

MEETING OF THE PARLIAMENT

Thursday 15 March 2007

Session 2

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Scottish Parliament

Thursday 15 March 2007

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

Parliamentary Bureau Motion

The Presiding Officer (Mr George Reid): Good morning. The first item of business is consideration of business motion S2M-5749, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Custodial Sentences and Weapons (Scotland) Bill.

Motion moved,

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

Groups 1 to 4: 55 minutes

Groups 5 to 6: 1 hour 35 minutes

Groups 7 to 12: 2 hours 20 minutes.—[*Ms Margaret Curran.*]

Motion agreed to.

Custodial Sentences and Weapons (Scotland) Bill: Stage 3

09:15

The Presiding Officer (Mr George Reid): The next item of business is stage 3 proceedings on the Custodial Sentences and Weapons (Scotland) Bill. Members should have with them copies of the bill as amended at stage 2; the marshalled list, which contains the amendments that have been selected by me for debate; and the groupings that I have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division this morning. The period of voting for the first division will be 30 seconds; thereafter, I will allow a voting period of one minute for the first division after a debate. The voting period for all other divisions will be 30 seconds.

Section 4—Basic definitions

The Presiding Officer: Group 1 is minor and technical amendments. Amendment 1, in the name of the minister, is grouped with amendments 2, 3, 45, 4, 48, 54, 65, 68, 69, 71, 74, 6 to 10, 76, 11 and 15. I draw members' attention to the pre-emption information that is shown on the groupings paper.

The Deputy Minister for Justice (Johann Lamont): This large group of amendments deals with a number of technical and drafting issues that have resulted from a final proofreading of the bill's provisions. The amendments will make the bill more consistent and readable. I am happy to go into the details of specific amendments if members wish, but at this point I will speak about two amendments in particular.

Amendment 4 provides further clarity to section 6. It addresses an area that has caused practical difficulty, in the past, in cases in which the custody part of a sentence results in a period that includes a fraction of a day. The amendment will require the court, in specifying the custody part of a custody and community sentence, to round up the custody part to the nearest whole day.

Amendment 15 amends section 48 to provide that the order-making power in section 47(1)—to make supplementary, consequential, and so on, provisions in a case in which the order amends primary legislation—is subject to the affirmative procedure. The proposed change reflects the advice of the Subordinate Legislation Committee at an earlier stage, and we are grateful to the committee for its continued interest in the bill.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Johann Lamont]—and agreed to.

The Presiding Officer: Group 2 is on the abolition of custody-only sentences. Amendment 16, in the name of Colin Fox, is grouped with amendments 17 to 19 and 33. Again, I draw members' attention to the pre-emption information that is shown on the groupings paper.

Colin Fox (Lothians) (SSP): The purpose of the amendments is to address what has been widely accepted as an anomaly in the bill—the fact that offenders who receive 14-day sentences serve longer in custody than those who are sentenced to periods of 28 days. The bill insists that those who receive sentences of 14 days or fewer must spend the entire time in custody—not the 50 per cent of the sentence that they currently serve, nor the 75 per cent that will apply to all other prisoners under the bill, but 100 per cent of the time behind bars, so to speak. Clearly, it is nonsense that getting a shorter sentence means serving longer in custody. That patently undermines the bill's objective, which is to make the justice system clearer and more understandable to the general public.

At various stages of the bill, the minister has argued that hardly any sentences of 14 days or fewer are handed down by sentencers. It could be argued that that gives us all the more reason to leave the current 50 per cent custodial part of the sentence alone. However, as the minister knows well, hundreds of fine defaulters end up serving such a sentence although a non-custodial disposal was suggested to be far more appropriate in the first place. Fine defaulters—persons for whom the court did not consider prison to be the appropriate disposal—now spend longer in custody than more serious offenders.

The plethora of evidence that the committee received included a submission from Sacro, which said that it considered the imprisonment of the least serious offenders to be misconceived. However, we are about to ensure that those offenders spend even longer in custody than more serious offenders. Frankly, many people would think that that was nonsense.

During the earlier stages of the bill's passage, the minister argued that we ought not to underestimate the fact that longer sentences also attract a community part under licence. However, under that licence, the offender simply promises to be on good behaviour; otherwise, they get to spend the rest of their time in their own bed and in their own community. Lesser offences attract more severe punishments. My amendments seek to rid us of that silly consequence by keeping the current sentence provision at 50 per cent of time being served. As I said, that is in keeping with the rest of the bill, which, after all, declares that the minimum

period in custody should be 50 per cent, rising to 75 per cent if the sentencers so decree.

I am sure that the minister will agree that I listened intently to what she said at stages 1 and 2. Amendment 16 is reasonable, balanced, fair and proportionate, and will avoid the public ridicule that will inevitably greet a bill with such complicated and counter-intuitive provisions and under which people who are on longer sentences will serve proportionately less time in prison than those who are on shorter sentences. I ask Parliament to support this very sensible amendment.

I move amendment 16.

Mr Kenny MacAskill (Lothians) (SNP): On the face of it, Mr Fox's comments and the points that were made by Susan Matheson in Sacro's submission have some merit. However, we need to look at these matters in a different light.

Sentences of 14 days and fewer have been handed down primarily for fine defaults and, frankly, that particular system has been brought into disrepute. People all over Scotland were aghast when they found that if people who were given a sentence of seven or 14 days because they had chosen, for whatever reason, not to pay a fine surrendered themselves at 6 am, they were free by 4 in the afternoon. We had to address the frankly unacceptable situation—one might describe it as a manifest injustice or illogicality—in which people who were given a two-year sentence had to do two years in prison while those who were given seven days were released after eight hours or whatever.

I do not think that the solution lies in treating sentences of fewer than 14 days as a parallel matter. Instead, we must ensure that, when a fine is imposed, it is paid and that, if it is not paid, the money is secured by some other method or manner. By doing so, we will not have the nonsense of people not serving the appropriate time and, indeed, we will ensure that the taxpayer does not have to bear the great cost of putting such people in prison. Thankfully, that matter has been partly addressed in other legislation. For that reason, I simply do not think that the amendments would address the problem of fine defaulters.

Should we be giving people sentences of fewer than 14 days anyway? In most cases, the answer is absolutely not. However, in some cases, a sheriff might think that such a punishment—similar, one might say, to a short period of disqualification for a driving offence—would be suitable. In dealing with driving offences, the sheriff might say, "Mr X, take two weeks' holiday and you won't have to lose your job as a result of the disqualification". Such cases will be few and far between—and there are certainly better ways

of punishing people—but I do not want to restrict the sheriff's discretion to say, "Mr X, you can use the two weeks that you would have spent sunning yourself in Spain to learn the error of your ways."

Although there appears to be an illogicality in the bill, I think that we should leave matters as they are.

Bill Aitken (Glasgow) (Con): Colin Fox is technically correct to say that the bill appears to contain an anomaly. However, in my experience, sentences of 14 days or fewer are unheard of. The minister might have more up-to-date information, but I doubt whether any such sentences were imposed in Scotland last year. Indeed, I would be surprised if there were any.

The provision must be included in the bill because, for various reasons that are usually fairly vague and illogical, some people either refuse to pay fines or do not ask for any time in which to pay a fine when it is imposed. In such cases, the justice or sheriff has no option but to impose a custodial alternative. If amendment 16, in the name of Colin Fox, were agreed to, the sheriff or magistrate would not have such a facility. As I have said before, I have no great confidence in the fine collection measures in previous legislation, but, if the custodial option is not included in this bill, the number of people not asking for time to pay in order to get out of their particular problem will continue to rise.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): At what stage can proper rehabilitation services and support start? At stage 1 and stage 2, Colin Fox made good points about the time it would take the prison service and others to identify an offender's particular problems before signposting to other services. Such points have been acknowledged in the policy memorandum that accompanies the bill, and acknowledged by the minister time and time again, but Colin Fox's amendments would make some very short sentences even shorter. He talked about licence. I am not sure whether he was listening at committee meetings, but the Executive offered clarification of the conditions that could be applied with regard to licence. It is not just a bond of good behaviour; it can be more than that.

I disagree with Bill Aitken. When I visited Edinburgh prison, I spoke to a prison officer who had indeed heard of a prison sentence of fewer than 14 days. He told me that, for a prisoner who was sentenced on a Thursday to seven days, reception was on the Friday morning and release on the Friday afternoon, because of the automatic release after half the sentence, and because people are not released on weekends. Kenny MacAskill made a similar point. Mr Fox's amendments would return that absurd characteristic of the present system—which we

want to move away from with the bill—into statute. That would be a retrograde step. Amendments 16 to 19 and 33 cannot be supported.

Johann Lamont: Amendments 16 to 19 and 33 seek to address Mr Fox's concern that custody-only prisoners could spend longer in prison than those custody and community sentence prisoners who receive very short sentences. Mr Fox wants to remove the anomaly by eliminating the category of custody-only sentences; all offenders who are given a custodial sentence, with the exception of those who are given life sentences, would be subject to a custody and community sentence.

I do not think that anyone disputes that there is an anomaly—that point was acknowledged at stage 1 and stage 2. However, we had to consider the practicalities of ensuring that the custody and community sentence was as effective as possible.

We agree that as many offenders as possible should be subject to the new custody and community regime. That is why we have set the threshold at the lowest practical point—15 days. I emphasise that we have to consider the practicalities. We have said many times that 15 days is the minimum time in which arrangements can be put in place for initial assessments to be made and conditions to be set. We are committed to tackling reoffending, but there is a particular problem with the group of offenders who are committing the types of offences that lead to short custodial sentences. For that group, it will be crucial to break the cycle and provide alternatives to a life of petty crime.

There is a limit to what we can do with those people, given the short sentences, and I know that some commentators do not want custody and community measures to apply to very short sentences—although they do not say what should be done with those offenders instead. I do not think that we should be doing nothing.

For people who are given very short sentences, the approach that is taken will be more about getting them in contact with the range of services that they will need—such as drug treatment, accommodation services, and advice on housing and benefits—to stabilise their lifestyles and move them away from offending. The service will be more akin to signposting people on and brokering access to services, rather than to formal supervision by social work. We have therefore stretched the application of the custody and community regime as far as practicable. Custodial sentences have to be meaningful, and that is what the 15-day threshold seeks to achieve.

Those who are sentenced to fewer than 15 days make up a very small percentage of the prison population. Most of those cases are for fine default. If a person defaults on a fine, they are

flouting a disposal already made. In the financial year 2005-06, the average daily prison population of prisoners who had been sentenced to fewer than 15 days was just two. That average excludes fine defaulters.

We are seeking to address fine defaulting in other ways. With fine defaulters, supervised attendance orders provide courts with an alternative to custody. We have announced that, from September this year, supervised attendance orders will be the mandatory penalty for fine default of up to £500. That will mean that the vast majority of fine defaulters will no longer be sent to prison. We estimate that that will remove approximately 3,000 annual receptions to custody for fine default.

Points have been well made about the inadvisability of amendments 16 to 19 and 33 in the name of Colin Fox. I urge Parliament to reject them all.

09:30

Colin Fox: Those members who argue that the current system is in disrepute are absolutely correct. That is what the bill seeks to address. However, the passage of the part of the bill that seeks to make people who are serving 14-day sentences serve even longer than they do now would bring the system into even more disrepute.

To Kenny MacAskill, I say, with all due respect, that it is he who misses the point entirely. I am not suggesting that people should escape punishment. However, as he well knows and as the evidence that was presented to the committee during the passage of this and other bills demonstrated, imprisoning people for short periods of time is a waste of money and time. There are far better disposals available for people in that category. The minister hinted at a few of them—drug treatment and testing orders, supervised attendance orders, community disposals and so on. No one is suggesting that people should walk away without punishment.

Kenny MacAskill and Jeremy Purvis suggested that we should leave matters as they are. Those who want to leave matters as they are should support my amendment, because the bill does not propose to leave matters as they are; it proposes to make people who are sentenced to 14 days in custody spend twice as long in custody as they would under the present system. Both those members have missed the logic entirely. They seem to suggest that leaving matters as they are means that we would not do anything with the current disposal, but that is not the case, as the bill seeks to change the situation entirely.

The emphasis of a large part of the bill, which I welcome, is on the community part of sentences.

Jeremy Purvis implied that people need to spend longer in custody so that they can have better rehabilitation services around them, but that flies in the face of all the evidence that he sat through in the committee, as all the experts told us that rehabilitation of offenders serving less than six months is impossible. If that is the case, it beggars belief that it can be done in 14 days. We have to make the sentences shorter by keeping the arrangement as it currently is. That is the point that Kenny MacAskill and Jeremy Purvis missed.

The minister is right to point out that we are dealing with an anomaly. Everybody in the chamber accepts that. However, my amendments are the only way in which that anomaly can be removed from the bill.

I press amendment 16 and ask the Parliament to support it.

The Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. Since this is the first division in these proceedings, there will be a five-minute suspension.

09:32

Meeting suspended.

09:37

On resuming—

The Presiding Officer: We will proceed with the division on amendment 16.

FOR

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)

Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 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)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)

Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 6, Against 94, Abstentions 0.

Amendment 16 disagreed to.

Amendment 17 moved—[Colin Fox].

The Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Fox, Colin (Lothians) (SSP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 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)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)

Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 6, Against 94, Abstentions 0.

Amendment 17 disagreed to.

Amendment 3 moved—[Johann Lamont]—and agreed to.

The Presiding Officer: I remind members that if amendment 18 is agreed to, amendment 45 is pre-empted.

Amendment 18 moved—[Colin Fox].

The Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Fox, Colin (Lothians) (SSP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 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)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)

Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 6, Against 95, Abstentions 0.

Amendment 18 disagreed to.

Amendment 45 moved—[Johann Lamont]—and agreed to.

Section 5—Release on completion of sentence

The Presiding Officer: Group 3 is on prisoners serving more than one sentence. Amendment 46, in the name of the minister, is grouped with amendments 49 to 51, 60, 61, 63, 64, 66, 67, 70, 72, 73, 75 and 78 to 84. I draw members' attention to the pre-emption information that is shown on the groupings paper.

Johann Lamont: I am sure that there will be agreement throughout the chamber that, for too long, lack of clarity in what sentences mean has undermined the credibility of the criminal justice system. We have said that one of the key aims of the bill is to improve public confidence by providing greater clarity about sentences, their length and their meaning. This group of amendments is the final step needed to ensure that that is achieved. As recommended by the judicially led Sentencing Commission, we are abolishing the practice of single terming sentences. Single terming means that a second sentence that is imposed during a period of imprisonment for an earlier offence can be entirely absorbed in the first sentence.

The amendments in the group, while complex and lengthy, are essentially technical in nature. They are intended to enhance the regime's operation, and they will prevent subsequent sentences that are imposed during a period of imprisonment from being entirely absorbed in the first sentence, which would not have been the court's intention.

Amendments 78, 79, 81 and 82 introduce new schedules to the bill that detail the processes to be applied when an offender is serving more than one sentence of imprisonment. We have a complex array of provisions in the new schedule that deals with the various permutations. However, it may help the chamber if I offer an example. When a court imposes a consecutive sentence, it will now be served in parts. That, after all, is the court's intention. For example, a prisoner who receives a custody and community sentence to be served consecutively to a sentence that is already being served will serve the custody parts of both sentences before serving the aggregate of both community parts on licence in the community.

In addition, for those on whom the courts impose an extended sentence, the extension periods will also be aggregated. Paragraph 6 of the new schedule that is introduced by amendment 82 also creates a new order-making power to apply the provisions of the new schedule to cases in which a previous sentence is imposed by a court elsewhere in the United Kingdom. That will enable the court, as it does now, to impose a sentence consecutively to a sentence that is imposed by a court outwith Scotland. Amendment 80 adds that order-making power, at section 48(4), to the orders that will be subject to the affirmative procedure.

Amendments 46, 49 to 51, 60, 61, 63, 64, 66, 67, 70, 72, 73 and 75 are all consequential to the introduction of the new schedule. Amendment 83 makes consequential amendments to sections 167 and 204A of the Criminal Procedure (Scotland) Act 1995, and amendment 84 repeals section 204B and subsections (7A) to (7C) of section 167 of the 1995 act, because the new schedule covers everything that was previously covered by those provisions. The changes may be complex, but they will deliver a more honest and transparent approach to sentence calculation.

I move amendment 46.

Mr MacAskill: The Scottish National Party has a great deal of sympathy with what the Executive is attempting to achieve with the amendments. It appears that what the public want, and what we support, is that the sentence that is given should be the sentence that is served—the minister has commented on that—and that judicial policy and sentencing policy should be understandable, not simply to a highly qualified lawyer of many years'

standing, but to the victim, to the accused and to the ordinary man or woman in the court at the time or elsewhere.

What causes frustration about the system is misunderstanding. It is all very well for sheriffs to claim that everybody knows that an offender who is given 12 months will be released after six months, but the man or the woman on the street does not understand that or have experience of that. Therefore, we welcome the progress on ensuring that people are provided with a greater understanding of what a given sentence will be. We certainly believe that the sheriff's official statement to the court on the custodial part of the sentence will be of benefit.

09:45

However, the problem with the provisions is that a great deal of difficulty will arise because of the complexity to which the minister referred. The new system will be deeply complex even for sheriffs of many years' standing and will need to be discussed, if not walked through, with sheriffs. Therefore, we have great worries about the complexity of the system that is being created.

