

MEETING OF THE PARLIAMENT

Thursday 14 December 2006

Session 2

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Scottish Parliament

Thursday 14 December 2006

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

Business Motion

The Presiding Officer (Mr George Reid): Good morning. The first item of business is consideration of business motion S2M-5318, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Legal Profession and Legal Aid (Scotland) Bill.

Motion moved,

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

Groups 1 to 5: 45 minutes

Groups 6 to 9: 1 hour and 15 minutes

Group 10: 2 hours

Groups 11 and 12: 2 hours and 25 minutes

Groups 13 to 17: 3 hours

Groups 18 to 20: 3 hours and 35 minutes

Groups 21 to 23: 3 hours and 55 minutes

Groups 24 to 29: 4 hours and 20 minutes

Groups 30 to 34: 4 hours and 45 minutes.—[*Ms Margaret Curran.*]

Motion agreed to.

Legal Profession and Legal Aid (Scotland) Bill: Stage 3

09:15

The Presiding Officer (Mr George Reid): The next item of business is stage 3 proceedings on the Legal Profession and Legal Aid (Scotland) Bill.

In dealing with amendments, members should have the bill as amended at stage 2, which is SP bill 56A; the marshalled list, which contains all the amendments that I have selected for debate; and the groupings, which I have agreed.

For the first division on an amendment, the division bell will sound and proceedings will be suspended for five minutes. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a one-minute voting period for the first division after a debate. All other divisions will be allowed 30 seconds.

Section 2—Receipt of complaints: preliminary steps

The Presiding Officer: Group 1 is on circumstances in which a conduct complaint about conveyancing and executry practitioners may be made. Amendment 8, in the name of David Davidson, is the only amendment in the group.

Mr David Davidson (North East Scotland) (Con): Amendment 8 seeks to remove section 2(1)(a)(ii), which I believe to be unnecessary, as conveyancing and executry practitioners are already covered by the rules on professional misconduct. Quite frankly, this matter should not be pursued in the bill, because if those practitioners have been convicted of a criminal offence that renders them

“no longer ... fit and proper ... to provide ... services”,

they can be dealt with in the same way as other practitioners through a professional misconduct complaint under section 2(1)(a)(i).

I move amendment 8.

The Deputy Minister for Justice (Johann Lamont): The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which covers the position of conveyancing and executry practitioners, lists conviction of a criminal offence that renders such a practitioner

“no longer a fit and proper person”

separately from “professional misconduct”. Therefore, it is not beyond doubt that a complaint that a conveyancing or executry practitioner is

“no longer a fit and proper person”

to offer conveyancing or executry services as a result of being convicted of a criminal offence would be treated as a conduct complaint. As a result, it is advisable for the bill to refer separately to the position of conveyancing and executry practitioners, as that will ensure, for the avoidance of doubt, that the new complaints handling system will definitely cover such matters. As no corresponding provision in the Solicitors (Scotland) Act 1980 raises the same question, we ask Mr Davidson to withdraw amendment 8.

Mr Davidson: I acknowledge the minister's comments. However, I have been advised that conveyancing and executry practitioners would be covered by section 2(1)(a)(i) and will therefore press my amendment.

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

Members: No.

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

09:18

Meeting suspended.

09:23

On resuming—

The Presiding Officer: We will proceed with the division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (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)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 32, Against 61, Abstentions 0.

Amendment 8 disagreed to.

The Presiding Officer: Group 2 is on determination of eligibility to make a complaint. Amendment 9, in the name of David Davidson, is grouped with amendments 11 to 16, 19, 21, 36 and 37.

Mr Davidson: As the Presiding Officer has pointed out, this group of amendments deals with determination of eligibility to make a complaint. In lodging amendment 11, I want to probe the meaning of the phrase “specified regulatory schemes” in section 2A(1).

I also seek clarity as to whether the proposed Scottish legal complaints commission will deal only with service complaints.

Amendment 12 is a consequential amendment that seeks to ensure that all relevant information that is given is complete.

Amendment 13 seeks to ensure that the commission will determine complaints that are made by eligible persons. Amendment 14 seeks to insert a new section that will define who can make a complaint. Amendments 15 and 16 would require the commission to send notice to both the complainer and the practitioner of determinations that are made under the proposed new section that amendment 14 seeks to insert after section 4. That would introduce an element of fairness and openness. Amendment 9 is a paving amendment to allow a new section to be introduced after section 4. Amendment 19 seeks to make a drafting change to allow a person to complain on behalf of someone else. Amendments 21, 36 and 37 are merely drafting amendments.

I move the amendments in this group in order to achieve clarity, because I am afraid that the bill as it was originally drafted did not provide clarity on a number of issues. I am trying to be as helpful as possible in assisting the minister to draft a much better bill.

The Presiding Officer: I clarify that you have moved only amendment 9 at this stage.

Johann Lamont: I am grateful for David Davidson’s kindness.

Amendment 9 would remove the reference to any provision on rules made by the commission under section 23(1) as to a person’s eligibility to make complaints. We appreciate Mr Davidson’s concern in that regard and can assure him that the intention of the provision is directed only at the provision in paragraph 1(a)(ii) of schedule 3, under which rules may determine

“the eligibility of persons to make ... complaints on behalf of other persons (whether living or not)”.

There is no intention to give the commission power to set other eligibility criteria that are not on the face of the bill. Having given that assurance, I

hope that Mr Davidson will withdraw amendment 9.

In our view, amendment 11 is unnecessary. It reflects an unfounded concern that the provisions of section 2A might have the effect of causing the professional bodies to lose some of their responsibility for the professional conduct of their members. Accordingly, it seeks to limit the working of section 2A to service complaints and to exclude conduct complaints.

Section 2A will not preclude the findings or orders of another scheme being used as the basis for a conduct complaint. It is designed to avoid overlap by providing that, when appropriate, the investigation of a complaint that relates to activities that are covered by a specified regulatory scheme is first carried out under that scheme. That does not preclude the Law Society of Scotland prosecuting if it feels that the public interest demands that further sanctions are necessary. For example, if the Financial Ombudsman Service investigates a complaint and finds that a Scottish solicitor has been responsible for serious financial malpractice, it will be possible for the Law Society to prosecute that solicitor for professional misconduct before the Scottish Solicitors Discipline Tribunal on the basis of the previous finding and any other relevant evidence adduced. If the charges are upheld, the tribunal will be able to impose its own disciplinary sanction to protect the public, such as suspending or debarring the solicitor.

Amendments 12 to 14 are also unnecessary, because the bill already provides that “any person” may make a conduct complaint, so the issue of eligibility simply does not arise in relation to conduct complaints. It would be nonsense to require the commission to determine formally that a conduct complaint had been made by “any person”, who was already, therefore, eligible.

As regards service complaints, there is no eligibility issue when the complaint is made by one of the public office holders or bodies that are listed in section 2(1A)(b) of the bill. The only eligibility issue on service complaints is whether the person

“appears to the Commission to have been directly affected by the suggested inadequate professional services”.

In our view, to make that decision the subject of a formal determination would be unduly bureaucratic. When there is any doubt about whether the person has been affected directly by the alleged inadequate professional services, we would expect the commission to investigate the complaint to get to the truth of the matter. If that investigation makes it clear that the complainer has not been affected directly by the services in question, the commission will be able to dismiss the complaint without further ado. Indeed, it would

not be competent for it to continue to deal with an ineligible complaint.

With regard to amendments 15, 16, 19, 21, 36 and 37, section 34 of the bill already defines the term “complainer” as

“the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person”.

That means that those six amendments are superfluous, so we urge Mr Davidson not to move them.

09:30

Mr Davidson: As I said earlier, I seek guidance from the minister about what is intended because members of the public, among others, have expressed doubts about what the bill means. I am content to accept what the minister says, as long as she accepts that notice must be sent to both a complainer and a practitioner of a determination that is made under the proposed new section that amendment 14 seeks to insert after section 4. If the minister is content with that, I will not press amendment 9.

Johann Lamont: I hear what Mr Davidson says and I have argued our position on the amendment. That should be sufficient.

Amendment 9, by agreement, withdrawn.

The Presiding Officer: Group 3 is on persons entitled to make complaint etc. Amendment 10, in the name of David Davidson, is grouped with amendment 211.

Mr Davidson: Amendments 10 and 211 seek to add sheriffs and tribunal chairs to the list of judges in the bill to ensure consistency.

I move amendment 10.

Johann Lamont: Amendment 10 seeks to add chairmen of tribunals to the list of public office holders who can make a service complaint to the commission, but it does not define what a chairman of a tribunal is or indicate which tribunals would be covered. Members will note that, because of the large number and variety of tribunals that exist, section 2(1B), which mentions exempting from conduct complaints

“a practitioner acting in a judicial capacity in a court or tribunal”,

provides that courts and tribunals would be specified by order by the Scottish ministers. Amendment 10 is therefore unworkable and I invite David Davidson to withdraw it.

Amendment 211 would enable both a sheriff and a tribunal chairman to make a complaint of professional misconduct to the Scottish Solicitors Discipline Tribunal. It seeks to align the list of

people in section 51 of the Solicitors (Scotland) Act 1980 who can make a complaint of professional misconduct to the Scottish Solicitors Discipline Tribunal with the list of public office holders in section 2(1A) who will be able to make a service complaint to the commission. However, the amendment is flawed. The reference to “judge” in section 51 of the 1980 act is defined by section 65 of that act to include a sheriff.

Secondly, as I have already explained, a reference to a tribunal chairman would cause difficulty because the term is not defined in statute. That is why section 2(1B) of the bill gives ministers an order-making power to specify the tribunals in which practitioners can be taken to be acting in a judicial capacity and therefore cannot be the subject of a conduct complaint to the commission. Section 2(1A)(b)(iv) refers to

“any judge (including a sheriff)”

because the definition of “judge” in the 1980 act does not apply in the bill.

I invite David Davidson to withdraw amendment 10 and not to move amendment 211.

Mr Davidson: I thank the minister for providing clarity. Now we know that our money goes on good legal advice to our ministers. I accept what she says, and because she has put on the record where the backing for the Executive’s position is, I am content not to press amendment 10.

Amendment 10, by agreement, withdrawn.

Section 2A—Existence of specified regulatory scheme

Amendments 11 to 13 not moved.

After section 4

Amendment 14 not moved.

Section 5—Complaint determined to be conduct complaint

Amendment 15 not moved.

Section 6—Services complaint: notice

Amendment 16 not moved.

Section 6A—Services complaint: local resolution or mediation

The Presiding Officer: Group 4 is on services complaint: local resolution or mediation. Amendment 17, in the name of David Davidson, is grouped with amendment 18.

Mr Davidson: Amendment 17 is a drafting amendment that seeks to ensure consistency with section 4(1). Amendment 18 would allow parties in

a mediation process to withdraw from mediation. It is as simple as that.

I move amendment 17.

Johann Lamont: I do not support amendment 17 because it is unnecessary. A complaint that is made under section 6A(1A) is a complaint that the commission has determined under section 4(1) to be either a conduct complaint or a service complaint. Under section 4(1), the commission also determines whether the complaint constitutes separate complaints that fall into more than one category and, if so, which categories those complaints fall into. Amendment 17 assumes that the mention of complaints in section 6A(1A) refers back to the receipt of a complaint under section 2, which relates to the preliminary step of sifting out complaints that the commission determines to be frivolous, vexatious or totally without merit, and thus fails to take account of the section 4 stage. I invite the member to withdraw amendment 17.

I am content to support amendment 18. Mediation clearly cannot continue if either party withdraws from the process, so it might be argued that an express requirement on the commission to discontinue mediation in that situation is unnecessary. However, I have no objection to the matter being made clear in the bill for the avoidance of doubt.

Mr Davidson: I thank the minister for accepting amendment 18, which is of benefit. If we can work together on that basis, we will have a good day. I accept the point that she makes on amendment 17, so I will not press it.

Amendment 17, by agreement, withdrawn.

Amendment 18 moved—[Mr David Davidson]—and agreed to.

Section 7—Services complaint: Commission's duty to investigate and determine

Amendment 19 moved—[Mr David Davidson].

The Presiding Officer: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)

Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Watt, Ms Maureen (North East Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
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)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
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)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 31, Against 64, Abstentions 0.

Amendment 19 disagreed to.

The Presiding Officer: Group 5 is on amendments consequential on stage 2 amendments and other minor amendments. Amendment 20 is grouped with amendments 30, 76, 79, 152, 153, 171, 172, 174, 199, 202 to 210, 213, 214, 219, 220 and 222.

Johann Lamont: There are a number of amendments in the group, so I ask members to forgive me for the length of my comments. The amendments are consequential on work that was done at stage 2 and will make the bill consistent.

Amendment 20 is a small technical amendment. At present, section 7(3) refers to a proposal for assessment of a services complaint being made by the commission under section 7(1) but, in fact, such a proposal would be made under section 7(2). Amendment 20 will simply substitute a reference to the correct subsection. Amendment 30 will clarify that a report on a complaint that has been dealt with by mediation may be published only once the mediation has been completed. It is only once the mediation is concluded that there could be an outcome that the complainer and the practitioner accept, so it is only once that stage has been reached that the commission should be able to consider publishing a report of the mediation under section 9A.

Amendment 76 will remove a stray reference to limited liability partnerships. Other references to limited liability partnerships were removed from the bill at stage 2 on the basis that such partnerships are simply a species of incorporated practice. Therefore, there is no need to refer to them separately from incorporated practices. Amendment 79 is a technical amendment. Section 34 contains various definitions that generally apply only to part 1. Sections 35 to 35E are in part 2, so there is a wider problem with the use of a range of expressions in sections 35 to 35E that are defined in section 34. Amendment 79 will resolve the difficulty by applying the section 34 definitions.

Section 38A will insert new provisions into section 54 of the Solicitors (Scotland) Act 1980, which, as amended, will deal with appeals to the Court of Session in professional misconduct cases against individual solicitors; in cases of breach by an incorporated practice of any provisions of the 1980 act or of a professional rule regulating such practices; and in cases in which a disciplinary proceeding follows the conviction of an individual solicitor or incorporated practice of certain offences. Such appeals would therefore always involve an individual solicitor or incorporated practice and not a firm of solicitors. Therefore, the reference to "a firm of solicitors" in line 26 on page 42 should be removed, which is what amendment 152 will do.

Amendment 153 is a minor amendment that will ensure that proposed new section 45(4A) of the Solicitors (Scotland) Act 1980 will apply whenever a solicitor is restricted from acting as a principal, and not only when that solicitor has been so restricted by order of the Scottish Solicitors Discipline Tribunal under section 53(5) of the 1980 act. For instance, a solicitor might be so restricted as a result of an order of the court.

Amendments 171 and 172 will extend slightly the powers of the Scottish ministers to make, by order, incidental, supplemental, consequential, transitional or saving provisions in connection with the bill. The powers will be extended to cover provisions that give full effect to the bill or any aspect of it. That may be useful in connection with the role of the Scottish Solicitors Discipline Tribunal. For example, it will enable provision to be made by subordinate legislation to adapt the tribunal's procedures to deal with any major increase in case law that is generated by the new complainer appeals that are provided for by the bill.

Sections 36 and 37 of the bill as introduced contained broad powers for the Scottish ministers to modify, by regulations under the affirmative procedure, any enactment, instrument or document for the purpose of giving the council of the Law Society of Scotland, the Scottish Solicitors Discipline Tribunal or the Court of Session further powers as regards unsatisfactory professional conduct complaints against solicitors and other practitioners. Those were holding provisions, which it was always intended to remove once drafting of the substantive provisions that were required was completed. Those substantive provisions were inserted at stage 2 and, as a result, the broad regulation-making powers were removed, but a reference to them remains in section 49 and should also be removed. Amendment 174 will delete that reference.

Amendment 199 is a minor technical amendment. Paragraph 1(2)(a)(ii) of schedule 4

substitutes certain words for the word “or” in section 3A(5)(a) of the Solicitors (Scotland) Act 1980. However, the word “or” appears more than once in that paragraph, so amendment 199 will specify that it is the first use of the word that is meant.

Amendment 202 will resolve a small problem that Bill Aitken pointed out at stage 2. It will clarify that proposed new section 45(4A) of the Solicitors (Scotland) Act 1980 will apply only to a solicitor who has been restricted from acting as a principal and who immediately before the restriction was a sole solicitor. Those are the circumstances that are mentioned in proposed new section 45(4A). The amendment specifies that that section has no application to the circumstances that are listed in section 45(1) of the 1980 act, namely, those in which a solicitor is struck off or suspended from practice or in which the registration of an incorporated practice is revoked. Section 45(1) of the 1980 act states:

“the following provisions of this section apply in these situations”,

which might conceivably be taken as including proposed new section 45(4A). Amendment 202 will remove any such false impression.

Amendments 203 to 205 and 208 to 210 are extremely minor amendments that will simply ensure that the amendments to the Solicitors (Scotland) Act 1980 that insert the word “Court”, spell it with a capital letter, as is appropriate. Those are probably my favourite amendments of the day.

Amendment 206 is a technical amendment that will bring proposed new section 45(3B)(b) of the 1980 act into line with similar powers to recover documents that are contained in sections 13 and 35A of the bill, by inserting a reference to documents that relate to any trust of which an employee of an incorporated practice is the sole trustee. Amendment 207 is a very minor amendment that will simply remove an extraneous “and” from section 45(5) of the Solicitors (Scotland) Act 1980.

Amendments 213 and 214 will remove a restriction on the Scottish Solicitors Discipline Tribunal’s power to fine in the case of an incorporated practice that has been convicted of an offence, rendering it unsuitable to continue to recognise it as such a practice, or which has breached a provision of the Solicitors (Scotland) Act 1980 or professional rules that regulate such practices. The relevant restriction on the power to fine is intended to avoid double jeopardy and will apply only where, in relation to the subject matter of the tribunal’s inquiry, the offending practitioner has been convicted of an act involving dishonesty and sentenced to at least two years’

imprisonment. Clearly, the restriction can never be applicable to incorporated practices, which cannot be imprisoned, so the references to incorporated practices should therefore be removed from the restriction on the power to fine.

Paragraph 1(6N) of schedule 4 will insert a new subsection into section 53 of the 1980 act, which will provide that a restriction on the Scottish Solicitors Discipline Tribunal’s power to fine does not apply in relation to any element of a decision to which proposed new section 53(2)(bb) in the 1980 act applies. Proposed new section 53(2)(bb) will confer on the tribunal a power to award compensation to complainers in professional misconduct cases. As the power relates purely to compensation, it has no relevance to the imposition of a fine in any event and does not need to be excluded from the restriction on the power to fine. Amendment 219 will therefore remove that exclusion. Amendment 220 makes a consequential grammatical change to paragraph 1(6N) of schedule 4.

Amendment 222 repeals subsections (2A) and (2B) of section 20 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Those subsections confer on the council of the Law Society of Scotland the power to order a rebate of fees and outlays against a conveyancing or executry practitioner or to order that a practitioner undertake rectification work where that practitioner is found to have provided an inadequate professional service. Following the enactment of the bill, all service complaints will be dealt with by the Scottish legal complaints commission, not by the council of the Law Society. It is therefore appropriate to repeal those powers.

I move amendment 20.

Amendment 20 agreed to.

Section 8—Commission upholds services complaint

Amendment 21 not moved.

09:45

The Presiding Officer: Group 6 is on steps which may be taken when services complaints are upheld. Amendment 1, in the name of Jackie Baillie, is grouped with amendment 22.

Jackie Baillie (Dumbarton) (Lab): At stage 1, the Justice 2 Committee—rightly in my view—considered that there is no clear rationale or justification for the proposed maximum compensation level of £20,000. Indeed, there was a feeling that the £20,000 figure bore more than a passing resemblance to what had been suggested for England and Wales, but was otherwise conjured out of nowhere in the Scottish context.

I remind Parliament that the proposals in the bill allow for maximum compensation of £20,000, through the proposed Scottish legal complaints commission, for an upheld services complaint that includes any element of negligence. I completely understand the Executive's thinking in wanting to make moderate-value negligence claims available to be dealt with by the commission, rather than only by recourse to the courts. That opens up the system to make it far more accessible to the individual complainer. For that reason, the provision is welcome.

That said, it is worth remembering that the current level of compensation, which was fixed by the Solicitors (Scotland) Act 1980, is £5,000. The figure was uprated a mere 18 months ago from £1,500. In that context, a jump to £20,000 seems quite steep. As I understood the matter from stage 2, the Executive's justification for the figure is that £20,000 is a compromise between the current level of £5,000 and the Financial Ombudsman Service's scheme, under which up to £100,000 may be awarded. I still do not understand the logic that underpins the figure of £20,000, however. It could equally well be £25,000, £30,000 or, for that matter, my more modest proposal—which I commend to the minister—of £15,000. The case for £15,000 is based on information that was provided about claims that have been made against the master policy in recent years. A substantial number of claims are below £5,000—the majority, in fact. By setting the level at £15,000, we would capture virtually all the rest. The figure that I have arrived at is based on real experience of claims that have been made.

At the time of the stage 2 debate here, clause 110 of the draft Legal Services Bill, which was considered at Westminster, also contained the figure of £20,000 for compensation. However, that included consideration of fees and outlays. In effect, the level of compensation could be lower once those had been taken into account. Our position on the Legal Profession and Legal Aid (Scotland) Bill was that it should exclude fees and outlays. Ultimately, the inclusion of the figure could have meant that we would unduly penalise lawyers in Scotland compared with their counterparts in England and Wales.

I understand that the Legal Services Bill is now before the House of Lords for its second reading, and that the position there has changed to reflect the provisions of the Legal Profession and Legal Aid (Scotland) Bill. I have no doubt that the Scottish ministers' influence now extends to the House of Lords. That is welcome in ensuring consistency where it is appropriate, but I stress that the base level of compensation at which we started in Scotland was lower: it was £5,000 and, until about 18 months ago, it was £1,500. In my view, and in that context, £15,000 is more

proportionate and will still capture the overwhelming bulk of claims. I look forward to hearing the minister's comments.

I move amendment 1.

Johann Lamont: Jackie Baillie should know as well as anyone that nothing is ever “conjured out of nowhere” for legislation here or, I am sure, at the House of Lords. People devote a great deal of time and thought to such matters. The parliamentary process adds to that, which ensures that the legislation that we end up with is as robust as it can be.

Our intention in setting a compensation limit of £20,000 is to provide access to justice for complainers who seek to pursue low-level negligence actions without facing the expense, uncertainty and delay of court actions. We accept that there might be initial anxiety in some parts of the legal profession about the proposed limit of £20,000, but the bill provides a number of safeguards. First, complaints about the service that has been provided by a solicitor may be made only by people who appear to the proposed Scottish legal complaints commission to have been directly affected by the suggested inadequate professional service. Secondly, the bill requires the commission to reject any complaint that it determines to be

“frivolous, vexatious or totally without merit”.

Thirdly, the bill requires the commission to assess what is “fair and reasonable” in deciding whether to uphold a service complaint and whether to award compensation and, if so, of what amount. We are confident that the new commission will behave competently and professionally in deciding on compensation.

I emphasise that £20,000 is the maximum that the bill sets for compensation. Jackie Baillie is quite right to point out that the Financial Ombudsman Service may award up to £100,000, but there is no suggestion that that amount has become the norm. We see no reason why maximum awards would be any more common for the legal profession than they are in the financial sector. In its evidence to the Joint Committee on the Draft Legal Services Bill, the Law Society of England and Wales opposed an upper limit on total redress and favoured a cap of £20,000 on compensation only.

Given that Jackie Baillie's research indicates that 90 per cent of master policy settlements fall into the up-to-£15,000 category, with a small number falling into the £15,000 to £20,000 category, I argue that it is equally logical for £20,000 to be the most appropriate maximum limit for capturing most, if not all, the low-level out-of-court negligence settlements.

I emphasise that the £20,000 limit will not be set in concrete for all time. The Legal Profession and Legal Aid (Scotland) Bill provides a power for ministers to vary the limit after consultation, by means of the affirmative resolution procedure, so that the limit can be adjusted in the light of experience. I invite Jackie Baillie to seek to withdraw amendment 1.

Amendment 22 will make a minor adjustment to section 8(2)(e), which enables the commission, on upholding a services complaint, to report any perceived lack of competence in any aspect of the law or legal practice

“to the relevant professional organisation.”

That organisation may then decide whether to order the practitioner to undergo further training.

As the body that will have the lead role in legal education, it is ultimately for the professional organisation to decide whether there is a lack of competence that should be remedied through retraining. Section 8(2)(e) should refer to the commission considering that the practitioner “may not”—rather than “does not”—have sufficient competence. I thank Jeremy Purvis for pointing that out at stage 2. I urge members to support amendment 22.

Mr Davidson: I lodged a similar amendment to that of Jackie Baillie, but I am happy to support her amendment 1. The Deputy Minister for Justice has said that the ministers of the day will have the power to vary the limit. In light of the fact that the change from £1,500 to £5,000 took place only 18 months ago, I would have thought that the minister would be encouraging inflation, shall we say, and the expectation of members of the public who are not all lawyers—otherwise, lawyers would not have claims made against them and people would not be using them.

It is very unlikely that claims of more than £15,000 would be made. However, were the minister to support Jackie Baillie’s amendment 1, which would make the limit £15,000, she knows that she has the powers, through the affirmative procedure, to lift the level, although she would have to give Parliament evidence that the limit needed to be lifted to £20,000. I very much support Jackie Baillie’s amendment 1. I also completely accept the need for direction on training, as proposed by the minister in support of amendment 22.

Mr John Swinney (North Tayside) (SNP): Jackie Baillie asked where the proposal for a £20,000 compensation limit came from. The former Deputy Minister for Justice, Hugh Henry, gave us a clue at the Justice 2 Committee on 30 May. In response to a question from Mr Purvis, Mr Henry said:

“If you are asking where the proposal came from, it is not something that originated from us. It first arose during discussions between my officials and representatives of the Law Society.”—[*Official Report, Justice 2 Committee*, 30 May 2006; c 2524.]

The argument that some people have made that, somehow, £20,000 is such an awfully huge amount that it will cause disaster in the legal profession sits rather uncomfortably with the statement that Mr Henry made on the record at the Justice 2 Committee some time ago.

The minister’s line of argument in this debate was absolutely compelling. She made it clear that there is a range of issues to be addressed and that the Government is trying to take into account issues of negligence and inadequate professional services and to make the system more accessible for those who become concerned about such matters. The aspirations that the minister set out a moment ago are utterly consistent with what the Government is trying to do in the bill. The proposal in the bill sits comfortably with the aspirations and direction of the bill. The minister’s point about Jackie Baillie’s research on the range of settlements in this area proves that there is a need for an upper limit.

One of the Scottish Executive officials who spoke to the Justice 2 Committee on 25 April made it absolutely clear, as the minister has reaffirmed today, that

“The figure of £20,000 is a maximum; it is the top of the scale of what the commission can award, so it will be awarded only for the most serious cases.”—[*Official Report, Justice 2 Committee*, 25 April 2006; c 2240.]

That is a fair characterisation of the provisions in the bill. I hope that the minister will stand firm on her line of argument.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The minister will be delighted to have Mr Swinney’s robust support. I commend Jackie Baillie on her consistency and modesty in introducing a lower figure. There has been concern about the issue among solicitors. Some people have assumed that, whether the figure is £20,000 or £15,000, that will be the automatic level of compensation. Some solicitors have said that such an amount would put them out of business or that they would choose not to take business in which there was a higher risk of complaints being made against them. It is up to members in all parties to say that that concern is unfounded.

Why set a figure at all? If the determination of the proposed commission is about inadequate professional service and degree of negligence; if we are to have a more robust appeals mechanism; and if there is to be no fine—although the previous Deputy Minister for Justice made a slip of the tongue at stage 2 in suggesting that there would

be a fine, but later corrected himself, which highlights the difficulty that we have had with the language that is used—but instead compensation for damage caused by inadequate professional service or negligence, why have a limit at all? If we must have one, there should be a broad window.

We heard at stage 2 that, given the additional recovery of costs, in some cases the figure would go well beyond the £20,000 mark. I agree with the minister on the ability of the proposed commission to make determinations. The intention is to catch as many claims as possible, so why set a level that would cover 90 per cent of them, rather than all of them? If we have a more robust appeals mechanism, there will be safeguards for solicitors, too.

It is also helpful, but not necessary, to have consistency with the system in England and Wales. Given that the limit in the bill provides such consistency, I assume that the Scottish National Party will support it fully.

Mr Kenny MacAskill (Lothians) (SNP): I am happy to support Jackie Baillie's amendment 1 and I agree with the points that David Davidson made. Such things are always a matter of balance. I accept that it has been difficult for the Executive to decide the figure. A balance has to be struck between the complainer and the complaine, and between the blue-chip firms that have substantial incomes and profit margins per partner and the small firms that are the backbone of the profession and of many communities, which would if we were to undermine them, be a loss to our society as a whole. Should the figure be £20,000, £15,000, £16,000 or £19,000? Such decisions are difficult, but there has been a lot of debate within the profession and many smaller firms feel that £20,000 is too much, so I am minded to accept the points that they have made.

We have to remember that we are talking about compensation for inadequate professional services. Scotland has never gone down the road of imposing punitive damages. If serious errors are made, there are other mechanisms by which those who have suffered loss will be recompensed. We are talking about how we provide recompense in other circumstances. We are not looking to go down the American road whereby as well as compensating someone for their loss there is substantial punishment.

10:00

My colleague John Swinney is right that the level was suggested by the Law Society of Scotland, but that is a generic body into which falls a diverse profession. Today we heard about the launch of a Scottish bar association, which shows that although we have a broad profession and the Law

Society has done well for its members, there are those who do not feel that they are appropriately represented in some instances. We have to deal with all aspects of the profession and strike the right balance between ensuring that people who suffer loss because of inadequate professional service are protected, and ensuring that we sustain smaller firms that would go out of business if a punitive element of damages were introduced. Such firms are important to our communities.

Johann Lamont: To be consistent with the position that I have argued before, I say that the limit is entirely clear and that there are safeguards, given that the figure is a maximum rather than anything else.

Jackie Baillie: The aspiration to ensure access to the resolution of complaints for inadequate professional service and negligence is shared throughout the chamber. The disagreement is about the upper limit of compensation. I am afraid that I have to disagree with Jeremy Purvis, no matter how charming he is—it is okay, I do not mean it—because I believe that there has to be an upper limit. We need to have clarity about what properly should fall to the proposed commission and what properly should fall to the courts. I am happy to withdraw amendment 1 in the light of the minister's comments—in particular, the assurance about ministers' power to review the level. It is important that we listen to the profession and reflect on the experience of the operation of the commission.

I seek leave to withdraw amendment 1.

The Presiding Officer: Does any member object to amendment 1 being withdrawn?

Mr Davidson: Yes.

The Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)

Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 41, Against 64, Abstentions 0.

Amendment 1 disagreed to.

Amendment 22 moved—[Johann Lamont]—and agreed to.

The Presiding Officer: Group 7 is on giving of notice, reasons and so on. Amendment 23, in the name of David Davidson, is grouped with amendments 24, 27 to 29, 33, 77, 92, 93 and 119. I draw to members' attention the pre-emption information that is shown on page 2 of the groupings list.

Mr Davidson: Amendment 23 would simply add practicality. Amendment 24 would provide for prior directions to the employing solicitor to be taken into account. Amendment 27 is a drafting amendment. Amendment 28 would provide clarity and ensure that reasons are given in every case for any determination, direction or report. In the modern way of doing things, if people are insured they get full information, which is essential. I cannot support amendment 29, which is in the name of the minister, because it directly opposes my amendment 28.

Amendment 33 is about the proposed commission naming and shaming a practitioner. It would allow the practitioner a reasonable time to take action to protect their reputation by going to appeal or seeking judicial review or an interdict, which would introduce an element of fairness. Any case in which a solicitor's name is impugned must be seen to be dealt with fairly because their reputation is their livelihood.

Amendment 77 is a 21st century amendment, which would allow for e-mail communication. Amendments 92, 93 and 119 concern style.

I move amendment 23.

Johann Lamont: Members will be aware of my instinctively consensual approach. Therefore, to support amendments 23, 24, 27, 33 and 77 gives

me no pain. We urge members to support the Executive amendments in the group, but we resist amendments 28 and 93.

On amendment 23, our policy is that the professional bodies should decide whether a practitioner is sufficiently competent in any aspect of the law or legal practice. That policy is appropriate because the professional bodies are responsible for admission to the profession and take a close interest in the education and training that their members require.

The function of the proposed commission, as will be clarified by Executive amendment 22, will be to report to the professional body when it suspects that a practitioner may not have sufficient competence in a particular aspect of the law or legal practice. As the professional body must make a decision on such matters, it is not essential to require the commission to copy its report to the employing practitioner in advance of a decision by the professional body. The professional bodies will no doubt judge for themselves whether to inform employing practitioners of decisions on the training needs of their employees but, on balance, we see no difficulty in requiring the commission to send a copy of any report under section 8(2)(e) to the employing practitioner. Therefore, I am content to support amendment 23.

Amendment 24 seeks to ensure that the commission takes into account prior directions that have been given to the employing solicitor and that the commission must, in considering what steps to take under section 8(2), take into account any prior direction that has been given under section 8(2)(d) not only to the practitioner, but to the employing practitioner. I thank David Davidson for lodging the amendment, which I support.

We also support amendment 27, which follows up the logic behind section 8(2A), which we proposed at stage 2. There is a case to be made for the employing practitioner receiving a copy of the documents.

I understand the concern that underlies amendment 28. Currently, section 9(2) provides that reasons need be given only when a determination has been made by a determination committee, which suggests that reasons need not be given when a determination has not been made by a determination committee—for example, if it has been made by the proposed commission or when a direction or report has been given. However, the amendment overlooks the fact that schedule 3 to the bill will require the commission to make rules on when reasons are to be given, expressly in circumstances in which they are not required to be given in the eventual act itself, for determinations, directions, decisions or recommendations under part 1 and in respect of

related matters. There is a mandatory rule-making power, so the commission must make rules and consult interested parties before making or varying them. Therefore, I urge David Davidson not to press amendment 28 as it is inappropriate.

