in various parts of Scotland, but there are different ways of approaching some of the concerns that are expressed. For instance, let us consider what is going on in Stirling and Clackmannanshire, where people are examining how they can change delivery at the front line and what they can do with the integrated management of services. I hope that that project comes to successful fruition, but it indicates how we can deliver much more comprehensive and better public services to people without interfering with their ability to refer to democratically elected representatives. That is the key. The exercise is not about lines on a map; it is about the kinds of services that are delivered. When someone approaches a counter in the public services, whatever service they require, they are less interested in how we organise to deliver that service than in the speed and quality of the service and in how it can make a positive impact on their life. That is the determinant that we will use in the Scottish Executive as we assess the many views that will be expressed to us in the months to come.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** Does the minister agree that, in order to reform public services and to deliver effective public services, it is vital that there is effective leadership right through Scotland's public services? Has he considered the report on that subject produced by Audit Scotland earlier this year, and reported on by the Audit Committee, which showed that, although post-devolution Scotland could and should have been ahead of the game in driving forward leadership development in the public sector, particularly on a cross-sectoral, collaborative basis, progress has in fact been minimal? What will he do to create a step change in that area so that we really see the kind of dynamic, innovative leaders who can do the job that he has set out today?

**Mr McCabe:** I welcome that relevant question. I have seen that report and am on record as saying that we have to redefine the professional accountability of those who serve us at senior level in the public sector. In the past we have perhaps made the mistake of thinking that paying people substantial amounts of money will automatically deliver the drive, leadership and innovation required to produce world-class services and leadership. Of course, that is not the

case. Part of what we are doing—and will do throughout the process—is examining how we can improve professional accountability and the mechanisms that will allow committed professionals to show the leadership that will undoubtedly improve circumstances for those people who need, depend on and receive services in Scotland. It is a critical part of the work on which we are about to embark. That is a good question and it will be raised and addressed as we engage in this conversation throughout Scotland.

**Tommy Sheridan (Glasgow) (SSP):** My question is less about leaders, or chiefs, and more about workers, or Indians. I have not had the opportunity to read the statement because I cannot speed-read.

Has the minister seriously considered the fact that we have 32 local authorities in Scotland, which means 32 chief executives, directors of education departments, directors of social work departments and directors of leisure and recreation departments? Is it not time that we merged local authorities to release funds to provide decent wages and conditions for the workers on the ground who deliver the essential services instead of maintaining those empires for the chiefs who are on wages of more than £100,000 per year?

**Mr McCabe:** Again, Mr Sheridan makes a pertinent point. I am on record as saying that we need at least to examine whether a country of 5 million people requires the number of chief executives, finance directors or other professionals that we have. Are there other ways in which we can bring services together? That will be an important part of this dialogue process.

The document says explicitly that the point of public service reform is to improve the quality and quantity of public services in Scotland, now and for the future. If we do that, it means that those who deliver those services on the front line will be in a much better position to reap the rewards that undoubtedly come from serving in the public sector. It will also clearly create the conditions to enable us to reward them better financially. That is part and parcel of this reform. We need to consume enough human capital to make sure that the public services in Scotland are the best that they can be, but we need to consume no more human capital than that.

Mr Sheridan referred to some of the local authority professions, so let us talk about finance, for example. What is the fastest growing sector of the economy in Scotland? It is the financial services sector. We cannot afford to dispense with any of that human capital. Because of the macroeconomic management that we have had from the Labour Government in Westminster and the sensible decisions taken by this coalition

Executive, we are fortunate to live in a country that has the second highest rate of employment of all 25 of the countries in the European Union. We cannot therefore afford to dispense with any of our human capital, although we can certainly use it better than we do at the moment, and that will be part and parcel of the search for better outcomes as we engage in this process.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** In his statement, the minister said that the Executive would seek new ways to continue to maximise every pound of public money.

Will the minister confirm that in November 2004, he launched a document about efficient government called "Building a Better Scotland"? Will he also confirm that in March this year—16 months later—on receiving a report on public sector procurement, he said:

"Urgent action is also required to ensure we use improved procurement practices to help deliver the efficiency savings we expect"?

I applaud the minister for making that statement and I could not agree with it more. However, is it not also true to say that the reality is that the minister's actions simply do not live up to his rhetoric? The minister will also recall saying in March:

"We will, of course, have to study the report in detail and establish the views of public bodies in Scotland."

That is hardly taking urgent action.

Does the minister accept that it is now almost 20 months since the launch of his efficient government agenda and still no substantial progress has been made? There was a headline in *The Herald* today that said that the public sector should sort itself out, but is the reality of the situation not that the Government should sort itself out? Seven years is long enough.

**Mr McCabe:** If Mr Crawford had taken just seven minutes to read some of the most recent publications on efficient government, he would not have bothered to waste the Parliament's time with those remarks.

We set the target of making savings of £1.5 billion by April 2008. Halfway through 2006, £1.25 billion of savings have been achieved, which I think represents significant progress. We have made that progress in the procurement of goods and services in our health service and in the procurement of information technology equipment by the Scottish Executive and the wider public sector. Does Mr Crawford not read any of that material? Is the Scottish National Party too interested in making cheap headlines in our press? Rather than concentrating on the facts, is Mr Crawford just making another attempt at a soundbite? Is the SNP just not accepting that it will

only ever be able to snap from the sidelines? Because the members of the SNP will never get anywhere near being in a position to take the hard and responsible decisions that are required in government, they indulge themselves by making comments such as Mr Crawford's.

**Cathy Peattie (Falkirk East) (Lab):** I welcome the minister's commitment to consult, which is extremely important. On page 37 of "Transforming Public Services: the next phase of reform", mention is made of leaders of the public, private and voluntary sectors being invited to take part in discussions. I am concerned about the Executive speaking only to gatekeepers; it is vital that communities, trade unions and other stakeholders are involved in the dialogue. I would be grateful if the minister could give a timescale for the process.

**Mr McCabe:** All the subsets that Cathy Peattie mentioned are important. I assure her that we have kept the trade unions closely in touch with the process and that they appreciate the effort that we have made to do that. I further assure her that the dialogue in which we will engage over the coming months will involve not only the people who provide services, but the people who use them. That is crucial. As I said in my statement, there is frustration about people's ability to influence the shape and the delivery of public services in Scotland. We want to address that in a meaningful way.

**John Swinburne (Central Scotland) (SSCUP):** Does the minister agree that finance is at the heart of the transformation of public services? What steps will he take to improve council tax collection rates, which currently average 93 per cent? The shortfall in collection results in higher council tax, which impinges on the lives of senior citizens and others who are on fixed incomes.

**Mr McCabe:** Many things will affect the progress of public service reform. Finance will always be important to the delivery of public services, as will culture and the ability of people to exercise leadership, which has been mentioned several times. It will also be necessary to create the structures and the ethos that allow innovation and enthusiasm to be released. All those factors will be important, in addition to finance.

I am sure that the member will be pleased to hear that figures that will be put in the public domain in the near future will show that we are making considerable progress on the collection of council tax in Scotland. The figures have improved; although we have some way to go, we are moving in the right direction. My first engagement as Minister for Finance and Public Service Reform was to speak to the leaders of the Convention of Scottish Local Authorities. On that occasion, I strongly emphasised the need to improve our council tax collection rates. They have

responded to that call and I am confident that they will continue to do so. I assure Mr Swinburne that we will be vigilant in our assessment of the progress that is made.

**Murdo Fraser (Mid Scotland and Fife) (Con):** When the minister talked about engaging in reform that will put people at the centre of the design and delivery of public services, did he mean that citizens will be empowered and given real choice and control in relation to public services or will we continue to have the Government-knows-best approach that has been adopted over the past seven years?

**Mr McCabe:** Our approach will certainly involve allowing people to have a greater say and finding the proper mechanisms that enable them to believe that they can influence both the shape and the delivery of services. In pursuing such an approach, we will be continuing in the direction in which we have been travelling since the day devolution began.

I saw a press release from the Conservatives this morning. It was quite revealing. Perhaps the most recent example of our putting the user at the centre is the change to parental involvement in schools. Those changes were passed in the Parliament by 92 votes to 17. The measures were supported by the Scottish School Board Association, the Scottish Parent Teachers Council, local authorities, the Scottish Consumer Council, teachers and head teachers. They are exactly the kinds of measures that a broad range of important bodies in society say are the right thing to do. Yet the Conservatives criticise those measures at the same time as they come here to ask us whether we will put the user at the centre of service delivery.

**Helen Eadie (Dunfermline East) (Lab):** I, too, share my colleagues' appreciation of the discussion document. I welcome the fact that people across Scotland will be able to participate in developing the vision that the minister has laid out.

I am particularly interested in the part of the document that deals with the voluntary sector. In the week before Civicus meets in Glasgow—when voluntary sector organisations from around the world will gather together—what message can those of us who will participate take from the minister?

**Mr McCabe:** My message would be that the voluntary sector plays a critical role in holding together many services that are delivered here in Scotland. They are partners who, in the past, have perhaps not been as valued as they could have been. We need to ensure that they are treated on an equal basis by statutory agencies that may control budgets that are released to the voluntary sector in order to deliver services.

The voluntary sector should know that the future holds a more important role for it. Its contribution to society will be better recognised. The Executive is determined to convince the voluntary sector that we willingly acknowledge the critical role that it plays in our society.

**Mr Andrew Arbuckle (Mid Scotland and Fife) (LD):** The Liberal Democrats support the drive for efficiency in the public sector through joint working and the sharing of common services. However, I hope that the minister will agree that delivering efficiencies will not necessarily require centralisation, with wholesale amalgamations of the political structures of councils and public bodies.

**Mr McCabe:** Mistakes have been made in the past. Previous ministers—thankfully not in this Executive—handed down tablets of stone about the right formula for the organisation of local government and other services. A Government must sometimes take final decisions, but—without avoiding that requirement—I would like us to preclude those decisions by involving people as much as possible and offering them the opportunity to offer local solutions. That would reverse the mistakes of the past, when solutions were handed down and people were just expected to get on with things.

We want to encourage as much involvement as possible. We will do that, but we will not avoid taking necessary decisions. We want to take those decisions in partnership with people in Scotland. We will work as hard as we can to ensure that that is how decisions are taken.

*Meeting closed at 15:28.*

## Committee of the Whole Parliament

[THE CONVENER *opened the meeting at 15:28*]

### Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill: Stage 2

#### Section 1—Functions of the Lord President during vacancy or incapacity

**The Convener (Trish Godman):** We move to stage 2 of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill. The bill will be considered by the Committee of the Whole Parliament, for which the occupant of this chair is known as the convener.

In dealing with the amendments, members should have SP bill 65; the marshalled list, which contains all the amendments that have been selected for debate; and the groupings that I have agreed. The division bell will sound as normal for the first division this afternoon.

The first group of amendments is headed “Procedure to establish incapacity or end of incapacity etc.” Amendment 1, in the name of Stewart Stevenson, is grouped with amendments 4, 5, 7, 8, 8A, 9, 10, 11, 14, 15, 17, 18, 18A, 19 and 20. I remind members that, before I put the question on amendments 8 and 18, I will put the question on the amendments to amendments 8 and 18. If amendment 8 is agreed to, amendment 9 will be pre-empted; if amendment 18 is agreed to, amendment 19 will be pre-empted.

15:30

**Stewart Stevenson (Banff and Buchan) (SNP):** The group of amendments looks rather intimidating, but it covers a relatively small number of policy areas. In the interests of cross-party co-operation and facilitating the stage 2 process, I have provided my speaking notes for the minister. Perhaps I should just sit down, but I will not.

Amendment 1, in my name, is simply a paving amendment for amendment 4, which would insert subparagraphs (ii) and (iii) into section 1(3)(a) of the bill. The first policy purpose is to ensure that all judges who do not sign the declaration of incapacity of the Lord President are aware that a majority of their colleagues have done so. The amendment would require only that notice be sent and so would not cause any delay in the process. Should members dissent from the second policy purpose of the amendment, they will have a second opportunity to vote for the first policy

purpose alone by supporting amendment 10 as an alternative.

The second policy purpose is bigger. My amendments would provide that two or more judges may block the declaration of incapacity. I suspect that, in practice, there would always be unanimity among the inner house judges, so the amendments would simply provide safeguards that should assure the wider public that a cabal would not be able to seize the inner house. When we legislate, especially when we do so quickly, we need to provide all possible assurances of the excellence of the processes that we define. I hope that the minister will acknowledge that the amendments that I have lodged are part of the due process of holding to account the Executive when it brings emergency legislation before Parliament.

Amendment 5 would repeat amendment 1 in respect of lifting the declaration of incapacity; it, too, is a paving amendment. Amendment 7 mirrors amendment 4 and contains the same two policy purposes. Amendment 10, to which I have already referred, covers both creating and removing a declaration of incapacity.