That said, as members from all parties have commented, the current system is unsatisfactory and is not—to use the buzzwords that are applied to many legislative provisions—fit for purpose. Therefore, we need to move forward. Only time will tell whether the proposals will work out but, given that we have the opportunity to decide only whether or not to support them, we will support the amendments despite the great worries that exist about the complexity that is being imposed.

Bill Aitken: As Kenny MacAskill said, the matter is complex, but the amendments in the group are indeed welcome. Apart from anything else, the amendments will close a loophole that exists under the 1995 act that affects individuals who are already serving a custodial sentence and who are supposed to be sentenced by another court to a further period of custody after their current sentence. If the sheriff simply imposes a sentence of, say, 12 months' imprisonment, the new sentence will start on the date on which the sentence is passed. In effect, that enables the prisoner to have a roll-up of perhaps three sentences and thereby defeat the purpose of the court, which was that he should be punished for the three offences that he committed.

Of course, the simple way round the loophole is to say that the sentence is 12 months' imprisonment to be served consecutive to the offender's current sentence and any other sentence that may be imposed by a court. Unfortunately, the word on that did not seem to get round terribly well and, in a number of cases,

offenders were in effect able to walk free after perhaps as little as a quarter of the sentence that had been intended.

The amendments in the group are welcome. I accept that they are complicated and do not clarify matters terribly much but, bearing in mind the complexity of the issue, I recognise that it is quite difficult to put something in black and white that is tremendously clear.

Johann Lamont: This issue may be complex, but we should not overstate the complexity of the bill as a whole. The bill's effect on sentence management will be quite straightforward. Sentences will have a custody part, a community part and an assessment of risk during the period in custody. That is not complex.

The amendments deal specifically with single terming. They will get rid of what might be called odd consequences—the term “anomalies” was used earlier—some of which were perhaps hinted at by Bill Aitken. I would not want to say that our judiciary is not capable of dealing with complexity—I enjoy a positive relationship with them and do not want to insult them—but we recognise that we need to work with the judiciary on the range of issues that the bill addresses. We are doing that through the planning implementation group on the bill, so that people understand the importance of explaining what they are doing.

The amendments do not even, I think, deal specifically with whether a court should impose a consecutive or a concurrent sentence. Courts are able to do that at the moment. The amendments deal with single terming, which can complicate matters and mean that people can end up in the position that has been highlighted.

The general thrust of the bill is quite straightforward, but the amendments address a specific complexity that has been recognised as requiring to be addressed. Although the amendments are not straightforward, they will provide the benefits of increased transparency and clarity.

Amendment 46 agreed to.

Amendment 19 moved—[Colin Fox].

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

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)

Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 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)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
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 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 6, Against 83, Abstentions 0.

Amendment 19 disagreed to.

Section 6—Setting of custody part

The Presiding Officer: Group 4 is on custody and punishment parts: consideration of protection of the public. Amendment 20, in the name of Bill Aitken, is grouped with amendments 22, 31 and 32.

Bill Aitken: I think that there is genuine agreement that anybody who suggests that sentencing is other than complex and difficult is being naive. Sentencers require to consider many issues. Retribution and punishment of the offender is one, the need to deter the offender or others who might be of like disposition to offend is another, and rehabilitation certainly has a part to play, but surely one of the most important aspects of the selection of a sentence must be the danger the offender poses to the wider public. As the bill stands, judges will be precluded from taking that into consideration.

The issue was debated at stage 2, but I was unconvinced by the Executive's argument that the bill protects the public satisfactorily. I do not accept its argument that the Parole Board for Scotland's deliberations will cover the matter. It remains to be seen to what extent the judge's report in cases of a violent or sexual nature reflect the evidence heard by the court or an agreed narrative presented by the prosecutor. What cannot be denied is the fact that the person who is best able—although not exclusively so—to assess the danger the offender presents is the trial judge.

It is ludicrous that the input of the trial judge is largely ignored in the sentencing process. Prevention is an important aspect of the sentencing consideration. It is ridiculous to remove judges' power to consider the risk that the offender presents. Amendment 20 and the consequential amendments 22, 31 and 32 seek to reinstate the right of judges to take that into consideration.

Scotland has a legal practice of which we can all be proud. Unfortunately, its effectiveness is being

diluted by legislation being passed by the Executive that interferes with judicial discretion and replaces judges' rights with the right of the Parole Board for Scotland to make decisions behind closed doors.

The existing system is much more transparent.

Jeremy Purvis: The member highlights the parts of the essence of the Scottish system that he alleges are being undermined. Would the system be undermined further if we got rid of one of its key elements, which is the double jeopardy principle?

Bill Aitken: That is a separate argument. My view on the matter is well known. The double jeopardy principle requires to be revisited in the light of technological advances and in the interest of fairness to victims and their relatives, who should see justice being done.

Stewart Stevenson (Banff and Buchan) (SNP): Does the member consider that amendment 22 is consequential to amendment 20, or should the matter be dealt with in its own right?

Bill Aitken: It could be dealt with separately, but the basic principle stands.

For the first time, a Parliament is seeking to reduce the powers and independence of the judiciary. That is alarming. The existing system is at least transparent. Under the Executive's proposals, decisions will be taken by the Parole Board based on the information that is provided, which in many respects will not be open to challenge. That is unfortunate in the extreme.

I move amendment 20.

Mr MacAskil: We are genuinely open-minded on the matter and will listen to what the minister says.

Mr Aitken's point is valid. We must take cognisance of the protection of the public, and we would be failing if we did not expect the judiciary to do that too. That said, we come back to the fundamental ethos of custodial sentences. Why do we impose them? Sadly, it is sometimes the case that prisons are receptacles for those who have social inadequacies or suffer from drink, drugs or deprivation. However, the fundamental ethos of prison is that it exists to punish dangerous people from whom we need to protect the public and/or to deal with people who have committed offences that are so serious that the disapprobation of the community can be shown only by a custodial sentence.

It can be argued that the element of protection of the public can be contained within the punishment that the sheriff or judge hands down. If that is the case, doubtless we will be satisfied. We will be interested to hear what the minister says on

whether the protection of the public can be dealt with in the punishment aspect—in the sentence that the judge will impose—and on whether that will be taken as read. If not, we will have some sympathy with Mr Aitken.

It is clear that we need an element of protection of the public. The question is whether it needs to be specifically stated or whether it is already dealt with and clearly understood by the judiciary.

Johann Lamont: I had a sense of déjà vu when I listened to Bill Aitken, because his amendments are remarkably similar to amendments that he lodged at stage 2, which the Justice 2 Committee rejected for the reasons that I will outline to the chamber. However, he managed to be even more mischievous than he normally is, and he perhaps bordered on being something more serious than mischievous in his allegations about what the Executive seeks to do in the bill. We have a responsibility to ensure that we do not, in what we say, undermine people's confidence in the system.

Amendment 20 seeks to remove the requirement for the court to ignore public protection when the custody part of a sentence is set under section 6. Amendment 22 would add the consideration of public protection to the factors that the court must take into account when it sets a custody part of more than 50 per cent of the sentence. Amendments 31 and 32 would make similar provision in relation to life sentences and the setting of the punishment part under section 15.

We have said all along—and we clarified it at stage 2—that the right time for public protection to be taken into account is when the court considers the appropriate length of the total sentence. As we have said before, the bill is about sentence management, not about sentencing itself. It is for the judge to consider all the factors that they consider relevant and to decide the total length of the sentence. At that stage, we are not able to fetter the consideration of the judge in what factors they take into account. The bill is about sentence management, or what happens when the headline sentence has been established.

The custody part of a custody and community sentence—or, as its name suggests, the punishment part of a life sentence—is for the sole purpose of retribution and deterrence. In other words, its purpose is punishment. It forms a minimum of 50 per cent of the overall sentence. Any extension by the court will be based on factors such as the circumstances of the offence and the offender's previous convictions or reoffending while on licence—we added that factor at stage 2. It is right for such factors to influence punishment, but it is not right to expect a judge who has fixed the headline sentence, after taking into account whatever factors he or she thinks are

relevant, to look into the future and assess the risk that an offender may pose at the end of the custody part.

10:00

The continuing assessment of risk and need by the Scottish ministers—in effect, the Scottish Prison Service—and by local authorities will form part of the sentence management process. Measures will be taken as appropriate during the custodial part of a sentence. That will allow decisions about risk to take account of all relevant factors, many of which transpire during the custody part and of which the court cannot be aware when it is passing sentence. Public protection remains a critical factor in setting the overall sentence and is key to determining whether an offender should move to the community part of a sentence.

Amendments 31 and 32 would overturn the existing provisions for setting the punishment part of a life sentence. They have worked well since they were introduced in the Convention Rights (Compliance) (Scotland) Act 2001. Substantial jurisprudence now supports the arrangement whereby the court sets the punishment part, whereas risk—public protection—is considered at the appropriate time by an independent and impartial tribunal, which is the Parole Board for Scotland.

Phil Gallie (South of Scotland) (Con): When the Parole Board determines at the end of the custody part whether an individual can be released, what effect could the European convention on human rights—I am not joking on this occasion—have on decisions that the Parole Board makes?

Johann Lamont: We know that the Parole Board's actions must be ECHR compliant and that Phil Gallie does not regard that as a good thing, but that is where we are.

The provisions on setting the custody part of a custody and community sentence are modelled on the life sentence arrangements. That underscores the fact that we have not developed the new regime on a whim.

For the reasons that I have given, the amendments are not needed. As Bill Aitken knows, similar amendments were not supported at stage 2. I suggest that the amendments should not be supported now. Most critically, we ought not to allow the Tories to represent the bill as an attack on public protection. Public protection is properly addressed in setting the sentence. While an offender is in custody, their risk can be further assessed. I urge members to reject the amendments.

Bill Aitken: I listened to the minister with interest. I am interested in how she equates what she said with the wording in the bill. At line 30 on page 3, section 6 says:

“The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).”

I say with all due respect that the bill says clearly that the judge must not consider any aspect of public protection. That is manifestly wrong. Surely one of the most important principles of sentencing is protection of the public.

Johann Lamont: Does the member accept what I have said, which is that judges can—and no doubt will—take public protection into account when establishing a sentence? The notion that the bill will erase public protection from sentencing is self-evidently nonsense. The headline sentence will be established. We are addressing sentence management and assessment while an offender is in custody.

Bill Aitken: That is not what it says on the tin. What the bill says is clear. If the minister and I agree about the matter, she has a clear remedy: to accept my amendments, which would impose on the bill the questions that the minister has posed. I think that most members think that public protection is apposite to the amount of time someone should spend in prison and must be a principal consideration of any sentencing approach.

Mr MacAskill: My one worry about Mr Aitken's approach relates to how a judge can quantify the danger a person presents. I understand why a judge should be able to say that a vicious assault merits a seven-year sentence or that such a sentence is merited because of the nature of the victim, who could be an old-age pensioner, but on what basis can a judge possibly decide that somebody is a danger? How would a judge know that somebody will be a danger for seven years, but that they will no longer be a danger after seven years and a day?

How can a judge quantify an intangible? A judge can certainly say that an act is reprehensible and goes against the mores, morals and values of our society and that a person should get X years for committing that act, but a judge cannot possibly be qualified to say that a person will be a danger for X number of years. A person might be a danger for ever and therefore must be dealt with, but they could stop being a danger. How can a judge measure whether somebody is a danger?

Bill Aitken: I accept that when a judge imposes a sentence of, say, six years, it is impossible for them to say that three years of that sentence will

be for punishment, two years will be because they are a danger and one year will be for some other factor, but on the basis of the evidence that the judge has heard or a narrative that has been presented, they can make an assessment that is based on the circumstances of the crime or offence and that is indicative of the extent to which the individual poses a clear and present danger to members of the public. My proposals must be considered on that basis. As it stands, the bill does not cover the matter.

The Deputy Presiding Officer (Murray Tosh):

The question is, that amendment 20 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)
 Goldie, Miss Annabel (West 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)
 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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 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)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 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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 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
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 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (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 14, Against 84, Abstentions 0.

Amendment 20 disagreed to.

The Deputy Presiding Officer: Group 5 is on repeat offenders. Amendment 21, in the name of Bill Aitken, is grouped with amendments 24, 26 and 29. Again, I draw members' attention to the pre-emption information on the groupings list.

Bill Aitken: I think that there is consensus in the chamber that recidivism is a serious problem in Scotland. Prisoners who are released early from jail frequently reoffend. It is sometimes argued that

the problem demonstrates that prison does not work, but that argument is facile. If one compares the records of other countries, one finds that where a high proportion of offenders are sent to prison, there is a corresponding reduction in crime levels. Furthermore, those who are offered community service reoffend to a great extent. The bottom line is that once offenders have reached the stage of prison or community service as a direct alternative, they are usually hardened. As such, they are prone to repeat their offending behaviour.

Amendment 21 would ensure that when an individual has been sent to prison on two or more occasions within a 10-year period, he will spend the entire period of his sentence in custody. He would not spend 50 per cent or 75 per cent of his sentence in custody—he would spend 100 per cent of it in custody.

The bill's wording inhibited the amendments I could lodge in many respects. My party's manifesto policy will, of course, go further than what I have proposed, in that it will propose that repeat offenders serve increased sentences based on the aggregate of previous periods in custody. I could not lodge an amendment to achieve what we want at stage 3, as it would not have been competent and in accordance with the wording of the bill. The amendments seek to deal with the matter in another way, in so far as it is possible to do so.

Those who persistently offend have obviously not learned their lesson, so sentences imposed against a background of two or more custodial sentences within a 10-year period will mean exactly the sentence that is pronounced by the sheriff or judge. That will act as an appropriate deterrent. It will increase public safety and make it quite clear that reoffending has a consequence over and above any sentence that may be imposed by the court at the time of the further offence.

I move amendment 21.

Jeremy Purvis: Bill Aitken tells us that evidence from around the world suggests that the countries that lock up most of their citizens have the lowest crime rates. Well, if that trend carries on in Scotland, we will be fourth in the world behind the United States of America, Russia and England. I am not sure what evidence Bill Aitken could present to show that the USA and Russia are crime-free zones.

We are also presented with amendments that, as the Conservatives would put it, mean three strikes and the offender will be in jail for the whole headline sentence. So the Tory policy is to say to victims of an offender's second crime that the offender will be punished harder if they do it again

to someone else. What kind of message is that to give to crime victims? Any justice policy that says to victims of an offence that the offender will be treated differently because they have done it only once before is extraordinary.

The message to the offender is also odd: it is that if they commit a third crime, they will get a longer custody sentence—but that is not necessarily so. Under the Conservatives' approach, an offender could serve less time in custody for a third offence than they did for a first or second offence, because the third offence is different. The Tories do not want to spin that.

Bill Aitken said that the amendments would deter repeat offending, but there would be no deterrent for an offender who committed a crime after being in prison; it would happen only if they committed a crime again and again. That is extraordinary.

The message that we should be sending out is that if someone has committed an offence, we will do what we can to ensure that they do not commit a further crime—by making prison work in the first instance. That is why the essence of the bill is to put rehabilitation on the statute book as part of the sentence. Bill Aitken's amendments would undermine that. They would give the wrong signal to offenders and they would let down the victims of crime.

Johann Lamont: Bill Aitken gave us déjà vu with his group 4 amendments, but the amendments in group 5 are not about anything that came before the committee for its consideration, so the proposed measures have not undergone any parliamentary scrutiny at all. Bill Aitken's suggestion that the amendments are about his party's election manifesto is probably closer to the truth. It is disappointing that we are being treated in this way.

Amendments 21, 24, 26 and 29 seek to insert a new structure into the bill that would mean full-term custody for offenders who have served two or more custodial sentences in the 10 years prior to their latest conviction. No one is arguing that prison does not work. We say that it is not the whole picture and that it cannot do everything. To say that prison does not work is a counsel of despair. It is like saying that we can do nothing and that we just have to live with it.

There are positive examples of people working with offenders in the prison system to address their literacy issues and other problems, to afford them the opportunity to move on when they go back into the community. Prison is part of the picture, but not the whole picture.

One of the problems with Bill Aitken's plan is that it is arbitrary and it will create anomalies depending on when the first sentence was

imposed. For example, if a prisoner's second sentence was imposed nine years and 11 months previously, the measures would apply, but if the second sentence was imposed 10 years and one month previously, they would not apply. Why should there be a difference for the sake of a couple of months?

Bill Aitken is in the luxurious position of being able to advocate something without having to work out how he would deal with the consequences of such a policy. Given the number of uncertainties, the consequences would be difficult to predict, but we can deduce that, given the proportion of prisoners involved and the increase in the prison population, if all prisoners served their full custody period in detention, there could be a sizeable impact on the prison population within a few years.

10:15

Miss Annabel Goldie (West of Scotland) (Con): Is the minister's position that, if the interests of justice in Scotland, the interests of victims and the protection of wider society require more prison capacity, she would rather dodge the issue and find complicated legislative compromises in order to avoid that solution?

Johann Lamont: I hesitate to tell Annabel Goldie not to be ridiculous, but her intervention was entirely ridiculous. We have said that the bill as it stands has consequences for prisoner numbers and that we recognise that that has implications for resources. We say that addressing offending behaviour is partly about custody in prison and partly about what we can do in the community, through work on rehabilitation. Both approaches have an important role to play. Members cannot pluck figures out of the air and claim to have a policy when they have not worked through the consequences and benefits of that policy.