Amendment 29 is a small technical amendment that will replace a reference to paragraph 13(1A)(c)(i) of schedule 1 with a reference to paragraph 13(1A)(d)(i) of schedule 1.

Amendment 33 would require the commission to give the practitioner notice of its intention to identify the practitioner in a report. We do not envisage the commission having regular recourse to the sanction of naming and shaming a practitioner against whom it has upheld a services complaint, which is why the bill sets a high threshold for such action—namely that the case is exceptional and that it would be in the public interest, in the opinion of the commission, for the identity of the practitioner to be included in the report. However, it is important to be scrupulously fair to the practitioner while seeking to protect the public. Therefore, I do not oppose practitioners' receiving a four-week period of notice.

I appreciate the thinking behind amendment 77, on the giving of notices by electronic means, and I have no objection to supporting it. Its approach is consistent with the approach that is taken to individuals and may serve to ensure that notices are safely received.

Amendments 92, 93 and 119 will impose a duty on the council of the Law Society to supply reasons in relation to its decisions on complaints of unsatisfactory professional conduct. Amendments 92 and 119 will, respectively, apply to complaints against solicitors and conveyancing and executry practitioners. They follow the pattern that is followed by section 9, which requires a determination committee of the commission to provide reasons only for its determinations, such as on whether to uphold a complaint, and not for its directions, such as requiring a certain amount of compensation to be paid, although the commission will have the power to specify in its rules additional circumstances in which reasons must be given. Amendments 92 and 119 therefore seek to put the council in a similar position to the commission as regards the duty to provide reasons.

Amendment 93 would apply to complaints against solicitors only, but otherwise goes further and would require the council to give reasons for the particular sanction that has been imposed. However, in the case of a censure, the only reason that could be given is that the council is under a duty to censure all solicitors who are found guilty of unsatisfactory professional conduct under proposed new section 42ZA(3)(a) of the Solicitors (Scotland) Act 1980, which will be

inserted by section 36 of the bill. In the case of other sanctions, it may be difficult to specify exactly why, for example, a fine of £1,000 has been imposed rather than a fine of £800 or £1,200. The council will have to make judgments about what is broadly appropriate in the circumstances.

Mr Davidson: I thank the minister for her consensual approach and will not speak to the amendments that she supports. I support her amendments in the group, except amendment 29. However, I will press amendment 28.

Amendment 23 agreed to.

Amendment 24 moved—[Mr David Davidson]—and agreed to.

Section 8A—Fair and reasonable: matters to be taken into account by Commission

The Deputy Presiding Officer (Trish Godman): Group 8 is on matters to be taken into account in considering what is fair and reasonable. Amendment 25, in the name of David Davidson, is grouped with amendment 26. I draw members' attention to the pre-emption information on the groupings list.

Mr Davidson: Amendment 25 would ensure that the proposed Scottish legal complaints commission will be bound by the law in all that it does, and that decisions that are made will apply in other courts of law and tribunals. It should be compulsory for the SLCC to be bound by the law. The matter is simple.

Amendment 26 will be a welcome addition to the bill.

I move amendment 25.

The Deputy Presiding Officer: I call Jeremy Purvis.

Jeremy Purvis: I am concerned that consensus will break out in the chamber. I therefore oppose David Davidson's amendment 25. I support amendment 26.

The bill's current wording takes into account relevant laws and rules, and it seems clear that the proposed commission would not take into account rules and conditions that were not in force at the time of the complaint, as they would not be relevant. A case could be made that that would be clearer if it were included in the bill, but the essence of the matter is the question whether the commission is determining whether inadequate professional service has been provided and whether relevant laws are being taken into account.

Amendment 26 takes into account damages that have been awarded by courts. The approach is

sensible and will mean that there will be a close correlation between the operation of the proposed commission and the courts in similar circumstances. I oppose amendment 25, but am happy to support amendment 26.

The Deputy Presiding Officer: I call the minister to speak to amendment 26 and the other amendment in the group. I apologise for not calling her before I called Mr Purvis.

Johann Lamont: In the midst of our technical debates, it is useful to remind ourselves that the commission is to be set up as a consumer complaints handling body in order to provide quick and effective solutions for practitioners and complainers alike, and to award redress where appropriate.

Amendment 26 will make a small but—I hope—reassuring addition to section 8A of the bill. I am aware that some people are concerned that the new commission may award large sums in compensation for minor lapses in service standards, but that fear has no basis. Experience of similar schemes, such as in the Financial Ombudsman Service, shows that compensation for distress and inconvenience without financial loss—the so-called botheration factor—is unlikely to be more than a few hundred pounds. There is no reason to think that substantial compensation will be ordered if no substantial financial loss has occurred.

We sought to reassure people who were concerned about that at stage 2 by imposing a specific duty on the proposed commission to take account of the relevant law, which would obviously include the law of negligence. Amendment 26 will add the further clarification that the relevant law includes levels of damages that are awarded by the courts in similar circumstances. I hope that that will make clear what we have always said: when a services complaint might alternatively have been brought as a court action, compensation will be broadly in line with what a court would have ordered.

10:15

Nevertheless, it is a key element of the new scheme that the proposed commission will take the lead role in setting and policing service standards, drawing on the expertise of both its non-lawyer and lawyer members. Amendment 25 would be inappropriate and unduly restrictive in relation to the commission's deliberations. The bill already provides that the criterion that the commission must apply to its determination of complaints and awards of redress is what is fair and reasonable in all the circumstances. In our view, that is an entirely appropriate and well-precedented criterion, which the Financial Ombudsman Service already applies successfully.

I urge members to support amendment 26 and I ask David Davidson to seek to withdraw amendment 25.

Mr Davidson: The point behind amendment 25 is that the commission should, when it makes a determination, be bound by the law that is in force at the time of the service provision. It is a tidying amendment. Although I am not totally convinced, I think that the minister has gone some way towards that. Therefore, I seek to withdraw amendment 25.

Amendment 25, by agreement, withdrawn.

Amendment 26 moved—[Johann Lamont]—and agreed to.

Section 9—Services complaint: notice where not upheld or upheld

Amendment 27 moved—[David Davidson]—and agreed to.

Amendment 28 moved—[David Davidson].

The Deputy Presiding Officer: If amendment 28 is agreed to, I will not call amendment 29 because of pre-emption.

The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)

Tosh, Murray (West of Scotland) (Con)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 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)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 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)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 37, Against 66, Abstentions 0.

Amendment 28 disagreed to.

Amendment 29 moved—[Johann Lamont].

The Deputy Presiding Officer: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 88, Against 15, Abstentions 0.

Amendment 29 agreed to.

Section 9A—Services complaint: reports

Amendment 30 moved—[Johann Lamont]—and agreed to.

Amendment 33 moved—[David Davidson]—and agreed to.

Section 11—Complaint appears during mediation or investigation to fall within different category

The Deputy Presiding Officer: Group 9 is on a complaint that appears during investigation etc to fall within a different category. Amendment 34, in the name of David Davidson, is grouped with amendment 35.

Mr Davidson: Amendment 34 is a simple amendment that, for clarity, points out that professional organisations are not involved in mediation.

Amendment 35 would keep professional organisations in the knowledge loop. That is an important part of the bill. The ministers have, where possible, tried to ensure that all those who are involved in a complaint will have knowledge of it. Amendment 35 simply adds something that was not quite there.

I move amendment 34.

The Deputy Presiding Officer: Robin Harper has pressed his request-to-speak button. Do you wish to speak, Mr Harper?

Robin Harper (Lothians) (Green): No.

Johann Lamont: I accept that the bill does not prescribe detailed procedures for professional bodies to follow as regards the possible mediation of conduct complaints remitted to them by the commission. That should not, however, be interpreted to mean that mediation is not an option for professional organisations. It is highly desirable, in policy terms, that mediation of a complaint should be pursued whenever it is sensible for that to be done. It is not inconsistent, therefore, that section 11(1) includes two express references to mediation by a professional organisation. I note also that amendment 34 has been drafted on the basis that there is only one such reference. For both policy and technical reasons, therefore, I cannot support amendment 34 and I invite David Davidson to withdraw it.

I agree that, when it appears to the commission that it is reasonably likely that a services complaint may be re-categorised as a conduct complaint, it is reasonable that there should be a reciprocal requirement to transmit the complaint and related material. I accept that the bill should require the commission to send a copy of the complaint and other material to the relevant professional organisation, just as a professional organisation is already obliged to do in the reverse situation. I therefore urge members to support amendment 35.

Mr Davidson: I thank the minister for her support for amendment 35. I wish to press amendment 34.

The Deputy Presiding Officer: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robison, Shona (Dundee East) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Watt, Ms Maureen (North East Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
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)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 37, Against 64, Abstentions 0.

Amendment 34 disagreed to.

Amendment 35 moved—[Mr David Davidson]—and agreed to.

Amendment 36 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

I point out to Malcolm Chisholm that he may have pressed the wrong button.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)

Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 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)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
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McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 36, Against 63, Abstentions 0.

Amendment 36 disagreed to.

Dennis Canavan (Falkirk West) (Ind): On a point of order, Presiding Officer. In what circumstances can the chair advise members how to vote?

The Deputy Presiding Officer: Malcolm Chisholm appeared on my list of people who wished to speak at a point when nobody should have wished to speak. A minute ago, I said the same thing to another member. I am pretty fair about that.

Dennis Canavan: I am talking not about speaking, but about voting. I understood you to say that Malcolm—

The Deputy Presiding Officer: Excuse me—my reference was not to how Malcolm Chisholm voted. I pointed out that I thought that he had pressed the wrong button, because his name appeared on my screen. I did exactly the same thing two minutes before.

Amendment 37 not moved.

Section 12—Power to monitor compliance with directions under section 8(2)

The Deputy Presiding Officer: Group 10 is on appeals against commission decisions. Amendment 38, in the name of David Davidson, is grouped with amendments 2, 3, 3A, 3D, 3B, 3C, 3E, 3F, 4, 4A, 237 and 238. [*Interruption.*] Could we have a bit of order, please? I draw members' attention to the pre-emption information that is shown on the groupings list.

Mr Davidson: The group deals with a key component of the bill, on which the bill could pass

or fail. It is grossly unfair to create a system with no form of appeal. We allow appeals for people who have broken the law on other matters and who have become criminals. The system in the bill is unfair.

I know that Jackie Baillie will perform her duties in pushing her amendments and I am sure that she will do so extremely well. The only reason why we have amendment 38 is that the bill as amended at stage 2 did not mention appeal, so amendment 38 was meant to tidy wording that had appeared to suggest that an appeal might exist, although no provision for appeal was made.

The bill's key failure has been the lack of an appeal process. The Law Society has obtained two opinions from Lord Lester that make it clear that the bill could be challenged as a result. I am sure that other members will speak to that effect.

I ask the minister to say in response to the group 10 debate whether she will accept Jackie Baillie's amendments, which would help to make the bill more reasonable. If the minister will not accept them, I may press my amendments in the group.

I move amendment 38.

Jackie Baillie: I support amendments 2, 3, 3D, 3E, 3F, 4 and 4A, which are in my name and that of Jim Wallace. Positive partnership working has taken place between me and my Liberal colleague Jim Wallace and between back benchers and ministers in arriving at this point. Without that and the ministers' willingness to listen, I am not sure whether the amendments would have succeeded. I am delighted that, as I understand it, the Executive will support the amendments.

Most members will be aware of the Law Society's concerns and the debates at stages 1 and 2 about European convention on human rights compliance, with the focus on the commission's independence and the absence of an external right of appeal. I pay tribute to the Law Society for its work on the issue, but I confess that I will not dwell on the relative merits of the opinions that have been obtained; rather, I will focus on what the amendments would do.

The amendments would provide a right of appeal to the Court of Session against decisions of the commission. However, the right would not be automatic. We would provide for leave to appeal, which would need to be sought from the Court of Session. That would remove any vexatious or unfounded appeals.

10:30

Appeals would be allowed only on the grounds that are set out in our amendments, which are that the commission's decision was based on an error of law, that a hearing that the commission

conducted had a procedural problem, that the commission acted irrationally in exercising its discretion or that the commission's decision was not supported by the facts that were found. In those circumstances, we do not envisage a significant number of appeals. The proposed provision is not unusual. Members will of course recall that the Mental Health (Care and Treatment) (Scotland) Act 2003 allows for decisions of mental health tribunals to be appealed to the Court of Session on similar grounds.

On a point of principle, it is important to have an external right of appeal against commission decisions. However, I am not in favour of creating a mechanism that would delay unduly the resolution of complaints for individual complainers. The creation of the commission will speed the process. Amendment 3 recognises that. It is proportionate and fair and I hope that the Parliament will support it.

Mr Jim Wallace (Orkney) (LD): I declare an interest as a Queen's counsel and a non-practising member of the Faculty of Advocates.

I reciprocate Jackie Baillie's comments about partnership working—ministerial old lags getting together. I thank the minister and the deputy minister for their willingness to engage as we genuinely sought to ensure that our amendments would improve the bill.

I strongly support the amendments that Jackie Baillie lodged. The amendments that stand in my name would purely tidy provisions—if a minister had lodged them, they would be technical amendments. The most significant of my amendments is perhaps amendment 3E, which would replace the word “unreasonably” with “irrationally”. The reason for that is that, on reflection, it was thought that the courts have considered the word “irrationally” in the past.

I will not move amendment 237, because it represents a fallback position. I hope that we will hear from the minister the reasons why we will not need the fallback position.

As has been said during the debate, the belief is that an appeal to the court should be possible against a determination by the commission that could lead to a financial penalty and have the great potential to damage a practitioner's reputation. Opinions have been obtained from Lord Lester about whether the bill complies with the European convention on human rights—David Davidson referred to that. I am the first to acknowledge that whenever opinions are obtained on contentious legal points, it is almost inevitable to have a judgment that leads one person to take one side and another person to take the other side. However, when we legislate, it is important to put issues beyond doubt. That is why we propose the appeal mechanism.

It has been suggested that judicial review would be sufficient, but there is emerging case law on that, such as the recent European Court of Human Rights case of *Tsfayo v the United Kingdom*. Indeed, the decision of Lord Mackay of Drumadoon in *Tehrani v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* reserves an opinion on whether judicial review is sufficient in such circumstances.

Mr Swinney: What position would Mr Wallace adopt when the Scottish legal complaints commission rejected a member of the public's complaint? Do the amendments that he supports pose the danger that the level playing field that the Government has created in the bill would be tipped in favour of practitioners rather than complainers, because the public will be less likely and less able to secure the legal representation that would allow them to put their case before the Court of Session?

Mr Wallace: I do not accept that. Subsection (2)(a) of the new section that amendment 3 would insert would allow the complainer to take a case, and people cannot complain if the rights that are available are extended to complainers. I assume that in the vast majority of cases, the complainer would be entitled to receive legal aid.

As Jackie Baillie mentioned, there is not meant to be an automatic right of appeal. People would have leave to appeal, but a stringent test would be applied. John Swinney made a point about the position of the complainer, but that is why we have made provision in the amendments for the commission to be the respondent in an appeal. If the legal practitioner lodged the appeal, the complainer would not have to bear the burden of defending the commission's decision—the commission would be able to step into the complainer's shoes and to take responsibility for that. Some may see that arrangement as having a further attraction, because under the bill the commission would be funded substantially—indeed, almost exclusively—by the legal profession. Either way, the legal profession would bear the cost of proceeding with an appeal. As Jackie Baillie indicated, the Mental Health (Care and Treatment) (Scotland) Act 2003 already makes provision for a tribunal to be party to any appeal to the Court of Session.

I conclude by acknowledging that some people may find it difficult to subscribe to an appeal mechanism that may be seen as giving rights to lawyers. I recognise that by becoming a politician I probably took a step up in the popularity stakes for professions. As someone once said, the trouble with lawyers is that in the “Oxford English Dictionary” lawyer appears halfway between laxative and lavatory. I have always believed that the real test of belief in human rights is not

whether we give rights to the underdog or to people whom we like, but whether we are prepared to concede at least some rights to people about whom we may have doubts. As Jackie Baillie said, this is a balanced, proportionate response to a genuine issue that the Law Society and others raised. I commend Jackie Baillie's amendments and the associated tidying-up amendments.

Mr Swinney: There has been a lot of talk of consensus and partnership working, and here I find myself coming to the defence of what I understood to be the Scottish Executive's position before the start of this morning's debate. My goodness, that is a sign of things to come in the months ahead.

Members must think carefully about the amendments in this group before we proceed. I agree with David Davidson that section 12 of the bill is critical. The amendments would alter fundamentally the character of the bill that the Government introduced. The objectives of the bill in respect of this area of policy are threefold: first, to create a level playing field between those who deliver legal services and those who complain about their delivery; secondly, to simplify the process; and thirdly, to avoid lawyers judging lawyers, to put it in a colloquial fashion. The former Deputy Minister for Justice argued that point very effectively in committee. If we agree to the amendments, we will undermine the three objectives that I have set out.

I am involved in this debate because of my experience of sitting in front of constituents who have spent far too much of their lives seeking recourse because of dissatisfaction with the conduct of the legal profession. Their experience of the current system is that they are passed from pillar to post regularly and frequently. They may make a complaint to the Law Society of Scotland. The heads of complaint are edited by the Law Society and the edited complaint is put before the client relations committee. If the committee finds against them, they may appeal to the Scottish legal services ombudsman, who may find in their favour and send the case back to the client relations committee, which will judge it again and may find in their favour. The case will then go to the Scottish Solicitors Discipline Tribunal. By the time that that happens, years of people's lives have slipped past. That is the current position, which is why the Government has done us a service by introducing the bill.

Another characteristic of the current approach to seeking recourse to the legal system is that when people have a complaint about another solicitor, they find it extraordinarily difficult to secure legal representation to pursue their concerns when their case gets near to a court. If members do not

believe me, I can cite to them constituency cases that I have handled and extracts from a petition for judicial review that was made to the Court of Session. The petition includes a quotation from a letter from a Mr Pritchard, who was the secretary to the Law Society of Scotland. He wrote to a firm of solicitors:

"I am anxious that you should protect your back in this matter because every solicitor who has acted for"

the person concerned

"has ended up with a claim against them ... You will appreciate that this is a private and confidential letter not to be shown to Mr McIntyre the sole purpose of which is to give what I hope is helpful advice to protect you and your firm."

The Law Society was giving quite active encouragement to a practitioner not to act to deliver legal representation to an individual. That is the current system, which is why it is so important that the Executive's bill is passed.

The difficulty with the amendments that Jackie Baillie and Jim Wallace have lodged is that they make the playing field uneven. If the commission supports a complaint against a practitioner, the practitioner is able to seek leave from the court to appeal and the commission will defend its decision. If the commission rejects a complaint, the practitioner will be happy with the situation and will have no reason to seek recourse, but if the complainer wants to have the same rights and access to the system that the practitioner would have if their roles were reversed, they must secure legal representation and leave to appeal from the court, and must pursue an action. Mr Wallace says that in almost all circumstances the complainer would be entitled to legal aid, but that is a very unlikely proposition to be argued as a fail-safe in this debate.

We must be careful not to undermine the fundamental character of a bill that is very robust and gives us certainty about where we are going. I close by quoting an exchange that took place at the Justice 2 Committee on 30 May. Mr Butler asked Hugh Henry, then Deputy Minister for Justice:

"Do you agree that, setting aside costs ... the correct body to hear an appeal would be the sheriff court?"

The deputy minister replied:

"In a sense, such an appeal would defeat the whole purpose. We have attempted to create something that is easy to access, simple to pursue and not a financial burden on an individual member of the public who feels aggrieved."

He went on to say:

"We could argue that that would introduce the potential for those with the greatest resources to use that route if, for whatever reason, they did not want a commission decision to be upheld. That would fundamentally weaken what we are attempting to achieve."—[*Official Report, Justice 2 Committee*, 30 May 2006; c 2516.]

That is an absolutely fair statement of the Government's position, which recognises that we are in an age in which the rights of the consumer must be protected. I hope that members will think wisely before agreeing to the amendments that Jackie Baillie and Jim Wallace have lodged.

Jeremy Purvis: This issue taxed the Justice 2 Committee and is now taxing the Parliament. After a well-considered argument from John Swinney, it is worth my reflecting on some of the points that he made. Although some of his analysis was correct, his conclusions are incorrect. There has been concern that if there is no appeal mechanism, the whole bill will be undermined on human rights grounds. That concern applies not only to solicitors but to complainers.

The amendments that we are considering today are the result of the combined work of Jackie Baillie and Jim Wallace. Jim has been more charming than me in his overtures to Jackie, but I suspect that his description of her as a ministerial old lag has placed that at risk. It is proposed that there should be grounds for appeal over and above judicial review. The bill has always made provision for people to seek a judicial review of the processes of the commission, regardless of whether an appeal mechanism exists. However, the amendments make very clear the grounds for appeal that complainers will have. For example, subsection (4)(d) of the new section that amendment 3 would insert states

"that the Commission's decision was not supported by the facts found to be established by the Commission."

If there were no mechanism to appeal to the court and the bill was left as at stage 2, any complainer who still believed that the commission had drawn the wrong conclusion on the facts that it had itself defined could go through the entire appeal process without the ability to review that decision. That is one of the fundamental reasons why Jackie Baillie's and Jim Wallace's amendments are better than the discussion that we had at stage 2.

To be fair to the previous Deputy Minister for Justice, an automatic appeal would undermine the case of those people who wanted to avoid going to court—

10:45

Mr Wallace: Will Mr Purvis, who is on the Justice 2 Committee, reflect on the closing part of Mr Swinney's comments in which he quoted the previous Deputy Minister for Justice? As I recall, Mr Swinney quoted the minister in reference to an amendment about an automatic appeal to the sheriff court, which would have changed the balance between the complainer and the practitioner. That is very different from setting a

high bar on granting leave to appeal to the inner house of the Court of Session.

Jeremy Purvis: Yes, indeed, I fully accept that. In our stage 2 debate we also looked at the internal mechanisms in the commission. The bar is higher and the tests that have to be set to allow a complainer to seek leave to appeal to the court are more stringent than those discussed at stage 2.

Mr Swinney: I point out that the exchange between Mr Butler and the then deputy minister that I quoted was at stage 1, not stage 2.

Do not Mr Wallace's comments in his intervention make my point even stronger? If the bar is set so high, it makes it much more likely that those who are not sophisticated in their use of the legal system will find it more difficult to seek recourse through the Court of Session.

Jeremy Purvis: That would be a fair point, if it were not for the fact that the amendments seek to extend the ability of a complainer to appeal, whether they are a solicitor or an individual. I take on board the point that we should avoid as far as possible any complainer having to go to the courts. That is why the commission will be able to consider cases of negligence and allow the payment of a high level of compensation.

Where there are significant financial penalties and potential repercussions for the reputation of a solicitor and where a complainer might feel that the commission has not carried out its duties correctly and come to a perverse or wrong decision on the basis of the facts, I do not accept that there should be no further recourse. That is the point of principle that we are discussing.

It is true that the bar is high, but appeals will be made in extreme cases and unusual situations and there must be specific ground for appeal. I do not accept the argument that, if there were no bar at all, we would cut out completely the ability of any complainer to take their case further. The proposals in Jackie Baillie's and Jim Wallace's amendments are a better way to proceed than those that we discussed in previous stages of the bill. I commend the Executive on supporting them as well as Jackie Baillie and Jim Wallace on lodging them.

Bill Aitken (Glasgow) (Con): Amendment 3 is important. I make it clear to the minister that what she says will largely determine our attitude towards supporting the bill or otherwise at the end of the day.

Although the arguments were well canvassed during stage 2 consideration, they are still relevant. We are dealing with a point of equity. We would be completely inconsistent if we were to deny rights of appeal to any particular party. Much has been said today about ministerial old lags, but

the old lags in a criminal court always have a right of appeal.

I have looked at the two legal opinions on this matter and found to be absolutely compelling the opinion of Lord Lester of Herne Hill that the bill as it stands would fail the test in article 6 of the ECHR. The minister might question that, but I would be unhappy if the Parliament had to take such a test in a court of law—it is an extremely fine point that we would lose. I return to the point about equity. Of course there must be a balance in all things and John Swinney is correct to say so, but at the moment, the balance is incorrect.

Let us look at what Jackie Baillie suggests in her amendment. It is not a question of there being an appeal on matters of fact. It is difficult in any court, whether it deals with a civil action, a sheriff summary action or even a jury trial in the High Court, to appeal on the basis of the facts. The facts have been determined either by a jury, a judge or a sheriff and any appeal against such a decision is most unlikely to succeed.

What is suggested in the amendment is completely consistent with that because the appeal would be on the ground of an error of law based on a procedural impropriety, as it is defined, or that the commission has acted unreasonably. There is nothing wrong with that. It is also submitted in amendment 3 that the appeal should be granted only with the leave of the Court of Session. I would imagine that such appeals would be as rare as hen's teeth, but nevertheless, the provision must exist if we are to comply with the ECHR and with common equity. I look forward very much to what the minister has to say and I hope that she is able to persuade us that the Executive recognises that what is proposed is the way forward and that wiser counsel has prevailed.

Maureen Macmillan (Highlands and Islands) (Lab): We have been discussing one of the most contentious parts of the bill, which, as others have said, has been well debated in and out of committee. Forceful assertions have been made on both sides about ECHR compliance if there were to be no right of appeal to the commission. Amendment 3 seeks to ensure that the concerns of the Law Society, the Faculty of Advocates and others are addressed.

I do not want to see the balance of justice swing away from the complainer—the man or woman in the street. The reason behind the setting up of the commission is to take regulation out of lawyers' hands so that the complainer may have more confidence in the system. However, my fear is this: if there were an automatic right of appeal, although every substantial claim would be appealed and funded by the solicitor's insurers, who would fund the claimant?

Two aspects of Jackie Baillie's amendment give me comfort. First, it proposes that the commission and not the claimant would be the party in court. Secondly, inclusion of the phrase

"with the leave of the court"

would ensure that an appeal to the Court of Session will not become an automatic part of the complaints process, thereby making the commission effectively redundant.

As John Swinney asked, what opportunity is there for a claimant to appeal to the Court of Session? Despite what Jim Wallace says, it is not easy for someone to qualify for civil legal aid. As a result of the limiting factors that are proposed by Jackie Baillie in her amendment, I am prepared to consider supporting it, but I will wait to hear the minister's response to the points that were made by John Swinney on the position of the complainer.

Mr MacAskill: My colleague John Swinney made some valid points about the difficulty that arises in balancing the interests of those with professional knowledge who are complained against and those who do not have such knowledge who make the complaint. The same difficulty arises whether one's complaint is against the medical or dental professions, psychiatrists, mechanics or plumbers, about whose professions we have little knowledge. It arises whenever someone provides specialist services while the person who complains about them does not have the same knowledge.

I accept that the matter is complicated in the legal profession because of the court system. Two points follow from that. First, the idea that there is a cosy consensus between lawyers does not apply in my experience. Many of the complaints that are made are against not court solicitors but conveyancing lawyers. There is no real warmth or support among lawyers in such situations. Secondly, the ethos of the profession is that a lawyer is an officer of court and carries out actions irrespective of whether they oppose a friend. To the credit of the legal profession, that ethos remains and I am not aware of instances in which it has been breached.

I do not think that we can avoid the situation. It is a conundrum that we simply cannot address, although we have tried in the context of the medical profession. Ultimately, imbalance remains and always will do. We must ensure that we have the appropriate checks in place. Maureen Macmillan's points have been addressed by others' comments.

The two fundamental points are the principle and the practicality. The principle is whether there should be a right of appeal. We are told that we have signed up for the ECHR, and there may be

complaints about it. We have accepted in other matters that there should be a right of appeal, and that not to have such a right would be manifestly unjust. It would be perverse simply to say to a section of society, "You are lawyers. You're not getting an appeal that everybody else can have." We have to accept that that would be fundamentally perverse.

The practicality is that, even if we do not establish a right, there will be appeals, as Jeremy Purvis and other members have said. If we think that having a commission and not encompassing a law of appeal, taking on Lord Lester's judgment, or doing all the things concerning principle, will mean that there will never be an appeal, we are wrong. There will be appeals; they will come about by judicial review, in a piecemeal fashion and in a rather disorderly manner. It is much better that we get ahead of the game, that we set the rules, and that we say that people can appeal only on cause shown and only if they come under certain criteria. We must address the matter of imbalance, so that if somebody makes a complaint that is upheld by the commission, an appeal is brought in. Maureen Macmillan referred to that.

Anybody who has tried complaining against lawyers should try complaining against the medical and dental professions. The Medical and Dental Defence Union of Scotland steps in and says, "We're going to fight this all the way." That is why the commission must become the party that says, "We got it right, and whether Mr or Mrs Smith wishes to attend is a matter for them. That can be minuted in the proceedings, but we decided in their favour and we got it right. We will go to the Court of Session and say that they were dealt with badly and that we will fight their corner." That manifestly addresses the issue.

We have no alternative but, on a point of principle and on the basis of practicality, to introduce an appeal. I recognise that questions are raised about rights and access, but that transcends a variety of occupations, from artisans through to the professional classes. It would be manifestly unjust if we did not have a right of appeal. I believe that the caveats that have been added will ensure that it is not simply a procedure that will allow people to go first to the commission and then to the court. That is not what it is about. People will go to the commission, but it would be perverse for the Parliament to pass legislation that maintains something that is perverse and wrong, by not allowing an appeal or, even worse, by allowing cases simply to be dealt with piecemeal through judicial review. That is why the amendments must be agreed to.

Johann Lamont: Members will have recognised from the tenor of the debate that ministers have decided to support the amendments that were

lodged by Jackie Baillie and Jim Wallace, namely amendments 3, 3D, 3E, 3F, 4 and 4A. It is clear to us that we should support that position rather than the one behind Mr Davidson's amendment 38.

There has been some discussion, as we have recognised, about the way in which people have engaged with the debate from all sides and have sought to get solutions that people find acceptable. That applies both internally, across the Parliament, and externally, because stakeholders beyond the Parliament have an interest in the bill. However, the debate has not been helped by those who have chosen to substitute lambast for debate and who think that by battering people over the head they can somehow persuade them of the strength of their argument. Nevertheless, there have been those externally who have been willing to recognise the challenge that the Parliament faces. I urge John Swinney, who clearly has a record on the matter, based on his local experience, not to allow himself to be put in a position whereby that becomes the acid test of the bill, as others have sought to do. There is agreement on a huge number of things in the bill, and I do not accept that we stand or fall by our position on specific amendments on the right of appeal.

The key amendments in the group concern the type of appeal that there should be against commission decisions and touch on issues that have been of concern to many members. A particular concern has been whether the type of appeal that we have is sufficient to bring the bill within the competence of the Scottish Parliament by properly respecting the rights of practitioners under the European convention on human rights. Bill Aitken mentioned the opinion of Lord Lester QC, commissioned by the Law Society of Scotland, which has suggested that the existing provisions of the bill may not be compatible with convention rights. In reality, any bill could be challenged on those grounds. That would be tested largely through the courts, but we are absolutely clear that the bill—[*Interruption.*]

Jeremy Purvis: That must be Lord Lester on the phone. [*Laughter.*]

11:00

Johann Lamont: I apologise, Presiding Officer.

Any bill could be challenged on those grounds, but we are confident that we have advice that says that the bill is compatible with the ECHR. As a matter of course, we do not introduce legislation willy-nilly that has not been tested in that way, and we are confident of the advice that we have on the bill's competence. We take competence seriously, and I would like to explain briefly why we are confident that the provisions in the bill are ECHR

compatible, and to explain that we have examined all the suggestions on their merits and gone further than the ECHR demands if the case was well made.

The specific question is about whether the provisions of the bill relating to the determination by the commission of complaints against members of the legal profession provide those members with a convention-compatible remedy. Article 6 of the convention provides that, in the determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Since the decisions of the commission would, in some cases, amount to a determination of a practitioner's civil rights, article 6 applies. However, I ask members to note that article 6 does not require there to be a full appeal in the usual sense of the word. One of the principal aims of the Scottish ministers in promoting the bill was to provide people who had genuine complaints about the quality of legal services with a quick, efficient, consumer-friendly way of resolving those complaints, avoiding the expense and delays of a court-based system, and so that good decisions could be made that took the complaints seriously and sought to make a judgment on whether the complaints were legitimate.

There was a perception—I put it no higher than that—that the system that was operated by the professional bodies was obstructive, overtechnical and slow; I suspect that John Swinney would put it higher than that. However, we were not trying to write a charter for professional complainers. There are awkward clients just as there are inefficient lawyers. The challenge for us in preparing the bill was to get the balance right and to deliver the type of complaints-resolving machinery that I have described, while also protecting the legitimate interests of all parties.

When we introduced the bill, we did so on the basis that it was within the competence of the Parliament, as is the case with any bill. When the Law Society raised its concerns about human rights, we took them seriously, recognising that the Law Society is an organisation that looks beyond the narrow interests of its members to the wider constitutionality of legislation. Accordingly, to address those concerns, we went further than the human rights convention perhaps required and took steps to make it explicit in the bill that the commission would be an independent and impartial tribunal in human rights terms. We further distanced ministers from the commission, we provided for fixed-term appointments, we put dismissals in the hands of the chairing member and the Lord President of the Court of Session, Scotland's most senior judge, and we required any determination committee to be chaired by a legal

member of the commission. In fact, we went the second mile to address the Law Society's points about the constitution of the commission from an ECHR perspective. In our view, the commission is now clearly independent of Scottish ministers and impartial as between the parties to the dispute.