**Gordon Jackson (Glasgow Govan) (Lab):** Perhaps I am just daft—that is possible, as that seems to be the fashion right now—but can the member explain to me what would happen if two judges were to dissent? I do not understand that. I presume that, if they did, we would be back to square 1 and would be faced with the problem that we are trying to avoid. Perhaps I have not understood the amendments correctly.

**Stewart Stevenson:** No, the member is absolutely correct. The purpose of the amendments is to ensure that, if there were dissent in the inner house, we would not proceed. However, the amendments would not provide one judge with a veto—two judges would be needed to block a declaration of incapacity. I have provided for the option of doing in part what I suggest. My aim is simply to debate the matter. I do not intend to divide Parliament on it, but in the normal course of events we would have raised such issues in committee at stages 1 and 2. We are now going through that process, which should not take too long.

Other amendments in the group would repeat those provisions in section 2, which concerns the Lord Justice Clerk, the policy purposes of which I have referred to in relation to section 1. Amendment 15 mirrors amendment 1, amendment 17 mirrors amendment 4 and amendment 20 mirrors amendment 10. As I said, I have given the minister my speaking notes, so she is no doubt checking them against delivery as I speak.

I turn to a minor policy issue that is addressed by amendments 2 and 6 for the Lord President

and amendments 12 and 16 for the Lord Justice Clerk.

**The Convener:** Those amendments are in the next group. Please stick with group 1.

**Stewart Stevenson:** Thank you, convener—you are correct. That is the trouble with legislating quickly.

Amendments 8 and 18 are merely consequential on earlier amendments, but amendments 8A and 18A would provide for new policy. Under amendment 8A, the Lord Justice Clerk would be unable to veto the lifting of incapacity by refusing to sign the declaration. The amendment would not prevent him from signing it. Amendment 18A, which applies to section 2, would work the other way round. Although that situation would not happen, my amendments would give the public the assurance that somebody who might get the job if the head honcho were to demit office would not be able to orchestrate such a situation.

I move amendment 1.

**Alasdair Morgan (South of Scotland) (SNP):** I congratulate Stewart Stevenson on his adherence to the Protestant work ethic, although I am not sure that many of his colleagues, or anyone else, would queue up to do the same.

Stewart Stevenson raises important points in his amendments. We have a responsibility to get emergency legislation right even though we do not have a proper opportunity at stages 2 and 3 to explore all the substantive issues in the bill or to get answers to our questions. Although Stewart Stevenson's amendments would allow us to do that to some extent, I cannot guarantee that I will support him should he press his amendments to a vote.

**Margaret Mitchell (Central Scotland) (Con):** Unlike Alasdair Morgan, I do not thank Stewart Stevenson. He wants to ensure that inner house judges who do not sign a declaration of incapacity are made aware that others have done so. If we needed to do that, we would be suggesting that it is beyond the competence of the judges to organise themselves. If that were the case, we would also need to safeguard the wider public from a cabal taking control in other situations. It would suggest that there is something more fundamentally wrong with our judicial system, and more properly its office holders, if they were predisposed to act in that way. If that were the case, Stewart Stevenson's amendments alone would be unlikely to rectify the situation.

Similarly, the amendment that would produce—no, that amendment is in group 2.

**The Minister for Justice (Cathy Jamieson):** I am glad that everything is becoming clearer by the minute and I thank Stewart Stevenson for giving

me advance sight of his speaking notes, although he was obviously trying to confuse me by putting his group 2 notes among those for group 1.

I have considered the group 1 amendments that would deal with the procedure that is needed to establish the incapacity or the end of incapacity of the Lord President or the Lord Justice Clerk. As Stewart Stevenson said, amendment 1 is to be read with amendment 4, which would require that a copy of the declaration that is signed by at least five judges be sent to the other judges of the inner house who did not sign it. Although I agree that each serving judge of the inner house who did not sign the declaration would be fully entitled to be made aware of what had happened—on which Margaret Mitchell made her point—I suggest that in the supreme courts there would be no question but that all the inner house judges would be involved by the Lord Justice Clerk in an understanding of what was being done in their names. Amendments 1 and 4 are therefore not necessary.

The second part of amendment 4 would effectively give a veto to two judges of the inner house who were not in favour of the declaration that had been signed by at least five judges—Gordon Jackson made a valid point about that. It is not the kind of situation in which any kind of veto ought to be given to a minority of judges in the face of the clearly expressed view of a majority of members of the inner house. I therefore suggest that amendment 4 should not be agreed to.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I thank the minister for giving way—I would have made a speech in the debate, but the shortness of time for consideration makes it difficult to take in what Stewart Stevenson proposes.

I am not against the idea in principle of giving notice to other judges that a declaration of incapacity has been signed. However, is it necessary for us to enshrine that in legislation, or should we give the judges responsibility for informing others? One way or the other, it is sensible that the other judges get to see the signed declaration.

I know that there will be no argument about which judge has seniority, but just in case, Stewart Stevenson's suggestion would be a good check and balance if one judge believed that another of the judges should exercise the Lord President's functions because he or she had more years' service. I am happy for the proposal not to be included in the bill, but I believe that the idea is good in principle.

**Cathy Jamieson:** I assure Pauline McNeill that we are not anticipating a situation in which the judges would not meet to discuss such matters. As I said this morning, the important point is that we

are trying to put in place a legislative framework that will allow the judges to make decisions and to take control of matters in the correct and proper way, given their independence from Government. I do not think that such a provision should be in the bill, although I point out that there is an understanding that all the inner house judges will want to be made aware of what is happening.

Given that amendment 5, which is to be read with amendment 7, deals with almost the same points as amendment 4, it is unnecessary and I propose that it be rejected.

Amendments 8, 8A and 9 seek to remove the name of the Lord Justice Clerk from the list of judges who must sign a declaration that the Lord President is fit to resume work. We must be careful not to suggest that the Lord Justice Clerk would behave in anything other than an entirely honourable way in deciding whether the Lord President is fit to return to work. Indeed, as I have already indicated, at least four other judges would be involved in the process. As a result, I do not believe that the amendments are necessary.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I am persuaded by the minister's explanation of why we should reject amendment 4, which seeks to permit the appointment of a temporary Lord President to be vetoed by two or more judges of the inner house. However, surely the same argument should apply to amendments 8, 8A and 9. After all, as the bill stands, one judge alone—the Lord Justice Clerk—could have a veto.

**Cathy Jamieson:** I understand Stewart Maxwell's point. However, in such a situation the Lord Justice Clerk would be the most senior judge in the country; it would be wrong for Parliament to suggest that he might not act honourably or that he might act in a way that was contrary to the interests of progressing the courts' business.

I have already dealt with amendment 10, which I feel is unnecessary. Just as Stewart Stevenson's comments on amendments 11, 14, 15, 17, 18, 18A, 19 and 20, which concern incapacity of the Lord Justice Clerk, mirrored his comments on amendments that would deal with incapacity of the Lord President, my comments on the amendments mirror my comments on procedures to establish the incapacity or the end of incapacity of the Lord President.

In light of this—albeit short—debate, I hope that we will all focus on what the bill needs to do, and that Stewart Stevenson will not feel the need to press amendment 1.

**The Convener:** Before I call Stewart Stevenson, I remind members that mobile phones must be turned off, and not left on standby or silent mode. If they are not turned off, the official reporters will not be able to hear what members are saying.

**Stewart Stevenson:** My purpose in lodging the amendments was to give the minister the opportunity to put on the record some very helpful comments. I now seek the Committee of the Whole Parliament's consent to withdraw amendment 1.

*Amendment 1, by agreement, withdrawn.*

**The Convener:** Group 2 is on the number of judges that will be required to certify incapacity or the end of incapacity. Amendment 2, in the name of Stewart Stevenson, is grouped with amendments 6, 12 and 16.

**Stewart Stevenson:** Amendments 2, 6, 12 and 16 would make the same change in different parts of the bill and would address the point that I and Jim Wallace raised this morning, which was that the size of the inner house might vary or that vacancies might arise. At the moment, changing the words

"5 judges of the Inner House"

to

"half of the judges in the Inner House"

will have no practical effect. However, if the size of the inner house should vary at any point, my suggested change will preserve the policy intention.

I move amendment 2.

**Margaret Mitchell:** We will reject amendment 2 because we are perfectly satisfied with the bill's wording. If the complement of the inner house were ever to be increased, references to it in other legislation would have to be amended to reflect that change. That would be the correct time to lodge such an amendment. At the moment, amendment 2 is simply unnecessary.

**Cathy Jamieson:** Amendments 2, 16, 12 or 16 seek to replace the term

"5 judges of the Inner House"

with the phrase

"half of the judges of the Inner House then serving".

15:45

The current complement of the inner house is 10 and it cannot be increased without the introduction by ministers of a formal order. There are no plans for any such order to be made in the foreseeable future. The stipulation of five judges will ensure that the clear majority of the judges support a motion to declare that the Lord President is incapacitated. Stewart Stevenson will, being a mathematician, know this, but I would have some concern that if we were to substitute Stewart Stevenson's term—namely "half of the judges"—in certain circumstances we could be in a situation in

which half equals 4.5 or another, similar figure. I say that not to be flippant but to ensure that we understand that what we are trying to do is to ensure that we have a majority from the present complement. I therefore suggest that the group of amendments is unnecessary. Again, I hope that Stewart Stevenson will not press amendment 3 at this stage, although I suggest that Parliament should reject it if he does.

**Stewart Stevenson:** Just in case the minister continues to think that I am mathematically incompetent—only my wife is allowed to say that—I have not deleted the words “at least” that precede “half”; therefore the provision would continue to operate on an integral rather than a fractional basis. However, the minister has had the opportunity to put on the record the appropriate remarks in that connection, so I seek the consent of the Committee of the Whole Parliament to withdraw amendment 2.

*Amendment 2, by agreement, withdrawn.*

The Convener: Amendment 3, in the name of Stewart Stevenson, is grouped with amendments 13 and 21.

**Stewart Stevenson:** Amendments 3 and 13 contain essentially the same policy position. They simply give the Committee of the Whole Parliament the opportunity to consider whether there should be a minimum period of incapacitation before we can allow the judges to decide on incapacity. I have arbitrarily chosen 35 days, or five weeks. Neither my pals nor myself have ever managed to get such a long holiday, which is why I came up with 35 days; I shall not adhere to that figure particularly strongly.

Amendment 21 is a different policy issue. It would extend very slightly the definition of incapacity to include the general heading, “or unavailability”. I referred to holidays, which are an example of what would otherwise not be captured by that section. If a judge were to go to Colombia and be kidnapped by the rebels there, that might make him incapable of doing the job.

**Alasdair Morgan:** Why would he go to Colombia?

**Stewart Stevenson:** Well—I have been there. His being kidnapped would not necessarily mean that he was unhealthy, but the amendment might provide a useful extension of the definition of incapacity, which members might consider. I shall listen carefully to what the minister has to say.

I move amendment 3.

**Margaret Mitchell:** The Conservatives will reject amendment 3 on the basis that it would introduce unnecessary delay and uncertainty to the process. Obviously, that is not to be welcomed. On amendment 13, which would substitute incapacity

with unavailability if the circumstances that Stewart Stevenson outlined were to prevail, I suggest that that would be a disciplinary matter rather than one involving incapacity.

**Cathy Jamieson:** I shall resist the temptation to follow up on that exchange between the Opposition parties. As Stewart Stevenson outlined, amendment 3 would require a period of at least 35 days to pass before the procedure could be implemented. I appreciate the thinking behind the amendment, but I am not persuaded that it would be wise to include a specific time limit, particularly one that is, by Stewart Stevenson’s admission, arbitrary.

In the unfortunate circumstances of a Lord President or a Lord Justice Clerk suffering a serious or catastrophic physical injury, about which the medical prognosis was gloomy from the outset, I am not persuaded that it would require 35 days to deal with that. It would not make sense to have to await the passage of a specified period before taking the necessary measures.

Amendment 13 deals with the incapacity of the Lord Justice Clerk. For the same reasons that I have outlined in relation to the Lord President, I suggest that the amendment is not necessary.

Amendment 21 would extend the definition of incapacity to include unavailability as well as health. A couple of suggestions have been made as to what that might mean in practice. I assure the Committee of the Whole Parliament that we gave a lot of thought to the definition of the word “incapacitated” for the purposes of the emergency bill. We decided that the proper course was to limit the statute to its dealing with the real situation that is before us, namely that the Lord President is unable, for reasons of ill health, to exercise his functions.

If the words “or unavailability” were added, that would give rise to wider considerations about the definition of “unavailability”. We should guard against situations involving the Lord President simply being out of the country on holiday in a remote place—not necessarily kidnapped, but nonetheless uncontactable for a time in a remote place. We would not want such a provision to be used in such situations. It seems that it would be better to limit the bill strictly to dealing with the real situation that faces us, namely the ill health of the current Lord President or of a future Lord President. I invite Stewart Stevenson to consider whether he wishes to press an amendment that is based on—I hope—a misunderstanding about what we are trying to do.