We can deduce from the proportion of prisoners involved and the increase in the prison population that the amendments would have an impact on numbers. In reality, there is no need for the amendments. I disagree slightly with the line that Jeremy Purvis took. The court already has at its disposal a mechanism for punishing persistent offenders—it is called sentencing. The overall sentence that the court hands out will take into account all the matters that the court thinks are relevant, such as the nature of the offence, the offender's history and previous convictions. In addition, section 6(4) provides details of the matters that the court may take into account when considering whether to extend the custody part of the sentence beyond the 50 per cent minimum. They include the offender's previous convictions.

The custody and community structure has received widespread support, in recognition of the

fact that there needs to be a community element to the sentence during which offenders can build on work that was begun in custody. That is designed to reduce reoffending by easing the transition from custody back into the community and ensuring that a number of conditions are placed on the community licence. Where restrictions are assessed as necessary, they will be imposed, but at the same time support will be offered, where required. Only through a combination of punishment in custody and rehabilitation in the community can we hope to address offending behaviour and to reduce reoffending.

This is not a simple matter, but it is one to which people must give commitment and energy, rather than glib solutions that do not address the real problem. We are not claiming that reoffending will cease overnight—that would be naive. We are saying that by providing the right mix of punishment and rehabilitation, we have a better chance of getting offenders to turn around their lives. Success will come through maximising the amount of work that is done during the custody part of the sentence, so that more progress can be made when they go out into the community on licence.

For many offenders, the issue will be to direct them away from their old ways by providing supports and some basic help. For others, more stringent interventions will be needed. Our plans allow for both eventualities and all scenarios in between. Surely that is a much more innovative and sophisticated approach than prison, prison and simply prison, and not addressing the core issues that the bill addresses. I urge the Parliament to reject the amendments.

Bill Aitken: Once again, there has been some illogicality in the arguments that our opponents have made. I will deal first with the issues that Jeremy Purvis raised. He is correct to say that the amendments would result in more people spending more time in prison. I thought that in some respects he might applaud that—he has often spoken in the chamber about the fact that the rehabilitation process in prisons seems to be limited; the amendments would give prison authorities the opportunity to work longer with offenders and, we hope, achieve some beneficial results. I do not accept the argument that the member makes. He will be aware that the Criminal Procedure (Scotland) Act 1995 provides for extended sentences, which would meet in many instances the requirement that rehabilitation be provided in prison.

The main difference between Conservative members and Labour and Liberal Democrat members is that we speak for victims.

Johann Lamont: If Bill Aitken spoke for victims, he would have taken a more positive approach to

the measures that we introduced to address, at an early stage, antisocial behaviour, which can become offending behaviour. There is no lack of commitment to victims from Labour and Liberal Democrat members. It is an insult for the member to suggest otherwise.

Bill Aitken: The minister seeks to rewrite history. Despite what she and many of her colleagues repeat time and again, we supported the Antisocial Behaviour etc (Scotland) Bill—we opposed only two parts of it. The minister is entering into the realm of believing that the more often a lie is told, the more readily it will be believed. She is trying to mislead the chamber in that respect.

The minister is correct: there would eventually be a cut-off point. She referred to what would happen to somebody who reoffended after nine years and 11 months and what would happen to somebody who reoffended after just over 10 years. Such a problem will always exist. In road traffic cases, for example, we have it if somebody has 12 points on their licence as a result of a speeding offence just within a three-year period. The problem is inevitable, so the minister's argument does not hold any water.

Of course there are consequences of what we propose, including consequences for the prison estate. We recognise that, and we are prepared to invest money in the prison estate to ensure that there are adequate prison facilities.

The fact is that, as I said, we speak for the victims. I simply do not know for whom other parts of the chamber speak.

The Deputy Presiding Officer: The question is, that amendment 21 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)
 Goldie, Miss Annabel (West 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)

Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
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 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)
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 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (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)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 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)
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 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)

Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (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 14, Against 85, Abstentions 0.

Amendment 21 disagreed to.

Amendment 22 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 22 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)
 Goldie, Miss Annabel (West 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)
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 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)

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 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)
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 Watt, Ms Maureen (North East Scotland) (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 14, Against 84, Abstentions 0.

Amendment 22 disagreed to.

Amendment 4 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Group 6 is on sentence to be served in custody or before release on curfew licence. Amendment 23, in the name of Bill Aitken, is grouped with amendments 25, 52, 53, 55 to 59, 62, 27, 28, 30, 34, 35 and 13. I draw

members' attention to the three pre-emptions that are itemised in the groupings list.

Bill Aitken: In many respects, this group of amendments encapsulates the principal arguments relating to the entire bill.

It is perhaps important and certainly appropriate that we review why we are debating the matter today. For some time, there has been considerable unease about the sentencing process in Scots law. It has been criticised, rightly, for being unclear, confusing to the victims and public, and, indeed, dishonest. Matters have been further complicated by the intervention of the European convention on human rights, which has resulted in the early release that is available under the existing law being granted automatically, regardless of whether the offender has behaved himself in jail or shown any contrition.

Before anyone else says it, let me make it quite clear that the most recent Conservative Government certainly contributed to the development of the present situation by increasing the proportion of sentences by which a prisoner could be released early. However, a number of important points should be made. First, 12 years ago, remission had to be earned—it would be granted only if the prisoner had behaved himself, shown some contrition, co-operated and demonstrated that he was intent on leading a reasonable life once he was released. However, the fact that prison governors do not qualify as independent tribunals under article 6 of the ECHR meant that it became no longer possible for them to dock or to curtail prisoners' remission, regardless of how the prisoners behaved while they were in custody. Frankly, that made the whole situation ludicrous.

I have criticised the Conservative Government, but I must stress that it had realised the error that it had made and was making efforts to correct it when it lost office in the 1997 general election. It ill behoves members of the Executive parties to criticise that Government for making a mistake when, some 10 years on, they have still failed to take the remedial action to which the Conservatives were committed. There is a degree of hypocrisy in the accusation that the Conservatives are responsible for the present situation.

Over the past few years, there has been a succession of serious cases involving crimes committed by offenders on early release. As a result of constant pressure from Annabel Goldie, Margaret Mitchell and me, the Executive was reconciled to the fact that at last something had to be done. It is truly depressing that the bill that we are considering today is the result of the Executive's deliberations, because it utterly fails to deal with early release.

The Executive claims that, for the first time, every offender will serve their sentence in its entirety, but when we read the small print, we find that that is not the case. The public perception of a sentence is a period spent in custody. The public demand that a sentence that is pronounced from the bench should be the period that is spent in prison—no ifs, no buts, no maybes. However, that will simply not be the case and it is quite wrong for the Executive to claim that it will be.

At present, for example, someone who receives a six-year sentence will serve four years. That is bad enough but, under the proposals before us today, in many instances such a sentence will mean that the offender serves three years. Frankly, I am not confident that many prisoners will serve 75 per cent of their sentences, given that the bill states quite clearly that there must be a presumption in favour of 50 per cent.

All that the Executive had to do to restore public confidence was to introduce a bill under which the sentence imposed was the sentence served. That would have removed the impediment of the application of the ECHR and would have let the public and the victims of crime know exactly what had happened. Instead of adopting such a straightforward and simple approach, the Executive has put forward a hotch-potch of complex and convoluted proposals that will simply cause more confusion. It cannot claim with any credibility that the bill will end early release.

It is perhaps even more ludicrous that it will now be possible for an offender not only to get early release or, indeed, very early release, but to get super-early release, whereby they will serve only a quarter of their sentence in jail. Recently, there was the appalling case of a man who deliberately and systematically defrauded a breast cancer charity of a substantial sum of money. He received a sentence of 18 months—some people might have thought that to be on the lenient side—but, under the Management of Offenders etc (Scotland) Act 2005, he was released after four and a half months. How on earth can that be seen as deterring criminality?

Jeremy Purvis: Will the member say whether it remains Conservative policy—there have been three policies in the past few months—that an offender should serve one sixth of their sentence on licence in the community, which would mean that a person who received a sentence of two years would be out on early release for about four months?

10:30

Bill Aitken: I repeat what I said to the minister: the bill's wording inhibited how I could lodge amendments. I accept that our approach might

appear inconsistent to Mr Purvis, but I could not lodge amendments in any other way. We retain the position that we support earned remission of one sixth of the sentence.

How on earth will super-duper early release deter a person from committing financial crime? The Executive will argue—and I accept—that it is unlikely that prisoners who are guilty of violence or serious sexual assaults will be released, but there will be no deterrent to financial crime if offenders are to serve only a quarter of their sentence. That is a serious issue.

The proposals that are before the Parliament are little short of a disgrace and represent an attempt to hoodwink the electorate into thinking that the Executive has taken action on early release. They provide an incentive to unscrupulous people who would seek to commit financial crime.

I am concerned that inadequate resources are being provided to local authorities for the supervision of offenders during the community part of their sentence. Does any member seriously think that there will be supervision? The vast majority of offenders will be released subject to one condition only: that they behave themselves. It is sad, but experience shows that people often do not behave themselves.

If any member seriously thinks that the bill will improve matters in the short, medium or long term, they must also believe in Santa Claus. The bill verges on the mendacious. The approach will be hopeless at coping with serious criminals. The bill is dishonest, because early release is not ending.

I move amendment 23.

Johann Lamont: I will speak briefly to Executive amendment 13, but first I address the amendments in Bill Aitken's name, as I will not have another opportunity to do so.

Bill Aitken might have a charming and easy manner, but what he said was remarkably offensive. He implied that the people who are committed to addressing crime and disorder in our communities want to lie to and be dishonest with the public. He should reflect on his comments.

When we said that we would end automatic unconditional early release, we also committed to replacing the discredited system with measures that would create a more flexible approach to sentence management. We wanted measures that would allow for the right mix of punishment, deterrent and rehabilitation, allow the courts to impose a longer period in prison to punish a particularly serious crime or take account of persistent reoffending, and allow offenders to be managed on the basis of the risk they pose and not the length of sentence imposed by the court. That is the Executive's approach and it is

dishonest of Bill Aitken to suggest otherwise. He seems to prefer a system in which, after someone has done their time, they go out into the community without conditions.

In the current system, a person who is sentenced to four years gets out after two, with no conditions. In the proposed new system, the person will serve two years in prison, during which time the risk they pose will be assessed. If they are assessed as being able to be released, they will spend two years in the community, with licence conditions that will allow them to be recalled. Bill Aitken will remember that at stage 2 we set out a more rigorous approach to recall.

Amendment 23 and the other amendments in Bill Aitken's name in group 6 reflect a lack of thought. Everyone understands that automatic early release was introduced as a response to prisoner numbers. There were no easy answers then and there are no easy answers now.

Bill Aitken's position at stage 2 was that the custody part of the sentence should be 90 per cent, but now he says that it should be 85 per cent, which suggests that, rather than addressing a serious problem, he is thinking of a number, and then another number, as if the matter were a child's game. The issue requires far more thought than that.

We could make the facetious point that Bill Aitken is now softer on crime than he was at stage 2, but the issues are more serious than that. I would argue that what we are suggesting is a far more serious approach to a difficult problem. We want a flexible regime that takes account of modern sentence management principles and that ensures that the work that has been started in custody can continue and be developed during the community part of the sentence to maximise its effects on public safety and rehabilitation.

Bill Aitken talks about the offender being rewarded for good behaviour. However, we know about circumstances in which people behaved in prison but caused problems in the community after they were released. We are now talking about risk assessment and management of offenders in the community after they have served the custody part. I would argue that that will enhance community safety.

Bill Aitken: Will the minister give way?

Johann Lamont: When I have finished these points, I will take an intervention.

Bill Aitken talked about home detention curfew. Home detention curfew has been established as being effective in a very small number of cases. However, we have clearly said that, because there will be a big change in the process, we will not reintroduce home detention curfew until the

system has bedded in. We have also accepted that it would be important for the Parliament to return to the issue if we were to reintroduce home detention curfew and that, therefore, that would require to be done by an affirmative order.

Bill Aitken: Would the minister care to comment on the existing provision for extended sentences? At present, someone could be given a determinate sentence—albeit subject to early release—but, thereafter, be subject to an extended sentence so that, in effect, what would happen would be exactly what she proposes in the bill. The power to do that already exists.

Johann Lamont: Of course, the provision for extended sentences will remain, but Bill Aitken will recognise that it will be used particularly for serious offenders, such as sexual offenders, who pose a greater risk. What we are saying is that such an approach could be used for far more offenders than would be the case under his proposal.

Members may ask why the maximum duration of the custody part has been set at 75 per cent of the sentence. We believe that that is necessary in order to strike the right balance. As I said earlier, it allows the court, in exceptional circumstances, to reflect publicly the fact that a crime is particularly heinous or that an offender is so persistent in his or her offending that the minimum custody period is not enough in their case. It also allows the Parole Board to deal properly with offenders who are assessed as still posing a high risk at the end of the custody part, and it leaves a reasonable amount of time for restrictions to be effective and for rehabilitative work to continue in the community.

The key question regarding these amendments is whether they would create a system that allowed in each case the right mix of punishment, risk assessment and management, joined-up working, and the opportunity for the prisoner to break the cycle of reoffending.

Phil Gallie: The minister is very much on the defensive on this issue. She recognises that the system of early release has been discredited. That was recognised by the Tory Government in 1997. Why has the Labour Government or the Scottish Lib-Lab pact not addressed the issue before now?

Johann Lamont: Through the bill, we are addressing a problem that has been identified in our communities. The quality of the debate from the Tories is not a measure of the importance of the debate to our local communities. The simplistic and trivial way in which Bill Aitken has plucked a number out of the air indicates how seriously the Tories take the matter.

The requirement to serve part of the sentence in the community is not a soft option; it is a smart

option. Evidence shows that we have a much better chance of preventing many offenders from returning to crime if we tackle the underlying causes of their criminality. It is significant that the bill is being attacked both by those who want nobody to go to jail and by those, on the Tories' side, who want to sound tough on crime. To be tough on crime is to address the real issues. It is to punish, but it is also to consider ways of turning offenders round. That is what the bill seeks to do.

We want the custody and community parts of sentences to be planned and joined up. We want the community part and the licence conditions to be taken seriously, and we want prisoners who have been released from custody to understand that the community part is an important part of the proposal. Therefore, resources must be identified for both the custody part and the community part.

Amendment 13 seeks to amend section 48(4) in relation to the order-making power in section 6B to alter the minimum proportion of the custody part of the sentence. Of course, it does not affect the 75 per cent maximum custody period, which is set in statute. The proposed changes reflect the advice that we received at stage 2 from the Subordinate Legislation Committee, which we are always delighted to please. Acting on that advice, we propose to make an order that is made under the powers subject to the Scottish Parliament's affirmative procedure.

As far as these issues are concerned, I have no reason to be defensive about the bill. The bill genuinely seeks to address all the issues that must be confronted in communities where serious offending is taking place. We know that we need to tackle such offending early, but we also realise that by sending offenders to prison we can both mark the seriousness of their offences and, if they have chaotic lives, give them help before they go back to the community.

The Tories have clearly given this matter very little thought and we must not allow them to present this serious measure in any other way. I urge the Parliament to reject all the amendments in the name of Bill Aitken and to support amendment 13.

Jeremy Purvis: Bill Aitken said that the bill is confusing. However, the only aspect that has confused me over the past three months is the fact that the Conservatives have taken three policy stances on this issue. First, they advocated a system in which prisoners could get out one month in every six; next, they proposed that the custody part of a sentence should be increased to 90 per cent; and, now, they are suggesting that the custody part should be 85 per cent. From a sedentary position, Phil Gallie said that they had been thinking about the matter for 10 years. If they go on in this fashion, in 10 years' time, they will be

suggesting that people should serve 5 per cent of their sentence in jail.

All this masks the Conservative policy of releasing people from jail early. Of course, the Tories want to give the impression that, under their proposals, there will be no early release for anyone but, in response to my intervention, Mr Aitken confirmed that, under their policy, people in prison could be out on early release one month in every six. As a result, someone on a two-year sentence could be out for about four months. However, the Tories cannot guarantee that that person will not commit a crime in that time.

The only element of mendacity is the Conservatives' repeated claim that someone serving part of their sentence in the community would never commit an offence. However, they could not guarantee that at stage 2; they cannot guarantee it today; and, in fact, they will never be able to guarantee it. Notwithstanding that, the Tories seek to claim that if someone on licence commits an offence, it is the fault of the Government or the system. That is simply not the case—it is the offender's fault. However, they acknowledge that a sentence should contain some element of rehabilitation, which is why they propose to allow prisoners out of jail one month in every six.

Bill Aitken: That has to be earned.

Jeremy Purvis: In response to Mr Aitken's comment from a sedentary position, I say that prisoners would simply have to demonstrate the lowest level of good behaviour to allow them to be released early. However, if they committed another offence during their period in the community, would that be the fault of the Conservative policy or the offender?

The Tory position is plainly nonsense. The Tories are seeking to spin something that is not their policy and does not match reality. As I have said, that is the only element of mendacity that we have witnessed this morning.

The Deputy Presiding Officer: Before I ask Bill Aitken to wind up on this group of amendments, I wonder whether the minister wishes to say anything further. Are you content, minister?

Johann Lamont: Do not encourage me, Presiding Officer.

The Deputy Presiding Officer: I sense your reluctance to respond.

Bill Aitken: Those two contributions were very interesting. With respect to Jeremy Purvis, he is a member of an Executive party and has therefore not had any of the Opposition's experience of the parliamentary system. As I made it clear earlier, the amendments in my name have to be tailored to the bill before us if they are to be competent

under the standing orders of the Parliament. That is the only way in which I can bring these very important matters to the chamber's attention.