We have not stopped there. We have lodged amendments to require the commission to consult the Lord President on the rules of the commission. Furthermore, Executive amendment 26, which we have already discussed, requires the commission to take account of awards made by other courts when it comes to fix compensation levels. That allays a major concern of the legal profession that awards of the commission might get out of step with those in the courts. Of course, rules about the practice and procedures of the commission must themselves be compatible with the convention. The bill makes it mandatory that the rules must provide for when hearings are to be available in relation to complaints and whether they should be in public or in private, and there must be rules for the giving of reasons for decisions, where they are not already in the bill. The bill already contains the framework for the commission to make its rules in a way that is wholly compatible with the convention.

It is clear and necessary that we strike a balance with the legislation. David Davidson's amendments seek a full appeal on all matters of fact and law, but that is one step too far for us to go. If we agreed to the Law Society's continued demands for a full right of appeal to the ordinary courts, we would lose one of the most important features of the bill—the provision of quick, consumer-friendly resolution of disputes between lawyers and their clients. We would risk the whole process becoming submerged in long, drawn-out appeals on technical grounds, and there is no reason for us to do that. It is not legally necessary and it is not right on the merits of the issue.

However, we have examined the amendments that were lodged by Jackie Baillie and Jim Wallace, and we have decided to support them because they would preserve the essence of the current policy, not undermine it in the way that John Swinney fears. David Davidson's amendments would allow a full appeal on fact and law, whereas in Jackie Baillie and Jim Wallace's amendments the grounds are limited first to error in law; secondly to procedural impropriety if a hearing is held; thirdly to cases in which the commission has acted irrationally; and fourthly to cases in which the commission's decision was not supported by the facts found to be established by the commission—according to the classic House of Lords analysis of the formulation, that the facts found by the decision-making body are such that no person acting judiciously and properly instructed as to the relevant law could have come

to the decision under appeal. We recognise that that is not contrary to our policy, but supportive of it.

We are happy to support a restricted right of appeal to the Court of Session. The proposed provision responds, as far as we are able to do so, to the Law Society's campaign for an appeal mechanism but it does not go as far as to provide for a full appeal on fact and law because we need to preserve the commission's ability to work in the interests of consumers by moving quickly and without unnecessary delay. The restricted right of appeal will not affect the policy aims underlying the creation of the Scottish legal complaints commission. The small number of important appeals that might go to the Court of Session by this route will emphasise the commission's ultimate accountability to the courts for its decisions. Our decision to accept a restricted right of appeal to the Court of Session should reassure MSPs and others who have followed the bill closely that the commission will be a properly accountable body.

A welcome feature of the Parliament's consideration of the bill is the consensus that has been built on key issues. That is demonstrated by our decision to support amendments 3, 3D, 3E, 3F, 4 and 4A. No matter how those amendments might have been characterised, they will ensure that practitioners have a limited and very restricted right of external appeal while sustaining our ultimate policy aim for the commission. I assure members that the bill, as adjusted by those amendments, will provide an excellent system for resolving disputes that balances the interests of all concerned.

Mr Davidson: I remind the minister that I opened the debate on this group of amendments by saying that, if she made it clear that the Executive would accept the amendments in the name of Jackie Baillie, I would not press the amendments in my name. However, I want to comment generally on the debate, which has been one of the Parliament's better discussions on a crucial hinge in a piece of legislation.

When I lodged amendment 38, the bill included no mention of any kind of appeal. Jim Wallace then lodged a catch-all amendment—amendment 237—which he has said he will now not press. Collectively, members have come to the view that the amendments in the name of Jackie Baillie will preserve the aims of the bill while delivering a form of justice that the bill would have denied, as Kenny MacAskill rightly said, to one particular group of people. I note that similar appeal systems exist for other professions. We cannot deny lawyers a right to challenge decisions, but that right must be qualified and there must be a good reason for making a challenge.

I welcome the fact that John Swinney, who has been a good attender at the committee, has taken a passionate interest in these issues. The committee has welcomed the fact that he has come along to give his points of view on behalf of individuals and the cases in which they have been involved.

I remind members that the right of appeal will mean that the commission, not the complainer, will need to defend decisions in court. The appeal provision will not result in small people being exposed in a big court where they will have to fight their case; the appeal will be about the commission's decisions. On that basis, I will not press amendment 38.

Amendment 38, by agreement, withdrawn.

Amendment 2 moved—[Jackie Baillie]—and agreed to.

Section 13—Power to examine documents and demand explanations in connection with conduct or services complaints

The Deputy Presiding Officer: Group 11 is on the duty to comply with the requirement to provide information. Amendment 39, in the name of David Davidson, is grouped with amendments 40, 71 and 80.

Mr Davidson: Amendments 39, 40, 71 and 80 seek to provide clarity on the new duty by removing any liability that might result under the confidentiality rules. The amendments are required as a result of the poor drafting of the bill. If the amendments are not accepted, an order will be required to remedy the matter if the requirement to provide documents flies in the face of the rules that the professional bodies have on confidentiality. All the amendments in the group are about that issue.

I move amendment 39.

Johann Lamont: The effect of amendments 39, 40, 71 and 80 would be radically to change the carefully structured provisions of the bill in terms of which the commission and the professional bodies can obtain documents and evidence.

At present, the bill provides that such bodies can require production of documents and other evidence. If the person who is put under such a requirement resists on the grounds of confidentiality or legal privilege, it will be necessary for the commission or professional bodies to go to court to seek an order. A court will not grant an order that breaches legal privilege and, in the public interest, it will try where possible to preserve other obligations of confidentiality.

The amendments would mean that all persons who were served with a requirement to provide documents would be put under an immediate

statutory duty to comply with the requirement. That would result in a complete override of legal privilege and confidentiality. However, legal privilege is an automatic right that not even the courts can overrule without explicit authority.

At stage 2, we amended schedule 3 to the bill to require the commission to make provision in its rules to prevent investigation of a complaint unless the complainer has waived any relevant rights of confidentiality. Accordingly, the whole framework of legal privilege is protected and respected in the bill. Even the complainer's rights are preserved unless he expressly waives them.

The bill should enable the commission and professional bodies to obtain most of the documents that they need without making inroads into rights of confidentiality or legal professional privilege, which are considered by the Executive to be of fundamental importance. Both the commission and the professional bodies will need to go to court if persons do not hand over documents or evidence that is required from them. In such cases, the legal machinery in schedule 2, which is based on provisions in the Solicitors (Scotland) Act 1980, would apply. In other words, the bill preserves the status quo on legal privilege and it adopts a procedure for going to court that is well tried and which works.

The amendments would radically alter the status quo in the wrong direction and against the public interest. On that basis, and in the interest of protecting client confidentiality, I oppose all the amendments in the group.

Mr Davidson: I am not totally convinced that the minister has responded fully to the issues that I raised. Did she say that, in some situations, there will be ways to get round the confidentiality rules that apply to legal professionals without altering the status quo? I am not convinced by her argument. It is possible that I misheard what she said, but I do not think she said that it will be all right to change the rules on confidentiality.

Unless the minister gives me the impression that I have missed something, I am afraid that I will be forced to press the amendment.

The Deputy Presiding Officer (Murray Tosh): The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)

Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robison, Shona (Dundee East) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
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)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (Sol)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 71, Abstentions 0.

Amendment 39 disagreed to.

Section 13B—Documents and information from third parties

Amendment 40 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 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)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)

McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 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)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
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 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
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 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 69, Abstentions 0.

Amendment 40 disagreed to.

After section 14

Amendment 3 moved—[Jackie Baillie].

Amendment 3A not moved.

Amendment 3D moved—[Mr Jim Wallace]—and agreed to.

Amendments 3B and 3C not moved.

11:15

Amendments 3E and 3F moved—[Mr Jim Wallace]—and agreed to.

Amendment 3, as amended, agreed to.

Amendment 4 moved—[Jackie Baillie].

Amendment 4A moved—[Mr Jim Wallace]—and agreed to.

Amendment 4, as amended, agreed to.

Amendment 237 not moved.

Section 15—Handling by relevant professional organisations of conduct complaints: investigation by Commission

The Deputy Presiding Officer: The amendments in group 12 relate to the handling of complaints: notice and time for making a complaint. Amendment 41, in the name of David Davidson, is grouped with amendments 42 to 45 and 47.

Mr Davidson: Amendment 41 seeks to provide clarity on the compliance of a practitioner. Amendment 42 allows the professional organisations to set the date for the clock to run; when they issue the document, the time starts to run. That should simplify things. Amendment 43 is consequential on amendment 41, and amendment 44 is consequential on amendment 42. Amendments 45 and 47 are consequential on amendments 41 and 43. The purpose of the amendments is to keep the practitioner informed.

I move amendment 41.

Johann Lamont: I see no reason why the commission and professional organisations should not be required to send copies of notices and reports relating to the handling of complaints to the individual practitioner concerned. I am therefore content to accept amendments 41, 43, 45 and 47.

Amendments 42 and 44 would require the commission not to investigate a handling complaint whenever it was made more than six months from the date on which the professional organisation sent its determination to the complainer. We believe that that would be too rigid. It does not take account of the technical reasons for the existing order-making power in the bill. The reason for taking the power is that different dates are required for different purposes. For example, in relation to unsatisfactory professional conduct, it would be the date on which the Law Society of Scotland made a determination; but in relation to professional misconduct, it would be the date on which the society decided to prosecute before the tribunal.

The appropriate dates in relation to conduct complaints that are dealt with by each of the other professional bodies will also be covered in the order. I therefore ask David Davidson not to move amendments 42 and 44.

Mr Davidson: I thank the minister for accepting amendments 41, 43, 45 and 47, and I understand her concerns over amendments 42 and 44.

Amendment 41 agreed to.

Amendment 42 not moved.

Amendment 43 moved—[Mr David Davidson]—and agreed to.

Amendment 44 not moved.

Amendment 45 moved—[Mr David Davidson]—and agreed to.

Section 16—Investigation under section 15: final report and recommendations

The Deputy Presiding Officer: Group 13 is on handling complaints: recommendations and duty to comply. Amendment 46, in the name of David Davidson, is grouped with amendments 48 to 50 and 52.

Mr Davidson: Amendment 46 relates to the fact that the commission should deal with merely service complaints.

As the bill stands, it places no obligation on the professional organisations, which is neither correct nor appropriate. Amendment 48 covers that.

I will not press amendments 49 and 52, because the minister's amendment 50 provides for the same thing.

I move amendment 46.

Johann Lamont: Amendment 46 would remove the commission's power to recommend that the professional body investigate further or reconsider a conduct complaint. The Law Society of Scotland believes that the power will trespass too far into the remit of the professional bodies. However, the power has the potential to be important in cases in which the complainer legitimately feels that his or her version of events has not been taken seriously or properly investigated. I will not support amendment 46, and I invite David Davidson to withdraw it.

In other ways, once again consensus seems to be breaking out. David Davidson managed to lodge his amendments 48, 49 and 52 before identical ones from the Executive were lodged. We support those amendments, which should ensure effective compliance with commission directions by the professional bodies. The purpose of amendments 49 and 52 and Executive amendment 50 is to achieve that while avoiding an immediate resort to the concept of contempt of court. The amendments will permit the commission to petition the Court of Session when there is non-compliance with a direction. The court will then be able to order the professional organisation to comply with the recommendation contained in the direction. Of course, breach of the Court of Session's order could itself trigger contempt of court, but that is the case with most court orders of this type, so there is no need to specify as much in the bill. However, I am confident that professional bodies will obey any orders of the court. Amendments 49, 52 and 50 should achieve compliance with commission directions by less coercive means.

Mr Davidson: It is a matter of principle, with regard to the history and development of professions in the United Kingdom and in other parts of the world, that professional bodies deal with certain matters relating to their members. The commission is not the appropriate place to deal with complaints other than service complaints. On matters of discipline, the professions are famously firm on their members. Amendment 46 would ensure clarity. I do not want a brand new organisation to be put into a situation in which it does not have the experience to deliver what I think the minister wants it to deliver. I will press amendment 46.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (Sol)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 16, Against 85, Abstentions 0.

Amendment 46 disagreed to.

Amendment 47 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 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)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)

Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (Sol)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

The Deputy Presiding Officer: The result of the division is: For 81, Against 20, Abstentions 0.

Amendment 47 agreed to.

Amendment 48 moved—[Mr David Davidson].

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 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)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (Sol)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

The Deputy Presiding Officer: The result of the division is: For 79, Against 22, Abstentions 0.

Amendment 48 agreed to.

Section 16A—Failure to comply with recommendation

Amendment 49 moved—[Nora Radcliffe]—and agreed to.

Amendment 50 moved—[Johann Lamont]—and agreed to.

Amendment 52 moved—[Mr David Davidson]—and agreed to.

Section 17—Abolition of Scottish legal services ombudsman

The Deputy Presiding Officer: Group 14 is on the abolition of the Scottish legal services ombudsman. Amendment 53, in the name of the minister, is grouped with amendments 54, 55, 226 and 227.

Johann Lamont: Amendments 53 to 55 are technical amendments to section 17, which provides for the abolition of the Scottish legal services ombudsman. Under the bill, the bulk of the ombudsman's current functions will transfer to the Scottish legal complaints commission, but for certain of the ombudsman's functions, relating to the ombudsman's powers to investigate complaints in reserved areas, that will not be the case, because regulation of the legal profession in certain sectors is dealt with in acts of the United Kingdom Parliament, the subject matter of which is reserved. Examples are the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. It is not within the legislative competence of the bill to transfer the ombudsman's functions in those areas to the new commission. That will be achieved by Scottish clauses in the UK Legal Services Bill, which was recently introduced at Westminster.

Amendment 54 provides that, on commencement of section 17, all the ombudsman's functions cease to be exercisable, other than those functions in the reserved areas that are specified in section 47(2). It also removes the current section 17(3), which enables ministers to modify functions of the ombudsman by order in preparation for abolition. We no longer think that that is necessary. The ombudsman's functions will simply cease to be exercisable under section 17 or the relevant provisions of the UK Legal Services Bill.

Amendment 53 provides that the ombudsman is not to be abolished until she no longer has any exercisable functions. Amendment 55 deletes sections 17(4) and 17(5), which enable ministers to make incidental, consequential, transitional and saving provisions in relation to modification of the ombudsman's functions and abolition of the ombudsman. Again, we no longer think that those powers are needed. The ombudsman's functions will simply cease to be exercisable on commencement of the relevant provisions.

Amendment 226 removes the requirement for the order abolishing the office of the ombudsman to be subject to any parliamentary procedure. As

amendment 53 specifies that the office will be abolished only once commencement of the relevant provisions of this bill and the UK bill have stripped it of all its functions, abolition will be entirely consequential on the effects of primary legislation and should not require to be subject to any parliamentary procedure. The order-making powers conferred by the current text of sections 17(1), 17(3) and 17(4) are included in the list of powers subject to the affirmative procedure. Amendment 227 removes them from that list. The existing order-making powers in sections 17(3) and 17(4) are being removed by amendments 54 and 55, and, as I have already explained, it is no longer appropriate for the power contained in section 17(1) to be subject to any parliamentary procedure.

I move amendment 53.

Amendment 53 agreed to.

Amendments 54 and 55 moved—[Johann Lamont]—and agreed to.

Section 18—Annual general levy

11:30

The Deputy Presiding Officer: Group 15 is on levies and the charging of interest on, and the recovery of, sums due. Amendment 56, in the name of Stewart Maxwell, is grouped with amendments 57 to 63, 196 and 197. I draw members' attention to the fact that there are three pre-emptions in the group.

Mr Stewart Maxwell (West of Scotland) (SNP): Amendments 56 and 61 are fairly straightforward. Their purpose is to address an inconsistency in the bill dealing with the annual general levy and the complaints levy. Sections 18(3)(b) and 18(4)(b) refer to

"interest due on any such sum at such rate (if any) as may be specified".

In other words, there is a possibility that interest may be charged, but it may not be charged if an annual general levy is late in being paid. However, in section 19(3)(b), which deals with the complaints levy, the words "if any" do not appear, so if a complaints levy is late in being paid, interest would be due. The inconsistency between the two sections does not make sense. I hope that the Executive will support amendments 56 and 61, to remove "(if any)" from sections 18(3)(b) and 18(4)(b), so that there is consistency between the two levies.

I thank the minister for amendments 196 and 197, which amend schedule 3 and are effectively consequential on amendments 56 and 61. The Scottish National Party will support amendments 196 and 197. However, on the pre-empted

amendments, we prefer the minister's amendments, which remove the word "civil".

I move amendment 56.

Mr Davidson: I note Stewart Maxwell's comments. In a consensual manner, we are all trying to make this a better bill. With regard to amendments 57, 59 and 62, the minister has delivered what I was seeking to deliver. I thank her for doing so and I welcome her move. On that basis, I will not move amendments 57, 59 and 62.

Johann Lamont: I support amendments 56 and 61, in the name of Stewart Maxwell. On reflection, we agree that, in practice, ministers will always want to specify a rate of interest that applies both to the annual general levy and the complaints levy in the event of late payment or non-payment. The use of wording that permits ministers to decide not to set a rate is unnecessary. Amendments 196 and 197 remove two further uses of "(if any)" in schedule 3. In the situations to which they refer, a rate of interest will always be specified, so those references are redundant.

Amendments 57 to 60, 62 and 63 are all intended to achieve the same purpose. On reflection, it is not necessary to refer to a debt as a civil debt, therefore the amendments seek to remove references to civil debts where they occur. However, amendments 58, 60 and 63 still specify that unpaid sums due to the commission by the professional organisations, such as annual general levies, complaints levies and interest, are recoverable as debts. That usefully specifies that a court action to recover any of those sums will be a debt action.

I welcome David Davidson's indication that he does not intend to move his amendments 57, 59 and 62.

Amendment 56 agreed to.

Amendment 57 not moved.

Amendment 58 moved—[Johann Lamont]—and agreed to.

Amendment 59 not moved.

Amendment 60 moved—[Johann Lamont]—and agreed to.

Amendment 61 moved—[Stewart Maxwell]—and agreed to.

Section 19—Complaints levy

Amendment 62 not moved.

Amendment 63 moved—[Johann Lamont]—and agreed to.

Section 20—Amount of levies and consultation

The Deputy Presiding Officer: Group 16 is on

consultation on the commission's budget. Amendment 64, in the name of David Davidson, is grouped with amendment 65.

Mr Davidson: Amendment 64 simply aims to make the bill consistent with the year end of the Law Society of Scotland, which would save a lot of work and additional burdens. Since the commission will be a new organisation, I am sure that that change could be accepted by the minister.

I move amendment 64.

Jeremy Purvis: I support amendment 65, which concerns a matter on which I focused at stage 2 and which has been a principal area of concern to some solicitors, who perceive a lack of transparency in setting the commission's budget and the levies. The two are inextricably linked, of course.

The commission's financial accountability and the consultation required to determine its budget were improved at stage 2 and are now being further improved at stage 3. At stage 2, the Executive accepted the principle of my amendment 289, on consultation. That principle is now endorsed and developed by amendment 65 in a better form than my amendment 289. It not only improves considerably on my efforts at stage 2, but it goes a considerable way to ensuring that solicitors have a commission that can set its budget—and the levies as part of that budget—openly, transparently and accountably.

Johann Lamont: I reiterate the Executive's commitment to ensuring that the commission's annual budgetary consultation is transparent. However, the timescale in amendment 64, in the name of David Davidson, is unnecessary for the annual consultation that the bill requires on the commission's proposed work plan and budget for the following financial year. The period from January to April is sufficient time for the commission to consult on its proposed budget and lay its finalised budget before the Parliament. For that reason, I do not support amendment 64 and I ask David Davidson to withdraw it.

As has already been indicated, amendment 65 builds on an amendment that was lodged by Jeremy Purvis at stage 2. Members of the Justice 2 Committee will recall that my predecessor undertook to lodge an Executive amendment along similar lines at stage 3. Amendment 65 requires the commission to publish by 31 March each year the responses that it receives to its annual consultation and proposed budget. However, in line with the Executive's current practice, the duty to publish will not apply if the consultee requests confidentiality.

Mr Davidson: I am not sure that the minister appreciates that she is asking the Law Society to

be involved in an audit and accountability process when it is only halfway through its financial year. As the bill is about involving the legal professionals who will pay the running costs of the commission once it is set up, it would be helpful if the minister acted consensually and gave way a little bit on the issue.

Jeremy Purvis: Given that the requirement is for the commission to consult the Law Society, not that the two bodies' budgets must be consistent, I am curious as to why the commission's consultation should be consistent with the Law Society's financial year. Consultation should place no additional burden on the Law Society.

Mr Davidson: I am told that it will place a burden on the Law Society's staffing levels, which will further increase the cost. As I said, the commission will be funded by practising lawyers who pay their dues. Amendment 64 is a small change to ask for at this time.

The Deputy Presiding Officer: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)

Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)

Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 73, Abstentions 0.

Amendment 64 disagreed to.

Amendment 65 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: I suspend consideration of amendments.

Question Time

SCOTTISH EXECUTIVE

General Questions

11:40

Wanlockhead Museum of Lead Mining

1. Alasdair Morgan (South of Scotland) (SNP): To ask the Scottish Executive what the impact on tourism and the local economy will be if the Wanlockhead Museum of Lead Mining does not open for its annual season at Easter. (S2O-11414)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): The Wanlockhead Museum of Lead Mining houses an important collection of mining artefacts. An estimated 15,000 visitors come to the museum each year and it is a major employer in the area, so its future is clearly important for the local tourism industry and for the economy of the area more generally. Because of that importance, we are working urgently with the Scottish Museums Council to examine the museum's financial position and to try to find ways of helping to keep it open.

Alasdair Morgan: Does not the minister agree that it is a farce that, although the Executive is prepared to offer Wanlockhead museum cash to employ a consultant to prepare an application for acceptance under the Scottish Museums Council's significance scheme and is prepared to offer it cash to advertise for a manager who might be asked to manage a museum, it is not prepared to give it assistance to open at Easter?

Patricia Ferguson: A lot more is happening than Mr Morgan has outlined. One of the things that we must do is ascertain why the Wanlockhead Museum Trust is in its current financial situation despite the fact that it already has considerable support from the public sector, not least from Dumfries and Galloway Council, which has promised funding into the next year, too. We must also gauge what other financial support or support in kind might be available to the museum from other organisations and we want to discuss with the museum the way forward, which might include commissioning a business plan.

However, the fact of the matter is that the museum will have to be accredited to be able to apply to the significance scheme. Before the museum's trustees made their intention to close known, we wrote to the museum indicating that we would give it any assistance that it needed to apply to the scheme. That is a facility that we offer

to many other museums too, but it is important that those discussions continue.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I thank the minister for meeting me on several occasions to discuss this truly worrying matter. Following Alasdair Morgan's members' business debate on Wanlockhead Museum Trust and Museum of Lead Mining in the summer, the minister hinted strongly to him and me that the significance scheme would be the most likely provider of the certainty and sustainability that the museum needs. Does she agree that achieving recognition under the scheme is likely to take a worryingly lengthy time? Will she assure us that she will not oversee the museum's closure because of a short-term funding gap between now and its hoped-for acceptance to the scheme? Will she advise us on how an application to the scheme can be furthered if the museum is faced with closure, given that it will lose the staff who would make the application?

Patricia Ferguson: The museum has already lost its manager and the Executive has offered funding to assist the museum to advertise for a new manager to ensure that everything about which Alex Fergusson asks is in place, so he can see our commitment to the museum. I cannot pre-empt the decision on whether it would receive funding from the significance scheme, but it must be in the best possible position to apply for that funding. Obviously, if it is closed, it will not be able to do that. However, I do not think that there is any reason why the museum should close. It has already received significant funding for next year from Dumfries and Galloway Council and, given the level at which it has operated in the past, I am sure that that funding will be sufficient to allow it to continue to operate until such time as its significance is judged and rewarded, if that is the case.

Karen Gillon (Clydesdale) (Lab): The minister will be aware that the museum also has a significant impact in the neighbouring villages of Leadhills and Crawfordjohn in my constituency. Will she indicate what lessons can be learned from the situation about the support that the Scottish Museums Council gives to small museums such as Wanlockhead and how it can be developed in the coming months to ensure that such museums do not find themselves in the same position as Wanlockhead year on year?

Patricia Ferguson: It is fair to recognise the significance of the museum to the south of Scotland more generally. However, I must say that it was disappointing that, at the time of the announcement of the closure by the trustees in October, neither the Executive nor the Scottish Museums Council was aware that that was their

intention, nor were we told that such a measure was being considered.

The opportunity for support from the Scottish Museums Council exists for museums such as Wanlockhead and other smaller museums around the country, but it must be a two-way process. Museums must engage with the council if they are to access the support that so many of them need.

Blood Donors

2. Margaret Smith (Edinburgh West) (LD): To ask the Scottish Executive what action is planned to address the decline in the number of blood donors. (S2O-11446)

The Minister for Health and Community Care (Mr Andy Kerr): Last week, the Scottish National Blood Transfusion Service launched a campaign to highlight to the public that blood stocks are low and that new donors are urgently needed.

The blood transfusion service aims through public relations work and campaigns to reach a wide number of people across Scotland who are potential donors.

Margaret Smith: I pay tribute to the great work done by the blood transfusion service staff and Scotland's donors. Will the minister agree to look again at some of the restrictions on those who can donate blood? I am not only thinking about the restrictions on gay men as a group rather than as individuals, but, having been restricted for many years after having a blood transfusion when I gave birth, I know that a number of other restrictions are also in place. Will he agree to reconsider all the restrictions to see whether any could be removed or amended in a bid to increase much-needed donations?

Mr Kerr: The Scottish National Blood Transfusion Service, along with the other United Kingdom blood services, bases its donation selection criteria on the best scientific evidence available. That is how the decisions are taken, and we have a standing advisory committee for the care and selection of blood donors.

Unfortunately, the number of blood donors who are excluded from the process has increased for many, but valuable, reasons, including variant CJD, the need for higher protection for those with potential anaemia, and changes in lifestyle and habits, for instance where people go on their foreign holidays. Unfortunately, a growing number of people are excluded, but that is for good reasons to protect the blood supply.

We want always to improve the process and widen the net. However, we must recognise that, although 20 per cent of Scots describe themselves as blood donors, only 5 per cent give blood. We need to address those who have not bothered or

who have found it difficult to access the service in recent times. We need to convert the 15 per cent who say that they do but do not into those who do.

Dennis Canavan (Falkirk West) (Ind): Will the minister look into the possibility of the blood transfusion service visiting the Parliament so that members and others employed in the building can donate blood at a suitable location within the building instead of having to go outside to a trailer in the car park at Holyrood park? Does not he agree that such an arrangement might also help to publicise the good work that the blood transfusion service does?

Mr Kerr: I must be honest—I am not sure that I agree with the member. We ask everyone else in Scotland to cross the car park at work or in the town centre to get to the donation van, and I see no reason why we should do it differently here. However, he is right to recognise the valuable work done by the blood donation service, and we want to ensure that we attract more people to the service.

Let us understand this: only 5 per cent of Scots are donating blood. We need 1,000 donations per day, and we need to increase donation rates. I remind members that every unit of blood given works for at least three patients in our health service. The blood is separated into three products, which in turn save potentially three lives. We all have a responsibility as individuals. Indeed, the First Minister and I are signed up for blood donor 24 and are regular blood donors, and I hope that other members will consider doing likewise.

Central Heating Programme

3. Margaret Jamieson (Kilmarnock and Loudoun) (Lab): To ask the Scottish Executive what consideration it has given to introducing a priority medical list for the central heating programme. (S2O-11471)

The Deputy Minister for Communities (Des McNulty): The central heating programme currently gives priority to applicants who are over 75, disabled or living alone. Given that the majority of those people are likely to have a medical condition or some degree of social vulnerability, it is difficult to see how a medical priority system could operate without undue bureaucracy and inflexibility.

Margaret Jamieson: I am somewhat disappointed by the minister's response. Like many members, I have a constituent who, from 5 October, required a new central heating system. I make no apologies for deliberately pestering Scottish Gas to ensure that Mrs Charnock of Kilmaurs received appropriate heating and the facility for bathing that would assist her current medical condition. I am pleased to say that

Scottish Gas rose to the challenge, and a new system was installed this week. I urge the minister to reconsider his decision so that older people are accommodated and their health and well-being are not further endangered.

Des McNulty: Almost by definition, all people in the queue are vulnerable to a greater or lesser degree, and this is not just a medical issue. However, let me assure Margaret Jamieson that officials are currently in discussion with Scottish Gas representatives to look at how the existing arrangements for dealing with the most urgent cases can be improved.

Brian Adam (Aberdeen North) (SNP): The minister might be aware that there is some concern about how the transition from the Eaga Partnership to Scottish Gas is taking place. Some of the service providers suggest to me that there is an imbalance in terms of not just medical need but geography. Will he assure me that he will produce the data showing where the current service provision is happening? As I understand it, it might not be happening uniformly throughout Scotland. Will he review the criteria on which the service is made available, so that it is available to all who need it throughout Scotland and not just in some parts?

Des McNulty: The intention is certainly to ensure that all parts of Scotland have access to the service. Scottish Gas has been signing up installers at a steady rate, and we hope to have full coverage across Scotland. We are making significant progress with that, but if Brian Adam wants to draw to my attention any particular area where he thinks that there is a shortcoming, I will be happy to respond to him.

Phil Gallie (South of Scotland) (Con): Like Margaret Jamieson, I was slightly disappointed by the minister's opening response. May I point him to the fact that individuals who are under 75 but who still qualify for the scheme can be in great need? I am aware of one gentleman who has had a heart attack and suffers from Alzheimer's. He lives alone, and his heating system has collapsed, so he has had no heating or—perhaps more importantly—hot water since October. I suggest that there should be some means by which priority can be given in such a case.

Des McNulty: As I said to Margaret Jamieson, we are looking at how we can establish a mechanism for dealing with the most urgent cases. I was simply making the point that, given that so many of the people who apply have medical conditions or some associated vulnerability, a medical priority system would create a potentially huge bureaucracy and inflexibility that might defeat the purpose that Phil Gallie is trying to point us towards. It is difficult to establish an effective priority mechanism based

purely on medical grounds. What we need to do is recognise that the vast majority of people who apply have a degree of priority, identify the most urgent cases and then tackle them more quickly.

Mr Alasdair Morrison (Western Isles) (Lab): I again put on record my constituents' appreciation of the central heating programme, a scheme that has transformed the lives and living conditions of senior citizens in my constituency and right across Scotland.

Will the minister give us an update on the transition of managing agents from Eaga to Scottish Gas?

Des McNulty: We have made some significant progress. The initial waiting list of some 10,000 has been whittled down to about 4,500 people who are eligible. Scottish Gas is giving us clear indications that it expects to be able to install 6,000 central heating systems by March 2007, which is in line with the target given. Ministers will certainly do everything that they can following the transition, which has now happened, to ensure that the new contractor is up to speed in getting the systems in place as effectively as possible.

Euan Robson (Roxburgh and Berwickshire) (LD): Will the minister consider extending eligibility to households with voluntary carers in which those who are cared for are not currently covered by the criteria?

Des McNulty: There are proposals in hand to extend eligibility to people who receive pension credit. If Mr Robson writes to me with details of his particular concern, I will be quite happy to respond to him in writing.

Free Personal Care (Refunds)

4. David McLetchie (Edinburgh Pentlands) (Con): To ask the Scottish Executive whether it has estimated the total cost to local authorities of refunding charges for assisting with meal preparation that were incorrectly made by them following the introduction of free personal care. (S2O-11432)

The Deputy Minister for Health and Community Care (Lewis Macdonald): No. It is for local authorities to estimate and meet their own spending commitments from the record resources that have been made available to them in recent years.

David McLetchie: Is the minister aware that the cost of making refunds has been estimated at as much as £20 million? Moreover, will he confirm that, if the consensus of legal opinion that councils have sought concludes that such charges have been wrongly made as a result of the Executive's confusing, contradictory and downright erroneous guidance to councils, the Scottish Executive will

fund such repayments through a supplementary allocation to councils to ensure that the current provision of personal care services is not adversely affected?

Lewis Macdonald: Mr McLetchie must have been overenthused by the consensus during this morning's stage 3 debate on the Legal Profession and Legal Aid (Scotland) Bill. Judgments on the application of laws are not usually arrived at through achieving a consensus of legal opinion, far less achieving a consensus among those who have been commissioned by local authorities—or, indeed, by anyone else—to provide such an opinion. In the position that he has described, Mr McLetchie fails to recognise that in on-going work that the Executive has commissioned, we are working closely with the Convention of Scottish Local Authorities to establish the degree of implementation of the service and the degree of consensus in its delivery. That is the key issue not only for us but for those who receive the service.

Moreover, as Mr McLetchie will be aware, additional resources were made available yesterday to local authorities. Those resources come with a number of conditions, including the requirement to ensure a consistently high standard of delivery of free personal care services throughout Scotland.

Pre-budget Report

5. Lord James Douglas-Hamilton (Lothians) (Con): To ask the Scottish Executive what the impact of the Chancellor of the Exchequer's pre-budget report will be on Scotland's essential services, particularly in respect of education. (S2O-11430)

The Deputy Minister for Education and Young People (Robert Brown): As education and opportunity for young people are central to Scotland's future, the Scottish Executive has invested substantially and purposefully in renovating the school infrastructure; in recognising, rewarding and recruiting additional teachers and other educational staff; and in refocusing the work of our schools, not least through support for educational leadership, initial and continuing teacher training and curriculum reform. We also recognise the need for schools to work in partnership with other services to support young people.

Scottish ministers will decide in due course how to allocate the budget consequentials, which amount to £16 million in the current spending round and £268 million in the next spending review.

Lord James Douglas-Hamilton: I am astonished that, in his response, the minister did not give a stronger commitment to education. Is he

aware that the former Minister for Education and Young People stated very clearly that he did not know how many teachers in mainstream schools possessed qualifications at any level in either special educational needs or specific learning difficulties and that later, under pressure, he produced figures that equated to only 1 per cent or so of teachers? In view of the huge sums that the Chancellor of the Exchequer has allocated to education in England, will the minister give top priority to making it certain that far more teachers are qualified in additional support needs education and specific learning difficulties? The present numbers simply do not meet the nation's needs.