**Pauline McNeill:** At stage 1, I raised the question of what guidance should exist, if any, in relation to determining incapacity. I am quite satisfied by the Executive’s position on the

matter—such guidance should not appear in the bill. Essentially, the bill addresses situations of temporary ill health. I cannot think of any other circumstances in which the term “incapacity” would be used.

I would want to know that judges had some kind of procedure in place. I do not want to scrutinise such situations and I do not want them to come before Parliament, but I would want to know that there were guidelines. I would be unhappy were judges simply to decide on a whim what they would determine to be “incapacity”. There should be guidance, especially on whether the period concerned is to be two months, three months or four months. In this case, I believe that the Lord President has been absent for six months. That is too long a period for another judge to exercise the powers that we seek to grant in the bill. I would be happy if the minister could confirm that guidance will be drawn up by judges following the passage of the bill.

**Cathy Jamieson:** I had intended to deal with this matter at stage 3 had Pauline McNeill not raised it now, at stage 2. She makes a good point about everyone concerned needing to be satisfied that the inner house judges will establish a fair and proper process for determining incapacity. As the bill makes clear, the First Minister will have to receive from the judges a copy of a declaration in writing before the process will be triggered. I think that we can rely on the judges to obtain appropriate medical advice and so on.

It is important for me to give the commitment that, as soon as the bill is passed, I will offer to meet the Lord Justice Clerk to discuss the matter further. I am sure that he will share members’ concern that the very serious steps that judges will have to take must be wholly justified by the circumstances.

**Stewart Stevenson:** Once again, we have given the minister the opportunity to clarify and expand on some of the bare words in the bill. That has been useful.

*Amendment 3, by agreement, withdrawn.*

*Amendments 4 to 8, 8A, 9 and 10 not moved.*

*Section 1 agreed to.*

## **Section 2—Functions of the Lord Justice Clerk during vacancy or incapacity**

*Amendments 11 to 18, 18A, 19 and 20 not moved.*

*Sections 2 and 3 agreed to*

## **Section 4—Interpretation**

*Amendment 21 not moved.*

**The Convener:** We move to group 4, on determination of seniority. Amendment 22, in the name of Stewart Stevenson, is the only amendment in the group.

**Stewart Stevenson:** Amendment 22 would provide for an extension of the definition of seniority when judges have been appointed on the same day. The definition does not include the Lord President or the Lord Justice Clerk, who have seniority by virtue of their positions; it would extend only to the remaining judges in the inner house. In the case of twins who were serving simultaneously in the inner house, it would still be possible in the usual course to separate them by the minutes that their births were apart. I will be interested to hear what the minister has to say.

I move amendment 22.

**Cathy Jamieson:** I congratulate Stewart Stevenson on trying to cover all possible eventualities, but I remind the Committee of the Whole Parliament that we are dealing with an emergency bill that deals with the circumstances in which we currently find ourselves. I therefore believe that amendment 22 is unnecessary. As I said in summing up the stage 1 debate this morning, in respect of the current complement of the inner house—I am not aware that there are any twins—all 10 were appointed on different dates and seniority is based on the date of appointment to the inner house. There is, therefore no possibility that we will be faced, for a number of years, with a situation in which two or more judges were appointed at the same time, as Stewart Stevenson describes. Therefore, I do not think that amendment 22 is necessary and I ask Stewart Stevenson to withdraw it.

**Bill Aitken (Glasgow) (Con):** Is the minister aware that the odds of that happening are 1,723:1? I would be more than happy to show her my calculation afterwards.

**Cathy Jamieson:** I am obliged for that information, for which I am sure Committee of the Whole Parliament is grateful.

**Stewart Stevenson:** I think Bill Aitken is wrong. If there are 33 people in a room, the odds of two people having birthdays on the same day—albeit in different years—are slightly different.

I am grateful for the minister’s remarks. It is clearly the policy of the current minister—and, I hope, successive ministers—to avoid appointing judges to the inner house on the same day, thus preserving the integrity of our legislation. I seek to withdraw amendment 22.

*Amendment 22, by agreement, withdrawn.*

*Sections 4 and 5 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

*Meeting closed at 15:58*

## Scottish Parliament

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 15:58*]

### Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S2M-4543, in the name of Cathy Jamieson, that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be passed.

15:59

**The Minister for Justice (Cathy Jamieson):** I thank everyone for their co-operation in getting the bill to this stage in such a reasonable and co-operative way. I do not think that we have had the precedent—the helpful precedent, I might say—of the Opposition party supplying not only its amendments but its speaking notes to the Executive well in advance. I am glad that Mr Stevenson has set such a precedent and I hope that he will follow it in the future.

Today has been about dealing with the particular circumstances in which we find ourselves in relation to the unfortunate illness of the Lord President. However, a number of points that were made during this morning's debate have a wider implication in relation to matters connected with the judiciary. We will reflect on those points in due course.

Despite the short notice of the bill and the short time available, the debate has been conducted in a thoughtful and, for the most part, informed way. It is important that we pass the bill today; perhaps there was an assumption in the past that, in the circumstances in which we find ourselves, it would simply be a matter of the Lord Justice Clerk stepping up to act for the Lord President. Clearly, we want to put that beyond doubt to ensure that the business of the courts can continue as it properly should.

I will pick up briefly on a couple of points from this morning's stage 1 debate, because I said that I would return to them. Stewart Stevenson raised the question whether the bill's provisions would work should both the Lord President and the Lord Justice Clerk be incapacitated simultaneously. The points that he made would be technically correct, because if both senior judges became incapacitated at exactly the same time or so close together that there was no opportunity to follow through the procedures that the bill would establish, it would be difficult to transfer authority. However, as I think that members recognised this

morning, the bill is intended to deal with the type of situation in which we currently find ourselves, for which we need an urgent remedy. Again, I thank members on all sides for their co-operation.

**Stewart Stevenson (Banff and Buchan) (SNP):** Of course, I accept the point that the minister makes. However, I hope that the draftspeople will note that, if we draft a bill that seeks to account for the possibility that both senior judges may be incapacitated at the same time, we should at least do so in a way that means the bill is capable of being implemented, albeit that that incapacity situation is not going to happen.

**Cathy Jamieson:** Again, I appreciate the points that Mr Stevenson makes, but I think that an emergency measure is not the appropriate place in which to try to make detailed provision to cover every possible set of circumstances that might arise in the future. Indeed, Stewart Stevenson raised a number of such points in today's debates.

The bill is structured to deal with a foreseeable, but of course unwished for, event, namely the incapacity of the Lord Justice Clerk after he has assumed the power to carry on the functions of the Lord President, if that is what the judges decide should happen. Were that to happen, the senior inner house judge would of course step up and carry on the functions of the Lord President; in turn, the next most senior judge would have powers to carry on any functions falling on the Lord Justice Clerk. I think that those proposals will provide the remedy that those who rely on the continuous functioning of our courts and public administration need. Again, I remind members that the proposals have the agreement of the senior judges. However, I am grateful to Mr Stevenson for raising his points during the debate.

As members know, we are considering responses from a broader consultation on aspects of the judicial system. We will receive the views of the senior judges on that soon, although obviously it may be a little while before we are able to receive the considered views of the Lord President.

**Mr Jim Wallace (Orkney) (LD):** I apologise to the minister if I did not pick this up correctly, but I think that Bill Aitken made an interesting point this morning about United Kingdom legislation that conferred consultation responsibilities with regard to the Lord President. Obviously, our legislation cannot affect that. Has thought been given to how that might be dealt with?

**Cathy Jamieson:** Yes, indeed. That issue was raised in this morning's debate and we have certainly taken account of it. Various discussions have taken place on the issue and we will continue to ensure that we put in place the appropriate measures to deal with whatever arises.

As I said earlier, we will want to consider all the points that have been made today before any final decisions are made about the wider reforms that may be required in the judicial system at a later stage. I want to provide brief clarification on Jeremy Purvis's question on whether the bill would be subsumed in future legislation. I hope that I have given assurances today that the bill is intended to deal with the circumstances in which we find ourselves at this point. That does not take away the need for a further look at what needs to be done in the future. I certainly expect that we would want to look at the issue that Jeremy Purvis raised as matters progress.

I thank everyone for their co-operation during today's debate and in the lead-up to the debate. I give particular thanks to all the staff, including the bill team, who were brought together at short notice, the draftspeople and, obviously, the parliamentary authorities and members for getting the bill to this stage. I hope that the bill will be passed today.

I move,

That the Parliament agrees that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be passed.

16:04

**Mr Kenny MacAskill (Lothians) (SNP):** The debate has been consensual, which is appropriate in the circumstances. The minister and her team are to be commended for acting expeditiously, as numerous members mentioned in the stage 1 proceedings. We had hoped that we would not have to do this and it is a matter of regret, not simply for those of us who have had to deal with the emergency bill but, doubtless, for Lord Hamilton, who has been unable to exercise the office that might have been the pinnacle of his career. It can only be hoped that he will, at some stage, be able to serve out some tenure as Lord President.

The civil service teams are to be congratulated. They are sometimes the butt of criticism—not simply from me, but from other members—but they have acted expeditiously to ensure that the administration of Scottish justice continues.

The need not only for an emergency bill, but for a broader discussion on the importance of the judiciary has been recognised. The judiciary is another section of our society that is sometimes the butt of criticism, but all parties have acknowledged the importance not only of judicial impartiality and independence, but of the judiciary as individuals. We require a sound legal system. Scotland's legal system and its law have served us well throughout the centuries and will continue to do so.

I am grateful for the minister's forbearance in some of the earlier discussions. We have had an opportunity to air matters and debate them, although not all bases can be covered in emergency legislation, nor should they be. The bill constitutes recognition of the importance to Scotland not only of the judiciary but of the Parliament; we would have had difficulty in dealing with the situation had we simply been legislating at Westminster without a Scottish Parliament to deal with such matters.

I commend the bill to the Parliament and thank the minister and her team for dealing with the matter expeditiously and appropriately.

16:06

**Margaret Mitchell (Central Scotland) (Con):** I welcome the smooth passage of this essential bill—Stewart Stevenson's contribution apart. I thank the Minister for Justice for her helpful briefing prior to today's proceedings and her willingness to address any possible areas of concern in advance of the parliamentary process. That approach, together with members' unanimous agreement that the bill is a sensible provision to bridge the gap in existing law, has resulted in a totally consensual debate.

In such circumstances, there is an obvious danger that members' speeches will become repetitive. The fact that that was not the case during the stage 1 debate was a tribute to members' ingenuity. Examples of that included Mike Pringle managing to make a tenuous link between the Lord President's illness and the collapse of one of his bed and breakfast customers this morning; Gordon Jackson flagging up his technical eligibility—or, as he was at pains to point out, extremely technical eligibility—to be a contender for the office of Lord President; Lord James's fond recollections of his university days with Arthur, alias the Lord President; and Kenny MacAskill taking the opportunity to reinforce the importance of maintaining judicial independence by way of praising Estonia's civil service. All that made a potentially stale debate colourful and interesting.

I wish Lord Hamilton a speedy recovery. At least, with the passage of the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill, he can rest assured that measures are in place to ensure that the powers that are vested in the office of Lord President continue to be exercised and that the business of the Court of Session and the High Court of Justiciary continues uninterrupted in his absence.

16:09

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** We are thankful that there has

never been any need for such an emergency measure. There was not one in the old Scots Parliament and we regret the requirement for one in this Parliament, but we have to respond to circumstances that require us to do something about the statutory basis for transferring the Lord President's functions.

Stewart Stevenson did not pass his speaking notes to other parties. We are relieved that he did not and grateful for his lack of courtesy in that regard. Where there is clarity, he sought to bring confusion, but I commend him for his ability to amend his own amendments in one lunch time. That is indeed a parliamentary feat.

**Stewart Stevenson:** I have done it before.

**Jeremy Purvis:** He claims that he has done it before. He is obviously a past master, of which there has been ample evidence this afternoon.

There seemed to be concerns about a cabal that could hatch a plot to unseat a Lord President. Margaret Mitchell said that it would be a disciplinary matter for the Lord President to be unavailable. That would be a bit harsh, unless he was irresponsibly fraternising with Colombian rebels in Bogotá who thought that kidnapping him and holding the Court of Session to ransom would advance their political aims.

The bill is a limited measure and is appropriately narrow in its scope. However, for Mr Stevenson, it has a significant flaw, which is that, if both senior judges were incapacitated by ill health at the same time and the remaining judges were all twins who were appointed on the same day and born minutes apart, difficulties might arise. I suspect that that is the case and I look forward to Stewart Stevenson's member's bill on the issue. The consultation process will be absolutely fascinating, if not statistically sound.