Johann Lamont: Given Mr Aitken's great expertise in the parliamentary process, will he explain why these amendments did not surface at stage 2? If he had lodged them then, we could have had a considered discussion of repeat offending and early release.

Bill Aitken: I did not lodge these amendments then for the same reason why, time and again, the Executive lodges last-minute—and sometimes manuscript—amendments to every aspect of legislation. The simple fact is that the more one looks at legislation, the more one sees ways of improving it. That is why I have now lodged these amendments. It is not good enough for the minister to keep on harking back to the fact that there is an inconsistency in the amendments. I have explained why they are inconsistent.

10:45

Jeremy Purvis: Will the member take an intervention?

Bill Aitken: I really have to make a little bit of progress. We will see how we get on later.

Mr Purvis asks whose fault it is when someone commits a crime and he answers that, of course, it is the fault of the offender. He is quite right, but there is also a problem with the existing sentencing and penal policy. It may be the offender's fault that he committed the offence, but in many instances we have to ask what gave him the opportunity to commit the offence. The answer is the system of early release. It is as simple as that.

Jeremy Purvis: One does not need parliamentary experience to be consistent in one's views. Mr Aitken's policy is for prisoners to be out of jail for one month out of every six. He should be consistent in that and should not posture.

Bill Aitken: I have clearly rattled Mr Purvis's cage. I say to him that we have to acknowledge the parliamentary procedures, according to which we cannot lodge amendments that go against the bill. I can assure him that, in the weeks ahead, there will be every opportunity to discuss and debate Conservative party policy. I am confident that that policy will be accepted overwhelmingly by the electorate. We look forward to hearing Mr Purvis's contribution when he hears our full policy.

Mr Jim Wallace (Orkney) (LD): I am grateful to Mr Aitken for explaining the dilemma that he is in with procedures. However, before we vote on the amendments in his name, will he tell us whether he actually believes in them?

Bill Aitken: Yes, I believe in the amendments, which would mitigate the damage caused by the bill. As I have explained consistently all morning, the amendments that we have lodged do not reflect our preferred policy options, but we are inhibited and constrained. I say to Mr Purvis that it was not me who worded the bill but his Executive.

The Executive's principal arguments remain the same. What is being presented to the chamber is not the end of early release but simply an attempt to pretend to the electorate that it is the end of early release. That is little short of disgraceful.

The Deputy Presiding Officer: The question is, that amendment 23 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)
 Goldie, Miss Annabel (West 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)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)

Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 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, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (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 14, Against 89, Abstentions 0.

Amendment 23 disagreed to.

After section 6

Amendment 24 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 24 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)
 Goldie, Miss Annabel (West 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)
 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)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 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)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)

Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 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, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watt, Ms Maureen (North East Scotland) (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 14, Against 86, Abstentions 0.

Amendment 24 disagreed to.

Section 6A—Application of section 6 to persons sentenced to extended sentences

The Deputy Presiding Officer: Group 7 is on the treatment of extended sentences. Amendment 47, in the name of the minister, is grouped with amendment 77.

Johann Lamont: Amendments 47 and 77 are further testament to our wish to make the provisions in the bill as clear as possible. We are retaining extended sentences as they are a valuable sentencing option for the court when dealing with offenders who might pose a greater risk to public safety. Amendment 47 deletes section 6A, which will be replaced by a new section to be inserted by amendment 77, which clarifies the application of part 2 of the bill in relation to custody and community prisoners who are also subject to an extended sentence. Thus, for example, in terms of section 6, the custody part must be set by reference to the confinement term of the extended sentence, that is, the term of imprisonment that the court imposes for the

offence before setting the additional extension period.

In relation to section 12, in the case of a custody and community prisoner who has been confined until the three-quarters point of their sentence on the ground of serious risk to the public, the Parole Board must review the case before that point. At the three-quarters point, the prisoner must be released on community licence. Again, amendment 47 applies that provision to extended-sentence prisoners by reference to the three-quarters point of the confinement term of their sentence. In effect, it makes it clear that the confinement period of an extended sentence is comparable to the full term of a normal custody and community sentence. In other words, the extended period is an additional period, during which the offender will be on community licence and will be subject to recall to custody for breach of the same.

I move amendment 47.

Amendment 47 agreed to.

Section 6B—Power to amend section 6(3)

Amendment 25 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 25 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)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
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)
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 25 disagreed to.

Section 6C—Judge's report

Amendment 48 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Amendment 5 is the only amendment in group 8.

Johann Lamont: Again, I make no apology for stressing the importance of the process for setting the custody part of the custody and community sentence, because it is a key measure in the new provisions. The process has, quite rightly, attracted much interest and comment during the bill's parliamentary progress. We are grateful for those comments, which helped us to develop a package of change, as accepted at stage 2, that was designed to clarify and improve the process. Those changes clarified what the judge may take into account when considering whether to increase the custody part beyond the 50 per cent minimum. We put beyond doubt the fact that these measures are about sentence management, not sentencing, and that they do not affect the matters, including public protection, that the judge quite properly takes into account when deciding what the appropriate overall sentence should be in every case. The changes mean that judges will be required to give reasons when they decide to extend the custody part of any sentence. We also made provision requiring the court to prepare reports for every case involving a custody and community sentence of 15 days or more.

The provisions in section 6 are key to the new regime. They set out what the court must do once a custodial sentence has been imposed. What happens at that point impacts on how long the offender will be in custody before being considered for release on community licence and that is also the point at which the offender, the public and the victim will know the minimum time that the offender should expect to spend in prison.

Section 6 prompted substantial debate during stage 1. We are grateful for that and for the Justice 2 Committee's helpful comments in its stage 1 report. In response to those comments, we said that we would present changes at stage 2 that we believed would further clarify the purpose of section 6 and put it beyond doubt that it is about sentence management and not sentencing. We did that and the committee accepted our amendments. One of those amendments inserted section 6C, which puts a requirement on the courts to provide the Scottish ministers with reports that the SPS and, potentially, the Parole Board for Scotland will require to carry out their business.

Although the committee agreed to our amendments, representatives of the judiciary continued to have concerns about the best way in which the information can be provided. Following further discussion, particularly with the Sheriffs Association, we are persuaded that the present requirement in section 6C to produce reports does not quite provide the degree of flexibility that is

needed to enable the courts to deal appropriately with the different types of cases. Section 6C may not enable the courts to provide in the reports—which will often be produced at very short notice—the level of information that is proportionate to the offence and the length of sentence that has been imposed. As well as placing an unintended burden on court resources, the practical effect could be to delay the transfer of information to the SPS, thus depriving it of information that would be valuable at the early screening stage. We are grateful to the Sheriffs Association for highlighting the inadvertent effects of the current provisions.

Amendment 5 will replace the current requirement in section 6C(2) with provisions that will require the court to provide relevant information to the SPS in a way that allows the court to respond appropriately and proportionately in each case. That enabling provision will allow an operational framework to be put in place that will support the transfer of information. Development work is already in hand through the custodial sentences planning group. The provision of more flexibility will not, of course, prevent the preparation of detailed reports by judges in cases in which such reports are required. However, it will mean that the process can be tailored to respond effectively and quickly to the varying demands that will arise from the different types of sentences. The prompt transfer of the right kind of information is vital, particularly in cases in which offenders are given very short sentences. The more flexible approach will allow for that.

I move amendment 5.

Bill Aitken: I simply comment that amendment 5 is acceptable and that the Executive, in this instance, genuinely has listened—it is just a pity that it did not listen earlier and more comprehensively.

The Deputy Presiding Officer: I doubt that you need to respond to that, minister, but I am always willing to put temptation in your way.

Johann Lamont: With Bill Aitken, we are damned if we do, damned if we don't. He makes a rather grudging comment about the fact that the Executive took seriously the committee's views and addressed issues that were raised by those who will have to implement the legislation. I would have thought that, rather than make such a grudging comment, Bill Aitken would have welcomed the amendment.

Amendment 5 agreed to.

Section 8—Review by Scottish Ministers

Amendment 49 moved—[Johann Lamont]—and agreed to.

Section 9—Consequences of review

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

Section 11—Release on community licence following review by Parole Board

Amendment 51 moved—[Johann Lamont]—and agreed to.

Section 12—Determination that section 8(2) applicable: consequences

Amendment 52 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 52 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)
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)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
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)
Henry, Hugh (Paisley South) (Lab)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
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, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
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Swinney, Mr John (North Tayside) (SNP)
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Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (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 86, Abstentions 0.

Amendment 52 disagreed to.

Amendment 53 not moved.

Amendment 54 moved—[Johann Lamont]—and agreed to.

Amendments 55 to 59 not moved.

Amendments 60 and 61 moved—[Johann Lamont]—and agreed to.

Amendment 62 not moved.

Section 12B—Referral to Parole Board for the purposes of specifying conditions

11:00

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

Section 13—Further referral to Parole Board

Amendment 64 moved—[Johann Lamont]—and agreed to.

After section 13

Amendment 26 not moved.

Section 13A—Cases where custody part specified as three-quarters of prisoner's sentence

Amendments 65 and 66 moved—[Johann Lamont]—and agreed to.

Amendment 27 not moved.

Section 14—Release after three-quarters of sentence served

Amendment 28 not moved.

The Deputy Presiding Officer: If amendment 67 is agreed to, amendments 29 and 30 are pre-empted.

Amendment 67 moved—[Johann Lamont]—and agreed to.

Section 15—Setting of punishment part

Amendments 31 and 32 not moved.

Amendment 68 moved—[Johann Lamont]—and agreed to.

Section 16—Referral to Parole Board

Amendments 69 and 70 moved—[Johann Lamont]—and agreed to.

Section 17—Review by Parole Board

Amendment 71 moved—[Johann Lamont]—and agreed to.

Section 20—Further referral to Parole Board

Amendment 72 moved—[Johann Lamont]—and agreed to.

Section 22—Effect of multiple sentences

Amendment 33 not moved.

Amendment 73 moved—[Johann Lamont]—and agreed to.

Section 27—Release on licence of certain prisoners: supervision

Amendment 34 not moved.

Amendment 74 moved—[Johann Lamont]—and agreed to.

Section 24—Release on community licence on Parole Board's direction

Amendment 6 moved—[Johann Lamont]—and agreed to.

Section 25—Community licences in which Scottish Ministers may specify conditions

Amendment 7 moved—[Johann Lamont]—and agreed to.

Section 29—Prisoner to comply with licence conditions

Amendment 8 moved—[Johann Lamont]—and agreed to.

Section 31—Revocation of licence

Amendments 9 and 10 moved—[Johann Lamont]—and agreed to.

Section 32—Referral to Parole Board following revocation of licence

Amendment 75 moved—[Johann Lamont]—and agreed to.

Section 33A—Determination that section 33(3) applicable: consequence for custody and community prisoners

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

Section 36—Curfew licences

Amendment 35 not moved.

Amendment 11 moved—[Johann Lamont]—and agreed to.

After section 39

Amendments 77 to 79 moved—[Johann Lamont]—and agreed to.

After section 42

The Deputy Presiding Officer: Group 9 is on the cross-border transfer of prisoners. Amendment 12, in the name of the minister, is grouped with amendment 14.

Johann Lamont: Amendment 12 inserts into part 2 a new section that provides Scottish ministers with an order-making power, subject to affirmative procedure, to deal both with the

transfer of prisoners from Scotland and other jurisdictions, and the transfer of a prisoner serving a sentence in another jurisdiction to Scotland.

Amendment 14 adds a new cross-border transfers order-making power to section 48(4) to ensure that any order made is subject to the Scottish Parliament's affirmative procedure. There are arrangements in place at the moment that deal with the cross-border transfer of prisoners in and out of Scotland. Under the terms of schedule 1 to the Crime (Sentences) Act 1997, prisoners in England and Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands may request a transfer to another United Kingdom jurisdiction or one of the islands. Under the provisions, prisoners may be transferred to another jurisdiction on either a restricted or an unrestricted basis. Transfer on a restricted basis means that the prisoner remains subject to the law regarding release from prison as it applies in the sending jurisdiction. If a prisoner is transferred on an unrestricted basis, he or she falls under the provisions of the regime in force in the receiving jurisdiction. We anticipate that the vast majority of prisoners will continue, as at present, to be transferred on a restricted basis.

Sections 10 and 10A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 make provision for the transfer of live prisoners and transfer of supervision for live prisoners respectively. There are also provisions dealing with the repatriation of prisoners to and from the UK to jurisdictions with which the UK has a repatriation agreement. Those are as contained in the Repatriation of Prisoners Act 1984 and schedule 2 to the Crime (Sentences) Act 1997.

Stewart Stevenson: For information, can the minister indicate the number of such transfers that take place?

Johann Lamont: I do not have the exact numbers, but I will ensure that the member is provided with that information. I would imagine that not terribly many transfers take place.

The new order-making power that will be inserted by amendment 12 will enable the Scottish ministers to continue to make suitable provision to facilitate the transfer of prisoners to and from Scotland. Subsection (1) of the new section allows the provisions in part 2 of the bill to be modified in relation to transferred prisoners. That might be necessary, for example, to impose certain licence conditions on an offender who is transferred on a restricted basis and who is subject to supervision conditions that were imposed by the transferring jurisdiction. New subsection (2)(b) will allow the Scottish ministers to amend other enactments if necessary; for example, to ensure that provisions for cross-border transfers remain operational.

I move amendment 12.

Amendment 12 agreed to.

Section 43—Licensing of knife dealers

The Deputy Presiding Officer (Trish Godman): Group 10 is on offences in relation to knife dealers' licences. Amendment 36, in the name of the minister, is grouped with amendment 37.

Johann Lamont: Amendments 36 and 37 will amend new section 27Q that will be inserted into the Civic Government (Scotland) Act 1982 by section 43 of the bill. Section 27Q will allow ministers to make exceptions to offences under the knife dealers licensing scheme. The amendments, which will ensure that any orders providing for such exceptions will be subject to affirmative procedure, respond to a concern that was raised by the Subordinate Legislation Committee during its consideration of the bill as amended at stage 2. The Executive agrees with the committee that the affirmative procedure would be more appropriate for any order that makes exceptions to offences under the knife dealers licensing scheme. I am happy to have lodged the appropriate amendments to the bill to make the change desired by the committee and I trust that the amendments will have the support of Parliament.

I move amendment 36.

Mr MacAskill: We welcome amendments 36 and 37 and, indeed, the bill's ethos on knives. It is uniformly accepted by all parties in the chamber that Scotland has a problem with knife crime that is not simply restricted to Friday and Saturday nights nor, sadly, to one geographical area. Although knife crime was once perceived as a west of Scotland problem, it is now uniform across Scotland and requires to be tackled. In that respect, we will give the Executive our full support on amendments 36 and 37.

Obviously, legislation is not the only solution. The minister has correctly tried amnesties, which have only sometimes been successful. However, these issues need to be worked through to effect the cultural change that is required. We fully support the minister's attempts and efforts to address the issue, such as by supporting the establishment of a violence reduction unit. Action needs to be taken.

Access to weapons is obviously a problematic matter that needs to be addressed. Although not all weapons that are used by those who are out for malevolent purposes are displayed in army and navy stores—a bread knife can be used with equally calamitous consequences—action needs to be taken to restrict the availability of such weapons. Obviously, as all members will know

from the communications that they have received, some people use such weapons for perfectly legitimate and innocent purposes. We need to strike the correct balance with sensible policing and sensible interpretation. Undertakings to that effect were given by both the current Lord Advocate and the previous Lord Advocate, so we can trust that good judgment will be used.

Action has to be taken. We welcome the Executive's proposals. They have our full support.

Johann Lamont: We should recognise the significance of part 3 of the bill. Sadly, it has been almost entirely disregarded due to the debate on the other issues. However, part 3 should also be placed in the context of our broader approach. Part 3 will ban swords, license the sale of non-domestic knives, double the sentence for carrying a knife in public, remove the restriction on the police's power of arrest and raise the minimum age for purchasing knives from 16 to 18. All those provisions should be seen in the context of our general approach to antisocial behaviour that recognises that when gatherings of young people become involved in low-level disorder they can quickly move towards becoming part of a gang culture in which, sadly, carrying a knife is regarded far too much as a prize.

I recognise the support that exists for part 3 of the bill. It is important that we send out a strong message on weapons generally.

Amendment 36 agreed to.

Amendment 37 moved—[Johann Lamont]—and agreed to.

Section 45—Sale etc of weapons

The Deputy Presiding Officer: Group 11 is on amendment of the Criminal Justice Act 1988. Amendment 38, in the name of the minister, is grouped with amendments 39 to 43.

Johann Lamont: Amendments 38 to 43 amend sections 44 and 45 of the bill, which both amend section 141 of the Criminal Justice Act 1988. I will go on to explain the effect of the amendments, but it is useful to start by saying something about section 141 of the 1988 act.

Under section 141, it is an offence to manufacture, sell, hire, offer for sale or hire, or lend or give to another person an offensive weapon specified in an order made under that section.

Section 141 also provides for defences for the purposes of functions carried out on behalf of the Crown or a visiting force, for making the weapon available to a museum or gallery; or, where the weapon is lent or hired by the museum or gallery, that it is intended for cultural, artistic or educational purposes.

Amendments 38 and 39, which will insert into section 141 of the 1988 act new subsection (11ZF), will alter the burden of proof that applies where an accused seeks to make use of the defences provided to offences under that section.