Robert Brown: The Scottish Executive takes a more holistic view of those matters than the member seems to suggest. Given that health services impact on people's ability to learn and education services impact on health matters, such an approach is only proper.

On the specific issue of special educational needs, Lord James Douglas-Hamilton will be aware that the Education (Additional Support for Learning) (Scotland) Act 2004 came into force two years ago. Considerable additional resources have been put into supporting the act and considerable efforts have been made throughout the country in implementing its provisions, involving, among other things, the production of progress reports by Her Majesty's Inspectorate of Education. One of the Scottish Executive's central priorities is to ensure that the act's framework works, that quality is pushed up throughout Scotland and that children who have additional support needs have those needs met. However, I repeat that decisions on the precise reallocation of the spending round—which, rightly, comes to Scotland as a block—will be made in due course.

First Minister's Question Time

12:00

Cabinet (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-2614)

The First Minister (Mr Jack McConnell): The Cabinet will discuss issues of importance to Scotland.

Nicola Sturgeon: If yesterday's local government settlement was as generous as the Minister for Finance and Public Service Reform said it was, can the First Minister rule out yet another round of council tax rises next year?

The First Minister: Given the excessive rises in nationalist councils over the past two years, that would be a very rash promise indeed. Ms Sturgeon will have more control over those councils than I will. Given the nationalists' promise to make a serious cut in the amount of resources available to local government in Scotland, until we know the outcome of the election on 3 May it would be extremely rash to make such a promise because if the Scottish National Party were to win, council tax would certainly have to rise.

Nicola Sturgeon: I am very proud of the SNP councils, which have some of the lowest council tax levels in the whole of Scotland.

Has not the First Minister just confirmed that next year people in Scotland will face their 10th consecutive inflation-busting council tax hike under Labour? I remind the First Minister that there has already been a 60 per cent increase in council tax since 1997—that is four times the rate of inflation in the same period. I also remind him that it is pensioners and low-income families who are bearing the brunt of those increases. If he cannot rule out 10 inflation-busting increases in a row from Labour, will he tell us exactly what he thinks next year's increase should be? Just for once, will he not duck the question?

The First Minister: Yesterday, the Minister for Finance and Public Service Reform made it perfectly clear that next year not only is there absolutely no reason for any council in Scotland to impose a council tax increase that is above the rate of inflation, there is no reason for any council to impose a council tax increase that is anywhere near the rate of inflation.

I return to my previous point. If we are to have a debate, it is not good enough for the SNP to distort the facts on our record on council tax as it seeks to distort the facts on tax, Government expenditure

and so many other matters. The use of figures that include the final year of the Tories' council tax rises simply provides an untrue reflection of council tax over the past 10 years.

The truth is that every year since devolution in 1999, council tax has gone up by less in Scotland than it has in the rest of the United Kingdom—and by less than it went up in every year of the final few years of the Conservative Government. Last year, all three SNP councils in Scotland had council tax increases that were above the national average, and in the previous year the two SNP councils in Scotland had the highest council tax increases in Scotland. That is a record that voters in Scotland should judge. When the SNP makes false promises about freezing the council tax or about cutting £1 billion out of council services to fund its local income tax, voters should see that for what it is—the SNP saying anything to try to win votes.

Nicola Sturgeon: I remind the First Minister that between 1998-99, when Labour was in power, and next year, there will have been 10 consecutive council tax rises under Labour. Last year, the First Minister said that the rises would not be more than 2.5 per cent. He was wrong, of course. Yesterday, Tom McCabe mentioned a figure of 3.2 per cent. The reality is that even the projections are going up under Labour.

Councils are rightly being asked to make substantial efficiency savings next year, but is the First Minister aware that that money is being chalked straight off their budgets? I refer the First Minister to a report that the Parliament's Finance Committee, which is convened by Labour's Wendy Alexander, published earlier this week. The report states that the Executive should allow councils to reinvest their efficiency savings. Is the First Minister aware that if he followed Ms Alexander's advice, council tax could be frozen next year? Would that not be putting council tax payers first?

The First Minister: I have two points on that. First, the amount of money to which Ms Sturgeon refers is exceeded by the amount that the Minister for Finance and Public Service Reform announced yesterday for local government services next year. The coalition partnership that forms the Executive is investing far more substantial amounts of money in local services than even the nationalists called for in that distorted question from Ms Sturgeon.

Secondly, the reality is that, rather than the cuts that would come under the Scottish National Party, local services in Scotland are being expanded, more money is available for them and council tax increases next year can easily be well below the rate of inflation. They will be in Labour authorities and I hope that they will be in Liberal Democrat authorities but, given the record of the past two

years, it is unlikely that they will be in nationalist authorities. The challenge to the SNP is to keep its council tax rises down before it starts talking about cutting other people's services.

Nicola Sturgeon: The SNP is absolutely clear that we will freeze council tax, whereas under Labour it will go up again. Is it not the case that Labour takes the money out of councils before it puts it back in? If the First Minister is not prepared to follow Ms Alexander's advice on the economy, why should the rest of us listen to anything she has to say? Is it not the case that Labour simply cannot be trusted on council tax and that council tax payers are today paying on average £421 more per year under Labour than they were before? Is that not just one of the many reasons why more and more people want to see the back of the council tax and the back of Labour and want a new SNP Government?

The First Minister: The SNP can run from the truth, but it cannot hide from it. The truth is that the false promise about freezing council tax, which has been made up simply to try to win votes, flies in the face of the reality of SNP councils in Scotland. Two years ago, SNP councils had the highest increases in Scotland and, this year, every one of them had increases that were above the national average. It is not surprising that, this week, the SNP seeks to distort the position on council tax: it cannot make up its mind on national taxation either. In the past three weeks, we have heard promises from Mr Mather, the man of many figures, that taxes would come down and promises from Angus Robertson MP, who leads the SNP's campaign from London, that taxes under the SNP would go up. Yesterday, we heard a miraculous promise from Mr Salmond, a man who will say anything to try to win votes, that no tax would ever go up under the SNP in Scotland. That is absolute nonsense. The truth is that the SNP has put up council tax more than other parties have done. The reality is that we are delivering improvements in local services and in the council tax and we will ensure that we look after the Scottish budget, too.

Prime Minister (Meetings)

2. Miss Annabel Goldie (West of Scotland) (Con): To ask the First Minister when he will next meet the Prime Minister and what issues they will discuss. (S2F-2615)

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

Miss Goldie: Five weeks ago today, the Burt review of local government finance, which was commissioned by the Executive, published its plans for an annual tax on home values. The First Minister's spokesman indicated that Labour would not support the rate but has not ruled out the

principle. The Minister for Finance and Public Service Reform indicated that the proposal “remains under active consideration”. The First Minister, true to form, said that he had made his position clear, even though he had not. Will he now make his position clear? Regardless of the rate, does the First Minister reject the principle—yes or no?

The First Minister: It is entirely proper to take the right and balanced view of the issue. The work that was put into the Burt commission’s report needs to be read, analysed and considered seriously by ministers. I am sure that, as a result, it will form part of the debate at next year’s Scottish elections.

I believe that the commission’s principal conclusion would be unacceptable to Scotland. I said so on the day of publication and I say so again today. That does not mean, however, that the considerable analysis and consideration that the commission put into its work on local government finance should be either dismissed out of hand or accepted without proper consideration. We will do that in proper time.

Miss Goldie: If that was clarity, it was straight out of the Bute House bubble handbook—or perhaps that should be the Bute House babble handbook, as it was clear as mud. I think that we have it on record that the First Minister is not ruling out a Burt-style home value tax. If he is not ruling it out, he is ruling it in. The only question now is what rate the Executive has in mind. Is it the same 0.6 per cent rate that Labour is imposing on Northern Ireland? Is it 1 per cent? Is it 2 per cent? What percentage is it?

The First Minister: Dear, oh dear. As I have said in the chamber before, it is incumbent on Miss Goldie to respond to the answers when she asks follow-up questions. The follow-up question is redundant in this case. I have just said clearly that the principal conclusion of the Burt commission is unacceptable to ministers and, I believe, unacceptable in Scotland, but that the rest of the commission’s report needs to be properly considered and that it will be properly considered. Given that there are no plans whatever to introduce the system that the commission advised—although, like the rest of the report, that should be properly considered—there is no assessment of what any rate would be under such a system. Miss Goldie’s question is based on an entirely false premise.

Miss Goldie: The First Minister now seems to be confirming, as is his wont with so many issues, that he does not know, that he has no plans and that he is not intending to tell anyone. If the First Minister does not know what his Executive will propose next May, if we assume that we are currently working with the council tax system, and

if we assume that the First Minister will dismiss a nationalist proposal for a 6.5 per cent local income tax—he is quite right to dismiss it—will he support what the Conservatives propose for pensioner households: a 50 per cent cut in their council tax? Will he support us in achieving that?

The First Minister: I suspect that one of the reasons why Annabel Goldie has difficulty following the answers is that, unlike her, I am not reading out what I say. I am trying to answer and deal with the questions as they arise—rather than reading out prepared questions that are not relevant to the answers that are given.

Let us be clear: the Conservatives, like the nationalists, are making a pre-election promise that they have not costed.

Members: We have done.

The First Minister: They will not admit the reductions in expenditure that would result. The Conservatives need to outline the facts—

Members: We have done.

The First Minister: No, they have not. They can shout from their seats that they have done, but when they were challenged on the matter before, they claimed that their proposals would be made possible by selling off Scottish Water. That is not the position in the annual accounts of the Scottish budget. The Conservatives want to propose reductions in local taxation. First, they must explain why that was never their record in government. Secondly, they have to explain where the money would come from.

Tricia Marwick (Mid Scotland and Fife) (SNP):

I know that, as the MSP for Ochil, Presiding Officer, you are rightly concerned about the flooding in Milnathort and Kinross over the past 24 hours. The whole Parliament will wish to express sympathy to those who have been flooded from their homes, particularly at this time of year. For them, there will be very little festive cheer. Will the First Minister join me in thanking the emergency, voluntary and council services, which are working tirelessly to assist? Will he give his assurance that there will be a review of the adequacy or otherwise of the flood defences, a matter that Mr Reid has been highlighting for the past few years? Will the First Minister give his assurance that sufficient resources are in place to deal with the current crisis and to prevent a recurrence?

The First Minister: I am sure that we all sympathise with those who had to leave their homes last night and with all those who have been affected by the power cuts and flooding. We have to praise the emergency services and volunteers who have helped those families during the past 24 hours and will perhaps have to do so again over the weekend.

I reiterate what I said last week: the resources available for flooding in the Scottish budget have increased tenfold in recent years—a substantial commitment by this Government to improve flooding schemes locally. Given the technical knowledge that is required and the essential engagement with communities, schemes have to be brought forward by local authorities—that is their statutory responsibility. We provide 80 per cent of the funding and local authorities have to provide the technical proposals in consultation with communities.

As I also said last week, in committing to that expenditure, I have no doubt that, following the election on 3 May next year, anyone who is currently involved in this Administration will wish to continue with at least the current level of commitment to flooding expenditure in local schemes. We will resist the calls from the SNP and others to cut local government budgets by £1 billion, because that would have a direct impact on the amount of money that is available for local flooding schemes and other proposals. We will not allow such cuts to take place. We will continue to invest in local services.

Jackie Baillie (Dumbarton) (Lab): The First Minister will be aware that Methode Electronics is likely to close its operation in the Vale of Leven, making 151 staff redundant as from 20 December. That would not be good at any time, but it is particularly bad for those employees and their families in the run-up to Christmas. Although I welcome the assistance of Scottish Enterprise Dunbartonshire in helping people secure alternative employment, will the First Minister join me and my Westminster colleague, John McFall, who is in the gallery, in encouraging Methode Electronics to meet its legal obligation to provide 90 days' statutory notice to all staff and to reflect that fully in the final payment of salaries?

The First Minister: It is clear that that is a desperately sad situation for the families affected, particularly at this time of year, and our sympathies are with them at this time. It is incumbent on the company to accept its responsibilities to those families. The Minister for Enterprise and Lifelong Learning and I have asked our officials to meet the company urgently, to pursue the case for it to meet those obligations properly, preferably before Christmas, in the final salary payment.

“Government Expenditure and Revenue in Scotland 2004-05”

3. Ms Wendy Alexander (Paisley North) (Lab): To ask the First Minister what implications the latest “Government Expenditure and Revenue in Scotland” report will have for Scottish public services. (S2F-2616)

The First Minister (Mr Jack McConnell): The latest GERS report indicates at least one part of the dividend that Scotland received from its membership of the United Kingdom in 2004-05. That money has helped us to fund the improvements in our schools, the reductions in health waiting times, the reductions in crime and, of course, the support for a growing Scottish economy that have been so critical to taking Scotland forward in recent years.

Ms Alexander: I share the view that the First Minister expressed earlier this morning: that by far the most interesting of the many comments that have been made on tax this week came from Alex Salmond yesterday, when he ruled out any tax rises on the basis that Scotland's finances would be in absolute surplus this year. *[Interruption.]*

The Presiding Officer (Mr George Reid): Order.

Ms Alexander: Is the First Minister aware that if the SNP had stuck to the way it calculated Scotland's budget as recently as it did in July, in its own document, it would have had to announce an absolute deficit earlier this week?

The First Minister: I am of course aware that the Scottish nationalist party has changed the methodology on which it calculates those estimates for Scotland on each of the three occasions on which it has published its so-called budget for Scotland. However, it cannot hide from the facts, it cannot keep making up the numbers and it cannot keep fiddling the figures. *[Interruption.]*

SNP members can shout all they like, but we know that the SNP will say and do anything to win votes. If that means that it must distort facts, it will try to do so. My advice to that party is to stop digging if you are in a black hole. I have no doubt that in the coming months the people of Scotland will see through its spending plans and its claims, which we shall expose, about freezing tax at Government or local level.

Mr John Swinney (North Tayside) (SNP): If we are to believe the contents of the report on Government expenditure and revenue in Scotland, does the First Minister agree that it is a shocking indictment of the Labour Government's management of the Scottish economy over the past 10 years and of the actions of the previous Tory Government? Does the report not make the case for electing a new Government that is determined to make this country a great deal more prosperous than Labour or the Tories have ever managed to make it?

The First Minister: I will say three things in response to Mr Swinney. *[Interruption.]*

The Presiding Officer: Order.

The First Minister: First, Mr Swinney has just admitted by implication that there is a financial black hole in the SNP's spending plans.

Secondly, let us consider the SNP's plans for one sector of the economy—the financial services sector. The SNP's plan to break up the British economy so that there would be a Scottish economy and a United Kingdom economy would have an impact on the financial services sector in Edinburgh, Glasgow and elsewhere. There would be new regulatory bodies, new borders with England for the 90 per cent or so of exports from our financial services companies that operate south of the border and uncertainty for those companies and everyone who works for them that would have a devastating impact on families. *[Interruption.]*

The Presiding Officer: Order.

The First Minister: Thirdly, it is shocking and disgraceful that, three days in advance of a publication that was prepared by independent civil servants—who do not have a voice in the chamber to speak for themselves—and that was certified by the independent Office for National Statistics, the SNP put out a publication the first sentence of which runs:

"The publication of GERS is a discredited, inaccurate and incredible political exercise."

If the SNP thinks that, in government, it could use such schoolboy bully tactics and attack people who cannot stand up for themselves in public because of their neutrality and independence, it is not fit for government.

Rural Post Offices (Closures)

4. Christine Grahame (South of Scotland) (SNP): To ask the First Minister whether Scottish ministers have assessed the level of additional social exclusion that will result from the proposed closure of rural post offices. (S2F-2622)

The First Minister (Mr Jack McConnell): An announcement by the United Kingdom Government on its proposed future arrangements for the post office network is expected as we speak. The Executive will use four criteria in assessing the statement in the House of Commons: whether there will be an acceptable level of future services, especially in remote rural and disadvantaged communities; whether there is recognition that the post office network is not purely commercial and that it has an important social role to play; whether there will be plans for proper consultation with affected local communities; and whether there will be a continuation of Post Office efforts to promote innovative means of service delivery that preserve the existence of post offices in disadvantaged and rural areas.

Christine Grahame: As the First Minister grew up in a rural community on Arran, I am sure he agrees that post offices are at the centre of sustaining and nurturing such communities. I am also sure that he agrees with Tom Begg, the chairman of Postwatch Scotland, who has highlighted the importance of rural post offices not only as places from which to post parcels and letters, but as vital meeting places in communities such as those in the Scottish Borders.

I hear what the First Minister has said. Will he inform the Executive's representations to Her Majesty's Government by commissioning an assessment of the impact of the proposed closures on communities? If he does, will he report back to the Parliament on that before we rise for our final recess?

The First Minister: It is implicit in the four criteria that I have outlined, which were agreed by the Cabinet yesterday and on which we will assess today's statement and make any further representations that are required, that an assessment of the role of post offices should be undertaken by the United Kingdom Government and by the Post Office as part of the decisions that are about to be taken. I strongly believe that proper engagement with local communities, based on the facts, is the way forward, and I hope that they will take on board the suggestion that has been made.

Dave Petrie (Highlands and Islands) (Con): Will the First Minister join me in condemning this move and undertake to do everything in the power of his Executive to protect the increasingly fragile economy of the Highlands and Islands and the rest of rural Scotland?

The First Minister: I think that it is particularly amateurish to condemn a statement before it has even been made. It would be far better for us to outline the criteria on which we will judge the statement and to comment on it afterwards. That is what we intend to do.

Nora Radcliffe (Gordon) (LD): Is the Executive considering ways in which, at its own hand, it could support the post office network?

The First Minister: We have continually tried to be helpful in that regard. It is important that we see post offices and the services that they offer as part of our wider strategy for rural development and support for rural communities. At the same time, however, it is important that those who have responsibility for post offices properly have regard to those circumstances, too. It is on that basis that we will assess the statement that is made today.

Sectarianism

5. Michael McMahon (Hamilton North and Bellshill) (Lab): To ask the First Minister what

progress has been made on the issue of sectarianism. (S2F-2617)

The First Minister (Mr Jack McConnell): All those who were involved in this week's reconvened summit on sectarianism have made considerable progress in tackling sectarianism. Working closely in partnership with a wide range of organisations, we have implemented measures in education and sport to bring people together, and we have seen contentious marches reduced and reorganised. A total of 58 football banning orders on conviction are awaiting trial, and football clubs have imposed their own bans on a significant number of people.

I take this opportunity to thank everybody—from all sides and from all corners of Scotland—who was involved in the first summit on sectarianism and the one that was held this week. I believe that they have done themselves proud.

Michael McMahon: In welcoming all the progress that the First Minister has made so far in the campaign against sectarianism, I ask whether he acknowledges the concerns of those who believe that clarity is required on the part of all the authorities concerned regarding what is considered to be sectarian behaviour and what constitutes legitimate expression of cultural and historical identity. Does the First Minister agree that, unless clarity is achieved, there will be misapprehensions about what constitutes sectarianism that will exacerbate tensions within and between communities, which will undermine the good intentions of the anti-sectarianism campaign?

The First Minister: Everyone who was at the summit on Tuesday agreed that, although it is important to respect traditions and people's right to celebrate them, when those celebrations turn to hatred or bigotry we need to be tough in our approach. I believe that it is important, especially when public officials or private security firms and others are involved, that people understand the difference between the celebration of a historical tradition and the kind of behaviour that we all abhor—behaviour that comes from hatred, leads to violence and is rooted in bigotry, which we intend to stamp out.

Private General Practitioner Practices

6. Fiona Hyslop (Lothians) (SNP): To ask the First Minister whether the Scottish Executive supports the introduction of private companies to run local GP practices. (S2F-2625)

The First Minister (Mr Jack McConnell): In the traditional model of general practice, the partners are already independent, self-employed practitioners who own and run GP practices as businesses for profit. That arrangement has been

in place since the start of the national health service.

Fiona Hyslop: Is the First Minister aware that Harthill health centre is the subject of tenders for future GP services? At a packed public meeting last week, many of its 1,000 patients from Greenrigg, Blackridge and Whitburn expressed alarm that they are being made guinea pigs for privatisation, because one of the three tenders is from a multinational, multimillion-pound company that has no experience of GP services in Scotland, but has significant contacts with NHS Lanarkshire.

If the Executive has any belief that the NHS is for the public and not for profit, will the First Minister seek, and share with my constituents, legal advice that shows that a precedent will not be set and that automatic tendering of GP services will not take place when GPs are willing to continue a practice?

The First Minister: Scottish National Party representatives say many bizarre things in the chamber and in communities, but that must be among the worst. The truth is that, from the beginning of the health service, GP practices have involved independent, self-employed practitioners and have been run as businesses for profit. The situation at Harthill is not in any way different from the historic position or the position elsewhere in Scotland today.

Local members—Karen Whitefield in particular—have made proper representations on their constituents' behalf to ensure that the area's health needs, rather than the political posturing of Fiona Hyslop and the rest of the SNP, come first. I send a clear message to all the local residents to whom Fiona Hyslop referred: do not believe the scaremongering or misrepresentations—this is the health service in action. If it is SNP policy to nationalise every GP practice, that would be a huge change in our health service that it would have to explain the length and breadth of Scotland.

The Presiding Officer: Since we started late, I use my discretion to call the constituency member.

Karen Whitefield (Airdrie and Shotts) (Lab): Thank you, Presiding Officer. Does the First Minister agree that whichever private company delivers GP services in Harthill following the dissolving of the Eccles-Thom partnership, the health care needs of the people of Harthill and Eastfield in my constituency and of Greenrigg and Blackridge in my colleague Mary Mulligan's constituency should be paramount? Will he therefore assure me that in awarding the contract, NHS Lanarkshire will ensure that those people's needs, which relate to access, limited public transport in the locality and the rurality of those communities, and that the need for local

knowledge, stability and continuity of provision will be central to any decision?

The First Minister: I congratulate Karen Whitefield on putting her constituents' health care needs ahead of the SNP's political posturing. The Minister for Health and Community Care has raised those issues on her behalf with Lanarkshire Health Board and has received those assurances.

12:33

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Enterprise, Lifelong Learning and Transport

Speed Warning Signs (Trunk Roads)

1. Alex Fergusson (Galloway and Upper Nithsdale) (Con): To ask the Scottish Executive what steps it is taking to encourage the use of speed warning signs on trunk roads in towns and villages. (S2O-11429)

The Minister for Transport (Tavish Scott): Transport Scotland is working with the police and other agencies to promote safety on the trunk road network. Portable vehicle-activated speed warning signs have been introduced at various locations throughout the trunk road network.

Alex Fergusson: When I drive up and down the A702 every week from my constituency to Holyrood, I cannot fail to notice the considerable number of speed warning signs that have been installed, in particular over the past year, in almost every town and village that I pass through. The signs are bright and effective, and I believe that they have had a positive impact on reducing speed. In direct contrast, in Dumfries and Galloway all I see are two rather outdated "slow down" signs, which more often than not have run out of battery power. What more can the minister do to encourage the use of signs in Dumfries and Galloway, so that we can catch up with other local authority areas in installing modern and effective speed reduction signs?

Tavish Scott: I agree with Mr Fergusson's points about the effectiveness of the mechanism. I would be happy to have Transport Scotland discuss with Dumfries and Galloway Council the most appropriate way to bring forward such measures, assess their effectiveness and consider their roll-out. I will instruct that that happen, and I will ensure that Mr Fergusson is kept up to date.

I am also interested in examining the mechanisms that have worked in different parts of the trunk road network and in investigating whether they can be used at the sort of locations in which Alex Fergusson is interested. I undertake to keep him up to date with progress.

Mr John Swinney (North Tayside) (SNP): On the A90 from Dundee to Aberdeen, there is in my view a very effective speed warning sign just north of Laurencekirk. Has the minister considered the

possibility of deploying a similar mechanism at the Lochlands junction at Forfar, which was the scene of a fatal accident a few weeks ago and another accident not long after that? Such mechanisms are extremely successful in identifying the speed at which drivers are driving and can influence driver behaviour.

Tavish Scott: I agree with that analysis. The location that Mr Swinney describes is an example of a mechanism that is working and assisting in tackling—let us be frank—driver behaviour. I am happy to consider the suggestion that such signs be used on different parts of the trunk road network, in particular at the junction that he mentioned.

I am sure that members would also want to bear it in mind that we ask Transport Scotland to regularly examine accident clusters across the trunk road network in order to make recommendations for future remedial actions and to address issues such as Mr Swinney and Mr Fergusson raised and the need for physical infrastructure improvements. We will continue to do that.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I am delighted that Mr Fergusson sees those signs when he drives through the part of the A702 that is in my constituency, but they are passive signs that are effective only with the active involvement of the police. Will the minister ask any new operator of the trunk road network in the south and south-west of Scotland to enhance road safety measures across the road network in that part of Scotland and to ensure that they work more closely with communities and the police on road safety issues?

Tavish Scott: We ensure that the contract for trunk road operators across Scotland includes a heavy burden in respect of road safety issues and therefore on working with communities and local police services. I would be happy to take up the points that Mr Purvis has raised, but I assure him that we take road safety very seriously in designing robust contracts for our trunk road network and the operators thereof.

Scotland's Competitiveness

2. Jim Mather (Highlands and Islands) (SNP): To ask the Scottish Executive when the Minister for Enterprise and Lifelong Learning last met the Chancellor of the Exchequer or HM Treasury officials to discuss the Scottish economy; how many such meetings have taken place, and what information it has on what steps are being taken by HM Treasury to improve Scotland's IMD competitiveness rating relative to the United Kingdom as a whole. (S2O-11418)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen): The Scottish ministers regularly liaise with HM Treasury on a wide range of matters, including Scotland's economy and competitiveness. The Treasury publishes an extensive amount of supporting material on Scotland's economy and competitiveness, which I do not propose to read out—despite considerable encouragement to do so from Tavish Scott.

Jim Mather: I wish that the minister's answer had been a little more illuminating. However, I will consider the subtext of his answer.

Last year, officials from Scottish Enterprise suggested to me that the IMD exercise is onerous and unhelpful. I disagreed. Now I hear that IMD has said that it will drop Scotland from the 2007 index on competitiveness, which will be published just before the election. Does the minister agree that that will be unhelpful? Will he ensure that steps are taken to reverse the decision so that comparative data on Scotland's competitiveness are available for potential investors and policy makers in Scotland?

Nicol Stephen: It is important that I emphasise that the decision not to include Scotland in the index was taken by IMD and not by Scottish Enterprise or the Scottish Executive. The reasons for the decision are not to do with Scotland but are based on IMD's consideration of Scotland and the other regional economies that it has assessed over a number of years. IMD thinks that it is proceeding appropriately.

I would, however, like a further update on the IMD figures because, as Jim Mather knows, we have moved up the table by five places, so our position is improving. On the key factors, recent figures show that our gross domestic product per head has overtaken that of Japan, Germany and France. That is encouraging news and I am sure that there will be more encouraging news. We are attracting international companies to bring new investment into Scotland, such as Barclays, which recently announced 500 new jobs, First Data, which announced 430 new jobs, Shell, which announced 100 new jobs, BSKyB, J P Morgan, and Terumo Vascutek. Everyone will remember that when we supported Barclays in bringing 500 jobs to Glasgow instead of locating them in Dublin or in one of the other parts of the world that the company was considering, the Scottish National Party said that it beggared belief that that support was given.

We have a strong record and I would like Scotland to continue to be in the index.

Transport Scotland (Budget)

3. Derek Brownlee (South of Scotland) (Con):

To ask the Scottish Executive what flexibility Transport Scotland has in the allocation of its budget. (S2O-11428)

The Minister for Transport (Tavish Scott):

Transport Scotland is an executive agency of the Scottish Executive and is therefore included with all other Scottish Executive bodies in the annual budgeting process, which is considered and approved by the Scottish Parliament.

Derek Brownlee: I want to probe deeper into what that means in practice. The minister is aware of the controversy about the proposals for a £4 million scheme on the A68, outside Oxton. I do not want to comment on the specifics of the scheme, but if the scheme does not proceed for whatever reason, who will decide where the £4 million will be diverted and whether that money will remain in the Borders? Will Transport Scotland or the minister make that decision?

Tavish Scott: As I am sure Mr Brownlee would expect, ministers are ultimately accountable for every departmental spending decision and are collectively accountable for all Government spending decisions, which are rightly scrutinised by Parliament through the Finance Committee and, in respect of transport expenditure, by the Local Government and Transport Committee. Ministers are ultimately accountable, therefore they make the decisions.

Brian Adam (Aberdeen North) (SNP): In the light of the minister's response to the question about flexibility in the budget, will he give a commitment that the Scottish Executive will support the upgrading that is required at the Haudagain roundabout in Aberdeen, particularly given the publication today of the draft special road orders for the Aberdeen western peripheral route, which include detrunking orders?

Tavish Scott: I hope that Mr Adam will expect any Government to take decisions on the basis of evidence and, in the case to which he refers, to take decisions on the basis of a proper analysis of the traffic circumstances in the city and the multimodal implications of wider investments that Government makes. It is not right to make on-the-hoof commitments on transport or any other portfolio and Mr Adam should not expect us to do so.

Public Transport

4. Carolyn Leckie (Central Scotland) (SSP):

To ask the Scottish Executive whether it has examined the free public transport scheme that operates in Hasselt in Belgium and whether it has considered replicating it in Scotland. (S2O-11435)

The Minister for Transport (Tavish Scott):

The Scottish Executive is aware of the free bus scheme in Hasselt, but has not carried out any detailed examination of its operation or outcomes. Our policies on improving public transport are clearly set out in our recently published national transport strategy.

Carolyn Leckie: I have a copy of the strategy and the Executive's bus action plan. I was astonished to find no reference to the evidence that was gathered in Hasselt, so I am willing to provide the minister with that documentation.

Even from the evidence that the Executive has set out in its bus action plan, it is clear that the problems in this regard stem from deregulation of the buses. The evidence from Hasselt shows that, as a result of the free transport policy, bus passenger journeys rose within a year by 870 per cent. The target that the Executive has set is for an annual increase in bus journeys of only 1 per cent, and 2 per cent in rail journeys. Is that not a pitiful vision?

Perhaps the minister can explain what the Executive proposes in its bus action plan. As well as a Scottish traffic commissioner, the Vehicle and Operator Services Agency and regional transport partnerships, we are now to have quality bus partnerships, bus forums, and punctuality improvement partnerships. There will be more quangos than buses.

Why does the Executive not do what its own evidence has overwhelmingly made the case for and regulate buses? Why does the Executive not follow Hasselt and do something that will work for the environment, workers, communities and the economy? Why not make public transport green and free?

Tavish Scott: Well, well. It is important to put on the record the conflicting evidence on the benefits that were achieved in the Hasselt scheme. Although it is fair to say that bus patronage increased tenfold, a large proportion of that modal shift was from walking and cycling to travelling by bus. Instead of being fully analytical, it is easy to be simplistic in one's analysis, as Carolyn Leckie was.

In six out of the past seven years, bus passenger figures have risen across Scotland. I would have thought that Carolyn Leckie would have supported and applauded that—obviously she does not. Rail passenger numbers have increased by 28 per cent in the past two years. Carolyn Leckie may shake her head, but those are the facts of the matter. Facts are something that her party—whatever it is called these days—has great difficulty with. Would not it be great if everything could be free? However, the rest of us have to live in the real world.

National Nuclear Archive

5. Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): To ask the Scottish Executive what discussions it has had with the United Kingdom Government and the United Kingdom Atomic Energy Authority regarding the location of the UK national nuclear archive. (S2O-11449)

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): The location of a proposed national nuclear archive, which is intended to consolidate all information relating to the development of the UK's nuclear energy programme, is a matter for the Nuclear Decommissioning Authority—the NDA.

The NDA has raised the possibility of locating the archive in Caithness with officials in the Executive. Formal discussion on the proposal will be taken forward in the new year, but it should be noted that Caithness is only one of a number of locations across the UK that are being considered by the NDA.

I understand that Highlands and Islands Enterprise, Caithness and Sutherland Enterprise and local partners, including the Highland Council, are actively supporting Caithness as the optimum site for the archive.

Mr Stone: I am delighted to hear that the NDA has strongly suggested Caithness. It will come as no surprise to the minister that that position is exactly where I am coming from. Caithness is where one of the first power stations that put energy into the grid was built. Will the minister assure me that he will work closely with colleagues in advocating the case for Caithness? Will he also work closely with the Highland Council and the enterprise network? I believe that we have a win-win situation with this—bringing the archive to Caithness could mean a great deal to the economy of the far north of Scotland in my constituency.

Allan Wilson: I am happy to give the member that assurance. To date, our department has not been involved in discussions with the NDA. The NDA's initial approach was made to the Scottish Executive Environment and Rural Affairs Department in October. However, we expect to meet with the NDA in early January. On that occasion, I expect that we will have a full discussion of the project. I hope to be able to work with the partners that I mentioned—HIE, CASE, and the Highland Council—as well as with Jamie Stone and others in exploring all the available options in bringing the archive to Caithness. That statement has to be tempered by recognition that it is not yet clear whether the proposal is predicated on Executive funding support.

Ring 'n' Ride Service

6. Dr Jean Turner (Strathkelvin and Bearsden) (Ind): To ask the Scottish Executive at what point the cost to the provider of a one-person journey negates the value of the ring 'n' ride service. (S2O-11489)

The Minister for Transport (Tavish Scott): This is a matter for the ring 'n' ride provider.

Dr Turner: I thought that the minister might say that, but I also thought that he ought to know that in Westerton in my constituency there are people who have lost their post office and the bus service and who depend on the ring 'n' ride service but sometimes cannot book a ride on it. They feel that their quality of life has diminished. When is the Scottish Executive going to try to restore the previous level of quality of life to those people—who have free bus passes but cannot use them—by restoring scheduled bus services to their area?

Tavish Scott: I appreciate the issues that people in Jean Turner's constituency confront. The problems that she describes are, of course, serious to those who are affected.