Wider issues have been raised. Gordon Jackson talked about the need to continue the independence of the judiciary and the requirement that the Parliament should be robust in tackling the incremental undermining that we often see of the strong independent judiciary and prosecution service. I am glad that the minister has said that the Parliament will produce legislative proposals that arise from the consultation document "Strengthening Judicial Independence in a Modern Scotland". That consultation will have a significant impact on Scotland's judicial processes and system. At the heart of that will be, within a unified judiciary, the role of the Lord President.

The bill is an emergency measure, but I hope that it signals the start of greater parliamentary interest in the subject. I hope that, soon after the summer recess and as soon as the Lord President's functions can be carried out to allow the judges to respond to the consultation, we will

be able to have a debate in Executive time on the consultation document. That is deeply required. I hope that the emergency bill will be passed today, with or without twins voting in the chamber.

16:12

**Patrick Harvie (Glasgow) (Green):** As many members have done, I and my Green group colleagues offer our best wishes to the current Lord President—we all hope that his recovery is a realistic possibility. The debate has been a bit bizarre and has been dominated by mathematics and surrealism. We had Stewart Stevenson giving us an explanation of recursion—or was it C recursion? We had the image of letters being signed by 4.5 judges and we had Bill Aitken trying to explain the statistics to Stewart Stevenson, which was bound to be dangerous. As Jeremy Purvis said, we had some pretty surreal images, such as the image of a future Lord President being kidnapped in Columbia and of twin judges who were appointed on the same day vying for seniority. Perhaps at that point, we would have to appoint the tallest.

For anybody watching from outside the Parliament, the debate must have seemed pretty odd all round. It is odd that emergency legislation is required for something that seems fairly common sense, which is that if somebody is off, somebody else works for them. If no Lord President has been off sick for nearly 500 years, the lifestyle must be one of the healthiest in Scotland. As the Minister for Health and Community Care is present, I suggest that he persuades his colleagues to have the entire population appointed judges of the inner house, so that we can put to rest the sick-man-of-Europe image once and for all. However, as members have said, sometimes such measures are needed, so we will of course support the emergency bill at decision time.

16:14

**Pauline McNeill (Glasgow Kelvin) (Lab):** There is not much left to say in this debate, given that we have fast-tracked the three stages of a bill in one day. I thank Stewart Stevenson not for lodging the amendments, but for bringing a bit of humour to the chamber. Why stop at considering twin judges—why cannot we consider triplets? Colin Fox was renamed Colin Jackson and is possibly looking for a new career as a High Court judge. All in all, it has been quite a scary debate.

Although this has not been our most exciting day here, I know that the bill is worth while. Some would argue that we have devolution precisely so that we can respond when action is needed—it was certainly needed in this case.

The debate is timely, because, as Gordon Jackson outlined more eloquently than I will, it provides an opportunity for politicians to respond to the press on the accusations that the Parliament has interfered too much with judicial independence. None of us is anything other than committed to protecting judicial independence, but we have to do our jobs in setting out the framework for the legislation, which is clearly required.

I am pleased with the minister's response to the question that I asked in the stage 1 debate, which reiterated the commitment to judicial independence. We set the framework and all we need to know and be satisfied with is that there is a robust process, which we trust the judiciary to determine.

Jeremy Purvis and others said that it was time that we had a debate on the modernisation of the judiciary. I have raised that matter in the past. Although I am happy to support the principle of the new way in which judicial appointments are made, that issue has never come before the Parliament. If we are to legislate in that way, we must at least be able to exchange views before we decide how we want to modernise the judiciary through legislation. I feel strongly about that and welcome the opportunity to put my view on the record.

I commend all members who have brought something worth while to the debate. I will be happy to support the bill.

16:17

**Cathy Jamieson:** I do not think that anyone would have wished for this bill; certainly no one anticipated the unfortunate illness of the current Lord President, to whom I pass on our good wishes. I do not think that, at the outset of the debate, anyone would have expected it to be quite as wide ranging, as Margaret Mitchell, Jeremy Purvis and others have said.

The amount of discussion that there has been about twins has perhaps had Wendy Alexander looking in from afar and planning a career path for her children. I understand that, given the Minister for Health and Community Care's family, he too might be changing his view, particularly in the light of the healthy lifestyle that judges have, according to Patrick Harvie. There might be opportunities there—who knows?

On a serious note, I am glad that we have been able to get cross-party support for the bill. It has been useful to work in co-operation with all the parties to ensure that the bill could proceed.

I was interested to hear Kenny MacAskill acknowledge my forbearance. That was interesting, given that it was one of his colleagues

who submitted the large number of amendments with which I had to be patient and tolerant. I might not always be quite so patient and tolerant in the future. I would not want Mr Stevenson to see this as a precedent; I am sure that there will be times when we disagree completely.

The point that Pauline McNeill made is worthy of further consideration. As we look forward to what might need to be done in slower time and in the longer term around modernisation of the judiciary, it is important that we acknowledge that there are fundamental principles that ought, quite rightly and properly, to be debated here in this Parliament. I am not in a position to guarantee to Pauline McNeill whether or when such a debate would take place, because that is not solely for me. I will reflect on that important point.

Once again, I thank everyone who has worked on the bill. Other spokespeople have commented on the civil service team in particular, and I have mentioned the assistance of the parliamentary authorities. It is a tribute to them and to members that we have been able to deal thoroughly professionally with a bill that was introduced in a relatively short space of time and which has been taken through with minimal disruption to the rest of the parliamentary process.

I hope that members will continue to give their support at decision time and that we will be able to progress matters as expeditiously as possible.

**The Deputy Presiding Officer (Murray Tosh):** That concludes the stage 3 debate on the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill. Members will be aware that the next item of business is the Student Fees (Specification) (Scotland) Order 2006. As a result of the decision to suspend standing orders, we have a precise 30 minutes for that debate, which will begin at 4.30. I suspend the meeting until then.

16:20

*Meeting suspended.*

16:30

*On resuming—*

## Parliamentary Bureau Motions

**The Deputy Presiding Officer (Murray Tosh):** The next item of business is consideration of motion S2M-4538, in the name of Margaret Curran.

*Motion moved,*

That the Parliament agrees that the draft Student Fees (Specification) (Scotland) Order 2006 be approved.—[*Ms Margaret Curran.*]

16:30

**Richard Baker (North East Scotland) (Lab):** As someone who was a student representative for a number of years—perhaps too many years—I have strong opinions on this issue, and I am proud to support an Executive that has taken a strong stance against top-up fees. That is why I am bewildered by some of the comment around this debate.

The draft Student Fees (Specification) (Scotland) Order 2006 is a necessary response to the policy that was introduced in England. To call it a move towards top-up fees in Scotland is untrue and misleading. I would not support such a move and neither would my colleagues. Top-up fees in England are levied by individual institutions. The order will mean a fee change that will apply to every institution in Scotland. In itself, that is not new. Scottish ministers have set new fee levels like this before, but these will apply only to English students. No Scottish student is being asked to pay a penny more. That is not about penalising English students; it simply means that the cost to them of studying in Scotland will be broadly comparable with the cost to them of studying at home. In some cases, studying in Scotland will be cheaper for them. Many students from England who have been welcomed here to study and who will continue to be welcome here to do so come because academically it is the right choice for them; it is not simply a financial decision.

I am sure that we will hear evidence from the minister that suggests that we can be confident that if this measure were not taken, there would be an increase in applications from people in England that would threaten to squeeze Scottish students out of courses in Scotland. Even if that evidence can be contested, the idea that we should not act to safeguard access for Scottish students on the off-chance that everything will be okay once top-up fees come in down south is absurd. Not to act would be to neglect our duties as parliamentarians. Our top priority must be to ensure that Scottish students, particularly those from poorer backgrounds, are given every chance

to fulfil their potential in education, to get access to courses in our institutions and to benefit from the system of bursaries that I am proud that this Parliament introduced and increased. It is ridiculous to suggest that we should threaten to put more obstacles to education in their way because we want to give a financial incentive to students from other parts of the United Kingdom.

**Mark Ballard (Lothians) (Green):** Does the member recognise that the order will put a financial disincentive in the way of students from England, Wales and Northern Ireland and will price some students out? Only if their parents can pay will they will be able to come to Scotland.

**Richard Baker:** In some cases, it will be cheaper and I have made the point that the fees will be broadly comparable, so my straight answer is no. Unfortunately, the member finds himself in the same bizarre position as the Scottish National Party. So fond is it of portraying itself as Scotland's party that it finds itself in a ludicrous position on this issue because it is failing our students.

To call this measure the thin end of the wedge or the start of top-up fees is not only to misrepresent the Executive's position but to ignore the record funding element that has been awarded to our further and higher education institutions by the Executive precisely so that they can compete with their counterparts in England without the need to introduce top-up fees. I argue that we should act today to ensure that as many of our students as possible can benefit from that investment in further and higher education.

I understand where the National Union of Students Scotland is coming from. I know that it is opposed in principle to any kind of fee increase anywhere in any situation. However, when that would lead us into supporting actions that could damage the interests of Scottish students, particularly those of students from poorer backgrounds, its campaign is counterproductive. When I was president of NUS Scotland, I led the Scottish students' campaign for bursaries, so today I will vote for a measure that will ensure that as many of our students as possible receive them. In that role, I regarded it as my job to stand up for Scotland's students, to oppose top-up fees and to campaign for bursaries. As a member of the Scottish Parliament, I know that it is my job to stand up for Scotland's students, to oppose top-up fees and to vote for access to bursaries. That is why I support the order. Colleagues across the Parliament should do the same.

16:34

**Fiona Hyslop (Lothians) (SNP):** Let us get a few things straight about why we oppose the order. Scottish education should be based on the

ability to learn, not on the ability to pay. By introducing additional variable fees, the Executive is opening the door to top-up fees for all. If Parliament agrees to approve the order, the mechanism will be there to introduce a 40 per cent hike in ordinary tuition fees and a 200 per cent hike in medical school fees. There is no flood of educational refugees from England to Scotland. The number of students from England who study in Scotland has increased by only 1.8 per cent.

Two weeks ago, the Deputy Minister for Enterprise and Lifelong Learning told the Enterprise and Culture Committee that there was no evidence that Scots were having any difficulty in getting places at Scottish universities.

**Mike Pringle (Edinburgh South) (LD):** How would the member answer the constituent of mine who wants to go to the University of Edinburgh's medical school who contacted me to say that, even though she had achieved six highers at grade A, she had failed to get a place?

**Fiona Hyslop:** I will tell the member how I would answer her. Several years ago, Calman said that we had to ensure that Scottish medical schools accepted pupils who had achieved five straight As in their highers but who had not done so at one sitting. Neither the Minister for Education and Young People nor the Minister for Health and Community Care has delivered on the commitment to tackle that. That is one measure that should be taken.

Universities will not get a penny more under the order that the Executive is asking Parliament to approve, nor will they get a penny less if Parliament votes not to approve it—they will just get in teaching grant what they would have got from fee income.

Non-European Union overseas students will not be affected. There has been a 29 per cent increase in applications to Scottish universities from EU students who are not English, Welsh or Northern Irish, who must be treated in the same way as Scottish students. In the Executive's book, it is only English, Welsh and Northern Irish students who can be discriminated against. The English students who applied to—and who, in many cases, have been accepted by—Scottish universities did so last year, before they knew about today's vote. This year's students are already in the system and they should not have to pay the price of an additional top-up fee to deter future students.

Regardless of what members think about the order, it has been laid far too late. The Scottish Further and Higher Education Funding Council has had to allocate grants to universities without knowing whether the order would be approved. Parliament should not reward poor and late

legislative procedure and the ministers should be sent back to think again because they have made a pig's ear of the process. They complain that it will take until 20 October to get through a revised order, but that can be dealt with.

When answering my colleague Alasdair Morgan's question on part-time fees at First Minister's question time earlier today, Jack McConnell said that the Executive would make a decision when it had all the evidence. However, he is quite happy to proceed with the proposed changes, even though there is no evidence for them. Members who believe in evidence-based policy should vote against the order. There has been a reduction of 6.5 per cent in the number of applications to Scottish medical schools by English students. The Executive must consider the retention of doctors later in their careers. It seems to want fresh talent to come to Scotland as long as it is not English. Scotland should be a bit more broad-shouldered than that. [*Interruption.*]

**The Deputy Presiding Officer:** Order. I will not have members shouting at the top of their voices at the person who has the floor.

**Fiona Hyslop:** Thank you, Presiding Officer.

Students come to Scotland from around the globe—including England—because of the quality of our universities. They come because we have better qualifications and better service. Our universities will face funding challenges once the increased income from top-up fees for English universities kicks in. That is a separate issue, but it is an important one, which Parliament should be debating rather than the wrong-headed proposals that we are examining today.