The amendments mean that it will be incumbent on the prosecution to prove that a weapon was not sold for use by a museum or gallery, rather than requiring the accused to prove that it was. Amendment 39 will also amend section 141 of the 1988 act by inserting into it new subsections (11ZA) to (11ZE). Subsections (11ZA) and (11ZB) provide further statutory defences to an offence under section 141(1). The amendments to insert new subsections (11ZC) to (11ZE) are technical amendments, which will ensure that the new defences interface effectively with the import regime.

The new defences make provision for the use of otherwise banned weapons for theatrical, film and television purposes. That makes similar provision for Scotland to that introduced for England and Wales by the Violent Crime Reduction Act 2006.

Amendment 41 will specify that the defences will apply only to conduct taking place after the defences have come into effect.

Amendment 40 provides a broader and more flexible version of the power to amend the application of section 141 of the 1988 act than that provided in the bill as introduced. That will enable additional defences to be introduced in the light of experience of operation of the provision. It will also ensure that the application of section 141 in Scotland can interface effectively with the UK import regime.

Amendment 42 will widen the effect of section 141ZA(3)(a), which establishes that the Scottish ministers, when making an order banning the sale of swords, may provide for defences for religious, cultural and sporting purposes. The amendment will ensure that defences can be put in place in respect of offences relating to manufacture and sale and offences relating to importation.

Amendment 43 is consequential to amendments 40 and 42. It will ensure that the powers to modify the application of section 141 of the 1988 act provided by the amendments work together properly.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 to 41 moved—[Johann Lamont]—and agreed to.

Section 46—Sale etc of swords

Amendments 42 and 43 moved—[Johann Lamont]—and agreed to.

Section 48—Rules, regulations and orders

Amendments 13, 14, 80 and 15 moved—[Johann Lamont]—and agreed to.

Section 50—Short title and commencement

The Deputy Presiding Officer: Group 12 is on the commencement of part 2. Amendment 44, in the name of Colin Fox, is the only amendment in the group. I invite Colin Fox to move and speak to amendment 14.

Colin Fox: It is amendment 44, Presiding Officer.

In the course of the evidence taking, it became clear to the Justice 2 Committee that there could be serious consequences for the criminal justice system from the implementation of the bill, such as: the possible addition of 1,100 prisoners, which would increase our record prison population by another 20 per cent; the need for 100 additional prison officers to cope with risk assessment programmes, on top of those needed to staff two new prisons; and a 10 per cent increase in social workers to supervise and support the community part of all sentences at a time when the committee and Parliament recognise that we cannot fill the current vacancies for criminal justice social workers—in any event, it takes four to five years to train them. According to the evidence that the committee took, the costs of that and of implementing the other measures in the bill could be around £250 million.

The evidence of many of our expert and informative witnesses from the Convention of Scottish Local Authorities, the Scottish Consortium on Crime and Criminal Justice, academics, the criminal justice authorities and many more suggested that if there was a willingness to spend that kind of money, there were far more effective ways of reducing reoffending and better serving the public.

Sacro, which I notice has contacted MSPs recently, fears that the bill will lead to an unworkable risk assessment programme, put an entirely unrealistic burden of expectation on the Scottish Prison Service and criminal justice system, reduce the community supervision of some of the most serious offenders, lead to an unmanageable increase in the prison population and worsen the already intolerable overcrowding in our prisons.

11:15

With that in mind, I lodged amendment 44, which seeks to put on hold the implementation of part 2 of the bill, on the confinement and release of prisoners, until a full and thorough independent report is drawn up and presented to the

Parliament. The report would analyse the costs and benefits of the bill's provisions against levels of reoffending and the impact on the prison population, and it would compare the bill's approach with other approaches.

At stage 2, the minister did not dispute the figures that I mentioned or the bill's cost implications. Rather, she sought to suggest that the provisions would hardly be used by sentencers. I am bound to say that the weight of the evidence that the committee received is against her.

My amendment 44 provides a sensible approach to the bill's objectives. It seriously addresses the issue of reducing reoffending and it would increase rather than reduce public confidence in the criminal justice system.

I move amendment 44.

Stewart Stevenson: If amendment 44 is agreed to, we might, at best, save the public purse £150 million in capital spending. The additional prison places that will be required as a consequence of the bill will take the number of prisoners in Scotland to 8,100 or thereabouts. That raises a financial issue in favour of Mr Fox's amendment, but there is a more important issue.

Examining how we deal with locking people up gives us an opportunity to reform the way in which we deal with low-level offenders. There is widespread support—certainly in the SNP—for ensuring that there is proportionate and proper locking up of the most serious offenders. Earlier this morning, we discussed public safety, which is at the heart of locking people up and locking them away from society. However, too many of the flotsam and jetsam—victims of social deprivation, drink and drugs—end up in prison. They come out with their problems unresolved and, frankly, communities are little safer.

Members of various parties want work to be undertaken to redirect low-level offenders away from incarceration and towards rehabilitation and the serving of sentences in the community. Amendment 44 raises the prospect of synchronising such work with the increase in the number of serious offenders in prison that will occur. We are therefore minded to support the amendment, unless someone can persuade us otherwise.

Bill Aitken: Colin Fox raises an interesting point. The Minister for Parliamentary Business has heard me waxing eloquent, long and often on the fact that the Parliament legislates far too much. Indeed, other members have also heard me speak on that theme.

To be serious, one of the failings in the parliamentary system is that, because of the

volume of legislation that is passed, committees and others do not get the opportunity to consider its effectiveness further down the road. The Parliament should set up its own audit system for considering the effectiveness of legislation. However, I have some doubts about whether the approach in amendment 44 is the right way to do that. It proposes that a report be laid before the Parliament within 12 months. No matter how good a piece of legislation is, I do not think that anybody could determine its effectiveness or otherwise in such a short period, so the approach in proposed section 50(2B) is unacceptable.

However, there is a lesson to be learned from amendment 44. We are told that, under the bill, there will be a greatly increased supervision element and there will need to be a corresponding increase in the amount of social work input. Whether provision for that is in place is a separate argument that we might explore this afternoon. It is important for the effect of legislation to be examined once it has operated for some time, but to do that after 12 months is far too early.

Johann Lamont: If I have learned one lesson as an elected member of the Parliament, it is that I do not require an audit committee to tell me whether problems exist with the law; my community and my constituents will tell me about the problems and demand change. If we track the significant legislation that the Parliament has passed, we can identify problems that constituents raised and on which they brought pressure to bear on the process. That is how democracy works and it is all the better for it.

To be frank, Colin Fox outlines through his approach his opposition to the bill, or at least to one part of it. A member who opposes the bill should vote against it. A member who supports the balance of the bill's approach should vote for it. There is no way of saying that we will maybe have provisions and that we will think about it—that would be a maybes aye approach to legislation. Members must decide whether they support the bill, act accordingly and ensure that the legislation is monitored.

We are aware of the concerns of the voluntary sector and of the Scottish Consortium on Crime and Criminal Justice, members of which I have met. I disagree with their conclusions, but I acknowledge their concerns. We must also acknowledge the concerns of people in our communities, who feel that the current system is inadequate and that we must address the lack of supervision when people leave prison and the fact that we have a sentencing regime that people do not understand.

Colin Fox recognised that we have acknowledged that prisoner numbers will increase—we put that in the financial

memorandum. We have also said that support must be provided for offenders and that resources need to follow that. We are serious about both parts of custody and community sentences. Colin Fox's proposal gained no support at stage 2, and I hope that members will not support it now.

The custodial sentence measures in the bill deliver the Executive's commitment to end automatic and unconditional early release, and do so in a way that injects into sentence management a structure that provides for punishment and rehabilitation. The proposals are not just about sending people to prison, but about getting offenders to turn their lives around. As we have said, stopping offending is the best way to protect the public. We intend the criminal justice reforms that are in hand and the measures in the bill to make significant inroads into tackling reoffending.

Amendment 44 would require the Scottish ministers to commission an independent report before they made any commencement order for provisions in part 2. I am intrigued by the notion of outsourcing our thinking on such matters. The Scottish Executive—whoever forms the Administration—and the Parliament are in as good a position as others to consider the effectiveness of legislation, particularly if they are open to elected members' representations. The independent report would be expected to consider the custodial sentence measures in isolation and to comment on their impact on offending and reoffending and on the prison population's size. The effectiveness of short-term sentences is recognised as an issue. Considering and addressing that problem are matters for a future Administration.

Stewart Stevenson: Does the minister concede that some benefit would be obtained for the public purse and more generally from synchronising the addressing of short-term sentences with the increase in the population with longer-term sentences that will derive from the bill, which we support?

Johann Lamont: I do not concede whatever the member really says or what I understand him to say. I do not concede that the report that amendment 44 proposes should be made. I am saying that an issue with short-term sentences has been highlighted and any Parliament worth its salt will address it.

Amendment 44 would require the Scottish ministers to publish the report and lay it before Parliament within 12 months of the passing of the bill. That is an arbitrary date. We have experience that having arbitrary dates for such reports has hampered them.

What could such a narrowly prescribed report tell us? It could not reveal the benefits of the

structure that was established through the Management of Offenders etc (Scotland) Act 2005 or the other recent criminal justice system reforms. It could not reflect the fact that the measures in the bill will build on the strong existing structures. It could merely speculate on the likely impact of the bill's measures.

I repeat what I said at stage 2: effective monitoring arrangements are already in place. The SPS board agrees its business plan with ministers. The plan for 2006 to 2008 included, for the first time, an indication of the prison population that might have to be accommodated. The figure is not a target figure, but its use shows the importance that ministers and the SPS attach to considering the level of the prison population and to planning the business to provide for that population. The increases that have recently been reported have been mainly in the remand population, prisoners on short sentences and young offenders, and are completely in line with what the SPS has said publicly for some time.

The SPS keeps a close eye on the prison population, and ministers included full consideration of that population in the financial memorandum's consideration of the bill's impact. The population level is half the story, and the Executive has shared with all relevant parliamentary committees full information about the relationship between population levels and capacity. The capacity levels as indicated by the SPS take account of the current plans for development and redevelopment of the prison estate.

The financial memorandum makes it clear that the Scottish ministers fully accept that adequate and proper resources must be in place before the system commences. The Justice 2 Committee is aware that a high-level group involving all the stakeholders—the very people who will make the bill's provisions work—is working on the detailed implementation plan.

Of course, once the new provisions are in place, it is only right that we evaluate them. Evaluation will be part of the process. In addition to the monitoring plans that I have mentioned, statistics that are produced by the courts, the SPS and local authority criminal justice social work departments will reflect developments once the new system is up and running.

In the meantime, the custodial sentences planning group continues to work on the detailed implementation strategy. It is right that that strategy should be developed by the people who will need to make it work. We aim to implement the measures as soon as is practicable. We are talking about big changes—root-and-branch reform—and it is essential that we take the appropriate time to ensure that the preparation is right and that the proper infrastructure is in place.

Mr David Davidson (North East Scotland) (Con): The minister is talking about implementing the legislation. When will implementing the measures in the community be practicable, given the shortage of people with the right training and experience to implement them? Does the minister have a date in mind for when the system will go fully live?

Johann Lamont: We have said that the custodial sentences planning group is charged with implementing the provisions and giving timescales and clarity to the process. We are clearly committed to such an approach, and we want it to be developed as soon as possible.

Amendment 44 would not add to the scrutiny and monitoring that will be done; rather, it seeks to second-guess significant parts of the legislation. If members support the bill's approach, they should vote for it; if they do not support that approach, they should not vote for it. I urge members to reject amendment 44.

Colin Fox: I am struck by the fact that the minister has not disputed any of the possible consequences or costs that I outlined in my initial remarks. She rightly talks about listening to the many people in our constituencies who suffer daily as a result of the current system. I advise her to listen to the many experts who appeared in front of the Justice 2 Committee, many of whom work with her constituents in Glasgow Pollok and with constituents throughout the country every day.

Before I deal with the substance of the minister's objections to amendment 44, I should say that I always feel slightly unnerved when receiving Stewart Stevenson's support. That said, I am absolutely unnerved by receiving Bill Aitken's support. I was glad that he dived for cover on the 12-month rule and got the hell out of it, and that he does not support my amendment.

Bill Aitken: I trust that Mr Fox recognises that my support for his amendment was highly qualified. Indeed, I said that we could not possibly support it because of the time constraints that would be involved.

Colin Fox: I am grateful for the support that a hanging man gets from a rope.

The minister's fundamental objection to an independent report was the same as Bill Aitken's caveat, which is interesting. I was struck by the minister's sanguine attitude to the potential expenditure of £250 million on questionable costs for questionable value. Is she saying that she has something to fear from an independent report, from independent scrutiny by experts and from the evidence being put in front of the Parliament by the Executive? She has not answered that question. Spending £250 million on highly disputed areas is a relatively new phenomenon for the Executive.

11:30

The minister was caught out by David Davidson's question. She is unable to tell the Parliament when the bill will be implemented. That is understandable if it is going to take five years to train criminal justice social workers and eight years to build two new prisons.

Amendment 44 is an entirely reasonable and fair amendment for the Parliament to consider. An independent report would consider the cost benefit analysis of the bill and compare it with other strategies that many experts feel are far more likely to work because they will give the public greater confidence and reduce the appalling levels of reoffending in Scotland.

I am not satisfied—I hope that no one in the chamber is satisfied—with the fact that in every year of the Parliament's existence, Scotland's prison population has broken records. The bill suggests that, willy-nilly, we should add another 1,100 people to that population, which is unacceptable. I press amendment 44.

The Deputy Presiding Officer: The question is, that amendment 44 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)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Kane, Rosie (Glasgow) (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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Watt, Ms Maureen (North East Scotland) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)

Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 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)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Petrie, Dave (Highlands and Islands) (Con)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 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 27, Against 74, Abstentions 0.

Amendment 44 disagreed to.

After schedule 1

Amendments 81 and 82 moved—[Johann Lamont]—and agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment 83 moved—[Johann Lamont]—and agreed to.

Schedule 3

REPEALS

Amendment 84 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: That concludes consideration of amendments.

11:33

Meeting suspended.

11:40

On resuming—

Question Time

SCOTTISH EXECUTIVE

General Questions

Child Protection

1. Mr Duncan McNeil (Greenock and Inverclyde) (Lab): To ask the Scottish Executive what action it is taking to ensure that children across Scotland are not being put at risk by the approach of local authority child protection services to the rights of drug-addicted parents, following the publication of “Joint inspection of services to protect children and young people in the Midlothian Council area”. (S2O-12378)

The Minister for Education and Young People (Hugh Henry): No child in Scotland should have to face danger, risk, neglect or abuse, including those children whose lives are blighted by chaotic parental drug misuse. The wide range of actions that we have put in place following the publication of “Hidden Harm—Next Steps” is founded on two child-centred principles: that serious and chaotic substance misuse is incompatible with parenting; and that safeguarding the welfare of children is paramount, even above keeping families together.

Mr McNeil: The minister will be aware of the finding on page 5 of the Midlothian report that

“Some staff tended to focus more on the needs of parents with substance misuse problems ... without sufficient consideration being given to the impact on the child.”

Manifestations of that attitude that are outlined in the report include, on page 8, some staff still being reluctant to share information when there were concerns about parental drug misuse,

“despite the recent introduction of new guidelines for protecting children living in families with problem substance misuse.”

As my local authority, Inverclyde Council, is similar in size to Midlothian and has similar problems with drug abuse, I am particularly concerned that problems identified in Midlothian could be lying undetected in my local authority and in local authorities throughout Scotland, leaving children unprotected. Will the minister agree to take urgent action to ensure that all local authorities are perfectly clear about their duties to prioritise the rights of vulnerable children and to act in their interests?

Hugh Henry: We will be carrying out inspections, and the same scrutiny will be given to each local authority as was given to Midlothian Council. I have made it clear to my officials that we

should be reminding local authorities that they should not wait for an inspection to take place but should pay heed to what happened in Midlothian and familiarise themselves with the details of the Midlothian report.

I hope that each local authority in Scotland will look closely at its services to ensure that there are no weaknesses in what is being done and that no one is waiting for a report.

Margaret Mitchell (Central Scotland) (Con): Is the minister aware that in November 2006 the First Minister confirmed that the new guidelines on the clinical management of drug misuse and dependence, which were due to be published in 2006, were still being reviewed? Given that it is now more than a year since the tragic death of two-year-old Derek Doran from a methadone overdose, can the minister tell me when the review will be published and whether there will be a re-evaluation of the assessment criteria that allow addicts to take home a three-day supply of methadone?

Hugh Henry: I do not have the specific date for the publication of the report, but we will return to Margaret Mitchell with such information as is available.

We are looking closely at the circumstances in which methadone—and, indeed, any other dangerous drug—is made available, but we should be careful about our use of words and the actions that we want to be taken. Stringent measures should be taken to ensure that dangerous drugs are not used inappropriately and that children are protected—as Margaret Mitchell will know, criminal actions can follow if something wrong is done. However, we know from experience that there are a number of people whose lives can be stabilised and who can make productive use of such a facility. It would be wrong simply to reject the whole system.