A number of mechanisms and funding streams are used to support the Strathclyde partnership for transport, particularly with regard to demand-responsive transport, of which the ring 'n' ride service is an example, and other helpful services. However, on the design of those services and the decisions about budget allocations for their funding, I hope that Jean Turner will accept the principle that I believe in strongly, which is that it is better that such decisions be made at local level rather than their being imposed from Edinburgh. Local delivery agents are much better placed to assess what will work in their areas. We will, of course, be happy to consider some wider examples, but it is important that, when attaching budgets, we let local delivery agents make the right choices about what will work in their areas of Scotland.

Raith Interchange (Upgrade)

7. Alex Neil (Central Scotland) (SNP): To ask the Scottish Executive when it anticipates that the upgrade to the Raith interchange will take place. (S2O-11420)

The Minister for Transport (Tavish Scott): I expect the upgrade of the Raith junction to start in 2009 and be complete by 2012.

Alex Neil: Is there any way of bringing that date forward, given the tremendous problems at the Raith interchange? Has the minister undertaken an economic impact evaluation of the upgrade? Has he calculated how many additional jobs it would bring to Lanarkshire and the surrounding area?

Tavish Scott: I cannot, off the top of my head, give an answer about the economic impact of the project. However, the economics of the junction have been considered as part of the appraisal that was done under the Scottish transport appraisal guidance. I will look closely into the matter and try to provide Mr Neil with a more detailed answer.

On Mr Neil's first point, I accept that there is considerable disruption in the area. Many of my colleagues talk about it in many moments in many days, so I take the point seriously. We are doing everything we can with regard to the situation, but unfortunately the nature of road design, road construction and the formal processes that must be gone through—with which most members are all too familiar—mean that we must have the kind of timescale that, at this time, we judge to be the right one.

Road Safety

8. Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): To ask the Scottish Executive what progress is being made on assessing safety improvements on roads. (S2O-11452)

The Minister for Transport (Tavish Scott): Transport Scotland implements an annual programme of road safety improvements as well as a number of larger schemes, most of which bring road safety benefits.

The assessment of road safety schemes, prior to implementation, is undertaken in conjunction with a number of agencies, including the police. All schemes are subject to a road safety audit following implementation.

Jeremy Purvis: As the minister will recall, a number of weeks ago I took him to see the dangerous junction on the A6901 that leads to the Borders general hospital, which is the regional hospital in the area. A number of days ago, there was another serious accident at that junction. At our meeting, he promised that Transport Scotland would make progress on the issue. Is the minister able to update Parliament on that progress, given the urgency of the situation and the dangerous nature of the junction?

Tavish Scott: I understand the points that Mr Purvis makes. I gather that vehicle-activated signs are being installed at the junction to improve driver awareness. I hope that that will be a step forward.

On 12 December, Transport Scotland received a detailed letter on this matter from the chairman of NHS Borders. We are looking closely into that and will see what further measures can be taken in conjunction with NHS Borders.

Maybole Bypass

9. Phil Gallie (South of Scotland) (Con): To ask the Scottish Executive what the timescale is for the provision of a Maybole bypass. (S2O-11433)

The Minister for Transport (Tavish Scott): An assessment of options in taking forward the Maybole bypass is currently under way. The study will be complete by spring 2007 and the priority for the preferred route will be considered as part of the strategic projects review.

Phil Gallie: I was slightly concerned to see no mention of bypasses in "Scotland's National Transport Strategy". Is there any intention to report on bypasses in the trunk road asset management plan to which the strategy refers and, if so, will the Maybole bypass be mentioned specifically?

Tavish Scott: I assure Mr Gallie that bypasses are mentioned in the national transport strategy. I had a spirited discussion on this very subject with my friend and colleague Mr Wilson some weeks ago, in which he put persuasive arguments about tackling journey times and congestion and improving the accessibility of our transport network. Mr Wilson and others have made compelling arguments on why we must still consider in the future the appropriateness of a bypass as a particular solution in a particular part of Scotland.

Mr Gallie is right that the Maybole bypass was not mentioned in the national transport strategy—of course, it was not the purpose of that policy document to do so. I assure him that the bypass is being considered as part of the projects review, on which I will keep him and Parliament up to date.

Justice and Law Officers

Young Offenders

1. Robin Harper (Lothians) (Green): To ask the Scottish Executive which policies it intends to re-evaluate, in light of the 15 per cent increase in the number of persistent young offenders. (S2O-11493)

The Minister for Justice (Cathy Jamieson): The vast majority of Scotland's young people play an active and positive role in our communities, but a small number—around one in 500—are involved in persistent offending. That is still too many and represents a hard-core minority of youths who continue to reoffend and disrupt many of our communities.

We all want to see youth crime prevented and its damage minimised where it happens. It has been possible to achieve a reduction in some areas, and I want that to be reflected throughout the country.

A team of professional advisers is now working with each local authority area to ensure that all agencies are working together to reduce youth crime.

Robin Harper: I thank the minister for that reply, as far as it went. The Executive's ambition was to reduce the number of persistent young offenders by 10 per cent, but it has gone up by 15 per cent. People must be deeply disappointed by the difference.

I put to the minister the specific criticism contained in the report, "The Politicization of Youth Crime in Scotland and the Rise of the 'Burberry Court'" from the University of Stirling, which states that the Scottish Executive has manipulated the evidence on youth courts—in the words of the authors, youth courts are a "politically motivated project". Is it not the case that the Executive has been more concerned with pandering to the calls to be tough on crime than with pursuing the rather more effective approach of being tough on the causes of crime, which is why the figures are heading in the wrong direction?

Cathy Jamieson: I refute any suggestion that the Executive tampered with evidence in any way. It is important that we are able to publish research reports as they stand.

We would do young people no favours if we did not deal with offending behaviour. That is why all our policies are based on trying to prevent and divert young people from crime in the first place, intervening when offending begins to become a problem and enforcing sometimes strict measures when it becomes a significant problem. If we do not do something about persistent young offenders, they are likely to go on to enter adult prisons later. I do not think that it is acceptable to simply write them off, and I am not prepared to do so.

Mr Kenny MacAskill (Lothians) (SNP): I welcome the minister's concluding remarks, which show why the ending of the Airborne Initiative was shameful and its restoration is imperative—a future Scottish National Party Administration will restore it.

Cathy Jamieson: Mr MacAskill can put forward his party's views, but the rationale for the ending of the Airborne Initiative was that it dealt with a small number of young people overall. It was not linked to the children's hearings system, but dealt with a different group of young people from those whom we are talking about. It is important that we consider what works. Seven local authorities have been able to meet the targets. I want to do further work on how they can meet them if others cannot. It is important that local authorities step up to the mark, which is why we have experts out there

working with the local authorities that have, so far, not been able to meet their targets.

Margaret Mitchell (Central Scotland) (Con): Will the minister confirm that no parenting orders have been issued since their introduction? Does she agree that parents have a key role to play in trying to combat youth crime and in being accountable for their children's actions and whereabouts?

Cathy Jamieson: Most members will be aware that on several occasions—both in the chamber and elsewhere—I have expressed disappointment that no parenting orders have been used so far, despite the fact that funding has been provided for their use. We risk failing our young people if we do not take seriously the fact that parenting and families are important. We must work with families to try to ensure that our young people have the best possible start in life. I am sure that various local authorities are considering their position on the matter as we speak, and I certainly expect more use of parenting orders during the coming weeks and months.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I welcome the minister's attempt to put into context the number of persistent young offenders, who account for less than 0.1 per cent of young people in Scotland. However, does she agree that more can be done for young people at earlier stages of their offending behaviour? Will she consider the approach that is being developed in England and in New York? There, the involvement of young people in restorative justice and the addressing of offending behaviour at an early stage have been shown to be far more effective than either referral to a youth court or hearings system or further police involvement.

Cathy Jamieson: We have to be careful not to confuse the different stages at which young people get involved in offending behaviour. There is clearly a place for restorative justice and there can be a place for peer education and peer involvement at the diversionary stage, but the public would not find credible the notion that the persistent offenders who cause the most grief and sometimes commit serious crimes in our communities should be dealt with in that way. That is why we need a range of approaches.

Scottish Criminal Record Office Fingerprint Experts

2. Mr Kenneth Macintosh (Eastwood) (Lab): To ask the Scottish Executive what action it is taking to ensure that fingerprint experts at the Scottish Criminal Record Office will be treated in a fair manner when the organisation becomes part of the Scottish forensic science service in April 2007. (S2O-11478)

The Minister for Justice (Cathy Jamieson):

We expect all public servants to be treated fairly. That is the responsibility of their managers and employers. In this case, the Scottish police services authority will be responsible for the Scottish fingerprint service from April 2007.

Mr Macintosh: Does the minister accept that it was her former Cabinet colleague, the previous Lord Advocate, who decided that four fingerprint officers should not be returned to the expert witness list? That decision, I may add, was taken publicly, at a meeting, with the four officers sitting behind the Lord Advocate but without their being given advance notice of the decision. Does she accept that the person whom she appointed as the interim chief executive of the new service has made it clear to six SCRO officers that they have no future in the service despite their long and unblemished record in the SCRO and the fact that their professionalism was upheld by successive inquiries? Does she believe that those Executive decisions have had no effect on the welfare or future well-being of the SCRO officers and that the Executive has no responsibility to ensure that fair play exists in public services?

Cathy Jamieson: It is important to clarify that the Executive works on the policy direction—it will ensure that the SPSA is set up properly and is able to take over the Scottish fingerprint service—but that it is for the Lord Advocate to decide who is used in the courts as an expert witness.

I have been at pains to stress—and I stress it again today—that there is a process that involves the employers, the trade unions and the individuals concerned. I do not believe that it would be right and proper to discuss the detail of that in the chamber while the negotiations are continuing. However, I stress the important point that everyone has employment rights that must be upheld. I expect that to happen whoever the employer is, and in this case I certainly expect the fingerprint service to look at that.

Stewart Stevenson (Banff and Buchan) (SNP): There should be increased confidence in the future of the service now that Mr Mulhern is in charge of it. Does the minister agree that the challenges for the service include ensuring that future employees have the opportunity to learn from the experience of other bureaux; that employees have adequate management support in doing the job that they have to do; and that we do not return to the position in which members of staff are hung out to dry by wholly inadequate management?

Cathy Jamieson: I know that the member is familiar with “The Scottish Fingerprint Service Action Plan for Excellence”. That plan will require a number of actions to be taken. It will ensure that the appropriate professional development is

provided and that management systems are appropriate and fit for the job that people are required to do. I look forward with interest to any comments or recommendations that the committee that has been considering the issue will make in due course.

Youth Court

3. Patrick Harvie (Glasgow) (Green): To ask the Scottish Executive whether it is satisfied with the operation of the youth court, given the critical evaluation it received from the University of Stirling academics commissioned to review the project. (S2O-11496)

The Minister for Justice (Cathy Jamieson): Yes. I recently announced that the Executive is considering the feasibility of setting up a further three youth courts, demonstrating the confidence that we have in their operation.

Patrick Harvie: Notwithstanding the earlier criticisms that were mentioned by Robin Harper, does the minister share the astonishment of one sheriff, who is quoted in the University of Stirling report, that no solicitor has yet taken a human rights case based on the fact that, by virtue of appearing at a youth court, an individual will be known to be a persistent offender? Given the fact that offenders who appear in adult courts are entitled to that protection, can the minister confirm whether the Executive has undertaken any preparatory work in anticipation of such a case?

Cathy Jamieson: We have taken the view that the sheriffs who sit in the youth courts are well able to come to a decision on the merits of the case that is before them. The evaluation found that a number of the distinctive features of the youth courts were to be welcomed, including a faster process for getting young offenders to and through the court; faster breach procedures; and the opportunity for multi-agency groups to come together to ensure that the right programmes are in place. That approach is to be welcomed and is far from being something that we want less of. Local communities expect us to seek the most effective ways of dealing with young people, which is why we are considering setting up another three youth courts.

Custodial Sentences (Children and Young People)

4. Shiona Baird (North East Scotland) (Green): To ask the Scottish Executive whether it supports increased use of custodial sentences for children and young people. (S2O-11492)

The Minister for Justice (Cathy Jamieson): As the member will be aware, the majority of children and young people who offend are dealt with through the children's hearings system.

However, in a few cases, children commit very serious offences, such as serious assault, culpable homicide or attempted murder. Those cases will be prosecuted through the courts and may result in children being sentenced to a period in secure custody.

Shiona Baird: How does the minister respond to the conclusion in the report to which my colleagues have referred that the Executive's youth court model will lead to what is called up-tariffing, with the courts making greater use of custodial sentences as well as other options? How does she respond to the evidence heard by the Justice 2 Committee, which slammed the Executive's proposal to increase massively the number of people in custody through the Custodial Sentences and Weapons (Scotland) Bill? Given the fact that all the evidence shows that prison harms young people and does almost nothing to prevent them from reoffending, should the Executive not support alternatives to custody rather than continue down that damaging punitive route?

Cathy Jamieson: It is important to recognise that we support alternatives to both secure care and custody. People are in danger of confusing the system for dealing with children and young people under the age of 16 and the adult system. We have the opportunity to use secure care and alternatives to that within the children's hearings system. Similarly, through the operation of the youth courts, there are opportunities for young people to participate in programmes to address their offending behaviour.

On the Custodial Sentences and Weapons (Scotland) Bill, it is important to recognise that there is an issue about automatic early release, which has fallen into disrepute among the public. We have a responsibility to ensure that our sentencing regime deals with that concern. I recognise that there are difficulties around the issue and serious challenges for our prison system. However, we simply cannot pretend that we can deal with all crime by keeping everyone out of the prison system. We cannot.

Youth Offending (Lothians)

5. Mark Ballard (Lothians) (Green): To ask the Scottish Executive what progress it is making in reducing youth offending in the Lothians. (S2O-11494)

The Minister for Justice (Cathy Jamieson): There has been great interest in the subject this week. I expect all local agencies to make reducing youth offending a priority and to redouble their efforts to reduce the numbers of young people who are persistently in trouble. They will be supported by the experienced team of

professionals that I have put in place to improve performance.

A good range of multi-agency action is already taking place to prevent and address youth disorder in the Lothians, including the big project in Broomhouse and north Sighthill; the provision of free and subsidised access to leisure facilities for young people throughout Midlothian; and the east Edinburgh early intervention project.

Mark Ballard: Notwithstanding the priority that the minister says that she gives to the issue, is she aware of the 20 per cent increase in under-18s who have been sentenced in the Lothians since 2001 and the 17 per cent increase in those who are sentenced to custody? Meanwhile, organisations such as Fairbridge—voluntary organisations that do much in the Lothians to support vulnerable young people and divert them away from criminal activity—describe their funding situation as dire. Does the minister recognise that that double failure in the Lothians mirrors the failure of the Executive's punitive approach, as laid out today, throughout the whole of Scotland? Is it time for a complete re-evaluation of the Executive's policy in the light of its failure to support alternatives and the increasing number of custody cases?

Cathy Jamieson: I repeat that people are not comparing like with like. If the member wants to focus on the youth justice system in the Lothians, in addition to the projects that I mentioned, we have several projects around Edinburgh and more widely in the Lothians that focus on diverting young people away from trouble and involving young people in activities.

However, we must recognise that for the most persistent offenders, and those who commit crimes and are in the adult system, we may well have to adopt an approach of enforcement. That does not mean that we see that as the first option, the only option or the best option, but we cannot simply never use the custodial option, as the Greens seem to suggest. I do not think that the Executive would be prepared to countenance that—the public certainly would not countenance it.

Police (Disability Equality Duty)

6. Marlyn Glen (North East Scotland) (Lab): To ask the Scottish Executive how police forces across Scotland are planning to comply with the disability equality duty. (S2O-11466)

The Deputy Minister for Justice (Johann Lamont): All police forces in Scotland have published a disability equality scheme as required under the Disability Discrimination Act 2005. Implementation of those schemes is a matter for chief constables. HM chief inspector of

constabulary will scrutinise police forces for compliance.

Marlyn Glen: I invite the minister to join me in congratulating Tayside police force on the thoroughness of its consultation, which led up to the early publication of its disability equality scheme. How are the schemes to be monitored in detail to ensure that they make a difference and are not merely paper exercises? Are disabled people to be asked to continue their involvement in monitoring schemes? That is important.

Johann Lamont: I am happy to add to Marlyn Glen's congratulations my congratulations to Tayside police on what it has done. All police forces published their disability equality scheme documents by the deadline of 4 December and all have appointed a diversity co-ordinator. Some police forces have been more creative—they have adopted a multi-equality approach and have incorporated the six strands of equality into one document.

Several issues relate to monitoring. Neither we nor the police forces want that to be a paper exercise. Monitoring is important.

We all know that talking to people who will be most directly affected by decisions means that the right decisions are more likely to be made. I encourage people who seek to meet the needs of people with disabilities to ensure that they test the schemes against the demands of people who have disabilities. That is good practice for equality issues more generally, which I am confident police forces will follow.

Town Centre Policing

7. Scott Barrie (Dunfermline West) (Lab): To ask the Scottish Executive what steps it is taking to improve policing of town centres on Friday and Saturday nights. (S2O-11458)

The Minister for Justice (Cathy Jamieson): Earlier this week, I announced additional funding of £600,000 for community safety partnerships to help tackle the public order problems that many towns and city centres experience at weekends. The deployment of the current record number of police officers in Scotland is, of course, a matter for individual chief constables.

The Presiding Officer (Mr George Reid): That ends questions to ministers—[*Interruption.*] I am sorry; I call Scott Barrie.

Scott Barrie: Thank you, Presiding Officer.

Many areas throughout Scotland have benefited from community safety partnerships. How has the evaluation of such projects gone? Will they be rolled out to all parts of Scotland and not just the areas in which they were piloted?

Cathy Jamieson: It is important to recognise that the money that was announced earlier this week is focused on those areas where we know that there have been a significant number of violent incidents, often drink related, in town centres. I will examine closely whether the money makes a substantial difference. If the scheme is proved to be successful, I will look to roll it out further in the future.

Legal Profession and Legal Aid (Scotland) Bill: Stage 3

Resumed debate.

Section 23—Duty of Commission to make rules as to practice and procedure

14:55

The Deputy Presiding Officer (Trish Godman): Group 17 is about publication of and consultation on rules as to the commission's practice and procedure. Amendment 66, in the name of David Davidson, is grouped with amendments 67 to 70.

Mr Davidson: Amendments 66 and 67 enhance accountability and transparency, which is essential in a process as technical as the workings of the Scottish Legal Complaints Commission. Amendments 68 and 70 ensure that the rules for the levies are published, so that no one is under any illusions about what may or may not happen and there is absolute clarity in the bill. I believe that the amendments will enhance the bill.

I turn to amendment 69, in the name of the minister. I very much welcome the involvement of the Lord President in the making of rules. The previous Deputy Minister for Justice will remember that my colleague Bill Aitken introduced the subject at stage 2. We believe that the system should not be run by ministers and that it should be possible to get the best advice on the setting of rules. We welcome amendment 69 and will support it.

I move amendment 66.

Johann Lamont: We continue this afternoon as we started this morning.

Amendment 69 adds the Lord President to the list of those whom the commission is required to consult before making or varying its rules of procedure. That should help to provide further reassurance that the rules will be fair and will further reinforce the reality that the full commission and its determination committees will act as an independent and impartial tribunal when ruling on the merits of complaints. I welcome the support that has been given to the amendment.

I support the other amendments in the group. Amendments 66 and 67 would place a slightly more stringent duty on the commission in relation to the publication of its rules and any changes to them. Instead of being required to publish the rules from time to time, the commission will be required to publish them as soon as is reasonably practicable and to make them available to the public in a readily accessible form. We accept that that will promote transparency.

Amendments 68 and 70 would remove the current exemption to the duty on the commission to consult before making or varying its rules, where those relate to the annual levy and complaints levy. Originally we thought that the commission's duty to consult the profession each year on the size of the levies under section 20 afforded sufficient protection, but we have no objection to a wider duty to consult.

Mr Davidson: I thank the minister for understanding what we are seeking to do to improve the bill. I very much welcome her support in these matters.

Amendment 66 agreed to.

Amendments 67 and 68 moved—[Mr David Davidson]—and agreed to.

Amendment 69 moved—[Johann Lamont]—and agreed to.

Amendment 70 moved—[Mr David Davidson]—and agreed to.

After section 27

The Deputy Presiding Officer: Group 18 is on a report to Scottish ministers on conduct complaints. Amendment 5, in the name of John Swinney, is grouped with amendment 7.

Mr Swinney: One of the matters discussed at length during consideration of the bill at stages 1 and 2 was whether complaints about services and conduct should be handled by the same body or different bodies. The Government proposes that service complaints should be handled by the Scottish legal services commission and that conduct complaints should be handled by the relevant professional organisations.

I moved a series of amendments at stage 2 to try to ensure that all complaints, whether they were about service or conduct, were handled by the Scottish legal complaints commission because I believed that that would fulfil the Government's commitment to an open and transparent process that would build public confidence. Those amendments were not successful at stage 2.

I have proposed in amendments 5 and 7 that the effectiveness, workability and performance of the separation of service and conduct complaints be reviewed after two years and subject to a report by the commission to ministers. There are two elements to the argument for doing that. The first is that however hard ministers try to make the distinction between service and conduct complaints, it is not quite as neat as everybody thinks. I was struck by some of the evidence that we heard in committee that members of the public invariably find that their complaints start off as service complaints and end up as conduct complaints. If that is the pattern, we would find that

different bodies would be looking at different elements of one complaint. That would disrupt the comprehensive assessment of complaints that members of the public want.

Also in evidence to the committee, the former Scottish legal services ombudsman, Mrs Costelloe Baker, said that in her opinion—based on her experience of dealing with such cases—the split between service and conduct complaints confused members of the public. Therefore, it would be beneficial to look at complaints in their totality to achieve an integrated approach.

The second element of the argument is about the performance of the professional organisations in dealing with complaints. Only recently, the Law Society of Scotland had to wipe clean the disciplinary records of about 250 solicitors whom it had reprimanded because the Law Society's actions were deemed to be illegal. The charge that was levelled at over 250 solicitors was one of unsatisfactory conduct. The Law Society has been down the route of trying to exercise disciplinary action and has got itself into a fix. On 13 November, the new Scottish legal services ombudsman, Jane Irvine, published official notices about cases in which the Law Society of Scotland refused to comply with her recommendations on the handling of complaints. I cite those two examples to demonstrate that the professional organisations do not always handle conduct complaints in the most effective fashion.

Instead of going back to the proposals that I made in my stage 2 amendments, which were not supported by the committee, I now seek to insert into the bill a provision similar to the one that Parliament agreed just the other week in the Bankruptcy and Diligence etc (Scotland) Bill. Gordon Jackson's amendment, which was accepted by ministers, proposed a two-year review period to look at the performance of particular elements of that bill. The provisions that I propose in amendments 5 and 7 would require the commission to report to ministers two years after the date on which the act will come into force to assess whether the separation between conduct and service complaints has worked effectively or whether the arrangement needs to be revisited.

The arrangement is worthy of further examination. Based on the Executive's past practice, I look forward to a warm response to my proposals.

I move amendment 5.

Mr Davidson: I am afraid that I cannot support John Swinney's amendment 5, for the simple reason that what he proposes involves a conflict of interests. If he is so keen that the Executive should have a report laid before it about the

performance of the commission, it should not be for the commission to produce the report; that should be done independently. I thought that we had all been arguing about independence of action and scrutiny throughout our consideration of the bill to date, and I find it strange, given his concerns about organisations doing things on their own behalf, that he would want to give the commission the power to audit its own performance and to make a report to ministers.

I am not minded to support amendment 7, because I am informed that it is not needed, as the powers, apparently, already exist. Perhaps Mr Swinney could clarify that when he winds up.

Colin Fox (Lothians) (SSP): Mr Swinney raises an important issue that is at the centre of the bill. The Justice 2 Committee spent a lot of its time considering conduct complaints, and its report highlighted the fact that the Executive's initial consultation showed that the public's overwhelming preference was for all complaints to be considered by a wholly independent complaints commission, which is what we are discussing now.

The separation between conduct complaints on the one hand and service complaints on the other reflects the current Law Society-designated categories. We heard a great deal of evidence from the Law Society, the Faculty of Advocates and others suggesting that the distinction between what is a service complaint and what is a conduct complaint is often not at all clear. I readily admit that there are different ways of handling the matter. The Faculty of Advocates more or less admitted that there was a big problem in making the distinction, but it boldly concluded that it was better to leave all complaints with the faculty—although I think that it is fair to say that the entire committee rejected that suggestion.

Like Mr Swinney, I accept that the Parliament has already considered the idea of the Scottish legal complaints commission dealing with all complaints, both service and conduct. The Parliament has made clear its view that it wants the two kinds of complaint to be handled separately, and I do not wish to reopen that argument at this stage. However, David Davidson says that he cannot support amendment 5 because he thinks that it might queer the pitch, so to speak, of the independence of the commission. I read amendment 5 as providing that a report can be written by the commission on those complaints that the commission itself will not be handling—the conduct complaints that will be handled by the Law Society.

Mr Swinney's amendments seek to ensure that the public's concerns that were raised in the initial consultations are assuaged. A review of and a report to Parliament on conduct complaints is

indeed the way forward. I would be happy to support amendment 5.

Johann Lamont: Amendment 5 has some attraction, in so far as it would require the commission to review its operations after its first two years. We commend such reviews as good administrative practice and certainly expect the commission to hold a consultative review seeking the views of interested parties on issues arising from its first few years of operation. However, that is as far as we would go. The amendment reflects the unease that some feel about the split that the bill makes between conduct and service complaints and about the fact that responsibility for conduct complaints is to be retained by the professional organisations. As has already been said, those issues were debated by the Justice 2 Committee at stage 2 in the context of amendments lodged by John Swinney. There was also debate about where the split is and how difficult it can be to make that absolutely definitive, but the bill recognises that there is the capacity to shift from one to the other, and that is an acknowledgement that a complaint that starts off as one type may become another and might therefore have to be dealt with in that way.

In our view, it would not be right to add conduct complaints to the commission's remit. The purpose of the commission is to provide an informal and consumer-friendly process, to promote mediation and dispute resolution at source and to focus on redress for consumer complaints. In contrast, conduct allegations carry with them the risk of a range of disciplinary sanctions against the practitioner, up to and including loss of livelihood. Disciplinary hearings against practitioners that could trigger sanctions of such severity require different, more formal and adversarial procedures, and full rights of appeal. If, in the worst-case scenario that John Swinney describes, it was found that that split was not working, it would not be a given that the commission would take over that role. A different solution may be needed, and the presumption that it would fall to the commission is not right. The professional organisations and, where appropriate, the discipline tribunals are already skilled at performing that sort of role and should be left to continue to do so. Given that the regulatory bodies set the standards of conduct for members of the profession, those bodies are in the best position to assess shortcomings. For those reasons, we do not support amendment 5.

On amendment 7, we do not believe that it is appropriate to have a reserve power to remove, by means of regulations, responsibility for conduct complaints from the professional organisations.

Even by John Swinney's standards, his suggestion that our acceptance of one

amendment to one bill constitutes past practice on the part of the Executive is a little elastic with the truth. In our view, an important principle of the bill is that service complaints should be dealt with by the commission and conduct complaints should be dealt with by the professional bodies. It is reasonable to argue that primary legislation would be the most appropriate way to make such a fundamental change, given that a range of options would need to be considered if, in the way that John Swinney fears, the approach in the bill had failed.

We do not support amendment 5 and we do not recognise the need for the reserve power in amendment 7, no matter how attractive John Swinney might have managed to make it appear by claiming precedent.

Mr Swinney: David Davidson seems to have fundamentally misunderstood or misread amendment 5. I am almost tempted to allow him to make a further speech in case he is more supportive the second time round.

Members: No.

Mr Swinney: My colleagues are encouraging me not to be so generous, so I should perhaps withdraw that offer.

The purpose of amendment 5 is not to ensure that the commission reviews its own work, but to extend the provisions in section 27, which give the commission the power to monitor practice and to identify any trends in the way in which the relevant professional organisations handle conduct complaints. Amendment 5 seeks to take that provision a bit further by enabling the commission, if it thinks that relevant professional organisations are handling conduct complaints inadequately, to recommend to ministers that there should be a change to the system. I am sorry if Mr Davidson did not understand the purpose of the amendments, but I am glad that at least Mr Fox was able to follow them.

Despite what the minister said, amendments 5 and 7 are designed to give the commission an extra role in monitoring and reporting on the situation and in presenting evidence, information and recommendations to ministers. By virtue of amendment 7, ministers would still have the power to make a judgment on whether they wished to take any step that the commission proposed.

Having seen how enthusiastic the Government was to accept the mechanism that Gordon Jackson proposed for the Bankruptcy and Diligence etc (Scotland) Bill, I think that it was reasonable to assume that my amendments would provide an appropriate vehicle to ensure that the concerns of the public are adequately addressed. I hope that the arrangements under the bill are successful and I hope that they work effectively. I

simply want to ensure that the bill includes a mechanism to allow those issues to be addressed in the longer term, after a couple of years have elapsed and once we have seen the performance of the relevant professional organisations.

The amendments would provide an important step that would maximise the consumer protection that will be available under the bill. On that basis, I will press amendment 5.

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. There will be a five-minute suspension to allow members to come into the chamber.

15:14

Meeting suspended.

15:19

On resuming—

The Deputy Presiding Officer: We will proceed with the division on amendment 5, in the name of John Swinney.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 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)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (Sol)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Ferguson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Gillon, Karen (Clydesdale) (Lab)

The Deputy Presiding Officer: The result of the division is: For 33, Against 71, Abstentions 1.

Amendment 5 disagreed to.

Section 28—Obtaining of information from relevant professional organisations

Amendment 71 moved—[David Davidson].

The Deputy Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)

Byrne, Ms Rosemary (South of Scotland) (Sol)
 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)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 37, Against 68, Abstentions 0.

Amendment 71 disagreed to.

Section 29—Monitoring effectiveness of guarantee funds etc.

The Deputy Presiding Officer: Group 19 is on monitoring the effectiveness of professional indemnity arrangements. Amendment 6, in the

name of John Swinney, is the only amendment in the group.

Mr Swinney: Amendment 6 is fairly straightforward and is designed to clarify the information that the commission will have access to in relation to the powers that are set out for it in section 29. The Government has brought forward a range of sensible proposals in section 29 for the commission to monitor the effectiveness of the Scottish solicitors guarantee fund, the professional indemnity arrangements and any funds or arrangements that are maintained by relevant professional organisations. However, it is unclear what the Executive means by “monitor the effectiveness of” and what information the commission may have access to to enable it to fulfil that purpose. Amendment 6 is designed to ensure that the commission is able to review the terms of any contracts or other documents that are associated with the professional indemnity arrangements.

The professional indemnity arrangements are commonly referred to as the master policy that provides security and insurance in relation to a variety of legal profession activities. The Law Society of Scotland has an obligation under the Solicitors (Scotland) Act 1980 to promote the interests of the public in relation to the profession. It is important that there is transparency about the documents that underpin that relationship. Amendment 6 is designed to clarify exactly what information the commission will have the power to access so that we can be satisfied that it can fully pursue the power that is allocated to it in section 29 to monitor the effectiveness of the professional indemnity arrangements and other matters.

I move amendment 6.

Mr Davidson: Mr Swinney comes from the insurance sector, and I would have thought that a contract between an individual party and an insurer comes under commercial confidentiality, but perhaps Mr Swinney can enlighten me when he sums up.

Johann Lamont: I appreciate that the aim of amendment 6 is to help the commission to fulfil its responsibility under section 29 to monitor the effectiveness of professional indemnity arrangements. Such arrangements are an important and integral part of the overall mechanisms for providing redress for clients who suffer as a result of poor service from a legal practitioner. However, our preference is to rely on the willingness of the professional bodies to co-operate with the commission when it seeks to carry out its duties under section 29. It will be very much in their interest to do so.

If the commission were to report a lack of co-operation on the part of the professional bodies, it

would be open to the Scottish ministers to place before the Parliament regulations under section 31 to enhance the commission's monitoring powers. Such regulations could set out the procedures for the commission to follow in obtaining documentation and provide enforcement powers for that purpose. I note that amendment 6 does not deal with how confidential commercial documents would be treated.

We propose to see how well section 29 works in practice and to review its operation in the light of experience. As I indicated, section 31 will allow us to improve its operation if required. At this point, I do not support amendment 6, for the reasons that I have given.

Mr Swinney: If ever I heard an argument for saving parliamentary time, it is the minister's point that, at some point in the future, if the arrangements are not working properly, the Government will lay regulations. There will be a problem with the disclosure of information, and for the commission to be able to fulfil its function of monitoring the effectiveness of the arrangements specified in section 29, it is essential that it has access to the quality of information that will enable it to make its judgments.

The Parliament regularly debates a number of questions about the ability of individuals and organisations to access information to satisfy themselves that issues are being dealt with properly. We can all think of examples. We should not wait until there is a problem; we should ensure that the commission is given full and effective powers to fulfil the responsibilities that the Parliament allocates to it under section 29. That is a key requirement.

Mr Davidson asked about commercially confidential information. I am concerned to ensure that the excuse of commercial confidentiality is not used to avoid proper scrutiny. What is the point of the Parliament passing a bill that gives the commission the power to monitor the effectiveness of arrangements without giving it the tools to enable it to do so? Amendment 6 is a necessary addition to the bill and would ensure that we pass a workable, robust and reliable bill that enables the commission to do its job properly.

I press amendment 6.

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)

Ballard, Mark (Lothians) (Green)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (Sol)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 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)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)

McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 71, Abstentions 0.

Amendment 6 disagreed to.

Section 31—Power by regulations to amend duties and powers of Commission

Amendment 7 not moved.

Section 32A—Restriction upon disclosure of information: Commission

15:30

The Deputy Presiding Officer: Group 20 is on restrictions on the disclosure of information. Amendment 72, in the name of the minister, is grouped with amendments 73, 75, 74 and 81 to 84.