Sometimes in politics there comes a moment to do the right thing. This is such a moment. I urge members to vote against the order and to get the minister to come back with a better proposal.

16:39

**Murdo Fraser (Mid Scotland and Fife) (Con):** I begin by drawing members' attention to my registered interest as a member of the board of management of the University of Dundee students association, which may be relevant to the debate.

The background to today's debate is the introduction of top-up fees in English universities by the Labour Government, which has created a problem for the Scottish Executive—although I appreciate that it is not a problem of its making. The Executive should be concerned about the possibility of fee refugees squeezing Scotland-domiciled students out of places at Scottish universities. I believe that the Executive is right to take action to level the playing field for England-domiciled students, whether they apply to English

universities or Scottish universities, so there is much in the principle of the order that I and my party do not oppose.

What we have a problem with is the specific proposal to charge medical students increased fees from September—just three months from now. The Executive proposal has been brought forward to try to address concerns that Scotland-domiciled students will be squeezed out of places at Scottish medical schools. Unfortunately for the Executive, there is not a shred of evidence that there is a problem.

The most recent figures from the Universities and Colleges Admissions Service show a 6.5 per cent drop in applications from England to medical schools in Scotland, while applications for the same courses from around Scotland have risen by 12 per cent in the same period. Where is the problem that the Executive proposal seeks to address? It simply does not exist.

The new fees for medical students will come into place in time for the new academic year, starting in September.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** As a parent, I was wondering how Mr Fraser would advise his son or daughter if he was facing £15,000 of medical school fees in England or £6,000 of medical school fees in Scotland. I would want my children to go to one of the good universities in Scotland—at £6,000, not £15,000.

**Murdo Fraser:** That may well be the case, Mr Rumbles, but there is not a single piece of evidence that that is what is happening. The best that can be said about the proposal is that it is premature.

As I was saying, the new fees will come into place for the current academic year, starting in September. When people applied for places, they were not expecting increased fees to be in place. There is a simple principle of fairness.

**Mr Jim Wallace (Orkney) (LD):** Will the member give way?

**Murdo Fraser:** No, I cannot give way; I have already taken one intervention.

All the places in the current academic year will have been awarded, so where is the requirement to introduce additional fees now, affecting the new academic year? It simply does not exist.

The very least that the Executive should do is to defer the introduction of additional medical fees for one more year, to allow further garnering of evidence and further monitoring of the situation. If a problem seems likely, of course additional fees can be charged. However, we have yet to see any evidence of a problem.

In the run-up to this debate, we have seen some pretty outrageous sabre rattling by the Executive. We have heard suggestions that, if the order is voted down, fees will be deregulated in Scotland and universities will be allowed to charge whatever they want in tuition fees. That is absolute nonsense. It is inconceivable that the principals of Scottish universities would charge whatever they wanted in tuition fees and expect to get away with it. Surely even this Executive could not be so useless and incompetent as to allow that to happen, even if this flawed order is defeated.

The real issue today is the betrayal by a Liberal Democrat Minister for Enterprise and Lifelong Learning of Scotland's students. In elections, Liberal Democrats always try to portray themselves as the students' friend, and always say that they are against top-up fees. However, here today we have the Liberal Democrat minister supporting methods to bring top-up fees into Scotland by the back door. It is typical Lib Dem duplicity, with which we are all too familiar. We will remind voters in Edinburgh South, North East Fife, Aberdeen South and everywhere else that this kind of thing is all that we can expect from Liberal Democrats. They will be the ones who brought in the top-up fees.

16:43

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** At the next election, the more Murdo Fraser reminds the electorate about what has happened with tuition fees, the better it will be for me and my colleagues.

Let me make one thing very clear—Scotland-domiciled students do not and will not pay tuition fees to study in Scotland because of the partnership Government. Instead of attacking the Scottish Government, which has actually done something about fees and is now trying to protect the right of Scottish students to attend Scottish universities where they can study without paying tuition fees, my colleagues in the Opposition should focus their attention on Westminster.

We must ensure that students choose to study in Scotland because it is the best place for their education, not because it is the best place for their pocket. I have said before, and I will say again, that I will not tolerate students from my constituency or any other part of Scotland losing out. It is our job to stand up for our students. Let us remember that.

Fact number 1—prospective medical students from south of the border would save £9,000 by studying medicine in Scotland if we chose to do nothing. That is no small incentive. Every university in the rest of the United Kingdom is charging the full £3,000 top-up fee to study

medicine. In Scotland, medicine is the only course that will have the higher fee and there is no ability for individual universities to vary that amount. That is hardly a top-up fee or a variable fee as most people would understand them.

The Opposition says that there is no evidence of fee refugees. Of course there is not—the top-up fees have not yet hit, and for the past year Scottish universities and UCAS have been telling students clearly that fees will increase in Scotland. I ask Murdo Fraser and others whether they would sacrifice the future of young Scots by waiting until they see the evidence of fee refugees coming across the border. That is a chilly and cruel calculation.

**Murdo Fraser:** Will the member give way?

**Mr Stone:** I will not take an intervention.

Like other members, I have seen that a gathering of students has been lobbying us today. If students from the rest of the UK want free tuition, they should lobby the UK Parliament to make that a priority and to follow the good example that the Scottish Government has set in Scotland's Parliament.

I turn briefly to the Opposition. The SNP did not even notice the three-year consideration of this important issue, made no attempt to contribute when it found out about it and even supported the measure on which we are voting today when it was first announced—fact. SNP education spokesman Fiona Hyslop was unaware of the third-phase review of higher education, which was considering fees, and defended her ignorance by saying that it must, therefore, be “private and secret”. When the Executive consulted on what to do about cross-border flows, the SNP said precisely nothing. Evidently, it had no idea what to do. When my colleague Jim Wallace announced the higher fee back in 2004, Brian Adam supported him. I thank him for that.

The Greens' ignorance leaves me equally breathless. Shiona Baird said last month:

“The Executive knew very well that the introduction of top up fees in other parts of the UK might impact on the availability of places for Scottish students—yet ministers refused to do or say anything about it.”

Fact number 3—the Executive has spent the past three years looking at the matter, has held a review, has made statements to Parliament, has published consultations and has made proposals in the order with the precise aim of doing something about it.

Shiona Baird also said:

“Greens will strongly oppose any moves to introduce variable top up fees.”

By voting against this proposal, the Opposition will be voting for London-style variable top-up fees. That is not a technicality—it is a reality. It has been proved that, without legislative guidance to stop them, the universities will be only too happy to consider boosting their coffers by charging fees well above what we are proposing today. That is a real threat. We owe it to our youngsters to recognise and deal with the situation.

I ask every member to look into their heart before they cast their vote tonight. I have no trouble whatever in supporting the order. It makes me very proud of our partnership and of the Parliament.

**The Deputy Presiding Officer:** In the remaining time, I will allocate three minutes each to representatives of the other established parties on the Parliamentary Bureau.

16:47

**Mark Ballard (Lothians) (Green):** I draw the chamber's attention to my entry in the register of members' interests and, in particular, to my recent installation as rector of the University of Edinburgh, elected by staff and students on the basis of a campaign against medical school fees for Scotland.

In asking us to agree that the order be approved, the minister is requesting that we grant him the power to price some students out of Scottish education. He is asking us to accept his argument that Scottish students are being unfairly denied places, although there is not yet any evidence of that.

**Christine May (Central Fife) (Lab):** Will the member take an intervention?

**Mark Ballard:** No—I have only three minutes.

The minister is also asking us to accept that the proposed fees are the only solution to the perceived problem. English, Welsh and Northern Irish students will face higher fees to deter them from coming to Scotland. Pricing some students out of education is simply wrong. What or where a prospective student should study should be decided on the basis of aptitude and interests, not on the basis of whether their parents can afford to send them to university.

If we want to get more Scottish students into medical schools in Scotland, we should do so by widening access, changing the exam system and encouraging applications. If we want to retain more medical graduates in the national health service in Scotland, we should do so by creating incentives for them to stay and making Scotland an exciting place for them to continue their medical careers. Non-Scottish medical graduates go back to their country of origin not because they

are homing pigeons but because that is where the jobs and career prospects are.

The argument that was made by Jamie Stone—and by the minister in committee—that if we do not agree to approve the order, principals will set whatever charges they like, is completely spurious and is an abuse of Parliament.

Parliament has a choice to make today and there can be no decision on top-up fees until Parliament makes that choice. The Executive argument is that we do not have a choice—we must accept the order or there will be chaos. The reality is that the Executive has to have a plan B and there are other ways of dealing with the situation, such as going directly to the Scottish Further and Higher Education Funding Council.

If we approve the order, students whom I represent as a regional MSP and a university rector will suddenly have to pay an extra five grand for their education. They have applied to Edinburgh, they have been made offers by Edinburgh and they are probably getting flats in Edinburgh, but then they will be charged an extra five grand. They cannot be deterred now. Although the increase will make no difference to this year's students, we will be imposing an extra five grand on students from September. It makes no sense.

One of the great things that this Parliament has done has been to resist the increasing marketisation of higher education, but the order proposes to take us down the slippery slope into variable fees. We should resist that and vote against the order to keep Scotland free of top-up fees.

16:51

**Frances Curran (West of Scotland) (SSP):** I draw attention to my register of interests and my position as honorary president of the University of Paisley.

This debate is not just about education and top-up fees; it is also about trust. We were told over the years that Labour would not introduce tuition fees, but what happened when that party got into government? Tuition fees. Then we were told that Labour would not introduce top-up fees, but when it got into government, it immediately introduced them.

The Scottish Parliament was told that there would be no top-up fees in Scotland. Guess what? We are now getting top-up fees. The problem is that, quite rightly, students no longer trust the Labour members of the Scottish Executive. [*Interruption.*] No wonder Executive members are making lots of noise in the chamber; they know what will happen: the historical record of today's debate will show, name by name, the Labour and

Liberal MSPs who were the first people to vote for the introduction of top-up fees in Scotland.

**Iain Smith (North East Fife) (LD):** Will the member give way?

**Frances Curran:** Not in a three-minute speech.

Now those members tell us that top-up fees are only for medical students and students who apply from outside Scotland. Guess what? We do not trust the Executive. That is the problem, that is why there is a lobby outside Parliament today and that is why the students do not trust the Executive. There is absolutely no way that this measure will not go all the way—it is the thin end of an elitist wedge.

Despite talk of its proud equality standards, does the Executive know what it is doing? The introduction of top-up fees will mean that only rich kids will get to be doctors. If people have the money, they can pay, but if they do not have the money, they cannot afford it. That takes us in the wrong direction when we need to open up education.

It is hard enough as it is for working-class students to get into higher education without the obstacles that the Executive is putting before them. This is not about degrees or qualifications; it is about how much money mummy and daddy have in the bank. That is how the situation will pan out throughout the country. Approving the order today will take us back to the 1930s when only the rich got into higher education.

I want to comment on what happens in other countries. In recent years, little old Cuba has emerged as a leading provider—[*Laughter.*] Members may laugh, but it is now a leading provider of medical education. Medical personnel bound for countries throughout the world are trained for free or at a low cost in Cuba and many thousands of overseas medical students are educated within its borders. That is the kind of solidarity that we need—not the narrow-minded introduction of top-up fees that the Executive proposes today.

16:53

**Dennis Canavan (Falkirk West) (Ind):** The clear purpose of the order is to discourage students from other parts of the UK from coming to Scottish universities. Whatever happened to the fresh talent initiative? The order seems to undermine it as well as the international status of Scottish universities.

Traditionally, our universities have not simply been national institutions that served the needs of Scots alone; for centuries, they have played an international role. The four ancient Scottish universities had an international reputation at a

time when Oxford and Cambridge were, by comparison, mere national institutions.

Many of our newer universities have continued and extended that international role by welcoming students from other parts of the United Kingdom and indeed from all over the world. That mix of different nationalities and cultures has led to a mix of ideas that has added value to the education of Scots and non-Scots alike. Indeed, such a cross-fertilisation of ideas brought about the Scottish enlightenment in the 18<sup>th</sup> century and can bring about a much-needed enlightenment in the 21<sup>st</sup> century.

However, I am sad—very sad—to say that the Scottish Executive does not seem to have much enlightenment or international vision. Our First Minister was recently castigated for not supporting England in its world cup match this evening. I honestly fail to see how supporting our Commonwealth brothers from Trinidad and Tobago can be described as being anti-English or discriminating against people from England. However, the order can be rightly described as discriminating against people from England and our celtic cousins from Wales and Ireland—or at least some of our Irish cousins. The order exacerbates the anomalous situation in which students from Northern Ireland will pay fees of up to £2,700 a year to study at a Scottish university, while students from the Republic of Ireland, as residents of a different European Union member state, will pay no fees at all, as discriminating against them would be against European law.

Likewise, we cannot discriminate against students from France, Germany, Italy or any other EU country. However, the order proposes to exploit a loophole in European law that allows us to discriminate against our nearest neighbours because we live in the same EU member state.