We need a balanced approach, so we are looking carefully at the situation. However, we need to ensure that, when drugs such as methadone are dispensed, the protection of vulnerable and innocent young people is taken into consideration.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The minister will be aware that Penicuik in Midlothian is in my constituency. Through casework with families, I saw for myself Midlothian Council's crisis management over a number of years. He will appreciate why the people of Midlothian were outraged by the report by Her Majesty's Inspectorate of Education, given that three years ago the interim review highlighted the lack of both leadership at the council and proper co-ordination with other local services. What action is he taking to restore leadership in

social work at Midlothian Council? What does he expect of the council from now on? Will he report back to the Parliament and update us on what I hope will be improvements in services, which will mean that children are no longer put at risk?

Hugh Henry: I made it clear to Midlothian Council that what had been reported was completely unacceptable. To its credit, the council has accepted that. The convener who was responsible for social work services resigned from his post, the director of social work stood down and other changes have been put in place. The council has taken action in regard to personnel and structures, and the chief executive has become directly involved.

As Jeremy Purvis knows, I cannot instruct changes at the council—it would not be appropriate for a minister to do that—but I have said that, from a policy perspective, what has been happening is unacceptable. I am pleased that the council has reacted positively, has made no excuses and has taken steps to ensure that improvements are made. Clearly, I want to keep a close eye on the situation. I have instructed my officials both to offer the council whatever advice, assistance or expertise it needs and to keep a close eye on what is happening, so that I can be reassured that progress is being made.

Local Authority Funding

2. Mike Rumbles (West Aberdeenshire and Kincardine) (LD): To ask the Scottish Executive when it will review the formula for the distribution of grant-aided expenditure funding to local authorities, as announced by the Minister for Finance and Public Service Reform on 7 February 2007. (S2O-12401)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): The local government funding formula is kept under constant review. I said last month that, in due course, I would like to review how the formula meets certain needs. That remains the position.

Mike Rumbles: No one would argue that money should be allocated on a population basis alone, but the minister will be aware that Aberdeenshire Council is one of only two local authorities that have consistently experienced a large growth in population since they were established. Thanks to the Scottish Executive, Aberdeenshire's position has improved over the past seven years—the funding that it receives has risen from 88 per cent to 90 per cent of the average level of funding that is provided to local authorities.

However, does the minister agree that no council should be expected to finance its services with less than 95 per cent of the average level of funding? In other words, does he agree that there

should be a minimum funding level, which any review should recognise?

Mr McCabe: A floor is already in operation to prevent any council from falling below a certain level of increase in any given year but, in my view, a fundamental review is required of certain aspects of the formula that are failing to address properly not just population levels, but different population mixes. For example, more affluent, economically active people are moving away from some smaller areas, which is leaving core services under increasing pressure. Several issues need to be examined. If the good people of Hamilton South and the First Minister intervene positively, we will do our best to undertake that work in the near future.

Brian Adam (Aberdeen North) (SNP): In relation to the floor, is it just a coincidence that Aberdeen City Council now has the highest council tax in Scotland and the second-lowest rate of support grant? Is it just another coincidence that Glasgow City Council, which receives a 25 per cent higher per capita grant allowance, has managed to freeze its council tax for the past two years?

Mr McCabe: As a general rule, I do not believe in coincidences. Usually, situations come about as a result of definite decisions. Perhaps the member should discuss with the local authority that takes the relevant decisions, rather than with me, why the council tax in Aberdeen is at the level that it is at.

Schools and Nurseries (Attainment and Achievement)

3. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Executive what impact is being made on attainment and achievement as a result of additional moneys allocated directly to schools and nurseries. (S2O-12388)

The Minister for Education and Young People (Hugh Henry): No one can be better placed than the school itself to judge what will best benefit pupils and have a real impact. That is why we insisted that the £40 million extra funding for materials and equipment, which we announced in November, should be allocated directly to schools.

Karen Whitefield: Does the minister agree that the additional funding for schools has allowed head teachers to focus spending on local needs? In Petersburn primary school in my constituency, not only has the additional funding helped to improve attainment in maths and language but it has been used to buy musical equipment and pay for staging, which has enabled pupils to perform in the community, thereby building their confidence and self-esteem. Does he agree that the resources are not only improving attainment but

helping to develop life skills that will be invaluable to young people?

Hugh Henry: I ask Karen Whitefield to pass on my congratulations to the head teacher, staff and pupils of Petersburn primary school for the work that they are doing, which is exactly the sort of response that we want. I agree that the additional funding is leading to a rise in attainment levels and enhancing the quality of pupils' education and lives, by helping to unearth new talents and give pupils interests that will last for the rest of their lives.

On my visits to secondary and primary schools and nursery facilities during the past few months, I have been struck by the difference that the direct allocation of funding is making. Head teachers and staff say that direct funding means that they can make decisions that are important for their schools. They are using the money imaginatively and I have been struck by initiatives that are going on. The approach benefits not just Scottish education in general but staff personal development and commitment, because staff know that the money can make a lasting improvement.

Fiona Hyslop (Lothians) (SNP): Does the minister think that the Labour Government's approval of the removal of qualified nursery teachers from nursery classes by a Labour council is a backward step in improving the educational attainment of children of nursery age?

Hugh Henry: That issue has nothing to do with the question, but I will engage in the debate if the Presiding Officer will indulge me.

The Presiding Officer (Mr George Reid): Yes, of course.

Hugh Henry: It remains for local authorities to decide which staff are relevant in any given circumstances. The early years curriculum must have educational underpinning and I am impressed by the range and quality of the professionally qualified staff who work in our early years establishments, all of whom make a lasting contribution. There can be a direct advantage to having educational input from teachers.

In a number of early years establishments that operate from 8 am to 6 pm teachers cannot be available, but staff are performing remarkably well. Each local authority can decide for itself what to do, but there should be no lowering of standards. The curriculum remains fundamental and there should be input from teachers into curriculum development. The issue is to do with partnership and the use of a range of skilled staff. I pay tribute to the skilled staff in the early years sector who are not teachers and who are making a remarkable difference.

Quality Learning Environments

4. Irene Oldfather (Cunninghame South)

(Lab): To ask the Scottish Executive what importance it attaches to a quality learning environment in the development of pupils. (S2O-12384)

The Minister for Education and Young People

(Hugh Henry): We attach a great deal of importance to the matter, which is why, in partnership with authorities, we initiated the biggest school modernisation programme in a generation.

Irene Oldfather: I invite the minister to visit the new Greenwood academy in my constituency, which will have the highest specification in new technology for the learning environment. Touch-screen active boards in every classroom will allow teachers to download from personal computers on to wall screens. Can he give me an assurance that a Labour-led Scottish Executive after May will consider extending that technology to all schools, so that pupils throughout Scotland can benefit from a modern learning environment?

Hugh Henry: I take note of Irene Oldfather's invitation and will add it to the many invitations that I have received but am unable to fulfil. What she describes is a feature of Scottish education. We have highly qualified, highly motivated teachers who are using very imaginative teaching techniques to improve levels of attainment and results in their schools. They are also using the most modern, up-to-date equipment. I have been struck by the difference that is being made by the new interactive whiteboards—which, I confess, baffle me, as I am a bit of a Luddite. I was particularly impressed when I visited an early years establishment at which an interactive whiteboard was being used by three and four-year-olds in a remarkable way. The teachers told me that the results have been striking.

Technology is important and, if we have the opportunity, we will continue to invest in technology as we have done. That will include—as I said in an earlier answer to Karen Whitefield—giving money directly to schools to allow them to make the decisions. However, that cannot have the effect that we want unless we have qualified, skilled and committed teachers, who make a huge difference.

Margo MacDonald (Lothians) (Ind): I hope that the Minister for Education and Young People agrees that he is, in fact, anything but a Luddite. I have always found him to be a listening minister. I hope, therefore, that he will listen to my plea that he should get in touch with local authorities that are currently refurbishing or rebuilding schools and replacing sports facilities. In many cases, the outdoor pitches that are being provided are not

what is required to ensure the greatest use by greatest number of sports. Grass and artificial turf are of different lengths, for example. It is a small point, but it is worth mentioning because so much money is involved in such developments.

Hugh Henry: There is always a sting in the tail with Margo MacDonald's compliments.

We should not underestimate the contribution that sport makes to a learning environment and to the quality of education that is available to a young person.

When Kenneth Macintosh and I visited Carlibar primary school in Barrhead, I was impressed with what the artificial-turf outdoor facility was doing for that school. Last Friday, along with Cathie Craigie, I visited St Maurice's high school in Cumbernauld, where there is a fantastic games hall that has been funded jointly by the Big Lottery Fund, sportscotland, the Scottish Executive and the local authority. The school had invited pupils from all the feeder primary schools, who were thriving on the opportunity to participate in sport. Indeed, I was told how well St Maurice's high school is doing in developing Scottish champions who represent Scotland at international level.

Margo MacDonald is right. Local authorities should pay particular heed to sports facilities and to giving their pupils opportunities to engage in sporting activities.

Ferry Services (Dunoon)

5. Dave Petrie (Highlands and Islands) (Con):

To ask the Scottish Executive what its position is on the need to continue to provide a passenger and vehicle ferry service into the centre of Dunoon. (S2O-12338)

The Minister for Transport (Tavish Scott):

Scottish ministers wish to see the best service on the Gourock to Dunoon route that is permissible under European law. That is why the Executive is pursuing with the European Commission the suggestions put forward at the meeting of elected representatives with an interest in the Gourock to Dunoon ferry service, which I chaired on 8 February. Meanwhile, Caledonian MacBrayne Ltd will continue to operate the existing vehicle and passenger ferry service until alternative arrangements are put in place.

Dave Petrie: I thank the minister for his response, which I could have predicted. If, as I fear, a car ferry service into the centre of Dunoon is not continued, the effect on the Kyle and Bute economies will be devastating.

Will the minister make a pre-election commitment to upgrade the Bute ferry terminal at Wemyss bay, with a long-overdue breakwater to protect the currently vulnerable and frequently

cancelled lifeline ferry service from the island of Bute? Those are my words, not George Lyon's.

Tavish Scott: Dave Petrie's colleague, Mr McGrigor, attended the meeting on 8 February at which these issues were very fully discussed. I am sure that Mr Petrie will wish to talk to Mr McGrigor to ensure that the Conservatives have a consistent position on the matter.

As far as new investment on the ferry service is concerned, this Government has invested considerable sums across the Clyde and the Hebrides, and will continue to do so.

First Minister's Question Time

12:00

Prime Minister (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister when he will next meet the Prime Minister and what issues will be discussed. (S2F-2777)

The First Minister (Mr Jack McConnell): I look forward to seeing the Prime Minister tomorrow, when I will tell him that, this week, the Scottish Parliament agreed to establish a rail link to Edinburgh airport; to secure healthy food for our children in our schools; and to get rid of the Tories' automatic early-release scheme. Moreover, we found out yesterday that Scotland now has the highest ever level of employment. It has been a good week in Scotland, and I look forward to telling the Prime Minister that.

Nicola Sturgeon: As always, we welcome the Prime Minister to Scotland and hope that he comes back many times before the election.

On 7 December 2006, the First Minister said that he supported a new Trident nuclear weapons system based on the Clyde. Does he hold to that view?

The First Minister: I have made my views very clear on this matter—and the United Kingdom Parliament, which has responsibility for it, made its view clear yesterday. It is also clear that, by focusing on this issue in the Scottish Parliament, the Scottish nationalists are trying to distract attention from the new poll tax that they announced yesterday. This Parliament has responsibility for local taxation in Scotland, and I welcome the opportunity to debate the issue with Ms Sturgeon if she is brave enough to answer questions on it.

Nicola Sturgeon: I will be happy to discuss the SNP's policies on fair local taxation when the First Minister decides his own policy on local taxation.

However, let us go back to the issue at hand. The First Minister is, of course, entitled to his view on Trident, but does he accept that he has completely lost the argument in Scotland? Is he aware that last night 37 of Scotland's 59 MPs did not support the Government's position on Trident?

I remind the First Minister that, in a speech on 5 March 2005, he said that the Tories should never again be allowed to impose policies on Scotland against the will of the Scottish people. Will he therefore explain why he thinks that it is okay for Labour, relying on the votes of Tories, to impose a new Trident system on Scotland when a clear majority of Scotland's MPs, all of Scotland's

churches, the Scottish Trades Union Congress and an overwhelming majority of the Scottish people say no to Trident?

The First Minister: In 1997, the Scottish people voted in a referendum to ensure that the UK's defence policy was the responsibility of the UK Parliament. The Scottish nationalists are simply using this issue and the views that I believe are very genuinely held by people on both sides of the argument right across Scotland and elsewhere in the UK to distract us from their other plans for an independent Scotland. They do not want to debate the fact that an independent Scotland would have an impact on Scotland's economy, our jobs, our taxes and our spending on public services. If the Scottish nationalists want an independent Scotland with an independent defence policy, they should be prepared to debate every aspect of that, and not try to hide certain aspects as they tried to do this week, starting with the Sunday papers.

The reality is that an independent Scotland would be cut off from the fifth-largest economy in the world and would have to not only raise taxes but cut spending to maintain the level of investment that we have at the moment. Ms Sturgeon can ask me questions about that, if she is brave enough.

Nicola Sturgeon: That is a diversionary tactic if ever there was one. The SNP has laid out its policies on health, education and tax; we are still waiting to hear from the First Minister about a few of his policies.

Let us get back to the question at hand. Is it not the case that the First Minister's position is utterly hypocritical? When the Tories imposed policies in Scotland against our will, he rightly called it a "democratic deficit". However, when Labour, propped up by Tory votes, does the same thing, this First Minister defends it. Is it not about time that Mr McConnell stopped trying to curry favour with Mr Blair and Mr Brown and instead stood up for the majority of Scottish people who do not want £25 billion to be wasted on weapons of mass destruction and who certainly do not want them to be dumped on the Clyde?

The First Minister: The debates about the Tories imposing policies on Scotland against our will were about the poll tax. Yesterday, we saw poll tax 2 coming forward from Alex Salmond and Nicola Sturgeon. It is the new poll tax from the SNP—not only the imposition of a flat-rate tax across Scotland, but a cut in the budget to go along with it. People in Scotland would get not only the poll tax, which was bad enough, but cuts in services at the same time. Not even the Tories, when they proposed their poll tax in Scotland, proposed cutting services at the same time. We would get not only the revisiting of the Tories' poll tax, but SNP cuts in services. No attempt by the

SNP to distract attention away from that and on to issues that are decided elsewhere will succeed. The people of Scotland know that the SNP now stands for poll tax 2. The SNP will pay for that at the polls.

Nicola Sturgeon: Never before has one man talked so much utter nonsense in one answer. I remind the First Minister that the Tories paid a heavy price in Scotland for imposing the poll tax. Labour will pay a heavy price for imposing Trident.

Is it not the case that what we have is Labour disunited and in disarray, depending on Tory votes to steamroller Scottish opinion? Instead of standing up for Scotland, the First Minister backs up the unholy Labour-Tory alliance every step of the way. Is it not just as well that, seven weeks today, people in Scotland will have the chance at the ballot box to reject those—Labour or Tory—who would impose Trident, and the chance to vote instead for peace and public services?

The First Minister: In seven weeks' time, people have a vote on the powers of this Parliament to reject the SNP's poll tax and to vote for investment and services and a stronger economy here in Scotland. In a week when Scottish employment has gone to even higher levels and still remains ahead of the rest of the United Kingdom; in a week when our investment in health and education has shown the improvements that the people of Scotland want to see; and in a week when the SNP has tried yet again to hide from its main policy of independence, we pledge here today to expose that policy to ensure that, here in Scotland, people know the implications. A vote for the SNP is always a vote for independence, and independence comes with a cost.

Mr Jim Wallace (Orkney) (LD): Does the First Minister agree that, regardless of what view one takes on nuclear weapons, they are a serious issue that should not be reduced to constitutional point scoring?

Will the First Minister acknowledge that, in the House of Commons last night, Liberal Democrat MPs voted against the rush to replace Trident and spend £20 billion? When he meets the Prime Minister tomorrow, will he ask him to reflect on whether, if he is genuine about a legacy, it would be far better—rather than delivering a hammer blow to the cause of non-proliferation with last night's decision—to adopt Liberal Democrat policies and have an immediate 50 per cent cut in Britain's nuclear warheads, thereby breathing new life into the non-proliferation treaty?

The First Minister: I think that these matters were resolved last night. I also believe that the decisions made last night that will involve a

reduction in warheads and submarines are welcome indications.

I respect the fact that there are different views on this subject, but I make my main point yet again. Here in Scotland, just this week, we have seen the strength of our economy and the growth of employment and jobs. We have seen the powers of this Parliament used today to end the Tories' automatic early-release scheme, and yesterday to secure a rail link to Edinburgh airport. Those are real improvements in life here in Scotland, delivered by this Parliament. When people in Scotland go to the polls in seven weeks' time, they should vote on the powers of this Parliament and give us a chance to build Scotland even further.

Cabinet (Meetings)

2. Miss Annabel Goldie (West of Scotland) (Con): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-2778)

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

Miss Goldie: Earlier this week in England, Rahan Arshad was sentenced to life in prison for the horrific murders of his wife and three children. The judge stated that, in Arshad's case, life meant life. Will the First Minister confirm that, if Arshad had committed that crime in Scotland, the judge would be required to specify a punishment part and will he further confirm that it is not possible for a judge in Scotland to tell a convicted murderer that life means life?

The First Minister: Of course, in our separate legal system in Scotland, judges can specify that that punishment part will last a considerable length of time—in fact, in some cases, it can mean life. The Tories' suggestion that it can under no circumstances mean life is a complete and total distortion. We have heard that distortion regularly in the chamber in recent years. The Tories should stop distorting the truth and get on with debating the issues.