Johann Lamont: Amendments 72 and 73 pave the way for the creation of a new criminal offence of wrongful disclosure of commission information by extending the prohibition on disclosure that is already contained in section 32A to information that is given to or obtained by the commission or anyone acting on its behalf. Amendments 81 and 82 perform the same function in relation to information held by the professional organisations.

Amendment 75 creates a criminal offence of knowingly disclosing information obtained when employed by or acting on behalf of the commission. The penalty on summary conviction will be a fine not exceeding level 4 on the standard scale. Amendment 83 applies an equivalent

offence in relation to the professional organisations and those acting on their behalf.

Amendments 74 and 84 would create similar offences, but there are a number of differences. First, the level of fine is not the same. Not a great deal turns on setting the fine at level 4 as opposed to level 5. We consider that conviction and a level 4 fine are sufficient deterrents.

Significantly, the Executive amendments apply only to information that is knowingly disclosed, therefore they provide an important defence of inadvertent disclosure, which David Davidson's amendments 74 and 84 do not provide. That should save the unfortunate employee who accidentally presses the wrong key on the computer and sends an e-mail to an unintended recipient or who leaves their briefcase on the train. Although such carelessness should be deplored, we should not criminalise otherwise law-abiding people for it.

The Executive amendments will also apply the criminal sanction whenever the information is obtained by someone who was employed by or acting on behalf of the commission or the professional organisation at the time. David Davidson's amendments 74 and 84 would not cover disclosure by people such as former employees, who would escape any penalty, therefore I do not support David Davidson's amendments.

I move amendment 72.

Mr Davidson: I accept some of what the minister says. I will not move amendments 74 and 84, as I am convinced by her arguments on them. However, I feel that amendment 72 is not supportable on the basis that it limits the legitimate need to disclose in court information that is required to assist a case by a complainer. Amendment 81 is wide and loose, and prevents fair presentation of required evidence. However, we are happy to support the minister's amendments 82 and 83.

The Deputy Presiding Officer: Minister, is there anything that you wish to add?

Johann Lamont: I have nothing further to say.

The Deputy Presiding Officer: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)

Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 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)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 Smith, Iain (North East Fife) (LD)

Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 86, Against 14, Abstentions 0.

Amendment 72 agreed to.

Amendments 73 and 75 moved—[Johann Lamont]—and agreed to.

Amendment 74 not moved.

Section 33—Giving of notices etc under Part 1

Amendment 76 moved—[Johann Lamont]—and agreed to.

Amendment 77 moved—[Mr David Davidson]—and agreed to.

Section 35—Conduct complaints: duty of relevant professional organisations to investigate etc

Amendment 79 moved—[Johann Lamont]—and agreed to.

Section 35A—Conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations

Amendment 80 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Petrie, Dave (Highlands and Islands) (Con)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (Sol)
 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)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)

Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (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)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 36, Against 67, Abstentions 0.

Amendment 80 disagreed to.

Section 35E—Restriction upon disclosure of information: relevant professional organisations

Amendments 81 to 83 moved—[Johann Lamont]—and agreed to.

Amendment 84 not moved.

Section 36—Unsatisfactory professional conduct: solicitors

The Deputy Presiding Officer: Group 21 is on remission of complaint from tribunal to council. Amendment 85, in the name of the minister, is grouped with amendments 86, 91, 94 to 96, 112 to 114, 118, 120, 121, 200 and 201.

Johann Lamont: The amendments deal with an issue that was raised at stage 2 concerning what would happen if a practitioner was prosecuted before the Scottish Solicitors Discipline Tribunal for professional misconduct and the tribunal did not establish professional misconduct but thought that the case might amount to unsatisfactory professional conduct. Under the bill, prosecutions for professional misconduct will continue to take place before the tribunal, while the new and lesser category of unsatisfactory professional conduct

will be dealt with by the council of the Law Society of Scotland.

We consider that this is a genuine issue, and that there should be a formal mechanism for ensuring that the case is properly investigated as one involving unsatisfactory professional conduct allegations. Amendments 96 and 112 therefore require the tribunal to remit the complaint to the council in such a situation. Amendment 96 deals with cases involving solicitors and inserts new section 53ZZA into the Solicitors (Scotland) Act 1980. Amendment 112 provides an equivalent for conveyancing and executry practitioners, and inserts new section 20ZZA into the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which is the governing statute for those practitioners. Both amendments permit the tribunal to make any of its own findings in fact available to the council, to avoid duplication of investigations.

Amendments 85 and 113 deal with what the council is to do on receiving such a remitted complaint. The details are contained in new sections 42ZA(1A) of the 1980 act and 20ZA(1A) of the 1990 act. The council is to notify the practitioner and complainer that the case has been remitted and that it is now bound to investigate the case as a complaint of unsatisfactory professional conduct. The council is to proceed to investigate and determine the case, but not before allowing the practitioner complained against the opportunity to make representations, and may rely on any findings of fact made available by the tribunal.

Amendments 86, 91, 94, 95, 114, 118, 120 and 121 insert, where appropriate, references in sections 36 and 37 to the new subsections introduced by amendments 85 and 113.

Amendments 200 and 201 are technical amendments that insert appropriate references to new sections 42ZA(1A) of the 1980 act and 20ZA(1A) of the 1990 act into paragraph 1(2)(a)(ii)(ab)(i) of schedule 4, as inserted by amendments 85 and 113 respectively.

I move amendment 85.

Amendment 85 agreed to.

Amendment 86 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Group 22 is on powers of council, tribunal and court where unsatisfactory professional conduct or professional misconduct is found. Amendment 88, in the name of David Davidson, is grouped with amendments 89, 90, 97 to 102, 104 to 109, 111, 115 to 117, 122 to 124, 126 to 132, 134, 139 to 141 and 146.

Mr Davidson: I will rattle through the amendments fairly quickly. Amendment 88 is about consistency and would allow the Law Society of Scotland to take into account a decision

of the Scottish Solicitors Discipline Tribunal when disciplining a practitioner. Amendment 89 is consequential. Amendment 90 would allow the council of the Law Society of Scotland to take into account other decisions when making awards under section 8. Amendment 99 would empower the tribunal to fine when dealing with appeals.

Amendment 100 would provide consistency with section 8 and amendment 90. Amendments 101 and 103 are consequential on amendment 100. Amendment 104 would clarify the powers of the court under proposed new section 54A of the Solicitors (Scotland) Act 1980 and would ensure that those powers were exercisable only under appeal. Amendment 105 is related to amendment 107. Amendment 106, in the name of the minister, is consistent with amendment 98.

Amendment 107 would remove the double jeopardy element, because it is an important part of justice that a person should not be punished twice for something. Amendment 108 would reinforce enforcement. Amendment 109 would add clarity. Amendment 111 would provide consistency with amendments 100 and 90. Amendment 115 would provide consistency with regard to conveyancing or executry practitioners, by providing that decisions of the Scottish Solicitors Discipline Tribunal and the court could be taken into account. Amendments 117, 124 and 126 would provide consistency with section 8. Amendment 127 is consequential on amendment 130. Amendments 129 to 132 and 134 would provide more consistency. Amendment 139 would change wording. Amendments 141 and 146 would provide consistency.

I am content with the amendments in the group that are in the minister's name.

I move amendment 88.

Johann Lamont: For clarity, I indicate that as well as asking members to support the Executive amendments, we ask members to support non-Executive amendments 88, 89, 115 and 116 and to reject the other non-Executive amendments. I will explain why.

Amendments 97 and 122 confer on the Scottish Solicitors Discipline Tribunal the power, when an appeal is made to it on a complaint of unsatisfactory conduct, to direct that the solicitor or conveyancing or executry practitioner concerned

"undertake such education or training as regards the law or legal practice"

as the tribunal considers appropriate. In the case of a conveyancing or executry practitioner, the direction would be limited to education or training on conveyancing or executry law and practice.

Following consultation, the tribunal thought that the additional powers would be helpful.

Amendments 98, 106, 123, 128 and 140 insert maximum levels of fine into various provisions, where it is reasonable to do so. The approach is in line with that of existing provisions in the bill, the Solicitors (Scotland) Act 1980 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, whereby the maximum fine payable is £2,000 in a case of unsatisfactory professional conduct and £10,000 in a case of professional misconduct.

I support amendments 88, 89, 115 and 116. Amendments 88 and 115 would allow the council of the Law Society of Scotland, in considering an unsatisfactory professional conduct complaint against a solicitor or conveyancing or executry practitioner, to take into account a previous determination of unsatisfactory professional conduct made against the practitioner by the Scottish Solicitors Discipline Tribunal or the court. In the bill as it stands, power is given to the council to take into account its previous determinations. Amendments 89 and 116 would additionally allow previous findings of professional misconduct against a practitioner to be taken into account. The amendments are reasonable and would permit the practitioner's disciplinary history to be more fully considered.

Amendments 90, 100, 111, 117, 124, 129, 130, 141 and 146 are not necessary. There is nothing to prevent the various bodies involved from taking into account all relevant factors in making decisions about compensation and there is no reason to think that those bodies would not do so. An obligation to take previous awards of compensation into account, regardless of the basis on which a previous award had been made, might also unduly restrict judicial discretion. I therefore invite David Davidson not to move those amendments.

I also invite David Davidson not to move amendments 99, 101 and 102. The appeals with which those amendments are concerned are complainer appeals against a decision by the council of the Law Society not to uphold a conduct complaint. The complainer has been given new appeal rights purely so that he or she can have the issue of compensation adjudicated at a higher level. The complainer's interest is in ensuring that an award of compensation is made against the solicitor where appropriate. That is why there is currently no power for the tribunal to fine the solicitor on such an appeal. In addition, no amendments have been proposed to make equivalent provision in relation to conveyancing and executry practitioners.

15:45

I do not believe that amendments 104, 109, 126, 132 and 139 are necessary. Clearly, on an appeal, the court has to decide whether the appeal succeeds or fails. That does not need to be spelled out. What is important is what the court has the power to do on a successful appeal. The bill already lists the powers of the court in that respect.

I understand Mr Davidson's motivation in lodging amendments 105, 107, 108, 127, 130 and 131. It looks as if there are gaps in the bill as drafted, but the omission of the matters with which those amendments deal was not an oversight. The 1980 and 1990 acts impose corresponding conditions on the powers of the council of the Law Society and the Scottish Solicitors Discipline Tribunal to fine for professional misconduct. However, those acts do not apply those same conditions to fines that are imposed by the court on appeal. We thought it important that the new powers that are being introduced in relation to unsatisfactory professional conduct complaints were consistent with the existing framework. We did not want to interfere with the inherent powers and practices of the court, or cast doubt on the way in which those acts have operated to date in professional misconduct cases.

Mr Davidson: I listened with interest to what the minister had to say. I am minded to take her advice not to meddle with the courts. As she knows, we on the Conservative benches like to see the courts acting independently, without ministerial intervention. On that basis, I will move or not move my amendments in the group as appropriate. I press amendment 88.

Amendment 88 agreed to.

Amendment 89 moved—[Mr David Davidson]—and agreed to.

Amendment 90 not moved.

Amendments 91 and 92 moved—[Johann Lamont]—and agreed to.

Amendment 93 not moved.

Amendments 94 to 98 moved—[Johann Lamont]—and agreed to.

Amendments 99 to 102 not moved.

The Deputy Presiding Officer: Group 23 is on the enforcement of directions and the ability to amend the powers of the tribunal, court etc. Amendment 103, in the name of the minister, is grouped with amendments 110, 125, 133, 135 to 138, 142 to 145, 147 to 151, 215 to 218 and 223.

Johann Lamont: Amendment 103 introduces new subsections (6A) to (6C) into new section 53ZA of the Solicitors (Scotland) Act 1980.

Subsection (6A) provides that any direction of the Scottish Solicitors Discipline Tribunal on an appeal relating to an unsatisfactory professional conduct complaint against a solicitor is enforceable in the same way as an extract registered sheriff court decree. It ensures effective enforceability of such directions.

Subsections (6B) and (6C) enable the maximum amount the tribunal may fine a solicitor or award as compensation on such an appeal to be varied by order. The maximum fine is to be variable by negative resolution procedure in line with changes in the value of money. The maximum amount of compensation is to be variable by affirmative resolution procedure after consultation with the council of the Law Society and such consumer groups as ministers consider appropriate. The powers of variation are in line with those elsewhere in the bill.

Amendment 125 provides an exact equivalent of amendment 103 as regards appeals to the Scottish Solicitors Discipline Tribunal following unsatisfactory professional conduct complaints against conveyancing and executry practitioners. It introduces new subsections (7), (8) and (9) into section 20B of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. They have the same effect as the new subsections (6A) to (6C) inserted by amendment 103.

Amendment 110 concerns appeals to the Court of Session following unsatisfactory professional conduct complaints against solicitors. It provides for the maximum level of fine that the court may impose to be varied by order under the negative resolution procedure, in line with changes in the value of money. It also provides for the maximum level of compensation that the court may award on such an appeal to be varied under the affirmative resolution procedure following consultation with the council of the Law Society and such consumer groups as ministers consider appropriate.

Amendment 133 provides an exact equivalent of amendment 110 for appeals to the Court of Session following unsatisfactory professional conduct complaints against conveyancing and executry practitioners.

Amendments 135 to 138 are purely technical amendments. Section 38(1)(b) currently inserts new subsections immediately after section 53 subsection (7A) of the Solicitors (Scotland) Act 1980. However, amendment 215 inserts a new subsection (7B) into section 53. The subsections inserted by section 38(1)(b) should follow immediately after this. Amendment 135 therefore provides for those subsections to come after new subsection (7B) and amendments 136 to 138 renumber them as subsections (7C) and (7D).

Amendments 142 to 145 introduce into section 55 of the Solicitors (Scotland) Act 1980 a new

power to vary by order the maximum fine that the Court of Session may impose on an appeal relating to a complaint of professional misconduct against a solicitor. The power is to be limited to making alterations in line with changes in the value of money, and is to be subject to the negative resolution procedure.

Amendments 147 to 151 are technical amendments. Section 38(2)(b) inserts new subsections (11F) and (11G) into section 20 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. However, amendment 223 also inserts a new subsection (11F) into that section. Those new subsections should, in fact, follow immediately after that new subsection (11F). Amendments 147 and 148 provide for them to do so and amendments 149, 150 and 151 therefore renumber them as (11G) and (11H).

Amendments 215 and 223 provide for directions of the Scottish Solicitors Discipline Tribunal in professional misconduct cases involving solicitors and conveyancing and executry practitioners to be enforceable in the same way as extract registered sheriff court decrees. They ensure effective enforceability of such directions.

Schedule 4 paragraph 1(6N)(b) inserts new subsections (8A) and (8B) into section 53 of the 1980 act. However, those subsections should now follow new subsection (9) of that section, which is introduced by section 38(1)(c) of the bill. Amendment 216 achieves that and amendments 217 and 218 accordingly renumber the new subsections as (10) and (11).

I move amendment 103.

Amendment 103 agreed to.

Amendments 104 and 105 not moved.

Amendment 106 moved—[Johann Lamont]—and agreed to.

Amendments 107 to 109 not moved.

Amendment 110 moved—[Johann Lamont]—and agreed to.

Amendment 111 not moved.

Section 37—Unsatisfactory professional conduct: conveyancing or executry practitioners

Amendments 112 to 114 moved—[Johann Lamont]—and agreed to.

Amendments 115 and 116 moved—[Mr David Davidson]—and agreed to.

Amendment 117 not moved.

Amendments 118 to 123 moved—[Johann Lamont]—and agreed to.

Amendment 124 not moved.

Amendment 125 moved—[Johann Lamont]—and agreed to.

Amendments 126 and 127 not moved.

Amendment 128 moved—[Johann Lamont]—and agreed to.

Amendment 129 not moved.

Amendment 130 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacAskill, Mr Kenny (Lothians) (SNP)
Martin, Campbell (West of Scotland) (Ind)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robison, Shona (Dundee East) (SNP)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Watt, Ms Maureen (North East Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (Sol)

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, Marilyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (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)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 35, Against 65, Abstentions 0.

Amendment 130 disagreed to.

Amendments 131 and 132 not moved.

Amendment 133 moved—[Johann Lamont]—and agreed to.

Section 38—Powers to fine and award compensation for professional misconduct etc

Amendment 134 not moved.

Amendments 135 to 138 moved—[Johann Lamont]—and agreed to.

Amendment 139 not moved.

Amendment 140 moved—[Johann Lamont]—and agreed to.

Amendment 141 not moved.

Amendments 142 to 145 moved—[Johann Lamont]—and agreed to.

Amendment 146 not moved.

Amendments 147 to 151 moved—[Johann Lamont]—and agreed to.

Section 38A—Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct

Amendment 152 moved—[Johann Lamont]—and agreed to.

Section 41—Safeguarding interests of clients

Amendment 153 moved—[Johann Lamont]—and agreed to.

Section 44—Criminal legal aid in solemn proceedings

16:00

The Deputy Presiding Officer: Group 24 is on legal aid conditions and reviews etc. Amendment 154, in the name of the minister, is grouped with amendments 155 to 157, 164 and 165.

Johann Lamont: Amendments 154 and 155 concern solemn criminal legal aid. Amendment 157 concerns legal aid in criminal appeal cases and cases before the Judicial Committee of the Privy Council. Amendment 165 concerns legal aid in certain proceedings that relate to children. The amendments widen the scope of the Scottish Legal Aid Board's condition-making powers. Such powers were introduced at stage 2 for civil and summary criminal legal aid, and the amendments introduce such a power in relation to solemn criminal legal aid. Amendments 156 and 164 are consequential amendments.

The amendments in the group will ensure that publicly funded legal assistance and representation is appropriately provided at all stages of cases in which it has been made available. Amendment 154 will allow the Scottish Legal Aid Board the flexibility to impose such conditions as it considers expedient during the currency of a solemn case. Solemn criminal legal aid will still be available under section 23 of the Legal Aid (Scotland) Act 1986 subject to the existing financial eligibility test, which determines

that legal aid should be available for an applicant who cannot meet the expenses of the case without undue hardship to them or their dependants.

Amendment 154 will enable the board to ascertain that people who receive legal aid continue to meet the financial criteria throughout the currency of their case. At present, when solemn legal aid is granted, it is not reviewed to establish whether the financial conditions continue to apply throughout the case. Cases can last a long time and the person's financial circumstances might change considerably. Amendment 154 will enable the board to ensure that legal aid should remain in place.

Amendment 155 provides the safeguard of a review mechanism whereby the board will establish a procedure that allows anyone who receives criminal legal aid that is subject to such conditions to apply for a review of those conditions.

Amendment 157 will give the board greater flexibility in imposing conditions to grants of legal aid in criminal appeal cases and cases before the Judicial Committee of the Privy Council. Legal aid will still be available subject to the eligibility tests in sections 25(2) and 25AB(2) of the 1986 act.

Amendment 165 will allow the board similar flexibility to impose conditions in certain proceedings that relate the children. As before, legal aid will still be available subject to the eligibility tests in section 29 of the 1986 act.

Amendments 157 and 165 will allow the board to require a person who receives legal aid to comply with such conditions as it considers expedient. Conditions may be imposed either when legal aid is granted or subsequently. The amendments will ensure that there is a consistent approach to the various types of legal aid. As with solemn criminal legal aid, the amendments will provide a review mechanism whereby the board will review decisions to refuse legal aid or to grant legal aid subject to conditions, if an application is made to it.

In criminal appeal cases, there is an existing power under section 25(2A) of the 1986 act for the High Court to determine that it is in the interests of justice for legal aid to be available in criminal appeal cases where the board has refused legal aid on the basis that it is not satisfied that it is in the interests of justice for it to be made available. Amendment 157 seeks to add new section 25(2B) of the 1986 act to provide for an extension of the High Court's powers. It provides that where, as a result of a condition that the Scottish Legal Aid Board has imposed, it terminates legal aid on the ground that it is no longer satisfied that it is in the interests of justice for legal aid to be available, the High Court can determine that legal aid should be

made available for an appeal if it thinks that it is in the interests of justice for it to do so. Following such a determination, the board shall make legal aid available.

I move amendment 154.

Mr Davidson: I appreciate the flexibility that the minister seeks to introduce, but it is important that the details are clearly set out so that the Scottish Legal Aid Board can be properly audited and understood by the many people who wish to take advantage of its services.

I am looking for an assurance from the minister that we will be able to know where all this will be laid out clearly, so that those who may wish to give advice on what is being introduced and those who seek assistance will know clearly what is being spelt out today.

The Deputy Presiding Officer (Murray Tosh): Do you wish to add anything, minister?

Johann Lamont: Just that clarity is always my watchword. We ensure that everything we do is clear to everyone who needs the information in order to proceed.

Amendment 154 agreed to.

Amendment 155 moved—[Johann Lamont]—and agreed to.

Section 44A—Criminal legal aid: conditions and reviews

Amendments 156 and 157 moved—[Johann Lamont]—and agreed to.

Section 45—Register of advice organisations: advice and assistance

The Deputy Presiding Officer: We move to group 25—adviser code: complaints. Amendment 158, in the name of the minister, is the only amendment in the group.

Johann Lamont: The draft adviser code that the Scottish Legal Aid Board submitted to the Justice 2 Committee at stage 2 requires registered organisations to have procedures in place for dealing with complaints and, when appropriate, for enabling complainants to pass on complaints to the board. There is, however, no requirement in the bill for complaints handling to be covered by the code. Amendment 158 provides that the board is required to include such details in the code and fulfils a commitment that was given to the committee at stage 2 by Hugh Henry.

I move amendment 158.

Mr Davidson: I welcome the minister's acceptance of the point that was made by my colleague, Bill Aitken, at stage 2. We are pleased

that the Executive has lodged the amendment, which will ensure clarity.

Amendment 158 agreed to.

Section 45A—Scottish Legal Aid Board: grants for certain purposes

The Deputy Presiding Officer: Group 26 is on the power of the Scottish Legal Aid Board to make grants. Amendment 159, in the name of the minister, is grouped with amendments 160 and 161.

Johann Lamont: Amendments 159, 160 and 161 are intended to provide clarification on the provisions in the bill that relate to grant funding.

The grant-funding power and the extension of advice and assistance to non-lawyer advisers that are established by the bill are limited to matters of civil law only. Amendment 159 makes it clear that the board may make grants in respect of advice and assistance that are provided by a non-lawyer adviser only in respect of matters of civil law.

Amendment 160 clarifies that the board can use its grant-funding power to support the full range of publicly funded legal assistance activities. It specifies that representing a member of the public is to be included in the list of fundable activities, along with advising them on the application of law to their individual circumstances and assisting them to remedy their legal problems.

Our intention for the operation of the grant-funding power is that the standard eligibility tests that individual applicants for legal aid must meet need not be applied automatically in respect of grant funding for the provision of advice, assistance or representation that is not traditional civil legal aid or advice and assistance. There are many good reasons why that may be appropriate when the award of a grant does not relate to the direct provision of advice to an individual. It would be incongruous to apply criteria that assess an individual's financial eligibility or the merits of an individual case to an application for funding towards work to develop advice standards or for the provision of advice to a group of people. The bill originally disappplied the sections of the 1986 act that contained the relevant eligibility tests and definitions but allowed the board to apply them to individual grants, when appropriate.

On reflection, we consider that new section 4A(2)(c) of the Legal Aid (Scotland) Act 1986, which is introduced by section 45A of the bill, is sufficiently flexible not to require the disapplication of those sections, as it does not make provision for the traditional civil legal aid and advice and assistance that are defined in the Legal Aid (Scotland) Act 1986. However, when civil legal aid or advice and assistance is provided in terms of a grant under section 4A(2)(a) or section 4A(2)(b) of

the 1986 act, the usual eligibility and other tests that are contained in the 1986 act will apply. Amendment 161 therefore removes the provisions that would otherwise disapply the relevant sections of the 1986 act from grant funding.

Amendment 161 makes it clear that grants may be made both to individual persons and to organisations; Maureen Macmillan raised that point at stage 2. It does that by clarifying the definition of "person" in relation to the provision of grants under section 4A of the 1986 act only. That is to avoid confusion elsewhere in the 1986 act, where "person" importantly refers to an individual applicant for legal aid.

I move amendment 159.

Amendment 159 agreed to.

Amendments 160 and 161 moved—[Johann Lamont]—and agreed to.

After section 45A

The Deputy Presiding Officer: Group 27 is on financial limit: advice and assistance. Amendment 162, in the name of the minister, is the only amendment in the group.

Johann Lamont: Section 10 of the Legal Aid (Scotland) Act 1986 sets financial limits to grants of advice and assistance by solicitors. It also provides that solicitors must seek the prior authorisation of the Scottish Legal Aid Board before giving advice and assistance over and above the financial limits that are set down in the section.

Amendment 162 has two purposes. First, it will build on the reforms that are soon to be made to advice and assistance under regulations. An amendment that was passed at stage 2 to create section 46A of the bill allows regulations to be made to provide the Scottish Legal Aid Board with additional powers to determine the matters that are or are not to be treated as distinct matters for advice and assistance.

Taken together, that amendment and amendment 162 will make the changes to advice and assistance that were outlined in the consultation on the proposed reform of advice and assistance in civil cases that Hugh Henry, the then Deputy Minister for Justice, issued in late 2004 and which ran to early 2005. Several changes are being developed in response to the views that were expressed in the consultation. They will ensure that, in civil cases, the advice and assistance scheme will be flexible and will operate as efficiently as possible.

Under the reformed advice and assistance scheme, solicitors in some cases will be paid a fee for the initial interview and work that relates to it but no more. That will apply when the case's

subject matter is neither listed by the Scottish Legal Aid Board as a distinct matter nor treated as such. The cases that would be caught are the same ones for which solicitors claim minimum fees now.

Amendment 162 is necessary to ensure that solicitors cannot ask for the financial limit of such initial interviews and work that relates to them to be exceeded. Allowing increases for such work would in effect remove the gains that would be made in removing the current abuses of the minimum fee arrangement.

Secondly, amendment 162 will allow the Scottish Legal Aid Board to make advice and assistance available retrospectively in some cases. It provides that the board may do so only when the advice and assistance were required to be given by the solicitor urgently and when it was impossible for the solicitor to obtain the board's prior authorisation. An example is giving advice and assistance outwith office hours in a criminal defence case because a client was taken into custody late at night. The amendment provides the Scottish Legal Aid Board with discretion to grant such applications only when it is satisfied that the advice and assistance required to be given urgently and when it was impossible for the solicitor to apply for an increase in authorised expenditure before doing the work.

The amendment provides that such retrospective approvals of advice and assistance cannot be given for cases whose subject matter does not appear on the list of distinct matters or is not treated by the board as if it appeared there when the work that the solicitor performs is solely to do with an initial interview and work that relates to it.

The 1986 act provides that the solicitor makes the initial assessment of whether, when the usual eligibility tests are taken into account, advice and assistance can be approved. The amendment makes no change to that arrangement. Solicitors will still approve and make the initial grant of advice and assistance.

I move amendment 162.

Amendment 162 agreed to.

The Deputy Presiding Officer: Group 28 is on payments in and out of the fund: contributions, expenses and property recovered. Amendment 163, in the name of the minister, is grouped with amendments 167 to 170.

Johann Lamont: Section 17 of the 1986 act defines the net liability on the legal aid fund as the aggregate of the sums paid or payable out of the fund to a solicitor, counsel or non-lawyer adviser that are not recouped by the fund from expenses. Amendment 169 will amend section 17 so that an

assisted party who meets the net liability as a result of property that is recovered or preserved and whose opponent subsequently pays legal expenses to the board may receive any amount in excess of the net liability and therefore benefit from the outcome of the court proceedings in their favour. Amendment 167 will amend section 4 of the 1986 act so that such payments may be made from the legal aid fund.

The other amendments in the group are intended to take account of changes that the bill introduces to enable advice and assistance to be provided by virtue of the board's new grant-funding power or by a solicitor whom the board employs to provide assistance with civil law matters. Their general purpose is to ensure that people who receive advice and assistance through those routes are not disadvantaged in comparison with people who are assisted through the more traditional route of services that are provided by a private sector solicitor.

Amendment 163 enables the board to make payments out of the fund to assisted parties where such payments would have been likely, had advice and assistance not been provided by virtue of a grant or by a board-employed solicitor.

Amendment 168 provides that payments may be made into the fund in respect of expenses or property recovered in proceedings where advice and assistance are provided by virtue of a grant from the board or by a solicitor employed by the board.

Amendment 170 provides that, when the board calculates the net liability on the fund in instances where civil legal aid and advice and assistance have been provided through a grant from the board or by a solicitor employed by the board, the calculation should be made with reference to the sums that would have been payable from the fund if the civil legal aid and advice and assistance had been provided through the more traditional private solicitor route.

I move amendment 163.

16:15

Mr Davidson: Amendment 163 and the rest of the amendments in the group are welcome additions to the grant aid power. For clarity, does the minister see this as a loans system to help people to get access to and to use their right to raise a case in the court on a basis that will be fiscally neutral for the public purse?

Johann Lamont: I do not see it as a loans system.

Amendment 163 agreed to.

Section 45C—Civil legal aid: conditions and reviews

Amendments 164 and 165 moved—[Johann Lamont]—and agreed to.

After section 45C

The Deputy Presiding Officer: Group 29 is on availability of legal aid: Judicial Committee of the Privy Council. Amendment 166, in the name of the minister, is the only amendment in the group.

Johann Lamont: Amendment 166 extends the availability of publicly funded legal assistance for proceedings before the Judicial Committee of the Privy Council that are not currently covered under the Legal Aid (Scotland) Act 1986. It provides that persons whose cases raise devolution issues that are referred to the Judicial Committee of the Privy Council under paragraph 33 of schedule 6 to the Scotland Act 1998 may receive legal aid. Those comprise proceedings in which the Lord Advocate, the Advocate General, the Attorney General or the Attorney General for Northern Ireland has required a court or tribunal to refer to the Judicial Committee of the Privy Council a devolution issue arising in proceedings before that court or tribunal. In such cases, the eligibility tests that are laid down in the 1986 act must be satisfied.

Where criminal legal aid has been made available in connection with the proceedings in which the reference is made, the legal aid certificate for the principal proceedings would already cover the reference. For that reason, the amendment provides that in such cases the legal aid provided is not by virtue of section 25AB of the 1986 act.

The amendment extends legal aid provision to cases in which devolution issues have arisen in judicial proceedings in the House of Lords. Paragraph 32 of schedule 6 to the Scotland Act 1998 allows the House of Lords to refer such issues to the Judicial Committee of the Privy Council. The amendment extends the availability of civil legal aid to provide that it will be available for such references when the eligibility tests that are laid down in the 1986 act are satisfied. For cases in which the House of Lords considers that, given all the circumstances, it should determine the devolution issue, legal aid may already be available under the 1986 act, where the proceedings are appeals from the Court of Session and the eligibility criteria apply.

A recent case has illustrated the lack of legal aid provision in direct references under paragraph 33 of schedule 6 to the Scotland Act 1998. That will now be corrected. The provisions will be brought into force as soon as possible.

I move amendment 166.

Amendment 166 agreed to.

Section 46—Contributions, and payments out of property recovered

Amendments 167 to 170 moved—[Johann Lamont]—and agreed to.

Section 48—Ancillary provision

Amendments 171 and 172 moved—[Johann Lamont]—and agreed to.

Section 49—Regulations or orders

Amendments 226, 227 and 174 moved—[Johann Lamont]—and agreed to.

Amendment 238 not moved.

Schedule 1

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

The Deputy Presiding Officer: Group 30 is on the Scottish legal complaints commission: appointment of members. Amendment 175, in the name of David Davidson, is grouped with amendments 176 to 180.

Mr Davidson: The independence of the commission is crucial. *[Interruption.]* I apologise, Presiding Officer—I have now turned off my phone.

Many members have difficulties with questions relating to the commission's independence. They and people outside the Parliament are greatly concerned about how independent an organisation whose members are appointed by ministers will be. The minister and her colleagues have moved some way by proposing the involvement of the Lord President in dealing with removals—that struck me as the beginning of a move towards a sensible solution to the problem—and she appears to be moving a little further so that the Lord President could even be involved on a consultative basis.

The committee took a lot of evidence on the commission's independence. Many people called for the commission to be completely independent of legal practitioners and ministers. Will the minister go all the way and make the commission independent, or does she want to settle for the Lord President being involved? I am not sure how far she is prepared to give way on the matter, but an important issue is involved. People outside the Parliament and people who do not practise the law should understand that the commission, which is supposed to act on behalf of members of the public, is independent.

I move amendment 175.

Johann Lamont: Amendment 175 would require commission members to be appointed by the Lord President of the Court of Session rather than by the Scottish ministers. Amendments 177, 178 and 179 are consequential on amendment 175.

We still think that it is essential for appointments to the commission to be made by ministers and that that is entirely compatible with the European convention on human rights. Our proposals are coherent and consistent with our policy position—we do not want a halfway house, which David Davidson perhaps implied that we wanted.

A wide range of qualities will have to be taken into account in appointing commission members, such as the person's experience of complaints handling and consumer awareness. Commission members will also have an important strategic management role. The range of qualities that will be needed will be best assessed in a selection process that is carried out under the umbrella of the Scottish ministers. I repeat that the appointments will be supervised by the commissioner for public appointments in Scotland and will not be political appointments. Therefore, I invite David Davidson not to press his amendments.

However, I have been persuaded that the Lord President's being given a consultative role would provide reassurance to those who still have concerns about the appointments process and that that will help to reinforce the fact that members of the new commission will have to be able to adjudicate in an independent and impartial way. Those judicial qualities will be assessed as part of the appointments process. Amendment 176 is therefore a small but significant amendment, which will require ministers to consult the Lord President before appointing members of the commission.

Paragraph 5(1A) of schedule 1 states that where the expression "the Lord President" is used, the Lord President of the Court of Session is meant. That clarification has been provided in amendment 176, the text of which will appear earlier in the schedule. The words to that effect in paragraph 5(1A) of schedule 1 are therefore no longer necessary and will be removed by amendment 180.