The order is a blatant piece of unfair discrimination that will prevent many potential students from low-income backgrounds from coming to our Scottish universities. It also sets a bad precedent and could turn out to be the thin end of a very dangerous wedge that might threaten educational opportunities for young people from Scotland and other countries.

For those reasons, I urge the Parliament to oppose this mean and despicable order.

16:57

**The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen):** The draft Student Fees (Specification) (Scotland) Order 2006 order is necessary under section 9 of the Further and Higher Education (Scotland) Act 2005. Let me be clear: if it is not

approved, there will be deregulation of tuition fees in Scotland.

In a briefing note handed out to MSPs, NUS Scotland says with regard to the deregulation of fees:

“Technically this may be true, however, what the Executive is failing to tell MSPs is that they have other options open to them to deal with this scenario. The Grant-In-Aid letter to the Scottish Funding Council could be used to set the expected fee level and inform institutions that it would be unacceptable to charge higher fee levels.”

The key words in that quotation are

“Technically this may be true”.

I have taken formal legal advice on that suggestion and have been told quite clearly and with no qualification that if we do not agree to approve the order, a grant-in-aid letter seeking to impose a condition on fee levels would

“be without legal effect in relation to such a condition.”

**Fiona Hyslop:** Will the minister give way?

**Nicol Stephen:** Yes, but I have very little time.

**Fiona Hyslop:** The grant-in-aid letter that the minister issued in March made it quite clear that universities cannot charge any fees on top of those set by Parliament. If Parliament does not agree to set a fee, the minister might well come back with another order that seeks to set a different fee level, but until then the fee level will be zero and the universities will not be able to charge any additional fee at all.

**Nicol Stephen:** I appreciate that that might well be Fiona Hyslop’s legal advice to the SNP, but it is not the legal advice that I have received. Let me put it even more bluntly: the only people voting for top-up or variable fees in Scotland are those who vote against approving the order this evening.

The reasons for these proposals have been very well rehearsed. Since top-up fees of up to £3,000 per year were announced for the rest of the UK, there has been a real concern that, because of an increase in applicants from England and other parts of the UK, Scottish students will lose access to places at Scottish universities.

Is there any evidence of that? Well, between 2004—when the Westminster top-up fee proposals came forward—and 2005, applications from England, Wales and Northern Ireland to Scottish universities increased by more than 14 per cent. Indeed, between 2005 and 2006, they increased further. Between 2000 and 2005, the number of England-domiciled students accepting places at Scottish universities had already gone up by 11 per cent. Those are places lost to Scottish students. There is clearly an issue here.

The problem is particularly acute for medical places. Indeed, the previous president of NUS

Scotland chaired the student issues group of the higher education review and specifically drew attention to the problem, saying that we should closely monitor the demand for medical places to ensure that Scottish students—particularly those from lower social class backgrounds—are not disadvantaged. That is why we are proposing to charge students from the rest of the United Kingdom £1,700 a year, with an increase for medical students to £2,700. That will still be a lower fee for medicine than the £3,000 that is being charged by each and every English university. We believe that that is the right measure to protect medical places for Scottish students at Scottish universities.

That was also the opinion of the Calman review of medical education in Scotland, which made clear how vital it was to retain an adequate number of medical places for Scottish students. Let us be clear: Scottish students who go off to university for the first time later this year to take up one of the 834 funded places for medicine at a Scottish university will not be paying top-up fees, variable fees or any other tuition fees. Tuition fees have been abolished for Scottish students and grants have been reintroduced. We are proud of that.

The NUS has made much of a supposed 6 per cent decline in applications for medicine from students living in the rest of the UK. UCAS has told me today that the actual figure is 3.4 per cent, not 6 per cent. Let me set that in context. I have here a printout from the UCAS website, from today. It tells me that to study medicine in Scotland will cost English students £2,700 a year, but I found out from UCAS that that information went on to its website on 17 August 2005. Applications for medicine in 2006 did not open until September 2005. Anyone from England considering studying medicine in Scotland this year would know that the proposed cost is £2,700. Members ask for evidence. The previous year, before the costs were announced, the number of applicants for medical places from England increased by 17.8 per cent. That is the evidence that members have been asking for. That is the reason for this move today. The policy is working. It is a practical, sensible policy from an Executive that has abolished tuition fees, opposes top-up fees, opposes variable fees and is absolutely determined to protect university places for Scottish students.

To vote against approving the order tonight is to allow variable tuition fees and, as the First Minister said this morning, to disadvantage Scottish students. I ask members to support the order.

**The Deputy Presiding Officer:** The next item of business is consideration of three Parliamentary Bureau motions. I ask Margaret Curran to move

motions S2M-4548 and S2M-4549, on the approval of Scottish statutory instruments; and motion S2M-4552, on the establishment of a committee.

*Motions moved,*

That the Parliament agrees that the draft Electronic Communications (Scotland) Order 2006 be approved.

That the Parliament agrees that the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Public Transport Users' Committee for Scotland as Specified Authority and Amendment of Specified Authorities) Order 2006 be approved.

That the Parliament agrees to establish a Committee of the Parliament as follows:

Name of Committee: Airdrie-Bathgate Railway and Linked Improvements Bill Committee;

Remit: To consider and report to the Parliament on the Airdrie-Bathgate Railway and Linked Improvements Bill;

Duration: Until the Bill has received Royal Assent, falls or is withdrawn;

Convenership: The Convener will be a member of the Conservative and Unionist Party and the Deputy Convener will be a member of the Scottish National Party;

Membership: Phil Gallie, Janis Hughes, Alasdair Morgan, Cathy Peattie, Jeremy Purvis.—[*Ms Margaret Curran.*]

## Decision Time

17:04

**The Deputy Presiding Officer (Murray Tosh):** There are four questions to be put as a result of today's business.

The first question is, that motion S2M-4543, in the name of Cathy Jamieson, that the Parliament agrees that the Senior Judiciary (Vacancies and Incapacities) (Scotland) Bill be passed, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill be passed.

**The Deputy Presiding Officer:** The second question is, that S2M-4538, in the name of Margaret Curran, on approval of an SSI, be agreed to. Are we agreed?

**Members:** No.

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

**For**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 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)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 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)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Brownlee, Derek (South of Scotland) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Frances (West of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 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)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 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)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)

Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Robison, Shona (Dundee East) (SNP)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 Watt, Ms Maureen (North East Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

**ABSTENTION**

Macleay, Kate (Dundee West) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 66, Against 56, Abstentions 1.

*Motion agreed to.*

That the Parliament agrees that the draft Student Fees (Specification) (Scotland) Order 2006 be approved.

**The Deputy Presiding Officer:** The next question is, that motions S2M-4548 and S2M-4549, in the name of Margaret Curran, on the approval of Scottish statutory instruments, be agreed to.

*Motions agreed to.*

That the Parliament agrees that the draft Electronic Communications (Scotland) Order 2006 be approved.

That the Parliament agrees that the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Public Transport Users' Committee for Scotland as Specified Authority and Amendment of Specified Authorities) Order 2006 be approved.

**The Deputy Presiding Officer:** The final question is, that motion S2M-4552, in the name of Margaret Curran, on the establishment of a committee, be agreed to.

*Motion agreed to.*

That the Parliament agrees to establish a Committee of the Parliament as follows:

Name of Committee: Airdrie-Bathgate Railway and Linked Improvements Bill Committee;

Remit: To consider and report to the Parliament on the Airdrie-Bathgate Railway and Linked Improvements Bill;

Duration: Until the Bill has received Royal Assent, falls or is withdrawn;

Convener: The Convener will be a member of the Conservative and Unionist Party and the Deputy Convener will be a member of the Scottish National Party;

Membership: Phil Gallie, Janis Hughes, Alasdair Morgan, Cathy Peattie, Jeremy Purvis.

## Migrant Workers (Highlands)

**The Deputy Presiding Officer (Trish Godman):** The final item of business today is a members' business debate on motion S2M-4411, in the name of Maureen Macmillan, on migrant workers in the Highlands.

*Motion debated,*

That the Parliament notes the increase in population in the Highlands over the last five years; welcomes the contribution made to these figures by migrant workers who are taking up job vacancies in Inverness, Badenoch and Strathspey, Lochaber, Easter Ross and other parts of the Highlands; commends the initiatives of agencies in the Highlands to support the migrant workers, in particular noting the forthcoming "Information Day" in Inverness on 22 May 2006; expresses concern regarding the capacity available in the Highlands to support increasing numbers of migrant workers, and notes that more needs to be done to give language and other support to the children of migrant workers in our schools.

17:07

**Maureen Macmillan (Highlands and Islands) (Lab):** I open the debate by saying that we warmly welcome migrant workers and their families to the Highlands. We are sure that they will make a great contribution to the economy and diversity of the Highlands. Alasdair Morrison, who cannot attend the debate, has said similar things to me about the welcome that migrant workers get in the Western Isles.

I have asked the Deputy Minister for Education and Young People to respond to the debate, as I feel that the children of migrant workers have been somewhat overlooked in the strategy for integration. I am sure that Robert Brown will relay our other concerns to the appropriate ministers.

In 2004, 1,235 foreign nationals were registered for work in the Highlands and Islands Enterprise area; in 2005, there were 2,555—the number is increasing year on year. We are all aware of the circumstances surrounding the case of Sakchai Makao, which I will not go into now, but it emphasises the precariousness of a foreign national's position.

In conjunction with research carried out through the UHI Millennium Institute's policyweb and the national centre for migration studies, the local enterprise companies have been engaged in developing capacity to support migrants through statutory and voluntary agencies such as citizens advice bureaux. Language classes have been set up, and training courses and careers advice are on offer. Two housing-related initiatives are being worked on with Communities Scotland.

That is all good news, as was the recent information day in Inverness, which I attended. Dozens of agencies and voluntary bodies took part

in it, covering housing, policing, health, language classes, careers, equalities and faith groups. Two hundred people came through the door looking for information. I hope that such information days will be repeated elsewhere in the Highlands.

A UHI research document states:

"Mechanisms need to be in place"

to prevent exploitation, and those should be

"linked to the provision of clear information and advice".

There are a lot of horror stories out there of exploitative middle men and agents, docked wages, overcrowded accommodation, rough sleeping and so on. There have been two deaths among the migrant workers.

We must work harder to break down the barriers behind which unscrupulous people operate. I commend Fergus Ewing's suggestion of holding surgeries in Polish for the migrant workers—many migrant workers in the Inverness area are from Poland. However, we, in the community, need information, too. Highlands and Islands Enterprise has provided graphs and pie charts on countries of origin, age profiles and industry sectors, which are very helpful, but there are no data on the number of children who are arriving with their migrant worker parents. We must find a way of providing some advance warning of the number who are coming and of ensuring that proper support exists when they arrive.

Until recently, there was little realisation that many migrant workers brought their children with them. In Highland schools, there are 60 different first languages spoken by children from Asia and from Europe. At the last count that I am aware of, there were 160 new pupils needing intensive support on top of the 500 or so who were already there. Those pupils pop up without warning and cannot be planned for. They pop up in schools throughout the Highlands—in small rural schools as well as in Inverness.

The number of specialist teachers of English as another language in the Highlands is 2.8. That number has not changed in 10 years. They are part of the additional support for learning team and do not even have their own department. By contrast, Moray has four EAL teachers—including one principal teacher—and two language assistants for a workload of around 40 pupils. Members can work out the ratios for themselves.

The minister will be aware of the 2(+) document, which is the bible of good practice. It points out the need for awareness that good social English skills do not necessarily mean that a child can cope with the vocabulary that is demanded by a school subject. It also points out that learning should be done in the mainstream classroom, with the peer group; that translation of worksheets and so on is

essential, as are dictionaries in the pupils' own languages to help them to translate.

Highland Council can no longer offer hands-on help in the classroom from EAL specialist teachers, nor the resources for translation. EAL specialists are now being used only to give advice from a distance, sometimes over the telephone, because of the sheer number of children involved. Three language assistants are promised for school-family liaison, but it is uncertain whether those will be classroom support assistants or whether they will work in the community.

Ordinary classroom teachers are faced with the task of coping with non-English speakers—sometimes in double figures, such as the 14 Latvian children in St Mary's primary school in Fort William—when they are not trained to do so. Of course, they cope to the best of their ability, and they are doing so well; however, we must provide much more specialist support in Highland and elsewhere for schools that are teaching these newly arrived children. I do not want to hear funding arguments. I suspect that Highland Council has spent some of its allocated £157,000 EAL money on other priorities, but I believe that the Executive needs to make much more of a commitment to EAL education. We need an audit of what we have and a projection of what we will need in the future if the trends continue.