Miss Goldie: The family of a murder victim goes to court to see justice done. To them, a punishment part that is in single figures is galling.

In addition to being anxious about the misuse of the term "life", the people of Scotland have, for some time, been worried about the Lib-Lab pact's policy of allowing non-lifers to stroll out of jail early. The First Minister has tried to talk his way round the provisions of the Custodial Sentences and Weapons (Scotland) Bill by saying that prisoners will serve their total custodial sentences in jail. What he cannot say is that prisoners will serve their total sentence in jail because, under his new

mongrel system, the sentence is split in two: the custody part and the community part.

Is the truth not that the bill is simply designed to make the First Minister sound like the friend of the victim when the fact is that Labour and the Liberal Democrats are still on the side of the criminal?

The First Minister: That is a breathtaking misrepresentation from the Conservatives. The Conservatives introduced a law in Scotland that not only allowed people to be let out of jail early but gave people the automatic right to leave jail early without any conditions applying to them when they went into the community.

Today, the Executive and the Scottish Parliament are righting the wrong that was imposed by the Conservatives on Scotland in the 1990s. In doing so, we will ensure not only that the custodial sentence that is imposed by a judge is served in full, but that those judges are able to impose an additional part of the sentence that ensures that the offenders are monitored and rehabilitated in the community after their custodial sentence. It is not just prison meaning prison; it is prison plus. Therefore, the system is far better than the one that the Tories introduced. We are proud to be repealing their laws and replacing them with ours. People in Scotland will be safer as a result.

Miss Goldie: Eight years of failure by the Lib-Lab pact cannot be spun away in eight minutes at FMQs. The First Minister is kidding nobody. Just now, prisoners stroll out of jail either half way or two thirds of the way through their total sentences. Under the First Minister's new legislation, all prisoners could stroll out of jail half way through their total sentences. If it looks like early release and smells like early release, it is early release.

If the First Minister were actually tough on crime and tough on criminals, his Lib-Lab pact would have backed our amendments this morning, as they would have kept criminals in jail longer. We have made it clear today, as we have done for many years, that we want criminals in custody. However, the Lib-Lab pact and, shamefully, the SNP, have made it clear that they want criminals in our communities. When will the First Minister stop standing up for criminals and start standing up for Scotland?

The First Minister: If we want to talk about years of failure, we could easily talk about 18 years in which crime rose, cutbacks were made in communities to the services for young people that distracted them away from a life of crime, and Scotland experienced the social decay that led to much of that criminality in the first place. We will take no lectures from Conservatives in Scotland about the impact of their policies on crime.

The Conservatives brought in automatic early release and created a system that allowed people to walk out of jail without any conditions being attached to their time in the community. Today, we are creating a system in which, if the judge says that someone will spend a number of years in prison, they will spend that number of years in prison and, when someone leaves prison, they will not just walk out and re-enter their community but will have conditions imposed on them. That is a far better system than the previous one. It is one that this Parliament was created to establish and we are proud to be voting it through today.

Christine May (Central Fife) (Lab): Will the First Minister join me in expressing profound sympathy for the families of Chris Mallin and Brian Wight, both of whom were 16, and Peter Reilly, who was 21, all from Kennoway in my constituency and who tragically were killed in a road traffic accident on Tuesday evening, and for their friends and others who witnessed the accident and tried to help?

The First Minister has spoken this week about the need to reduce the number of accidents and deaths among young drivers. Will he examine urgently schemes such as the safe drive stay alive scheme in Fife, which trains young people in the dangers of car use, and the pass plus scheme, to find out whether he can introduce any measures that would reduce the tragic waste of young lives?

The First Minister: When I was growing up on the Isle of Arran, I lost friends in road traffic accidents, which I remember deeply to this day. I know about the impact, particularly in rural areas, that bad and poor driving can have on the families who are affected by such tragic losses. I am sure that all members would want to express their sympathy for the families who were affected by the accident that Christine May mentioned and by other accidents in the past week. We must ensure that proper training is provided for young people as they learn to drive and continue driving, but we must also ensure that we have safety measures on our roads that help to prevent accidents and prevent pedestrians from being affected by accidents.

We must create a culture in society of more personal responsibility. At the heart of the issue is the fact that, in too many instances, people driving cars in this country do not take personal responsibility for their actions. Whether people use mobile phones, drive too fast or irresponsibly do not take account of other vehicles on the roads or pedestrians, it is simply unacceptable to put others' lives at risk. Politicians from all parties have a responsibility to show leadership and to urge greater personal responsibility as well as Government action in the years ahead.

Secretary of State for Scotland (Meetings)

3. Shiona Baird (North East Scotland) (Green): To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-2786)

The First Minister (Mr Jack McConnell): I expect to see the Secretary of State for Scotland again soon. We will discuss issues that are important to Scotland.

Shiona Baird: In the wake of the publication of the United Kingdom draft Climate Change Bill, Sarah Boyack hurriedly announced plans for a Scottish climate change bill that is intended to apply to devolved matters. Seven weeks before the election, will the First Minister tell voters whether the Scottish climate change bill will set binding annual targets on the Executive to reduce climate change pollution and, if not, why not?

The First Minister: It would probably be inappropriate for me, as head of the coalition Government, to outline today Labour's plans for the election. However, I reassure Shiona Baird that the commitment to a climate change bill from the Labour Party was announced not on Tuesday, but several weeks ago, on the day that David Miliband was in Scotland. I assure the member that she will find the content of the proposal interesting when she reads it in three weeks, when the election campaign gets under way fully. The Administration has a strong record on climate change. The two parties in the coalition have worked together on the issue. The climate change programme that we have outlined has received praise, at home and elsewhere, and we have a record of action on the issue that stands any test of scrutiny.

There is a proper debate about whether there should be annual targets or targets across a number of years. This week, the UK Government announced targets that would be across five years—between 2008 and 2012. Some people criticised that and said that there should be annual targets but, this week, Jonathon Porritt, who chairs the Sustainable Development Commission and who we would all accept is an absolute authority in the UK on such matters and has been for at least two decades, said:

"I think the NGOs have got this wrong ... What the Government has gone for are ... five year budgets rather than one year targets. We think that is a more sensible and practical way of driving change ... to be honest, the notion of the one year target is just a bit of macho breast-beating ... and I don't think that the government has got this ... wrong."

I am prepared to go with Jonathon Porritt's view on the matter. If we in Scotland look to set targets, we should set targets that are beyond one year.

Shiona Baird: I thank the First Minister for that reply, but I disagree with him on his record in the Parliament. Does he agree that his Executive's green thread has snapped? The evidence is that on environmental justice, the Executive has failed; on waste reduction, it has failed; on energy efficiency, it has failed; on road transport reduction, it has failed; and on climate change action, it has gone nowhere. Does he agree with the Greens that Scotland needs binding annual climate change targets now? Yes or no?

Members: No.

The First Minister: My colleagues have answered the question for the member.

I shall go through our record. The Green party describes our record on waste as a failure. In fact, the recycling of waste in Scotland has gone from 6 per cent five years ago to 25 per cent today. The use of clean energy in Scotland has gone from less than 9 per cent in 2001 towards our ambitious target of 40 per cent of renewable energy generation by 2020, and we met our 2010 target five years early. We have an ambitious climate change programme for Scotland. The official figures indicate that net Scottish greenhouse gas emissions fell by 12 per cent between 2001 and 2004.

Public transport now accounts for 70 per cent of our transport budgets. Two years ago, 150 million fewer car miles were driven on our roads. Five years ago, there were 65 million journeys by train in Scotland; last year, there were 75 million. In those and in many other areas of climate change and environmental issues, this nation, Scotland, is leading the rest of the United Kingdom. We are proud to do so, and we look forward to continuing after May.

Trans Fats

4. Dr Elaine Murray (Dumfries) (Lab): To ask the First Minister what action is proposed to reduce the presence of trans fats in Scotland's diet. (S2F-2787)

The First Minister (Mr Jack McConnell): Many in the food industry are already voluntarily removing trans fats from their products. The Food Standards Agency has no plans to recommend a ban on the sale of foods containing trans fats. We and the agency will keep that policy under review. Should any new evidence about health risks come to light, we would be prepared to take appropriate action.

Dr Murray: Is the First Minister aware that evidence from the United States of America indicates that trans fats in the diet increase low-density cholesterol levels and reduce high-density cholesterol levels, thereby increasing the probability of clogged arteries and heart attack?

The UK as a whole consumes less than the recommended maximum of 2 per cent of trans fats, but is he concerned that trans fats are more prevalent in the economy brands and that therefore people on lower incomes may be inadvertently consuming higher levels of trans fats? Will he discuss with the Food Standards Agency the inclusion of trans fats in its traffic light scheme?

The First Minister: I am sure that ministers would be happy to take up that last suggestion, but I stress that the primary focus of our efforts in that area in Scotland has been on saturated fats. There is a particular problem with trans fats in the USA, but it is not a problem on the same scale here. The big problem in the Scottish diet is saturated fats. We are trying to tackle that through our hungry for success programme; through improvements to school meals—new legislation that was passed yesterday guarantees nutritious school meals for all children in Scotland; through the activity co-ordinators in our schools; and through the success of the keep well pilots that we hope to see spread throughout Scotland, to improve the health, diet and exercise levels of individual Scots. In addition, we are getting the food industry to take voluntary action to reduce the level of fats in food.

John Scott (Ayr) (Con): The First Minister will be aware of the concerns about poor diet and childhood obesity that were raised in the recently published Scottish diet action plan. He will also be aware that the potential increases in childhood obesity, with its attendant risk of diabetes and other illnesses, is likely to wipe out all the health gains that have been made in the past 10 years. Does the First Minister agree that part of the problem has been a lack of strategic approach, and does he accept that Government must now develop a strategically integrated approach between Government departments to address the problem? Does he have any plans to do that?

The First Minister: However genuine Mr Scott's views are, he will find that clinicians and experts regard our strategy on diabetes as one of the most respected in Europe. The action plan was put together and implemented by bringing together people in the health community, academic experts and others. The plan gives us the opportunity to tackle an issue that is particularly prevalent here in Scotland.

The investment that Johnson and Johnson has made in production and research in Inverness shows not only that we can continue to tackle the issue, but that we can create and support successful enterprises that will help people elsewhere in the world.

Our actions so far have been praised, but they are not yet sufficient and we need to continue to improve them.

Hospitals (Car Parking)

5. Ms Sandra White (Glasgow) (SNP): To ask the First Minister, further to his reported comments on hospital car parking charges at a recent "Ask Jack" event, what intervention the Scottish Executive plans to make to address the concerns of hospital staff and users. (S2F-2779)

The First Minister (Mr Jack McConnell): Revised guidance on car park charging has been issued to national health service boards in a Health Department letter. NHS boards that fail to comply with the car parking guidance or, for that matter, with any other guidance that is issued in the form of Health Department letters are accountable to the chief executive of NHS Scotland.

Ms White: I thank the First Minister for his reply, but I had rather hoped that he might take the issue to the Labour group and come back with a more positive recommendation.

Does the First Minister agree that many workers, because of the nature of their job, cannot access public transport and have no option other than to use the car? Does he further agree that deducting money from wages by charging up to £12 a day is nothing more than a tax on health service workers and is simply not acceptable?

The First Minister mentioned recommendations and reviews. When will he publish the Executive's review? Will it be published before or after the election?

The First Minister: It would be helpful if SNP members made representations before decisions were changed rather than coming in afterwards. Pauline McNeill and other Glasgow members have been raising the issue for weeks. As a result of that, Greater Glasgow and Clyde NHS Board has decided, quite properly and correctly, to withdraw its proposals so that they can be revised. The new guidance that has been issued in the past week makes absolutely clear that the interests of staff and regular patients should be included in any proposals for car parking charges.

I welcome the changes that have taken place both inside the Health Department and in the Greater Glasgow and Clyde NHS Board. It is right that the proposals have been changed and it is right that, where car parking charges are necessary in the health service in Scotland, the charges do not penalise, in particular, lower-paid members of staff and those patients who have to attend hospital regularly.

Tourism

6. Richard Baker (North East Scotland) (Lab): To ask the First Minister, in Scottish tourism week 2007, what steps are being taken to grow tourism. (S2F-2784)

The First Minister (Mr Jack McConnell): Our ambition is to grow Scottish tourism with a 50 per cent revenue growth by 2015. We are investing around £90 million a year in tourism, including in VisitScotland's award-winning marketing. We have taken tough decisions to reorganise the service and we are now seeing the benefits of improved promotion and quality at home and abroad. There has been a huge increase in international visitors, with the overseas market up by 50 per cent between 2001 and 2005. That is very encouraging evidence of how tourism is growing.

Richard Baker: Will the First Minister assure me that the Executive's successful tourism strategy will continue to focus on growing tourism throughout Scotland including, for example, the rapidly developing golf tourism industry in the north-east? Does he agree that one of the first mistakes of a nightmare SNP Administration would be to scrap the post of tourism minister, as the SNP announced at the beginning of tourism week?

The First Minister: First, let me say positively that the growth of golf tourism in the north-east and the growth of green tourism throughout Scotland have been significant. With the improved promotion of Scotland especially in Europe and North America, the number of tourists has increased in recent years at almost twice the rate of the increase in the rest of the United Kingdom. Our tourism and our investment in tourism are working. We have worked in conjunction with the industry, which likes to be represented at the top table.

The SNP's wish to withdraw that representation by not having a tourism minister in the Cabinet is only one of a number of impacts that an SNP Administration would have on the tourism industry. That would be one problem. The cuts in budgets, locally and nationally, that would result from the SNP's poll tax would be another problem. Of course, there would also be the absolute distraction for four years of moving towards independence with a referendum. Given all the distractions involved in that, the SNP would take its eye off the ball when it should be growing our economy, growing tourism and ensuring that Scottish people have jobs for the future. Our priorities should be those issues rather than the SNP's plans for independence.

Alex Neil (Central Scotland) (SNP): Has the Scottish Executive made any assessment of the impact on tourism in Scotland of Gordon Brown's doubling of air passenger duty? In his few remaining weeks in office, will the First Minister urge the chancellor not to take any further measures to damage the Scottish economy and Scottish tourism?

The First Minister: It would be good if, now and again, Alex Neil said, for example, that in the course of devolution we have seen a trebling of the number of direct air routes in and out of Scotland as a result of measures that have been taken by this devolved Executive. The distraction of the SNP's plans for independence would of course have meant that it could not have delivered that kind of improvement in Scotland.

When I next speak to the chancellor, I will make it absolutely clear to him that we oppose the SNP's plans for a poll tax here in Scotland and its plans to take Scotland as an independent country out of the fifth-largest, most stable economy in the western world and that we will ensure that the resources that he provides for us yet again in the budget next week will be invested properly in health, education, tackling crime and creating even more jobs than those that are shown in the record employment levels that we heard about yesterday. Scotland today is a successful country and we will not let the SNP spoil it.

Scotland Malawi Partnership

The Deputy Presiding Officer (Murray Tosh):

The final item of business this morning is a members' business debate on motion S2M-5725, in the name of Karen Gillon, on Malawi. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the partnership that has been established between Scotland and Malawi and, in particular, the historic co-operation agreement signed by the Scottish Executive and the Government of Malawi; congratulates the wide range of schools, churches and civic organisations in Clydesdale that are involved in joint work with similar groups in Malawi, and believes that MSPs should sign up to the Scotland Malawi Partnership's pledge in advance of the election to ensure that this mutually beneficial partnership continues.

12:32

Karen Gillon (Clydesdale) (Lab): I begin by declaring my interest as co-chair of the cross-party group on Malawi in the Parliament. I thank the many members from throughout the chamber who have signed the motion and enabled us to bring the matter to the Parliament. It is my pleasure to open the debate and I welcome those from civic Scotland who will be joining us for it.

As members know, I, along with many others in the Parliament, have had the privilege of visiting Malawi twice. I have also had the pleasure of hosting colleagues from Malawi in my constituency.

As the election approaches, there are many demands on us as individuals and on the parties that we represent. By urging us to sign the pledge lodged by the Scotland Malawi Partnership, the motion attempts to ensure that our new partnership with Malawi does not lose out during the election campaign and is built on during the next session of Parliament.

In Malawi, the pledge has been signed by politicians, church leaders, business leaders, academics and representatives of the media and non-governmental organisations. They have been joined by their counterparts here in Scotland and by many individuals the length and breadth of the country, not to mention throughout the United Kingdom, Germany, Hong Kong, South Africa and Egypt.

Signing the pledge, the Right Rev Alan McDonald, the moderator of the Church of Scotland, said:

"I am proud to sign the pledge to continue working to develop relations between Scotland and Malawi, for the betterment of both countries in a genuine partnership.

It says a lot about Scotland that we lost no time after devolution in looking beyond our own shores and reaffirming our historic links with Malawi in particular. Throughout Scotland, communities are responding with imagination and generosity to the leadership which has been offered by the Executive and the Parliament. Everyone who has become involved tells me that they have gained far more than they could ever give to this remarkable partnership.

These have been important beginnings, but there is much more to be done. It is my hope that, in the years to come, we will all continue to find creative and inspiring ways to build on the foundation which has been laid."

Those are strong sentiments and they reflect my experience both of my time in Malawi and of the work that I have been involved in since I came back.