Bill Aitken: I fully accept that convention rights will be complied with, but I am not entirely satisfied that what has been proposed is right. The minister recognises that people are sensitive about the issue. I acknowledge that she has come some way along the road with us and also that a chicken-and-egg argument is involved, as the commission cannot materialise out of the ether—it must come from somewhere. However, we should bear in mind that judicial independence is one of

the keystones of the Scottish legal system and therefore we must be exceptionally careful about what we are doing.

The Executive must be detached from the commission and the setting up of that commission as far as is humanly possible or else there will be accusations of unfairness. I am perfectly satisfied that what the Executive seeks to do is not going along those lines. However, it must not only be fair, but it must be seen to be fair, and the detachment that is necessary is met with in Mr Davidson's amendments.

Jeremy Purvis: Does not Mr Aitken acknowledge that the minister's amendments, which I hope that all members will support, make the bill much more consistent with the Scottish Solicitors Disciplinary Tribunal? Ministers are involved in the appointment of members to that tribunal, and that does not seem to give him much concern.

Bill Aitken: I recognise that what the minister has done is helpful, but I do not think that the argument about the Scottish Solicitors Discipline Tribunal is consistent. A degree of sensitivity attaches to appointments to the commission that does not apply to the tribunal. Even at this late stage, I look to the minister and recommend to her that David Davidson's amendment 175 be accepted.

Mr Davidson: I must simply say to Mr Purvis that we are dealing with the bill that is before us today. I do not know why he is bringing in an argument about something else.

Jeremy Purvis: Will the member give way?

Mr Davidson: I do not have time. Quite simply, I intend to press amendment 175.

The Deputy Presiding Officer: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
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 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (Sol)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)

Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 13, Against 74, Abstentions 0.

Amendment 175 disagreed to.

Amendment 176 moved—[Johann Lamont]—and agreed to.

Amendments 177 to 179 not moved.

Amendment 180 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Group 31 is on the Scottish legal complaints commission: delegation of functions. Amendment 181, in the name of David Davidson, is grouped with amendments 182, 183 and 183A. I draw members' attention to the pre-emption information that is shown on the groupings list.

Mr Davidson: Amendment 181 is a paving amendment for amendment 183. The argument for amendment 183 is that it provides an opportunity to set up a determination committee for the new commission. According to the bill, as currently drafted, the functions of the commission can be exercised by any of the persons mentioned in paragraph 13(1) of schedule 1, including a member of staff of the SLCC. The only exception is for the function of determining whether the complaint is frivolous or vexatious, which can be exercised only by one of its committees or by an SLCC member. However, those are all essential and important functions relating to a complaint, and they should therefore be made by a determination committee.

In considering this part of the bill, we have a choice between the minister's amendment 182 and my more concise amendment 183, with amendment 181, which would, if agreed to, pre-empt amendment 182.

I move amendment 181.

16:30

Johann Lamont: Amendment 182 follows on from amendments that were made to the bill at stage 2, whereby complaints are to be screened out and not investigated by the commission if they are deemed to be

"frivolous, vexatious or totally without merit"

rather than simply "frivolous or vexatious". Paragraph 13(1A)(a) of schedule 1 contains a reference to "frivolous or vexatious" that should also be extended to include the new criterion of being "totally without merit".

Amendments 181, 183 and 183A would require that only a determination committee of commission members could be delegated by the commission to make decisions on whether a complaint is frivolous, vexatious or totally without merit, whether a complaint has been made timeously or prematurely, whether a complaint constitutes a conduct complaint or a services complaint, and whether the complaint has been made by an eligible complainer.

At present, the bill provides that the first of those decisions—whether a complaint is frivolous or vexatious—may be delegated to any committee of the commission or to a commission member. The other decisions could currently be more widely delegated and could be taken by commission staff. I believe that the existing mechanisms provide adequate safeguards. It is in no one's best interests for the debate on whether a complaint is frivolous, vexatious or totally without merit to be prolonged. Some exercise of judgment will be involved in such decisions, but the correct decision will generally be obvious to a disinterested person. Although the decision will have an important impact on the complainer, delegation to a commission member is reasonable.

The issue whether a complaint has been made timeously or prematurely will largely be resolved by applying the commission's own rules. In deciding whether a complaint is a conduct complaint or a services complaint, the commission will apply criteria that have been developed and applied by the Law Society over many years along with precedents that the commission has set internally. The issue whether a complaint has been made by an eligible person should be fairly straightforward, given that anyone is permitted to make a conduct complaint whereas services complaints may be made by anyone who has been directly affected by the standard of service plus a list of defined public bodies and office holders. The task of deciding the category of the complaint can safely be delegated to competent members of staff.

Consideration needs to be given to ensuring that commission members are not overwhelmed and that staff are able to act to progress cases through the system. For example, every complaint that comes through the commission's doors must be categorised as either a services complaint or a conduct complaint. If that task had to be performed by determination committees, the process of dealing with complaints could grind to a halt. Section 11 permits a complaint to be recategorised at a later stage if it appears that the original classification was wrong. We should also not forget that, if a statutory test that is contained in the bill has been misunderstood or wrongly applied, judicial review procedure will be available to correct the error.

Mr Davidson: I have listened to what the minister said, but I will press amendment 181.

The Deputy Presiding Officer: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
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 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
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 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 11, Against 86, Abstentions 0.

Amendment 181 disagreed to.

[Interruption.]

Murdo Fraser (Mid Scotland and Fife) (Con): We have a repeat offender.

The Deputy Presiding Officer: Members might find that, if they switch off their mobile phones altogether, the chances are that they will not go off a second time.

Amendment 182 moved—[Johann Lamont]—and agreed to.

Amendment 183 not moved.

The Deputy Presiding Officer: Group 32 is on the accounts and reports of the proposed Scottish legal complaints commission. Amendment 184, in the name of David Davidson, is grouped with amendments 185 to 188. I draw members' attention to the pre-emption information that is given in the groupings paper.

Mr Davidson: With amendment 184, I seek that

accounts and reports would come to Parliament and not to ministers. That would add to the atmosphere of independence and accountability that we hope will be generated around the proposed commission. Apart from some set-up costs, the Executive is not funding the commission; it will therefore not be taxpayers who fund it, but legal practitioners. Parliament would be best placed to receive reports, so that we can scrutinise them independently on behalf of the public.

Amendment 187 would qualify the minister's amendments in the group. Amendments 186 and 188 overlap with my amendments, so I suggest that, as part of the new and very enjoyable partnership that has developed in the chamber today as we have worked on the bill, the minister accept my amendments and not move her own. Parliament must take precedence over the Executive when the Executive is not providing the funding: Parliament represents the people.

I move amendment 184.

Johann Lamont: It is always advisable for members not to push their luck.

Ministers are committed to ensuring the transparency of the proposed commission's annual accounting and reporting processes. Amendments 185 and 186 relate to the commission's annual statement of accounts. Paragraph 15(2) of schedule 1 requires the Scottish ministers to send it to the Auditor General for Scotland for auditing. Amendment 185 will tighten and clarify that duty by requiring that it be performed "as soon as practicable". Amendment 186 will add a new requirement for the Scottish ministers then to lay the audited statement before Parliament "as soon as practicable".

Paragraph 16(4) of schedule 1 requires the Scottish ministers to lay a copy of the commission's annual report before the Scottish Parliament. Amendment 188 stipulates that this is to be done "as soon as practicable", in line with amendments 185 and 186.

David Davidson has lodged alternative amendments. Amendment 184 would require the commission to send its annual statement of accounts to Parliament rather than to ministers, but ministers would not be able to send the statement to the Auditor General for auditing or to lay the audited statement before Parliament, if the statement has not been sent to us in the first place.

Amendment 187 is an alternative to amendment 186. It uses the wording

"as soon as is reasonably practicable"

rather than "as soon as practicable". I do not think that this would make any difference in practice to

the way in which the duty will be interpreted. I am content that ministers would be more than happy to perform the duty “as soon as practicable”.

I invite David Davidson not to press amendment 184 and not to move amendment 187, and I urge members to support amendment 185.

Mr Davidson: The minister and I simply do not agree. I will press amendment 184.

The Deputy Presiding Officer: The question is, that amendment 184 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
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 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
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 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
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 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
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 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
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 Stevenson, Stewart (Banff and Buchan) (SNP)
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 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 84, Abstentions 0.

Amendment 184 disagreed to.

Amendments 185 and 186 moved—[Johann Lamont]—and agreed to.

Amendment 187 not moved.

Amendment 188 moved—[Johann Lamont]—and agreed to.

Schedule 3

RULES AS TO COMMISSION'S PRACTICE AND PROCEDURE

The Deputy Presiding Officer: We come now to the 33rd group of amendments, on rules as to practice and procedure. Amendment 190, in the

name of the minister, is grouped with amendments 191 to 195, 198 and 212.

Johann Lamont: Amendments 190 to 192 are intended to address a continuing concern of the Law Society. Paragraph 1(c) of schedule 3 will currently oblige the proposed commission to make rules requiring it to have regard to the European convention on human rights in deciding whether to hold a hearing in relation to a complaint, and whether that hearing should take place in public or private. The Law Society has argued that such a reference to "having regard to" convention rights dilutes the requirement on the commission to act compatibly with the ECHR. I do not believe that that is the case. Like all public bodies, the commission will be under a duty to act compatibly with the ECHR in everything it does. It is not required that that be stated in the bill and it would not be possible for paragraph 1(c) of schedule 3 to detract from that duty. The wording is intended purely as a special reminder to the commission in the context of decisions about hearings, where ECHR considerations are particularly likely to arise.

However, ministers have listened to what the Law Society has said, so we accept on reflection that the reference to "having regard to" convention rights may be infelicitous. I believe that it is preferable to remove the controversy about that relatively minor point, so amendments 190 to 192 will remove the reference to "having regard to" convention rights. Paragraph 1(c) of schedule 3, as amended, will simply oblige the commission to make rules that will require it to hold a hearing where it considers that to do so is appropriate, and to decide whether such a hearing should be in public or in private.

Amendments 193 and 198 are intended to provide reassurance that the proposed commission will be rigorous in its approach to evidence-gathering, and will treat evidence according to clear criteria. They will oblige the commission to make rules as to the evidence that may be required or admitted in relation to complaints, the extent to which evidence may be oral or written and the consequences of a person's failure to produce information or documents that have been required by the commission. Previously, the commission had discretion as to whether to make rules on that topic. Amendment 198 will delete that provision from the commission's discretionary rule-making powers, and amendment 193 will insert it into the list of matters that must be covered in the commission's rules.

Amendments 194 and 195 reinforce what has always been our policy, which is that the proposed commission and its determination committees will act as independent and impartial tribunals when

making binding rulings on the merits of services complaints. Within the commission there is, of course, a two-stage dispute resolution process. First, there is an initial informal investigation of the complaint, which will usually result in a provisional settlement being proposed to the parties. That initial stage will normally be carried out by commission staff, although it is possible that commission members may be involved, for example if the case might set an important precedent. Such a provisional settlement will not be binding unless all the parties accept it. I hope that over time that will increasingly become the norm as confidence in the process grows. It is in everyone's best interests for disputes to be resolved informally and amicably if possible. However, if all parties do not accept the provisional settlement, the complaint will be referred for a formal determination. That can be done only by the full commission or by a determination committee of commission members.

Paragraph 1(f)(ii) of schedule 3 specifies that, where a provisional settlement has been proposed to the parties but not accepted by all of them, the commission's rules must require the members of the determination committee that rules on the complaint to have had no involvement in the formulation or making of the proposed settlement. It is designed to eliminate any possible appearance of bias. Amendment 194 will extend that provision slightly, to require the commission's rules also to stipulate that members of the determination committee must have had no involvement in any aspect of the prior investigation of the complaint, including any decision as to whether the complaint was frivolous, vexatious or totally without merit. That will further reinforce the separation between informal initial complaints handling and the final binding adjudication that is required where a complaint cannot be resolved informally.

Amendment 195 provides additional reinforcement along the same lines by ensuring a corresponding separation between initial investigation and binding determination if the full commission chooses to adjudicate on a complaint itself, rather than to delegate the matter to one of its determination committees. I am aware of the second opinion that the Law Society has obtained from Lord Lester, arguing that the commission will not be an independent and impartial tribunal because it will be an investigative and not a judicial body. However, I firmly believe that that view wrongly conflates the two processes of investigation and determination, which are entirely separate. Amendments 194 and 195 will reinforce that separation. The commission and its determination committees will act as an independent and impartial tribunal when they rule on complaints.

Amendment 212 will permit the Scottish Solicitors Discipline Tribunal to make rules entitling or requiring persons to appear, or to be represented, at any appeal from the council of the Law Society on an unsatisfactory professional conduct complaint against a solicitor, or in relation to a direction requiring a solicitor to undertake further training. That can be used to ensure, for example, that the solicitor appears where required, and that any individual complainer appears or is represented where appropriate.

I move amendment 190.

Amendment 190 agreed to.

Amendments 191 to 198 moved—[Johann Lamont]—and agreed to.

Schedule 4

16:45

Amendments 199 to 210 moved—[Johann Lamont]—and agreed to.

Amendment 211 not moved.

Amendments 212 to 220 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Group 34 concerns the disclosure of information by the Scottish Legal Aid Board. Amendment 221, in the name of the minister, is the only amendment in the group.

Johann Lamont: Amendment 221 will update the list of exceptions to the disclosure rule in section 34(2) of the Legal Aid (Scotland) Act 1986. It will enable employees of the board to provide information to the Scottish information commissioner for the purposes of section 50 of the Freedom of Information (Scotland) Act 2002. Without the amendment, the provision of information for that purpose would constitute a criminal offence under the 1986 act.

I move amendment 221.

Amendment 221 agreed to.

Amendments 222 and 223 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Legal Profession and Legal Aid (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-5223, in the name of Cathy Jamieson, that Parliament agrees that the Legal Profession and Legal Aid (Scotland) Bill be passed.

16:47

The Deputy Minister for Justice (Johann Lamont): I thank the Justice 2 Committee for its thorough consideration of the Legal Profession and Legal Aid (Scotland) Bill. A number of refinements were made to the bill at stage 2 and I thank the committee members for their careful consideration of the issues. There is no doubt that a consensual approach was taken early on—perhaps my late involvement did not tamper too much with that.

The bill has attracted much interest and comment from stakeholders, MSPs and the media. Although the Executive may not have agreed with all the concerns that have been raised or all the suggestions that have been made, we have listened carefully to what was said. There is clear evidence of a dialogue throughout the process and of movement and development as the bill has progressed through Parliament, which gives the lie to the false notion that the Executive introduces bills and then repels all boarders who wish to change them. In particular, we have taken on board concerns about the inequity of applying the complaints levy to all complaints, whether they are upheld or not. We have also taken seriously the questions that were asked about the bill's compatibility with the European convention on human rights so, to strengthen the bill, we have taken action to reinforce the Scottish legal complaints commission's independence and provide a right of appeal.

The bill strives to build a new working relationship between practitioners and their clients. I believe that it now strikes the right balance in respecting the rights of both. A strong, independent and well-regulated legal profession in which the public have confidence is one of the cornerstones of the justice system. When they use lawyers, consumers need to understand their rights, the level of service that they can expect and their own responsibilities. When things go wrong, an effective process must be in place to ensure that the right remedies and redress are available and are provided quickly.

The need to reform the current arrangements for handling complaints was originally highlighted in a report by the previous Justice 1 Committee in 2002. That committee's diagnosis was reinforced

by the public response to the Executive's consultation paper last year. The Legal Profession and Legal Aid (Scotland) Bill takes forward the agenda for change by proposing a quick, efficient and consumer-friendly way of resolving disputes when people who have genuine complaints have been unable to resolve their complaints directly with their lawyers.

The bill will set up the Scottish legal complaints commission, which will be an independent complaints-handling body that will act as a single gateway to receive complaints against members of the legal profession and which will handle them impartially, transparently and efficiently. That core proposal has been broadly supported; indeed, Parliament overwhelmingly endorsed the general principles of the bill following the stage 1 debate.

However, there have been differences of opinion on matters of process. I understand that, at stage 2, there were a number of lively debates on a variety of issues, such as the appointment and dismissal of the commission's board members, powers of enforcement for the commission's recommendations and the appropriate maximum level of compensation for complainers.

However, the most controversial issue that was debated at stages 2 and 3 was the bill's compliance with the European convention on human rights. Many members will be aware that the legal profession expressed concerns at stage 1 about how the bill would provide for the independence and impartiality of the commission. Notwithstanding the fact that the Presiding Officer certified that the bill is ECHR compliant and that the Executive was, and remains, assured of the bill's compliance, further concerns were expressed at stage 2 and today. Although the Executive does not accept the legal argument that was put forward, several amendments were lodged for the purpose of reinforcing the independent status of the commission as a regulatory body in a specialised area of consumer complaints handling. In particular, we introduced several measures to ensure compliance with article 6 of the ECHR and we removed ministers' powers to issue general directions to the commission. I add that there was never any intention to use those powers to influence the commission's decisions, although they could have been seen as enabling ministers to do that.

We also clarified the appointments provisions to make it clear that appointments are for a fixed period, and we secured a consultative role for the Lord President of the Court of Session on the appointment of board members. The Lord President will also now have a role in dismissal of the members and chair of the board. The bill already required the commission to make rules about its practice and procedures, and we lodged

amendments to require that the Lord President be consulted on those rules.

We also lodged an amendment to reinforce the demarcation between the commission's investigative function on the one hand and its determination function on the other. That amendment makes it clear that the determination committee cannot include any person who has been involved in earlier consideration of the complaint.

We acknowledged the concern that the practice of the commission in fixing awards may differ from that of other courts, so we made it clear in the bill that the commission must, in considering levels of awards, take account of levels of damages that have been awarded by the courts in similar circumstances.

Finally, the legal profession called for a full right of appeal of the commission's decisions to the court, again for ECHR reasons. We considered that carefully, and we accepted the need for a right of appeal. However, I emphasise that an appeal will proceed only with the leave of the Court of Session. That will ensure that only cases in which there are substantial grounds for appeal will proceed. We recognise that, for the new complaints handling system to work effectively, it must secure the confidence of both the users and providers of legal services. It must also be based on a secure statutory foundation. I hope that in developing the package of measures, we have reinforced the bill's ECHR compatibility and reassured the legal profession of the commission's independence.

Those were the concerns of the legal profession, but I remind everyone that the central aim of the bill was to put the users of legal services at the heart of regulatory arrangements. People seek legal advice at critical times in their lives, so lapses from high standards, however rare they are, can have severe consequences for clients. The people of Scotland have the right to complain in such circumstances, and they deserve to have their complaints dealt with quickly, efficiently and transparently. When a complaint is upheld, redress needs to be appropriate and delivered swiftly.

There was discussion both at stage 2 and this morning about the appropriate level of compensation for service complaints. The Justice 2 Committee questioned the basis for the maximum of £20,000 in the bill. We responded by saying that the figure is necessary to ensure that the commission can consider as many complaints that involve low-level negligence as possible. At present, all cases involving negligence must be pursued through court action, regardless of the amount of damages that is sought. It is vital for access to justice that ordinary people can pursue

a complaint involving low-level negligence without facing the uncertainty and expense of a court action. That is why we resisted attempts to have the figure lowered.

It is also important that clients receive full redress for what they have lost and all that they have suffered. That is why we resisted calls for the £20,000 limit to represent a cap that also covers other measures of redress, such as the limitation of fees or the cost of rectification. The maximum level of compensation will be £20,000, and the sum will be in addition to the value of the other remedies available. As we have said, the figure is a maximum—any anxieties on the part of the profession that it might become an average level of award are completely unfounded.

On the legal aid provisions, the bill will also implement some of the key recommendations from our “Advice for All” consultation where amendment of the Legal Aid (Scotland) Act 1986 was required. The changes are part of a range of improvements that will pave the way for the development of a more flexible and proactive system of publicly funded legal assistance. We want to progress to a system in which unmet needs can be identified and addressed in a co-ordinated way and in which advice can be provided by whoever is best equipped to do so.

In the stage 1 debate, Hugh Henry announced that he had asked the Scottish Legal Aid Board to set up a network of solicitors who are employed by the board to provide civil legal assistance where there are gaps in private sector provision. I am delighted to announce that that project is now under way. In response to the difficulties that some applicants have encountered in finding solicitors who will deal with domestic abuse cases in the Highlands and Islands, the board has advertised for a solicitor to provide that service. The key focus will be work with local organisations and women who have experienced domestic abuse. I know that that news will be welcomed in particular by Maureen Macmillan, who raised the issue with Hugh Henry and the chief executive of the legal aid board.

We have listened to the views that were expressed by stakeholders in response to our formal consultation and during discussions that were arranged by officials while the committee took evidence at stage 1. That is why we lodged amendments at stage 2, including amendments to provide SLAB with a grant-funding power. That is not only to provide another funding stream for advice provision, but to give SLAB a strategic tool that it can use to help develop and support provision in areas where the problems are more fundamental than mere unavailability of advisers. We have also listened to views that were expressed by committee members during their

thorough consideration of the bill, and by John Swinney and Bill Aitken, who diligently attended the stage 2 meetings and contributed to the discussions. In response to an issue that was raised by Bill Aitken, we lodged an amendment at stage 3 to require the code of practice for registered advice organisations to include arrangements for complaint handling.

We are committed to ensuring access to justice. It is important to recognise that the vast majority of legal aid provision comes from hard-working solicitors in private law firms. It is therefore important that we continue to monitor the legal aid system and its remuneration levels to ensure that an adequate supply of solicitors provide this crucial service. A report by SLAB—with the Law Society and the Executive—indicates that the civil legal aid reforms that were introduced in October 2003 and in 2004 are operating reasonably well, but it also identifies areas in which we could make further improvements.

We hope to be able to introduce regulations soon, which will make important changes to the civil block-fee system, which will improve both flexibility and the reward for solicitors. Although I am sure that that will be welcomed, I have asked my officials to work with SLAB in the new year to review the overall level of fees that are payable to solicitors in civil legal aid cases, given that the new system was introduced in 2003. We will also review the financial eligibility rules for legal aid to ensure that it is not only the best and worst-off people in our society who can receive help to get their legal problems resolved.

There has been a great deal of interest in the bill from the legal profession, members of the public, MSPs and consumer interests. I thank everyone for contributing their ideas, expressing their concerns and challenging the bill's provisions in a positive and rigorous way. I believe that the bill strikes the right balance in dealing with complaints in a way that is fair and accountable to all parties. It incorporates safeguards to reassure the profession that the Scottish legal complaints commission will act in a reasonable way in handling complaints. Equally important is that the provisions in the bill will give a voice to consumers and provide them with an opportunity to work with the legal profession in raising the standard of legal service provision in Scotland.

I thank again all those who have been involved, in particular the bill team, who had to deal not only with a very complicated bill but with a new minister at a very late stage. Their tolerance of me was very much appreciated.

I move,

That the Parliament agrees that the Legal Profession and Legal Aid (Scotland) Bill be passed.

The Deputy Presiding Officer: I am minded to accept a motion without notice to bring forward decision time to 5.30 pm.

Motion moved,

That, under Rule 11.2.4 of Standing Orders, Decision Time on Thursday 14 December be taken at 5.30 pm.—[*Ms Margaret Curran.*]

Motion agreed to.

16:57

Mr Kenny MacAskill (Lothians) (SNP): I pay tribute to the minister's endeavours today. I concur with the tribute that the minister paid to everyone in the bill team.

The bill has been a long time coming. As the minister correctly pointed out, the issue was considered by the Justice 1 Committee at the start of the millennium. At that stage, the perception was that it would be a simple case of taking matters from the Law Society and creating an independent body. It has become clear that the issue is highly complex, for a variety of reasons.

The issue is difficult, as we must balance various rights. We must consider not only the profession that we seek to have some regulation of—rather than its being self-regulated—but the requirement to balance rights within the profession and elsewhere. Also, the situation is fluid, which is perhaps shown by the fact that in addition to establishing the commission, we are addressing the provision of legal services. The legal profession is changing as we speak. It is important that we address that.

Some aspects of the bill may not work out in practice because of issues that we have not foreseen. We will have to consider and return to them, but it is to the credit of the Law Society that it accepted, perhaps belatedly, that the situation could not go on as it was and that there had to be an independent, impartial body. It was no longer acceptable to the general public or to the body politic that it said that it was a well-run, well-regulated profession that could self-regulate. It may well be such a profession—I think that all members concede that the number of people who err and fall below the high standards that are set by the Law Society are few—but there have been instances when matters have not been dealt with appropriately. There are occasions when the conduct of solicitors and the service that they provide are not appropriate. Those matters must be considered. It is clear that there has been division on the issue, but we must regulate.

I hope that the matters that have been raised today will be addressed. John Swinney was right to say that the provision of a right of appeal against a decision of the Scottish legal complaints

commission creates problems. We have acted correctly in trying to ensure that there is a focused approach, but we should warn the legal profession that it must not abuse the system. If complaints to the commission become just one part of the process because practitioners who do not like the decision will appeal, thereby dragging the process out and imposing financial constraints on people who complain about service, the Parliament will review the situation. It is not the Parliament's will or understanding that such an outcome is the intention of the amendment that was agreed to today. The Executive was correct to accept amendment 3 on the basis that appeals would be allowed in limited circumstances and that that approach would preserve rights rather than create a perverse situation that could be abused.

It did not take the wisdom of Solomon to support amendment 1, which would have reduced the maximum compensation payable from £20,000 to £15,000, but the Executive did not support it. Although we regret that the amendment was not agreed to, it is disingenuous of people in the legal profession to suggest that the maximum fine will always be imposed.

When I was a practising solicitor many years ago, people would come in to discuss an offence that might carry a level 5 fine, which could be a significant amount—£3,000, £5,000 or even £10,000. I would say, as would any sensible solicitor worth their salt, "Don't be silly. You will not be fined the maximum amount; you will be required to pay a fine that is reasonable given your circumstances and the offence you committed." I would prefer the maximum compensation to be £15,000, but the profession's fears should be allayed—practitioners will not pay a mandatory amount of £20,000. A balance will be struck and matters will be resolved.

We must acknowledge that circumstances have changed. The profession was quite right to accept that the current system could not continue, although I still receive letters from solicitors who seem unaware that the body that represents them has acknowledged that there should be an independent commission. Those solicitors must deal with their representatives; we have addressed the matter today. We trust and hope that we have got the balance right but we acknowledge that the profession will change as society changes. If the new system does not work, we will review it.

We welcome the changes to the legal aid system, which were vastly overdue. There are significant problems and I do not think that we have seen the last of changes to the system, but that is a matter for another day. In the meantime, we commend the bill and are happy to support it.

17:02

Mr David Davidson (North East Scotland)

(Con): I joined the Justice 2 Committee as convener on day 1 of stage 2 of the bill, which gave me a real introduction to the trenches in the front line—I had to read hundreds of submissions. I pay tribute to all the people who sent evidence to the committee at an early stage and wrote copious amounts of mail to us thereafter—demonstrating that people acknowledge the usefulness of the work of the Parliament and its committees.

I thank the committee clerks and the former Deputy Minister for Justice, Hugh Henry, who provided much help to the committee during its initial consideration of the bill. I welcome the new Deputy Minister for Justice's continuation of the open dialogue that the committee and the Executive have had throughout the bill's progress. I hope that such dialogue continues as other parliamentary committees consider all the forthcoming proposed legislation.

In thanking the people behind the scenes, I mention the bill team, who played a vital role. I was very saddened to hear that Andrew Dickson, who was the bill team leader during the early part of the bill's progress, died last week. I believe that he was a devoted and respected civil servant. We send our regards and sympathy to his family.

The Conservatives have acknowledged for a long time that the legal complaints system needed to be modernised. There was a need for balance, to ensure not only that complainers' rights were guaranteed but that there was a fair deal for practitioners who were complained against. We are not completely satisfied that our concerns on the ECHR are past us yet, but what ministers have done has taken us pretty well there. I look forward to the roll-out of that provision.

The point that Kenny MacAskill and others, including the minister, made about £20,000 being the maximum compensation payable is important—one need only look at what happened in Northern Ireland, with its compensation limit of £3,500 and the fact that Scotland has only recently moved its figures. We have to ensure that there is no public doubt that £20,000 is not a given. It is not the level of most of the settlements that have been made.

We welcome the legal aid changes. People in small communities and remote areas find it particularly difficult to get access to legal aid through a solicitor. We welcome what has happened on the voluntary sector front, as long as the sector is properly funded, accountable and accredited.

I turn to appeals without leave of the court. We accept that that is what the minister has done—she has moved a long way since the bill was

introduced, at which time there was no thought whatever of an appeal system. We also welcome the new role of the Lord President. We on the Conservative benches like practical legislation—legislation that works—but we want to ensure that there is public confidence in it and transparency in all the processes.

Huge regard was paid to the evidence that we received—some of which we may have to return to—including that of the in-house lawyers, who may not continue to pay their Law Society registration if there is no requirement to do so. That could lead to the loss of members. A critical mass is required—all this has to be funded. I hope that ministers are mindful of that.

Solicitors in small practices may decide that they are not prepared to take on anything that seems risky—perhaps because the £20,000 limit has led to a lack of confidence. I hope that that will not deprive people of access to legal services.

That said, I thank the Executive for the treatment that the Parliament and the committee have had during the passage of the bill. I thank everyone concerned. We will, at last, be able to support the bill, because of the work of the minister and her team.

17:07

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):

I will refer to the debate at stage 1 and to the committee's stage 1 report. The main areas of consideration at that stage have been substantially addressed, both at stage 2 and today. There were three main considerations: that the bill would put at risk small solicitor firms, in respect of which there is a higher than average complaint rate; that the commission would not operate in a fair, transparent or accountable way; and that the absence of an appeal mechanism could lead to ECHR concerns and issues of fairness for the complainant and the solicitor who is the subject of the complaint.

Before I explore those considerations, I will touch on a series of questions that can be seen as a test of the bill. First, will the bill make it easier for someone who believes that they have received inadequate service from a solicitor to make a complaint? Secondly, will the process be quicker than it is at present? Thirdly, will the complaint be concluded fairly and in a straightforward manner that is easy for the complainant to understand? Finally, will the process be much less expensive than using the courts? In short, does the bill address the deficiencies of the current system, which relies almost wholesale on the Law Society? From the committee's stage 1 report, one can see that the short answer is yes. The Executive has

reinforced that conclusion by addressing the concerns that were raised at stage 1.

It is appropriate to recognise the work of my committee colleagues and that of other members such as John Swinney—whose contribution has been mentioned in the debate—and Bill Aitken, who took an active and constructive role in the consideration of the bill. Indeed, their assistance to the committee shows the value of having non-committee members attend committee meetings at stage 1 and stage 2. That does not happen often, but their experience—from a constituency and an experience perspective—was helpful.

The previous Deputy Minister for Justice listened and responded genuinely to the debate. The new Deputy Minister for Justice, who took office at a developed stage of the bill, managed to gain a remarkable grasp of the details of the bill at stage 2, as did our convener. The Executive's willingness to work with all the parties and take a constructive view does it credit. It is good for the Parliament and the public to see the democratic process working constructively.

I want briefly to consider the areas that have caused concern throughout passage of the bill. The first relates to the concerns that were voiced at stage 1 by solicitors who practise in an area in which there is a higher than average rate of complaints. Their main concern was that the complaints process would not be fair for them, that there would be no appeal and that the complaints levy would be set at a 50:50 split to raise the revenue, which would mean that it would be a *de facto* fine. That was addressed at stage 2 and has been further addressed at stage 3. That is welcome.

There is concern about financing the commission through the annual levy and the retrospective complaints levy, but that is for the commission to determine. It is incumbent on the commission to develop a strong relationship with the legal profession to ensure not only that there is a proper processing of complaints but that there is a proper relationship between it and the profession. The changes that have been made in that regard and in relation to the appeals mechanism have made the bill stronger.

When we were faced with an alternative appeal mechanism at stage 2, which involved an automatic appeal to sheriffs, we decided that it was not attractive. What we have agreed today is attractive, as will be the more streamlined approach for the complainer, which will be more efficient, cheaper and better. That is a good definition of the bill that I hope we will pass at half past five.

17:11

Bill Butler (Glasgow Anniesland) (Lab): I record my appreciation of the sterling support that the clerking team and the Scottish Parliament information centre have given the committee.

No one would disagree that, in recent years, the public's confidence in how the system deals with complaints about lawyers has declined. Despite some changes that were made by the Law Society, doubt remains in the minds of citizens. To be frank, there is a public perception that complaints are not dealt with in an unbiased way and that the odds are stacked against individual complainers.

If we pass the amended bill that is before us, I believe that public confidence can be won back. I welcome the fact that the commission will be led by a board with a non-lawyer majority and a non-lawyer chair and will receive complaints about lawyers that cannot be resolved at source. I believe that that is sensible, as is the intention that the commission should handle complaints about inadequate professional services. I am also content that responsibility for professional discipline will remain with the legal professional bodies and that the relevant discipline tribunals will be involved because the commission will oversee the manner in which such complaints are handled.

I believe that the Parliament's decision to support the Executive in maintaining £20,000 as the maximum compensation when a services complaint is upheld is correct. The minister was correct when she said that the commission will behave competently and professionally when it decides compensation. I welcome the Parliament's decision.

The right of appeal against commission decisions is much knottier. I thought that John Swinney's comments on the matter were eloquent, sincere and detailed but, in the end, not persuasive. Given that the amendment in the name of my colleague, Ms Baillie, was eventually passed *nem con*, I hope that, during the debate, Mr Swinney took comfort in the clarification that Mr Wallace and Mr MacAskill, among others, offered.

I am content that what was passed does not tilt the balance in favour of the legal profession at the expense of the individual citizen. If I had thought for a moment that it did, I would not have supported the amendments. I believe that the amendments provide only the possibility of an appeal to the Court of Session and that the application for leave to appeal would need to be sought from and granted by the Court of Session before it could proceed. Appeal would be possible only on the restricted ground that it does not challenge the merits of a commission decision. That is only right and proper. The commission will

be party to any appeal. I concur with the minister's wise words this morning: the amendments preserve the essence of the current policy and do not undermine it.