What use is a fresh talent initiative if we do not educate these children properly? What future is there for the integration of our communities if we neglect this and other pressures, such as I have already mentioned, that affect incoming families? When the deputy minister visited my old school, Millburn academy, he was surprised at the number of such pupils who were there. We have a problem of capacity in the Highlands. We are doing our best to overcome it, but we need resources. It is an attractive place for migrants to come to, but if resources are not put in place, we will begin to have the sort of problems that will sour the warm welcome that we presently give to this new workforce. I do not want that to happen.

17:14

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** First, I apologise to members for the fact that I have to leave the debate early to travel north. I, too, congratulate Maureen Macmillan on raising a topic that is now well and truly on the radar screen of every politician in the Highlands.

There is no doubt that there is a huge number of people who have come to work in the Highlands from Poland, Lithuania, Latvia and further east in Europe. They come because they can earn far more here than they can in their own countries.

They tend to be hard working and they have the courage to come here. They may want to stay here and they will usually want to send back home a large proportion of their earnings.

The Highland economy is reliant on tourism and on fish and food processing, and many of our eastern European visitors come to do jobs in those sectors. Some of those jobs might be regarded as being too menial or too low paid for local people. One hears that comment a great deal. However, our eastern European visitors are here and as long as they are here, they are our responsibility. We accept them into our country and they have a right to be treated fairly and with dignity. I hope that the surgery to which Maureen Macmillan referred can be made available for some of the many Poles who have made Inverness their home, so much so that there are now 2,000 Poles in Inverness. I had to think carefully about whether to retain my allegiance to Trinidad and Tobago in those circumstances.

The pressures on housing are immense. Homelessness applications to Highland Council have nearly trebled over the past four years. Maureen Macmillan referred to the effect on education and I do not think that I need to repeat her exposition. The Deputy Minister for Education and Young People recently visited Inverness. Once it was pointed out to him that it is, in fact, an urban centre, I am sure that the minister was made aware of the pressure on our education and housing services in the Highlands. If it is the case that the Highlands receives proportionately more eastern European workers than do other parts of Scotland, I say to the minister that it follows logically—he is shaking his head, but I think that what I said is true. I would be interested to know what his statistics are, if he says that I am wrong. If I am right and more people come into the Highlands from eastern Europe than go to other parts of Scotland, that means that our public agencies require a fairer deal in order to discharge their duties on housing and, in particular, education.

When I discussed this issue with the Scottish Council for Development and Industry three Fridays ago, I heard about the practical, nitty-gritty problems that migrant workers face in obtaining employment. A new migrant worker must do three things: register for a national insurance number; open a bank account; and register with the Home Office under the Department for Work and Pensions scheme. Each of those involves serious problems. I hope that the Scottish Executive can establish some kind of formal arrangement with the Home Office, once it is functioning again—partially—to try to solve those problems. I will write to the minister about that.

However, the Home Office is doing more for the cause of independence than just about anything else at the moment, particularly among those who are trying to take on staff. They are met with a Home Office that routinely loses documents that are sent to it and which is incapable of functioning. It leaves employers worried about whether they should shop and report people because they are illegal immigrants, having overshot their stay. Those are serious problems, but I cannot tackle all the nitty-gritty elements of them just now.

I remind members of the novel by Albert Camus, "L'Etranger", which is a most chilling and clinical account of the darker side of human nature that fears the outsider. I think that in Scotland we want to welcome the outsider and not fear him. However, we have a lot more work to do to live up to that objective.

17:19

**Dave Petrie (Highlands and Islands) (Con):** I thank Maureen Macmillan for bringing this valuable debate to the chamber.

The history of the United Kingdom, Scotland and the Highlands and Islands has been characterised by millennia of migration from all over the world. That has been fused into our culture and it has created the economic and social wealth that we enjoy today. The elevenfold increase in the registration of overseas nationals in the Highlands over the tax years 2003-04 and 2004-05 shows that the majority are from the new European Union accession countries in eastern Europe. It is that burgeoning community to which I now turn.

The rapid influx of new workers has been a great boost to the Highland economy. It is unfortunate that many of the available jobs in the region have previously lain dormant and not attracted much of the indigenous workforce. The new migrant workers have stepped into that vacuum. If they were to disappear overnight, our hospitals, restaurants, building sites, shops, service industries, public transport network and factories would grind to a halt. In short, many aspects of day-to-day life that we take for granted would collapse without a sufficient number of willing people to take their place. Therefore, I firmly associate myself with support for the motion, reiterate the point that migration is nothing new in our islands and reiterate the great value of the current phase of migration to the Highlands.

Despite its positive impact, migration can lead to many negative side effects. We have seen in towns and cities throughout the UK how the perception of immigrant communities can lead to social upheaval and a rise in racist agitation. If migration is to survive and continue to have a purely positive impact on the Highlands, it is

important that the correct support networks are put into place, and I will focus on that approach.

It is unfortunate that past immigration has often led to the ghettoisation of communities along racial or ethnic lines, so I applaud the Government's attempts to address that by introducing citizenship lessons and ceremonies. It is important that we properly welcome migrants into our communities from day one. However, as EU citizens, the migrant workers whom we are discussing will not be involved in such activities. Therefore, it is important that we create the same results through different means.

Many migrant workers encounter a number of obstacles when they come to the Highlands, and I will highlight the most important of them. The first is language and communication. Not only is not being fully able to communicate with the society in which they live a huge obstacle to integration, but it can prevent migrant workers from offering their full potential in the employment market. A language barrier will only encourage them to look to each other for support and social interaction and encourage the local society to regard them as others. That can create a dangerous level of division, so we need to provide easy-to-access language classes and translation and interpretation facilities for key services.

The second obstacle is accommodation. Many migrant workers who have come to work in the Highlands and Islands end up living in substandard and often overcrowded housing. If we are to create a positive impression of the country as well as a good and healthy workforce, it is important that we address that issue. It would not be right simply to reserve the better housing for them—the perception that that happens has often damaged social cohesion and integration in other parts of the UK—so we need to increase the stock of good-quality affordable housing.

Access to information and advice is also a problem. It is important that workers who come to the Highlands are given easy access to proper information about the new society in which they find themselves. Simple matters, such as banking, can pose a brick wall for some people. Employment regulation and legal duties and responsibilities also need to be properly explained.

The Highlands needs migrant workers, and they deliver a net contribution to our economy. It is therefore right that we give them something back. It is also important for our whole society that we do not allow the situation to evolve into different groups living separate lives with tensions existing between them. If we provide a good infrastructure for migrant workers while they are here, they are more likely to stay and keep much of the investment that we have built together in the Highlands. Therefore, I applaud the fact that the

area that I represent has had such a rich level of investment from migrant workers from the EU accession countries.

**The Deputy Presiding Officer:** You must finish now, Mr Petrie.

**Dave Petrie:** Okay. Investment and support for migrant workers will only help to bring further benefits and maintain our long tradition of welcoming all cultures to arguably one of the most attractive locations in western Europe—no bias intended.

17:24

**Jim Mather (Highlands and Islands) (SNP):** I, too, congratulate Maureen Macmillan on securing the debate and join her in welcoming the new accession state migrants, the vast majority of whom are good, talented, skilled and hard-working people. I am particularly happy that they are working in the Highlands and Islands, because they know that independence has changed their countries and that their lives are better for it, and that is a healthy contagion to release in Scotland. They will also monitor further the progress that is made at home and compare it with what is happening here, which will help us to inform our future. However, it will probably mean many of them will eventually return home.

The migrants are here and they are doing the valuable jobs that members have mentioned in sectors such as food processing and hospitality. It is hard to socialise or do business in the Highlands without meeting such people. They are galvanisingly bright young people, but they are filling a space that our young folk who have left the Highlands have created. It is important that we consider why that has happened. There is a low incidence of matches between skills and career opportunities in the Highlands, especially for our best and brightest. Another issue is low pay: a third of working people in Scotland are on less than £6.50 an hour, but I suspect that, in the Highlands and Islands, the figure is more like 50 per cent of working people. As has been mentioned, we lack adequate and affordable housing. Another issue is the expectation growth that has been naturally inculcated in our kids—they now expect to do as well as or better than their parents. That is logical and reasonable, but it does not allow us to keep our own in the Highlands and Islands. There is no reason to assume that the accession state people will not follow that example. They are bright folk who have shown the gumption to get here and get a job, so their expectation levels will grow, too.

At present, the practical impact is mixed, but the positive aspect is that these people are helping many businesses in the Highlands and Islands to

cope with labour shortages—which exist for the reasons that I have just mentioned—and the high fixed costs of transport rates, water charges, raw materials and supply. People who are willing to work for relatively modest wages are attractive to businesses. However, the negative aspect is that, in the long-term, the situation will hold down wages for longer and further and will make it even less likely that we will retain a good proportion of the children who are educated in Highlands and Islands schools. Another element is that political advantage is being taken of the situation. The fact that we are exporting youngsters out of the Highlands gives a false indication on unemployment. The fact that we have the accession state people working means that we have a high level of labour participation, but that is in part because we have exported our young people from the area.

There is an upside for business, but it is achievable only if we respect the people who come into our country; pay them fair wages; give them decent terms and conditions and decent accommodation; provide the infrastructure, training and support that Maureen Macmillan mentioned; and provide the educational support that their children need. We must acknowledge the disproportionate pressure on Highlands and Islands education services that results from the disproportionately low wages in the area's economy.

In the long term, we must keep an eye on the objective of making the Highlands and Islands a premium destination and a source of superior goods and services. We aspire to a high-value, high-wage economy that overcomes distance and generates real growth in the Highlands. To achieve that, we must encourage employers and Government to level the playing field, so that we attract staff through terms and conditions that exceed rather than trail the UK average. We need to get businesses working together to become more viable and to deliver real value. However, that will be hard to do with the limited powers that we have. Ireland, which has immigration and tax powers, has 120,000 accession state people working there, whereas, throughout Scotland, we have only 23,000, which is about one fifth of the number in Ireland. We have a huge distance to go.

The balance is that, by all manner of means we should have such people in, but we must also take action to allow our kids to stay in the Highlands and Islands and have a successful and rewarding career.

17:28

**Eleanor Scott (Highlands and Islands) (Green):** I will refer a lot to a Highlands and Islands Enterprise report entitled "Migrant Workers

in the Highlands and Islands: Research Report”, which is dated October 2005 and has a lot of information. I am sure that other members have mined that report for the debate, which is one that I welcome, because the subject is important. Interestingly, the report shows that the number of national insurance number registrations for overseas nationals in the HIE area has gone up sixfold in five years and that there was an elevenfold increase in the registration of EU accession state nationals in the HIE area in the tax years 2003-04 and 2004-05. The movement of people is increasing. More migrant workers are coming to the Highlands and Islands, particularly from the accession states. We are not necessarily talking about a homogeneous group of people or about a group of people who all have the same aspirations.

As has been stated, many of the migrant workers in the labour market are employed in relatively low-wage and unskilled jobs, often very much below the level of their qualifications. Sometimes employers recruit staff from eastern Europe because of local skills shortages, but sometimes a combination of unattractive wages and poor working conditions makes particular jobs unattractive to local people, which means that employers have to recruit elsewhere. Given that we are bringing in people with skills that we lack, should we not be trying to develop those skills ourselves rather than plundering other countries for their skilled people? Is it reasonable to pay people low wages just because the place they come from means that such wages do not seem so bad to them?

Around 40 per cent of the migrant workers from eastern Europe are under 25, which is an interesting statistic. Many of them are employed in jobs well below their qualifications and experience. Their long-term intentions about whether to stay in the Highlands and Islands are mixed. For some the future is uncertain, because much depends on how the situation in their home countries develops in the short to medium term. Perhaps more important, for many there is an emphasis on having positive experiences as well as access to good-quality accommodation while they are in the Highlands and Islands. Others have mentioned that and I will come back to it.

There is an assumption that all migrants want to learn English, but some of those who responded to the HIE study said that they wanted simply to come and earn as much money as possible while they were here. While they are young and doing jobs to which it would be hard to recruit otherwise, I do not think that there is anything wrong with that. However, there is a need to support those who are staying longer. Maureen Macmillan mentioned the children of migrant workers. She and I visited a school in Fort William that had had

quite an influx of children of Polish origin. The staff mentioned one child in the Gaelic-medium class who was being brought up trilingual—speaking English, Polish and Gaelic—which I thought was stunning.

We have to acknowledge that integration is an interactive process that involves migrants as well as the host society. There is a need to develop a comprehensive information pack for migrant workers and employers, which should be undertaken collaboratively by all agencies and should involve migrants, employers, local authorities and trade unions. That is not my idea, but a recommendation from the HIE report. There is also a need for an independent source of advice and information that migrant workers can access, whether in person, by telephone or electronically, with supportive interpreters who are competent in a range of languages.

Employers should be encouraged to use only well-regulated recruitment agencies—we want to avoid exploitation.