The policy intentions behind the bill are vital to its overriding aim of creating a system of justice that is efficient, effective and accessible for all the citizens of Scotland, and that is seen to be so.

17:15

Mr John Swinney (North Tayside) (SNP): I thank the Government for introducing the bill and the ministers for steering it through Parliament. I imagine that the volume of correspondence that I have passed to them on the subject might have made the issues involved somewhat difficult to avoid, but I am glad that we are having this debate.

Mr Butler asked from where I took comfort. Much as I hang on every word of Mr Wallace and Mr MacAskill, I found the deputy minister's comments on appeals this morning particularly clear and specific. I welcome the fact that she went to great lengths to set out the fact that there would not be a general, widespread right of appeal, and that it would apply only in limited circumstances.

The bill contains many desirable and welcome provisions. I hope that it will create a new atmosphere in the way the minority of individuals who have a bad experience of solicitors find recourse through the system.

I hope that the bill will create recognition in some of the professional organisations that there has to be a cultural shift in their outlook on the world. We see that in some organisations, but not in others. I was intrigued by an interview that the chief executive of the Law Society of Scotland gave to *The Herald* on 30 October, in which he said, in relation to the provisions of the bill that would provide the commission with oversight of the master policy:

"If they try to do this, I believe the insurers and the Financial Services Authority will tell the Scottish Parliament to take a hike."

If I were to capture a sentence that illustrates the cultural shift that is required, it would be that one. We are living in a different world. We are living in an age when the consumer in every walk of life has every right to expect the highest standard of service from any organisation. I hope that the bill will lead to a cultural shift in some of the organisations that have been far from responsive to some of the changes that have taken place in consumer attitudes in the past.

I hope that the bill will achieve the objectives that the Government has set, which I think

recognise that there has been a problem in the design of the system. The Government has made a serious attempt to tackle that problem. I hope that in passing the bill later this afternoon, we will see public confidence in the legal system begin to be rebuilt over a period of time and that consumers can achieve the satisfaction to which they are entirely entitled.

17:18

Colin Fox (Lothians) (SSP): As other members have said, there were many issues for the Justice 2 Committee to consider in scrutinising this 80-page bill, which was probably dwarfed by the hundreds of submissions from throughout the country that we had to read.

In the three minutes that I have, I will address just two aspects of the bill: the need for greater public confidence in the complaints system and widening access to justice. The Executive introduced the bill, which I welcome, in response to the overwhelming demand from the public for a legal complaints system that they can trust and on which they can rely for a quick and fair resolution to their reasonable concerns. The current self-regulatory procedure is disliked and criticised because it is seen as the Law Society of Scotland and the Faculty of Advocates investigating themselves. It is also seen as cumbersome, costly and weighted against the interests of consumers.

I acknowledge that the Executive introduced the bill on that basis. However, the public's preferred option in the initial consultation of a wholly independent commission dealing with all complaints is not among the options before us in the bill. That is a mistake, because we will still get a sense that, as the Scottish Consumer Council put it, the system

"needs to put the users of legal services at the heart of the regulatory arrangements."

I am not sure that the bill achieves that. As Linda Costelloe Baker, the outgoing Scottish legal services ombudsman, said when she appeared before the Justice 2 Committee to vent her frustration, the remit of the commission will be limited to addressing complaints of poor service. The rights of advocates and solicitors to self-regulation should be scrapped. The commission will not, however, be the regulator of the adequate practice of the profession. We will move from self-regulation to partial co-regulation. The minister was right to acknowledge the unease about the separation of conduct and service complaints, but we will see how that develops in due course.

My final point is on the evidence that the committee heard about the huge unmet demand for legal advice. We received a great deal of evidence that the cost of accessing even basic

assistance is prohibitive to many people, so the provisions that will increase people's access to advice and low-level assistance are particularly welcome.

I again draw the minister's attention to paragraph 233 of the Justice 2 Committee's report on the bill, which highlights the need to commence the provisions in sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to provide more choice and legal protection for consumers. The fact is that those provisions have not been commenced in 17 years. The Executive has made a commitment to commence the provisions in March, before the dissolution of Parliament, and I hope that it does so.

The Scottish Socialist Party will support the bill at decision time, even though we would have preferred all complaints to be handled by the Scottish legal complaints commission.

17:21

Bill Aitken (Glasgow) (Con): The fact that the bill is a completely different animal from what appeared at stage 1 is a good advertisement for the parliamentary process. I pay tribute to the Justice 2 Committee, under the able convenership of David Davidson, and to the Executive, which listened and acted.

We had two principal concerns about the bill. One was about the appeals system and the other was about the independence of the new body and how it will be set up. The Executive has not moved as far as we would have liked on those matters, but it certainly listened and reacted. It has reassured us to the extent that we can vote to pass the bill today.

It is important to recognise that the bill is about service complaints and not about embezzlement or negligence. In the case of embezzlement, in addition to any criminal sanction, the indemnity fund will kick in, and in the case of negligence, acts such as a failure to lodge a reparation action timeously or the purchase of a house without a proper title will result in professional indemnity insurance kicking in. The limit that has been put on service complaints is indicative of the fact that, in most cases, they are not terribly serious, but they cause considerable concern and irritation along with some hardship to those who make complaints.

The legal profession must think that it is being selected for special treatment. People have problems with plumbers, electricians and joiners as well, and I look forward to a plumbing and electrical trades (Scotland) bill being lodged at some distant time. However, the Legal Profession and Legal Aid (Scotland) Bill is a job well done and it reflects well on all concerned, particularly the

Deputy Minister for Justice and her predecessor. We will vote for the bill in a few moments' time.

17:23

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

I add my thanks to those of other members who were on the Justice 2 Committee during stages 1 and 2. I thank the clerks and my fellow committee members, who worked hard in examining the bill, and I also thank the committee's adviser. I do not know whether anyone else mentioned the adviser we had at stage 1, but I would certainly like to thank them.

One of the most important aspects of the debate, certainly at stage 1 and particularly at stage 2, was about the maximum level of compensation, which the bill sets at £20,000. It is important to emphasise yet again that that is not the normal level, but the maximum level. As Mr MacAskill said, we do not have punitive damages in this country. Instead, the sum that is awarded represents compensation for loss. The truth of what the bill is about was lost in some of the rhetoric during the early stages of the bill. I hope that the profession now understands what the bill is about, rather than the fear stories that were put about regarding the £20,000 level.

The need for an appeals process was much debated at stage 1 and, particularly, at stage 2. Although it was an interesting debate, there has been a welcome outcome in the fact that we now have an appeals process. After listening to the evidence, I felt that there was a solid case for an independent appeals process. I hope that it will assuage some of the fears that have been raised about ECHR compliance, and I welcome the comments on the bill's ECHR compliance that the minister made earlier.

It is interesting that so little has been said today about the separation of service complaints and conduct complaints. Perhaps we talked ourselves out on that matter at stages 1 and 2, although Colin Fox raised the issue again today. I think that we will have to wait and see how that works out. If there is a problem later on, we will perhaps have to reconsider it; however, I think that we have got the balance just about right.

Bill Butler emphasised the important fact that the board will have a non-lawyer majority. That is central to the whole shift in culture that my colleague, John Swinney, mentioned. I echo his comments on that. It is very important that we have that cultural shift and move away from the problems that we have had with some lawyers in the past. It is broadly accepted by most people that it was time for a change to an independent complaints commission. That is an important shift, and it is time that we introduced that measure.

The underlying principle is that an efficient and effective lawyer should welcome a process that targets the small minority—I emphasise the fact that it is a small minority—of lawyers who are failing their clients. I hope that the bill will assist in raising standards in the legal profession, and I am glad to support it.

17:26

The Minister for Justice (Cathy Jamieson):

Like Kenny MacAskill, I recognise the fact that the bill has been a long time in the making. I thank the parliamentary committees—not just in this Parliament, but in the previous Parliament—for all their work in bringing the bill to fruition. I also commend the committee clerks for their hard work in ensuring that business was conducted sensibly and timeously.

I thank in particular the bill team, who have done a tremendous amount of work. As has been mentioned, the bill team leader, Andrew Dickson, unfortunately took ill during the preparation of the bill and, after a short illness, sadly passed away. I am sure that the chamber will want to send condolences to his wife, Wilma, and his family in advance of the funeral tomorrow. Thanks are also due to Louise Miller for stepping in to lead the bill team and bring the bill here today.

Thanks should also go to the former Deputy Minister for Justice, Hugh Henry, who pursued various issues in the bill with zeal and passion, and to Johann Lamont for coming to a complex and technical bill at a late stage. However, it was pretty much certain that anybody who could manage the Planning etc (Scotland) Bill would be able to manage this one.

It is important to recognise that we are generally served well by members of the legal profession. The number of complaints about the services that they provide is very low in the context of the overall volume of business that they transact on behalf of their clients. It is largely thanks to the profession that Scotland enjoys such a high international reputation for a justice system that is based on fairness and integrity.

Nevertheless, we know that things go wrong, and not just from the letters in John Swinney's mailbag, over which we have had robust exchanges concerning specific cases, and from the examples that have been brought to me by other MSPs from their casework. *The Galloway Gazette*, the local newspaper in the south-west of Scotland, also undertook a campaigning role at one stage in the process. That is why we have produced a bill that will create an independent commission chaired by a non-lawyer and with a non-lawyer majority. That will give consumers

confidence that they are represented where it matters most—at the decision-making level.

It is important that the legal profession and its clients will now have the opportunity to form a true partnership in which they can work together to resolve disputes at the local level. The bill encourages lawyers and their clients to resolve problems at source. When that has not been possible, the commission will provide a quick, user-friendly and fair system of complaints handling.

We have had a robust debate about the bill's ECHR compliance. We have listened carefully, as we always do. As justice ministers, we have prided ourselves on ensuring that we have listened to Parliament. I am confident that the bill is ECHR compliant and that our amendments reinforce the commission's impartiality and independence, particularly through including a procedure for appeal on restricted grounds against a commission decision. That was a sensible way forward that will achieve the correct balance.

The bill will change several aspects of legal aid. I hope that people will in particular welcome the progress that Johann Lamont talked about on the new network of solicitors whom the Scottish Legal Aid Board will employ to provide civil legal assistance where gaps exist in private practice. As Kenny MacAskill said, we will need to consider other issues in due course. That is for another time.

I am glad that we have reached consensus on the bill in Parliament. That sends a strong and powerful message to the legal profession and to consumers that they can have confidence in what we are doing and we will have confidence that they will make progress. I hope that that support will be translated into votes.

Decision Time

17:31

The Presiding Officer (Mr George Reid): There is only one question to be put as a result of today's business. The question is, that motion S2M-5223, in the name of Cathy Jamieson, that the Parliament agrees that the Legal Profession and Legal Aid (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Legal Profession and Legal Aid (Scotland) Bill be passed.

Carbon Trust

The Presiding Officer (Mr George Reid): The final item of business is a members' business debate on motion S2M-5207, in the name of Nora Radcliffe, on the Carbon Trust. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the recent successful parliamentary reception held by the Carbon Trust; values the role the trust plays in Scotland in helping organisations to reduce carbon emissions, develop low-carbon technologies and respond to climate change; notes the positive views about the Carbon Trust in Scotland expressed by representatives of RHI Refractories in Clydebank and Ocean Power Delivery, two of the many Scottish companies that have received support from the Carbon Trust; notes that Aberdeen City Council pioneered the Local Authority Carbon Management Programme which Aberdeenshire Council is also using; notes with interest that organisations that take steps to reduce carbon emissions not only help the environment but can also benefit financially from more efficient use of energy, and believes that everyone concerned with reducing carbon emissions and improving business efficiency should be encouraged to spread the good word about what the Carbon Trust can do to help organisations, both large and small, across all sectors in Scotland to ensure that our nation's carbon footprint on the world is as small as possible.

17:33

Nora Radcliffe (Gordon) (LD): I thank members for their support of the motion and the Carbon Trust for the excellent briefing that it circulated to members before the debate. Last but not least, I give special thanks to colleagues who have stayed half an hour later than usual after a busy parliamentary week to speak in the debate.

The scientific community agrees that climate change is happening, that it is happening because of man's activities and that it is probably still possible to avert potential catastrophe by modifying our activities. The urgency of the message that we must modify our activities has been reinforced this week by the report that polar ice is not refreezing after the summer melt; by the fact that, closer to home, people had to flee their homes yesterday because of flooding; and by the 14 flood alerts that were in operation throughout Scotland this morning. That follows the warnings in the Stern report that the cost of doing nothing will be far greater than the cost of taking action now and that the longer we leave it, the more costly it will be.

When that message prompts the business community to ask, "What can we do?" the Carbon Trust comes into its own. The Carbon Trust is an independent company that was established by the Government. It helps the United Kingdom to meet its climate change obligations by helping

businesses to understand the importance of lowering their carbon emissions and by offering practical advice on how to do that. Businesses are responsible for about half of all the UK's carbon emissions, so it is important that they get the message, advice and help.

The Carbon Trust has developed a comprehensive range of carbon management activities for large organisations that wish to manage and reduce their carbon emissions while growing profitably. Two large paper mills in the north-east are benefiting from that. Aberdeen City Council pioneered, and Aberdeenshire Council is using, the local authority carbon management programme, which has been adapted for the public sector and provides councils with technical and change management support and guidance to help them to realise carbon emission savings.

The Carbon Trust has a carbon management product that is tailored to the needs of the higher education sector, and the trust's national health service carbon management programme is designed specifically for NHS trusts. The programme provides staff with support in and guidance on integrating good carbon management into their organisation's infrastructure and day-to-day operations at all levels. I am delighted that my local health board, NHS Grampian, is working with the Carbon Trust in the NHS carbon management programme. It is the only NHS Scotland board that is involved in the programme, and it is one of only 10 that are taking part in the UK. The programme runs until the end of March 2007, and goes beyond energy savings and awareness. It examines issues such as procurement, planning, travel and transportation, business strategies and capital programmes. NHS Grampian could significantly reduce, in a sustainable way, its carbon output and energy-related costs. By the end of March 2007, it will have developed a strategic implementation plan for carbon reduction targets and cost reductions over the short, medium and long term.

What is interesting and attractive about the Carbon Trust's approach is that modifying our activities to combat climate change does not require a hair shirt. Businesses and organisations continue to function, to produce and to provide services, but they do so with an awareness of the carbon cost, as well as the monetary cost, of their activity. By sensible planning and the elimination of waste, they save not only carbon emissions but money.

Buildings are responsible for approximately 40 per cent of the UK's carbon emissions, with non-residential buildings being responsible for approximately half of that. Members will not be surprised that the Carbon Trust has a free building design advice guide, which contains a detailed

overview of all that people need to know about procuring good, energy-efficient buildings. The trust will help people to mitigate the climate change impacts from buildings by making the most of low-carbon design and technologies and ensuring that buildings are economically carbon responsible from their concept design through to their final occupation. The Carbon Trust has supported to the tune of £250,000 the development of an innovative new building membrane technology at the University of Aberdeen.

At about 1.5 per cent per annum of UK building stock, new build represents only a small fraction of the opportunities that are available to reduce carbon emissions from buildings. Although many older buildings have poor energy performance, buildings typically undergo major refurbishment every 20 to 30 years, which offers opportunities to reduce carbon emissions. There are online tools to help people working in offices, industrial buildings, sports centres, civil estates and hospitality premises to compare their energy use with that of similar organisations. The Carbon Trust operates from the large scale of carbon management programmes to the small scale of free starter packs, containing energy-saving fact sheets, energy-saving tips relevant to businesses, posters and stickers to motivate staff to take simple energy-saving measures, and details of the free products and services that the Carbon Trust offers to help people to make further savings.

People can phone the trust on 0800 085 2005 for free advice on any aspect of energy saving. Its experts will answer simple requests for information or detailed technical questions about particular technologies. A huge range of information can be found on its website, including everything from lists of suppliers of energy-efficient equipment to comparative studies of different technologies to the criteria for receiving financial and other help to start new companies. One such company is Clear Process, which is a spin-out company from the University of Aberdeen that was supported through its birth pangs by the Carbon Trust. Strategic and business development consultancy, advice on corporate finance, mentoring for management teams, energy-related market research and guidance on technical support are all available where there is carbon-saving potential.

The Carbon Trust has the financial capacity to co-invest to develop low-carbon technologies, to fund or part fund large-scale demonstration projects and to conduct research into and analysis of different technologies and models. Its great strengths are its independence, the objectivity of the research that it conducts or commissions and the reports that it produces.

I hope that this debate will help to spread the word about what the Carbon Trust can and will do to help organisations and businesses of every shape and size to rise to the challenge that we face and that we must meet of mitigating climate change by saving carbon.

The Presiding Officer: Each of the four members who wish to speak will have four minutes.

17:40

Sarah Boyack (Edinburgh Central) (Lab): I might not use all of my four minutes.

I congratulate Nora Radcliffe on securing this timely debate, as I am sure colleagues will do. There was a huge turnout at the Carbon Trust meeting in the Parliament. One of the things that struck me most at that meeting was the practical nature of the projects that were presented. The presentations that were made by companies were critical. They talked about the benefits to their businesses, their increasing competitiveness, the lowering of costs and their pride in what they had done in conjunction with the Carbon Trust. That is a good way to proceed. Businesses should feel that they are part of the agenda. The Stern report and the climate change work that has been discussed in the Parliament aim to get businesses to feel that reducing carbon emissions is their agenda. An agenda will not be imposed on them. Opportunities are presented to them by their taking on board the low-carbon agenda and working with groups such as the Carbon Trust to deliver it.

I am proud of the work that the higher education institutions in Edinburgh have done to reduce their carbon emissions. The University of Edinburgh has looked at combined heat and power systems as part of its energy supply refurbishment programme. Last week, Napier University won an award at the green energy awards for its imaginative and radical use of photovoltaic installations, and Queen Margaret University College has put up very energy-efficient buildings in the east of Edinburgh. Some big public sector organisations have therefore signed up to the Carbon Trust's work.

Nora Radcliffe made a crucial point about the NHS. She was delighted to praise her local NHS board, but it would be good if NHS boards throughout Scotland joined in the programme. The NHS runs a huge estate. It represents one of the biggest parts of the public sector, and its use of carbon in buildings and in getting patients and staff to and from buildings makes a huge impact. We must push the NHS further up the agenda and help it to play its part.

Recently, I went to a presentation by Lothian NHS Board. It has to pump millions of extra

pounds into its budget to deal with fuel price increases, which is crazy. That money should go on front-line services. Lothian NHS Board is doing an excellent job in bringing down waiting lists, but money is being wasted. The issue is energy that is not CO₂ friendly. There is a real job to be done in thinking about the public sector, and particularly in thinking about the NHS. I hope that Allan Wilson and the Minister for Health and Community Care will speak to each other and think about how they can play a more proactive role and use the Carbon Trust's experience.

Finally, larger businesses are doing hugely important work, but I want to focus on smaller businesses. In that context, I declare an interest in the work that I have been doing on my proposed energy efficiency and micro-generation (Scotland) bill. Very small businesses do not think that they have enough time or staff to go to the Carbon Trust or the business environment partnership, which is an issue, but it would be a worthwhile investment for them if they did so. We should think more about incentives that can be provided to them. The Scottish community household renewables initiative has done a superb job for householders. I would like business taxation on businesses that retrofit to be reduced, for example, and small businesses, which should be part of the agenda, to be targeted. Such businesses must be encouraged and given practical incentives. I hope that the minister will consider my suggestion, and I would be delighted if he commented positively on it. If he does not do so, I would be happy to meet him to discuss the proposal further.

17:44

Richard Lochhead (Moray) (SNP): I congratulate Nora Radcliffe on securing the debate. We cannot talk enough about tackling climate change, and tonight's debate is another example of the recent trend for such debates in the chamber. We all know from the weather that has occurred over the past few days, which has affected communities in your own constituency, Presiding Officer, and elsewhere in Scotland, about the here-and-now impact that climate change is having.

It is imperative that we reduce Scotland's carbon footprint. As individuals, we have to reduce our carbon footprints. Households have to reduce their carbon footprints, and the public sector and business community must do so too. The Carbon Trust effectively deals with the public sector and the business community, so it plays an important role in that regard. We must get the case across to the business community and the public sector in Scotland that it is in their economic interests, as

well as the environment's interests, to reduce their carbon footprints.

As Sarah Boyack said, doing that will reduce energy bills, which is a big issue on the balance sheet for the private sector. There are also economic opportunities for new business start-ups, and I was delighted to learn that the Carbon Trust is involved in many exciting initiatives in that area. Scotland can take a lead in reducing not only its own carbon footprint but the world's carbon footprint, by developing energy efficiency techniques and technologies and exporting them to the rest of the world.

I will raise two or three issues that other members might not raise. I have met representatives of the Carbon Trust in the past couple of weeks, although I was unable to attend the event in Parliament due to other engagements. I learnt that the trust has nine employees in Scotland, out of 140 across the United Kingdom. Given the urgency of the situation, I have to ask whether nine people working on behalf of the trust in Scotland is enough of a resource. I know that the trust has received a grant of £5.7 million from the Scottish Executive and that it has other income streams as well, but again, given the scale of the challenge that faces Scotland, we must, as a society and as a Parliament, examine the scale of the resources that are being devoted to that subject.

The climate change levy provides much of the income—perhaps half of it—that the Carbon Trust acquires. Is the minister convinced that we are getting back our fair share of the climate change levy raised in Scotland? I do not know what the figures are, as I have been unable to find them out. I assume that the question is of importance to the minister and that he will look into it if he does not have the figures to hand. Perhaps we get more than our fair share, given Scotland's opportunity to make a contribution, but we must find out the level of climate change levy that is raised in Scotland, and how much is being spent in Scotland to tackle climate change. That is what it is all about.

I am concerned about duplication. The excellent initiatives from the Carbon Trust support business incubators and other measures at the research and development stage, but other organisations, such as ITI Energy in Aberdeen, run similar projects. Enterprise agencies and companies are also involved in such initiatives. Is that work joined up, or is work being duplicated? Given that so many agencies are involved, do people know where to go to get proper advice and support? We need to look at that.

It is sad that the Government in Scotland has not yet published its energy efficiency strategy, which we have been promised time and again. If the strategy is a priority for the Government of

Scotland, it should have been published long ago. We should not be waiting until just a few months before the elections and eight years into the Scottish Parliament. The issue is of the utmost importance. We were promised that the strategy would be published this December, but we are still waiting for it; I hope that the minister will give us some news on that. I hope, too, that ministers are not simply paying lip service to the issue, but are making it a priority.

It is important that we have a simple message and a simple one-stop-shop approach with which to get that message across both to the public and to the business community and public sector. I do not believe that that is happening just now. Far too many agencies are involved—they include the Carbon Trust, the Energy Saving Trust and various other charities, independent organisations and Government initiatives—and they all promote the same message. We must bring them all together and have a single energy efficiency agency for Scotland. Let us have one-stop shops in Scotland's cities and bigger towns, perhaps with energy advice centres that can service the business community and the public. We must streamline our efforts, so that the public can identify with this important issue and find it easy to get support and information.

I hope that the minister will give us good news, because we have been waiting for the Government to make energy efficiency a priority.

17:49

Alex Johnstone (North East Scotland) (Con):

Like Richard Lochhead, I was unable to get to the reception that is mentioned in the motion. I am trying to remember where I was that night. Perhaps there was something else on—or at least I do not think that I was at the reception, but perhaps it was just a better reception than I care to remember.

I, too, congratulate Nora Radcliffe on securing tonight's debate and on bringing before us the issue of the Carbon Trust, the work that it is doing and the successes that it has had.

As we all know, climate change started off as a fringe issue in the Parliament but, over the now nearly eight years of the Parliament's existence, more and more people have gradually become aware of the problems surrounding the issue, the causes of climate change and the effects that it will have on Scotland. As I have said on previous occasions, the fact that we have had a greater number of Green party members during the second session has resulted in their priorities becoming the priorities of the Parliament and, suddenly, of all parties. Although we may not agree on everything, I think that we agree on that.

An important point about how the Carbon Trust operates is that, as Sarah Boyack pointed out, it is worth while for big businesses to develop schemes and methods of reducing CO₂ emissions. If an organisation has a multimillion-pound energy budget, it does not need to make many efficiency savings to make a big difference to its profits. As a consequence, big companies have quickly seen the sense of becoming more energy efficient and more CO₂ conscious.

The problem lies at the other end of the market, where very small companies might see the potential benefits of energy efficiency but are unable to find either the time or inclination to move down that road. For that reason, all parties have plans—this is certainly true of the Conservative party—to make that an issue in the next Scottish Parliament elections. Our party has plans, which I know are shared by other parties, to extend the efforts to encourage domestic energy efficiency and microrenewables into the small business arena so that small businesses are given equal levels of support.

Many comparisons can be drawn between the activities of the Carbon Trust and those of many other organisations, but it strikes me that, in certain respects, the trust's activities are similar to those of our enterprise companies. However, whereas our enterprise companies need to pick winners that will develop their contributions, the Carbon Trust is required to spread its effectiveness across a range of companies and public sector organisations in order to try to produce results everywhere.

Richard Lochhead raised an issue about the number of people that the Carbon Trust employs in Scotland. I do not believe that we should judge the trust's success on the number of its employees. If the trust can do the job with nine people, that is all the better as more money will then be available to spend on the investments that the trust believes are important and which are its reason for existing. However, if the trust needs more employees, we should consider that request. If the trust's activities need to be stepped up, it is certainly evident from the briefing paper that we get good value for money from what we currently provide.

I worry about Richard Lochhead's proposal that we should consider how to bring together the Carbon Trust and similar organisations into bigger organisations that would, it is perceived, do the job more efficiently. I am not inclined to agree with that, as I do not necessarily believe that big is beautiful. One man's duplication is another man's competition. I believe that competition can be successful in certain areas, including this one. Therefore, I am keen to have smaller organisations, working together where possible,

that can bring about the results that we know can be produced by the Carbon Trust and the other organisations that operate in similar or parallel fields. Let us allow those with talent to specialise and let us see the results that they produce in the longer term.

17:54

Shiona Baird (North East Scotland) (Green):

I, too, thank Nora Radcliffe for lodging the motion for debate.

As Richard Lochhead said, climate change is an important subject that cannot be debated too often. Equally, we must keep repeating David King's pronouncement that climate change is a bigger threat than terrorism. As yet, there is still little appreciation of the impact that climate change will have if we do not take action now.

The Carbon Trust does a great deal of work in highlighting the opportunities that moving to low-carbon technology can bring to all businesses. Energy efficiency and better resource management are essential for businesses to avoid the waste that costs them dear. The idea is a no-brainer, but far too many businesses still accept such levels of waste without any real understanding of the savings that often could be made with very little effort. The Scottish Executive estimates that businesses and consumers in Scotland lose at least £1.3 billion in wasted energy every year.

The work of the Carbon Trust makes not only sound environmental sense, but sound economic sense. The Carbon Trust and other groups such as the business environment networks need support and deserve thanks for the work that they are doing. However, much remains to be done.

The Stern report made a valuable contribution in acknowledging the economic impact of climate change. In effect, the report brought the issue right into the enterprise arena. This is not an environmental issue parked on the sidelines. If ignored now, climate change will have a devastating effect on every aspect of our lives. It will have a disproportionate effect on the vulnerable in Scotland and around the world. That is happening already.

It is appropriate that it was in Aberdeen, the oil capital of Europe, that the local authority carbon management programme was piloted. That enabled Aberdeen City Council to establish the vital baseline from which improvements can be made. Such leadership is to be praised, although the targets are somewhat modest. We have to remember that, if we are to prevent runaway climate change, we must consider a reduction of 90 per cent in CO₂ emissions by 2050. The borough of Woking has already reduced its

emissions for the whole of the borough by more than 17 per cent. Because the public sector plays such a large part in the Scottish economy, substantial reductions in the sector are very welcome. Praise must also go to Aberdeenshire Council for adopting the programme. The challenge will be for all other public bodies to do likewise.

However, all progress will be quickly undone if councils fail to address all sectors when considering how to reduce CO₂ emissions—especially in the new build of commercial and domestic properties, and, of course, in transport. Councils' planning departments can have a major and positive role in implementing the low-carbon approach.

I refer members to two crucial statements in the Stern report—that business as usual is not an option, and that doing nothing will cost far more in the long term. When will we start to take climate change seriously across all sectors? The decision by councillors to approve the expansion of Aberdeen airport undermines all Aberdeen City Council's good efforts and sends completely the wrong message to the people of the north-east. We need reductions in emissions in all sectors; we do not need actions that will deliberately increase emissions.

A recent study by the Carbon Trust, called "I Count", puts the annual carbon footprint of the average Briton at 11 tonnes of CO₂, which is way in excess of what the planet can sustain. The report acknowledges the importance of individual actions in all aspects of life, but it also acknowledges that it is Government action that will produce the big savings—particularly in aviation and power station emissions. We need leadership and moral responsibility.

Many organisations such as the Carbon Trust are taking their responsibilities seriously. However, until we place a carbon cap on all sectors, we cannot ensure that our carbon footprint is small enough to prevent runaway climate chaos.

17:58

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): I, too, commend Nora Radcliffe on securing this debate; I also commend the endurance of all members who have stayed on to participate.

We welcome the debate. The Carbon Trust plays a valuable role in helping public sector and business sector organisations to reduce their emissions; in supporting the development of low-carbon technologies; and in helping organisations to respond to climate change. All those issues have been mentioned by the members present,

and the Executive supports all those objectives whole-heartedly.

I am not saying—as Richard Lochhead implied or inferred—that individual weather events are necessarily the consequence of climate change; but I agree with Shiona Baird that the Stern report, which we have all seen recently, confirms to us all the seriousness of the challenge and of the threat to our economy. The Stern report made a compelling case for global action across international boundaries to reduce greenhouse gas emissions.

The Executive is committed to taking action. In global terms, Scotland's emissions are very low, but as a developed country we have a responsibility to act. I would argue that we are leading by example. Through "Changing our Ways: Scotland's Climate Change Programme", we have put in place ambitious carbon savings targets and a robust framework to support their achievement.

I was interested in the juxtaposition of the arguments from right to left—as I look at the Presiding Officer, rather than in any political sense. The Executive considers that the Carbon Trust's costs are high, and we plan to discuss that with the trust.

I agree with the duplication argument to an extent, but I tend to Alex Johnstone's theory along the lines of "Let a thousand flowers bloom", which is more of a Maoist theory than a Conservative one, in so far as each organisation has a role to play. I am not convinced of the merits of absorbing different organisations into single larger ones, even if we had the power so to do with regard to the Carbon Trust or the Energy Saving Trust.

Richard Lochhead: My reason for believing that we should have a single energy efficiency agency in Scotland is that it is imperative that the man or woman in the street is conscious of the effort to promote energy efficiency in Scotland. My experience at the moment is that if I speak to the man or woman in the street, or indeed to any local businesses, few are aware of any of the existing initiatives to promote energy efficiency in Scotland. Having one agency would heighten the profile of the issue as well as achieve economies of scale. At present, each existing agency is sourced from a different area in terms of the way in which it is organically grown.

Allan Wilson: I understand the argument for rationalisation in the sector, although I am not sure that I would agree with it, even if, as I said, we had the powers to deal with it. Mr Lochhead does the Carbon Trust and the Energy Saving Trust a disservice. As the recent Carbon Trust reception in the Parliament clearly showed, a number of businesses have benefited from the trust's

experience and expertise. As the trust's briefing demonstrates, it makes a valuable contribution across the board to informing and enlightening businesses, particularly on how they can secure the benefit for their bottom line. I agree with Sarah Boyack in that respect. A green jobs strategy is designed primarily to focus in on that economic benefit and the employment that can flow from it. A number of good examples of the Carbon Trust's work in that context were given at the reception.

Improving energy efficiency is one of the easiest and most cost-effective means of reducing carbon emissions and business costs. A key focus of our developing strategy will be the potential for improvements in the business sector. The Executive already funds the provision of a wide range of practical advice—whether through the enterprise networks or directly—on energy audits and interest-free loans. We have a dedicated business adviser network to help our smaller businesses take action and we fund the Carbon Trust to help deliver some of those objectives.

I agree with those who argue that, on the demand side of energy generation as opposed to the supply side, the potential of energy efficiency to contribute to a low-carbon economy has always been underestimated. I also agree with Shiona Baird that the public sector lead in that area is vital. The Executive's central energy efficiency fund is a good example of what can be achieved in Scotland. It could be argued that there are too many funds and too many outlets for businesses and others to access, but that is a good example of where specific, targeted initiatives can make a difference. A recent example is at Queen Margaret University College, which was given about £500,000 to build a biomass boiler.

We want all public bodies, including those in the NHS, to follow the example of Aberdeen City Council, which was referred to by Nora Radcliffe. There is great merit in that approach.

It would be remiss of me not to mention renewables. We want to realise the opportunities for economic growth that they present and to benefit environmentally from the clean energy sources that they provide. Of course, we have ambitious targets in that regard and there are economic prizes to be gleaned from achieving them.

Richard Lochhead: Will the minister update members on the timescale for the energy efficiency strategy? We are still waiting for it.

Allan Wilson: I hope to see it in the new year. The good news is that the delay is the result of energy efficiency and microgeneration being mainstreamed across all departments, as others have mentioned. That has made the process of the strategy's production more complex, but I

assure Richard Lochhead that that is for all the right reasons.

The Executive believes that sustainability is the key. Employing strategies to make energy savings, meeting a growing proportion of energy demand from renewable sources, encouraging a behavioural change among energy consumers and reducing our wasteful use of energy resources are not jobs for Government alone. The Carbon Trust makes an important contribution to those objectives and I join all the other members who have stayed on for the debate in commending it for its activities in that regard.

Meeting closed at 18:06.

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