The First Minister has described Scotland’s declining population as the single biggest challenge that we face as we move further into the 21<sup>st</sup> century. We want to retain our own people, as has been the tradition, but we also want to welcome other people, as has been the tradition, and we need to provide for them.

I do not have time to go into the schools issues that Maureen Macmillan mentioned, but I endorse fully what she said. We can give people who come to work here, and who we are glad to have working here, a good experience of working in the north of Scotland, which is a great place to be. We want to ensure that people are not exploited but are welcomed and catered for so that they can add to the richness of Highlands and Islands society.

17:33

**Rosie Kane (Glasgow) (SSP):** I, too, thank Maureen Macmillan and welcome the debate—I know that she knows how important it is.

I will talk about migrant workers and their children in the community throughout Scotland. In the past few years, tens of thousands of new citizens have arrived in Scotland. Many of those workers have filled gaps in hospitality and food processing and some work as bus drivers or dentists. We have gained nurses and cleaners—you name it, our new citizens are doing it.

I know from local folk that when they first set out for the UK they imagined that they were heading for the land of milk and honey, with good housing opportunities, but the reality is very different. Many migrant workers have reported that they were

given false information and expectations about prospective employment and opportunities in Scotland. That is not a new phenomenon. My father came here from the Republic of Ireland in his teens with the same dreams, but the reality was racism, poor housing and low-paid, exploitative labour.

Often, when new folk come to our communities they are viewed with suspicion, which is fuelled badly by some of the reactionary media that enflame that suspicion. Different customs are not fully understood and explained, which can lead to isolation and even conflict. Where I live in Glasgow there are families from Latvia, Poland and Slovenia. The adults enjoy standing and chatting on street corners, which they used to do at home, but people are already talking about them. I have heard comments about how they look at people and their being an eyesore. People say that they rake through bins and that their children sometimes do not wear shoes. As far as I know, those things are not crimes yet. People attack such communities because of a lack of understanding and poor communication. Such suspicions and fears could be bypassed if time were taken to educate the entire community.

**The Deputy Presiding Officer:** I will stop you for a moment, Miss Kane. Members' business debates are usually on specific topics. This debate is specifically on migrant workers in the Highlands, so I hope that you will talk about them.

**Rosie Kane:** I will.

**The Deputy Presiding Officer:** You are taking some time getting there. You have only four minutes.

**Rosie Kane:** Members have talked about migrant workers in general. My expertise lies in what is happening in Glasgow.

**The Deputy Presiding Officer:** Members have spoken about the Highlands, Miss Kane, which I have been clear they should do. You have a minute and a half to speak about the Highlands.

**Rosie Kane:** Okay. I will do so.

According to Citizens Advice Scotland, an increasing number of migrant workers are complaining about problems such as low pay, long hours and poor accommodation in the Highlands and everywhere else. Language barriers mean that our new citizens' awareness of human rights is limited, which adds to their exploitation. Does the Executive have plans to ensure fair treatment at work? Would it benefit from working with the trade unions to ensure that migrant workers have access to trade union membership and all that comes with it?

It has been projected that Scotland's population will fall. We should see people who come to

Scotland and the Highlands as a gift and as people who are coming to our aid, and they should be treated as such. It can be hard to come to a new country with few possessions and little knowledge of its language, customs, culture and so on. Our new citizens are often vulnerable and ripe for exploitation.

Citizens Advice Scotland, which certainly knows its way around the issue, has said that there are few options for people who are exploited to complain and that they could lose their job as a result of complaining. They could then be sent back to the country they came from. If that is not exploitation and abuse of workers, I do not know what is. Emotional and psychological problems, which could impact on their families, could result.

We have an opportunity to grasp the nettle and to get on top of things before people get lost in the system and lose heart. I say to Maureen Macmillan that I want to live in a mixed and diverse Scotland, whether in the Highlands or elsewhere. I look forward to hearing what the minister says about creating such a place for everyone who comes to live here.

17:37

**Rob Gibson (Highlands and Islands) (SNP):** I thank Maureen Macmillan for raising the subject. It is essential that we discuss in the Parliament the concerns of people whom we meet in surgeries and those of people whom we hear about through the citizens advice bureaux who come to our part of Scotland and find that they have displaced other workers from their jobs because they can be hired more cheaply or that they are being discriminated against in some way.

I will try to put things in context. The arrival of European Union accession state nationals in Scotland represents a small part of a much greater exodus of people from eastern Europe and elsewhere who want to find economic improvement in higher-wage economies. That wave of nationals is one of many waves of people throughout history who have made Scotland the proud mongrel nation that it is. There are experiences that are common to previous waves of immigrants to Scotland and the current wave. I want to explore the things that the past and current waves of immigrants can teach us about how to handle things.

Maureen Macmillan's motion focuses on the population increase of the Highlands and Islands, which is partly due to migrant workers coming into the country, but is also due to relatively wealthy and elderly retirees. The figures mask the outward movement of young Scots who seek education, wider experience and well-paid work in other parts of Scotland, Europe and elsewhere. Our people

are part of the migrant trail for the same reasons that people come from eastern Europe to this country. The people who leave do not have things such as affordable housing, which they would hope to have if they ever return, although the fear of not having such housing might deter them from returning. Likewise, the likelihood that there will be enough well-paid jobs that can be supported in a balanced Highland economy is missing.

The incoming migrants obviously suffer from a shortage of well-paid work and of affordable housing, so the people who are forced to leave and the people who are coming in face the same problems, which the Government has yet to address. Across the parties, we recognise that providing homes for those on modest incomes is a huge issue. We want to ensure that affordable homes are available, but we have not managed to solve that problem for the people who are already in the country, so it is doubly important that the minister finds ways of tackling those problems and that the Scottish Executive recognises that everyone in the Parliament wants that to happen. Otherwise, we will never be able to welcome people on a more permanent basis.

The taxi firm that I use to get to Inverness station on the way to Parliament cannot find drivers for the wages that it is prepared to offer. Immigrants would be able to do those jobs if it were not for the language barrier, but we do not have enough teachers to help those immigrants to do those jobs and many others. Young Scots go abroad and teach English as a foreign language. We need to recruit them to teach here, and I hope that the minister can tell us a bit about what he intends to do in that respect.

When we consider the experience of migrants to our country, we should not forget that some of them can fall foul of other rules. Maureen Macmillan mentioned in passing the case of Sakchai Makao. The problems created for migrants is not an issue that we have a great deal of time to deal with in detail in this debate, but they must be taken into account in the overall picture. I would like to think that we can take a more comprehensive approach to housing and well-paid jobs but, when people want to stay, the fundamental thing is the ability to have their children educated in our schools and to be taught the English language. We must have people who are capable of teaching them. If we are to make progress on the migrant issue for the Highlands, that is the area that needs the most investment.

17:42

**The Deputy Minister for Education and Young People (Robert Brown):** This has been a debate of unusual significance. I congratulate Maureen Macmillan on securing it and I welcome

the tone of the contributions that have been made throughout the evening.

It might be helpful to begin by settings things in context. The widening of the European Union has led to a significant increase in the number of people coming to the United Kingdom from the new-entrant countries of central and eastern Europe. As has been said, by far the largest number come from Poland.

Migrant workers from the new member states are required to register with the Home Office; 20,000 are registered as coming to Scotland. I am not aware of the figures being broken down further than that. Many enter the hospitality industry and, particularly in the Highlands, they may go into agriculture, especially for seasonal work. There are, of course, migrant workers from other parts of the world; the other main language groups are Cantonese, German and, to a lesser extent, French and Bangladeshi.

The issue is not unique to the Highlands, nor does it appear that the numbers are disproportionately higher in the Highlands, although there may be an element of the Highlands catching up with other areas. The numbers that several members have mentioned indicate the trend. Fergus Ewing said that more are coming to the Highlands than to other places, but I do not think that that claim is borne out by existing figures.

I will concentrate on education, as Maureen Macmillan asked me to do. At the time of the most recent school census, in September 2005, Highland had 1.2 per cent of what are known as "white other" pupils, compared with 1.3 per cent elsewhere. That figure obviously accounts predominantly for the eastern European catchment.

In the same census, there were 468 pupils whose main home language was not English, but for 75 of them it was Gaelic. There were 48 pupils with eastern European languages, some of whom had some knowledge of English, but information about the extent of their knowledge is a little bit patchy and we need to dig down a bit deeper into that.

There is anecdotal evidence that the number is rising. Figures from the Scottish English as an additional language co-ordinating committee suggest that the total number of pupils whose main home language is not English may now be around 600, out of a total of 32,495 pupils in publicly funded schools in the Highlands. We will get a more accurate view shortly, when the next school census is available.

As members have said, the trend is both a challenge and a major benefit for Scotland. Migrant workers support the current growth in the

economy in Inverness—and FirstBus, for example, has a training depot in Poland to train bus drivers for employment in Scotland.

Immigration introduces more younger people and is a source of future strength as it helps to reverse pessimistic predictions about a declining population here. The Scottish Executive is totally committed to encouraging people to continue to come to live and work in Scotland. Tom McCabe was in Warsaw as part of the fresh talent initiative on Monday to launch a Polish information pack that will be widely available—in Polish, I hasten to add—to intending migrants from that country. It is designed to give people proper information and prepare them better for coming to Scotland. Transmigration from Poland is driven by high unemployment rates, particularly among young people.

Tom McCabe also attended the Highland population summit in May. Maureen Macmillan has communicated with and met Peter Peacock to talk about various aspects of the issues. There have also been exchanges with other members, such as Christine May and Jeremy Purvis. Jamie Stone mentioned the issue to me, although he was not able to stay for tonight's debate.

It is clear that the educational challenge in accommodating the children of migrant workers falls into several areas. The first is the problem of unpredictability, on which Maureen Macmillan rightly touched. In light of the Presiding Officer's earlier rebuke to Rosie Kane, I hesitate to say this, but I went to a Glasgow primary school that had approximately 20 Slovakian children materialise in the school in the middle of P3 or P4. That is more difficult to plan for than a known number arriving at the start of P1. We need to dig down through the question of what notice we can get. I do not think that it is easy, because of the individual choices involved.

The second area is the lack of information about the children, about their competence in English, about their past attainment and the teacher's knowledge of them as children. They need to be assessed and their learning and any additional needs, predominantly in language, have to be planned.

The third area is the lack of teachers with experience in teaching children who have little or no English. That is clearly a problem of capacity, particularly in the Highlands, that goes beyond other capacity issues. We reformed the policy framework through the Education (Additional Support for Learning) (Scotland) Act 2004 and backed it up with substantial resources so councils could support their implementation of the act. The needs of children who have English as an additional language were recognised when we considered the bill.

As Maureen Macmillan said, Highland Council is in the process of recruiting to three new bilingual language assistant posts and I believe that it is considering more. We also heard that there is a parallel with Moray. I hope that those assistants will be fluent in English and one other language and that they will work across agencies and services to provide support where it is required.

The issue is primarily one of expertise rather than resources, although councils will have to adjust their priorities as necessary to meet the new challenges. For example, Highland Council has £191.3 million in grant-aided expenditure for education in 2006-07 and various other GAE lines to support additional support for learning. When we take into consideration the number of staff we are talking about, I do not believe that this is an issue of resources.

Highland Council has not specifically approached us for advice, but I would be happy for my officials to discuss the issues with it if it wishes. There might be ways in which expertise can be gained from HM Inspectorate of Education, Learning and Teaching Scotland, SEALCC or indeed from other councils that have relevant expertise.

Maureen Macmillan's motion mentions the recent information day for migrant workers in Inverness, which was a helpful initiative. Fergus Ewing mentioned the links with the Home Office. Dave Petrie spoke about interpretation services. Maureen Macmillan and Rosie Kane mentioned unscrupulous employment practices. Eleanor Scott rightly raised the issues of long-term prosperity here and in migrants' home countries and talked about the potential for partnership with trade unions.

Rob Gibson touched on housing, which is probably the second biggest issue in this context. I could say something about the resources that are going into the Highlands on that score, but we know that it is a continuing challenge there, as it is in other areas. Ministers from all departments will have to examine those issues.

The debate has raised a number of issues, particularly in education but also beyond it, and I want to reflect on the points that have been made and, if appropriate, discuss them with other ministers. Peter Peacock and I will be happy to engage with Maureen Macmillan on any aspects of how we can help, bearing in mind the fact that Highland Council has the primary responsibility and the resources for developing the appropriate responses in its local area.

This has been an important debate—it is an emerging issue. I am sure that the 2006 figures will suggest that there has been a substantial increase in the number of adults and children who

have little or no English. The issue requires a coordinated response. We want to consider how we can best work together across the board with local agencies to ensure that such a response is in place. I stress that the issue has emerged in other areas, albeit not so quickly, so there is some experience there. I am sure that we can learn from what has happened in those areas and that that will assist our response in the Highlands.

*Meeting closed at 17:49.*

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