In Clydesdale, many events have taken place and numerous relationships have been built. I will mention just a few of them. Many primary schools, including Carnwath and Glengowan primary schools, have twinned with schools in the Zomba district of Malawi. The children's curriculum includes a planned programme of events to teach them about life in each other's countries. They share experiences and learn what it is to be a global citizen. Children in Scotland learn what fair trade means to young people in Malawi and what it can mean to us here in Scotland.

Carlisle rotary club is sponsoring an ambassadorial scholar to come to Scotland to learn more about community development so that, when they return to Malawi, they can put more into the community from which they come. The whole community in Stonehouse came together to twin with the community in Mulanje and develop sustainable projects of mutual benefit. Members might remember the young people from the target youth project, some of whom hosted the danceathon last year, at which some of us danced more than others. They have formed a link with a similar project in Nkata Bay in Malawi. In that project, young people who are perhaps not in education, employment or training are joining with their counterparts in Malawi, sharing experiences, working together and supporting each other.

As I visit groups and communities throughout my constituency, I find that they are proud of the steps that we are taking and that they want us to continue. I must give a small mention to the community in Jedburgh, from where I come. It has been working very hard. Recently, it raised £1,600 to put a well into a village in Malawi and help the village to become more sustainable.

This week, we again have visitors from Malawi. The Royal College of Nursing is hosting a visit from—and beginning a partnership with—the National Association of Nurses of Malawi. All of us who have been involved with Malawi understand the importance of supporting its work to train and

retain its health care staff. The partnership between the RCN and the national health workers support group of Malawi will begin to develop that relationship. They are supporting nurses and developing their lobbying and advocacy skills so that they can work more effectively with the Malawian Government to share experiences and build training.

Many members will be aware of the recent BBC programme on Scotland and Malawi. I have no intention of getting involved in the pros and cons of how the Scottish Executive funding has been used. There will always be people who have been disappointed and there will always be criticism to be made. What disappointed me most about the programme was that it focused so much on the negative, rather than the positive, aspects of our relationship with Malawi.

We—as a country and as individuals—benefit from the relationship, and Malawi will benefit. It is a partnership. It is not about us doing something for them. We are working together in a genuine partnership. I have been to Malawi. No one can tell me that the partnership is not worth fighting for and developing. Dr Charles Mwansambo from Lilongwe said:

"Malawi looks at Scotland as a very close friend indeed because of the help we have received in the past and also the close historic ties that we have. Being a Scottish trained paediatrician, I know there is a lot Scotland can offer Malawi and vice versa."

We must strive to make that work in the future.

I urge colleagues to sign the pledge so that we can—throughout the parties, in a non-partisan way—continue to develop our mutually beneficial relationship with Malawi in the months and years ahead. We will all benefit but, most important, the people in Malawi who do not know where their next meal is coming from will begin to have a better life. If we can play a part in that, we should all be proud of doing so.

12:39

Dr Jean Turner (Strathkelvin and Bearsden)
(Ind): I thank Karen Gillon for managing to fit in the debate before the end of the session because the subject is important, as is keeping the connection and the partnership with Malawi.

When I was nine, I visited the Livingstone memorial at Blantyre for the first time. At that time, I never thought that I would visit Malawi. To do so was a mind-boggling experience and a privilege.

I have vivid memories of very good main roads in Malawi from north to south and from east to west, but immediately we went off those roads we were on dirt tracks, although this is the 21st century. When I close my eyes, I can visualise people in various coloured garments walking along

the edges of roads—walking, walking, walking. People in Malawi walk everywhere. They seem to have energy—more than people in Scotland—although food is sometimes lacking.

Malawi seemed very much like Scotland. The scenery was like that of Scotland's west coast, as was the rain.

The visit made me realise that we need roads. Immediately we went off the main roads, we were on dirt tracks. If people have no roads or water supply, nothing can be done for schools or hospitals.

People in Malawi have difficulty accessing hospitals and education. Children walk, on average, one and a half hours to school and back again and they do not have breakfast clubs. They have voracious appetites for education. It was wonderful to see them, even when there were 200 in a class, which would really push some of our teachers.

The smoke from burning wood fuel was everywhere. It was even in the grounds of Mulanje hospital, because people who go there to look after friends who are patients cook on site and are in charge of the food.

This is the 21st century, but in Mulanje hospital clothes are washed by hand in big concrete tubs. Despite that, the hospital's standards of medicine and cleanliness were superb. I take my hat off to the staff, who fight to maintain standards. I was amazed. I heard stories before I went to Malawi, but seeing the reality was another matter.

If someone is lucky, they can walk to hospital. If they are very lucky, they will have a bicycle ambulance. Members can imagine that a bicycle ambulance bumps over the roads and that if someone has a painful problem they will be very sore and sick by the time they reach the hospital.

Another of my memories is of seeing in an operating theatre in Bottom hospital an operating table that looked like a flimsy ironing board. Gosh, they could do with equipment.

I know from visiting universities and hospitals that they need journals. They need a register of the great deal of work that is done in Malawi. We recently met people from Malawi who mentioned that. Much is done out there, but no record of it is kept or co-ordinated. Hospitals and churches help, people give their time to help and NGOs help, but not even the NGOs' work is co-ordinated. That is sad. If anything can be done to establish a register of the work that is done there, which is great and should continue, we should do it, because we need a register. I was surprised that the Church of Scotland, whose congregations spend about £100,000 a year, does not have a register for that.

Malawi is an old friend. We should look after old friends and continue to do so.

12:44

Murdo Fraser (Mid Scotland and Fife) (Con): I commend Karen Gillon for her motion and congratulate her on securing the debate, which is on a subject that is dear to her heart and to many of us around the chamber. With several other members, I was part of the Commonwealth Parliamentary Association delegation that visited Malawi just over a year ago. My memory of that visit is fresh, as Dr Jean Turner's obviously is. I say honestly that that trip was one highlight of my parliamentary career to date.

The motion refers to the Scotland Malawi Partnership's pledge, which has been circulated. I am pleased to say that I have signed that pledge and that I have encouraged other members of the Scottish Parliament to sign it. I have also circulated it to Conservative party candidates, many of whom will join me on these benches after 3 May. I hope that they are signing up to it and that they will be committed to supporting the Scottish Executive's work in Malawi when they come to the Parliament.

I recognise that some people are concerned about the role that the Scottish Executive plays in Malawi. Some will say that international development is a reserved matter for Westminster. As a general rule, that view is correct. If the Scottish Executive were to launch a hugely ambitious international development programme in an attempt to take over the ground that is currently occupied by the Department for International Development, which is the responsibility of Westminster, that would be a legitimate cause for concern, but the relationship that the Executive and the Parliament have forged with Malawi is not at all in that league. The Executive has made a total commitment of £3 million a year to promote links with Malawi, which is one ten thousandth of the Executive's annual budget of £30 billion a year. I do not regard that sum or proportion as outrageous. It is entirely reasonable and proper that a devolved Parliament such as the Scottish Parliament and a devolved Executive should seek to build links with other small countries around the world, especially places such as Malawi. Scotland has historic links with Malawi that go back hundreds of years, to the times of the early Scottish missionaries.

Karen Gillon referred to the "Frontline Scotland" programme on Malawi. I did not see it, but I have heard enough about its contents to concern me. I accept that free countries and open societies such as ours need journalists who are prepared to question what Governments do. In particular, journalists are needed who are prepared to

question how taxpayers' money is being spent. However, my experience of the many Scottish voluntary organisations and charities that work in Malawi is that, far from wasting money on administration, they run extremely lean organisations. Virtually every penny that is raised is spent on the front line. It would be a tragedy if the programme that was shown on the BBC affected the flow of cash into organisations that do exceptionally important work in Malawi. I appreciate that people who make television programmes want people to watch them and that they want to generate headlines, but the media have a responsibility and an obligation to act in a reasonable and responsible way. I am concerned that the "Frontline Scotland" programme crossed the line.

The relationship between Scotland and Malawi is important, and I want us to develop it and build on it. We in Scotland and the Parliament should be proud of it.

I commend Karen Gillon for lodging the motion and—perhaps more important—for all her work on developing links.

12:48

Michael Matheson (Central Scotland) (SNP): I congratulate Karen Gillon on securing the debate and declare my interest as one of the two co-conveners of the Scottish Parliament cross-party group on Malawi.

I begin by underlining the importance of partnerships. It has been said that the relationship between Scotland and Malawi goes back many years—to long before the Parliament and the Executive existed. Over the years, that relationship has been kept alive largely by civic organisations in Scotland, and by churches in particular, which have taken a lead role in developing relationships. The relationship is worthy and greatly valued—I know that from personal experience as a member of the first group that went to Malawi several years ago, which met organisations there that work in partnership with organisations in Scotland, and as a result of visiting organisations in Scotland that have partners in Malawi.

I was involved in the discussions about the Scotland branch of the Commonwealth Parliamentary Association's idea of an outward visit at some point and where it should be to. I do not think that we could have imagined that we would reach a co-operation agreement between Scotland and the Malawian Government, which is testament to the views of all members of the Scottish Parliament and the value we place on looking outward to other nations, particularly those with which we have a strong relationship.

To those who criticise the idea of this type of partnership, I say that in a new century with a new Parliament and Scottish Government, it is appropriate that we should cement such partnerships at a national level as many of our civic organisations have done over the years. I recognise that, during the past 18 months to two years of the co-operation agreement, the Executive's international development policy has focused on developing partnerships and considering how they can be expanded. The phase has been worthwhile and I and my party have supported it.

Like Murdo Fraser, I missed the "Frontline Scotland" report, although I have heard much about it. During the next session of Parliament there will be issues about greater parliamentary scrutiny of the co-operation agreement and how it is progressing, and about ensuring that it delivers what is intended and that it is as effective as possible.

The Scotland Malawi Partnership takes a lead on co-ordinating work across the civic organisations in Scotland and working with partners in Malawi. I am more than happy to support the pledge, as is the Scottish National Party, and I urge all parties and all election candidates to sign up to it.

At times, I get the feeling that no matter where I go I will come across an organisation or individual who is involved in some partnership with Malawi. Only recently, I had a meeting with the minister from Erskine parish church in Falkirk and the minister for Haggs parish church just outside Falkirk. They emphasised the importance to their parishes of the relationships that they have developed over the years.

In the coming years, after the co-operation agreement has served its purpose and the relationship between the CPA branches has come to its natural conclusion, it will be the sustainable relationships between our civic organisations, churches, individuals and schools that will continue. We should encourage the next session of Parliament to continue to develop that.

12:52

Dr Sylvia Jackson (Stirling) (Lab): I thank Karen Gillon for lodging the motion. As I was with her on the cross-party delegation to Malawi, I know how strong her commitment is.

I will speak about the work of the CPA Scotland branch, of which I am an executive member. The theme of respecting difference and promoting understanding, which is this year's Commonwealth day theme, is apt. It lies at the heart of the CPA's work, promoting knowledge and understanding of parliamentary democracy and working towards

better governance everywhere in the Commonwealth.

I had the privilege of leading the cross-party CPA delegation in February 2006, with Karen Gillon, Murdo Fraser and Mark Ruskell, all of whom are here today. It is fair to say that every MSP found it a life-changing visit because, in spite of the great problems the people of Malawi face—poverty, AIDS, lack of basic amenities such as water and lack of essential services—their warmth shone through powerfully.

In July 2006, Margaret Neal and I revisited Malawi to undertake a scoping exercise in which we asked MPs and support staff how CPA Scotland might support them in their training and development programme. Because of that visit, even stronger links have been made. We were delighted to secure £75,000 from the CPA's executive body and, more recently, to get support from the Scottish Parliamentary Corporate Body to endorse a technical assistance programme based on our report.

The report contained three key themes: strengthening the capacity of the parliamentary secretariat, including the revision of its standing orders; supporting the speaker of the assembly in the creation of a parliamentary corporate body, including subsequent support to that body; and training and building the capacity of the national assembly members and parliamentary staff.

The report recommended that the Parliamentary Services Commission undertake a study visit to the Scottish Parliament. That happened last month. The overall purpose of the study visit was for the five commissioners to examine the Scottish Parliament's system of institutional management. The visit's objectives included looking at the Parliamentary Bureau and how parliamentary business is organised; learning as much as possible about the working of the corporate body; gaining an in-depth understanding of the management structures that are in place to support the clerk and chief executive; and meeting members and officials of the Audit Committee, the Finance Committee, the Procedures Committee and the Standards and Public Appointments Committee, to enable the commissioners to understand the roles of those committees and to gain a deeper understanding of parliamentary oversight, ethical governance and how the committee system operates in the Scottish Parliament.

More than 40 meetings were arranged and a number of them involved representatives of several organisations. I hope that I have given members some idea of the breadth of opportunity the delegation was afforded to acquire information about and knowledge of the Scottish system. I was pleased when I met the delegates to hear at first

hand that they thought the visit was very useful and that they would take back parts of what they had learned to the National Assembly of Malawi. While the delegation was here, the parliamentary service commissioner expressed interest in developing further the pairing and twinning of members after the election. Through the cross-party group on Malawi, Karen Gillon has played an important part in laying the foundations for MSPs and MPs to be twinned and to work together.

Since the CPA became involved in the Scottish Executive programme, links established through existing ties have grown stronger in churches, schools and many other organisations. Long may that continue, because the MPs and people of Malawi need all the support we can give them.

12:56

Mr Mark Ruskell (Mid Scotland and Fife (Green)): I join other members in thanking Karen Gillon for securing this lunch time debate. All of us who have been to Malawi, including the minister, have been deeply inspired and affected by our visits. One of my overriding impressions of Malawi, after my visit, was that in many ways it is a fantastic place to live—the spirit of the people is incredible. I was also left with the impression that it is a frightening place to live, because there is a very thin safety net for citizens of the country. There is an urgent need to improve public services, especially education and health. It should be clear to us all that the only way to achieve that in the long term is to have a period of sustained and sustainable economic growth in Malawi. I am pleased that, through the partnership agreement, the Executive is focusing on delivering growth.

It is clear that Malawians have a huge capacity for economic growth. Each year, the average Malawian emits in greenhouse gases the equivalent of what individuals in this country produce every two and a half days. Malawians are well within their ecological limits—in many ways, Malawi's emissions need to rise as ours decrease. We need to give Malawi room to breathe and to develop its economy.

A crucial element of economic growth on which we in the Scottish Parliament can focus is fair trade. There is growing consensus on the role that public procurement can play in that regard. I am pleased that the Executive recently funded development work on fair trade in Malawi, which is significant. When I travelled around Malawi, I noticed the difference between producers such as the Kasinthula sugar producers in the south, who produce the little white sachets of sugar that we get in the Parliament canteen, and the coffee producers in the north, who do not get the fair trade premium. Through that premium, the sugar

producers were enabled to put electricity into their homes and to stock drugs in their local medical centres—things that the coffee producers were unable, unfortunately, to do in their communities.

However, positive changes are happening even in the coffee-producing areas. Women are coming together to form workers' co-operatives and processing initiatives are starting up. The coffee producers whom we visited in the north are tantalisingly close to engaging in the fair trade supply chain, getting premiums and bringing wealth into their communities. I am pleased that the Executive is supporting a programme that will enable those producers to get involved in the fair trade supply chain for the United Kingdom, to access distributors and retailers based in this country and to get into dialogue about how we can supply fair trade products here.

In answer to the "Frontline Scotland" accusations, I think that we need to spend some of the money in Scotland to set up trade fairs here and get Malawians to meet retailers and distributors in Scotland so that they can establish the trading relationships that in the long term will bring real economic development and wealth to Malawi. There is a multiplier effect in using our public spending to develop the Malawian economy in the best possible way. The impact of our doing that will be substantial.

Let us consider what Cafédirect has achieved in the Rungwa area of Tanzania in recent years. Over three years, it has invested the fair trade premium in local schools development, setting up 140 new schools in the district. That is a prize that we have to help the Malawians to grasp: stable public services and a vibrant economy. We can do it through the great international partnership that we have between Governments, Parliaments and our civic societies.

13:00

The Minister for Tourism, Culture and Sport (Patricia Ferguson): I add my congratulations to Karen Gillon on securing the debate. I have listened with great interest to the experiences that she and other colleagues have outlined, many of which they have shared with me in the past year or so.

I have been interested to hear the information supplied by members about the activities in their constituencies and about their particular interests in Malawi. I welcome the cross-party support that has been shown not just today but throughout the time of our collective work on Malawi. It is one of the strengths of the work we are doing.

I know from my visits to constituencies around Scotland that there is a genuine willingness throughout Scotland to become involved in the

work with Malawi to improve health, education and long-term sustainable economic development.

As has been said on more than one occasion in the chamber, no one who visits Malawi comes back unaffected by the experience. The experience is not just of a country stricken by poverty and the devastating effects of the HIV/AIDS epidemic, but of a country with a truly warm-hearted people who have a deep appreciation of Scotland and our historical links. They are a people who are willing to work in partnership to improve their situation and eager to exchange new ideas.

In March 2005, the Scottish Executive published its international development policy, which outlined our aims and strategy for engaging with developing countries. Building on that, it became clear in discussions with ministers, officials and those involved on the ground in Malawi that the themes of education, health and civil society needed to be widened and that a stronger emphasis was required on governance and sustainable economic development in order that we could help to meet the specific circumstances faced by Malawi.

As a direct result, we saw the signing of a co-operation agreement between our two countries. It is not a sterile document; it has tangible aims and aspirations as to how we will work together. Ministers and officials have worked in partnership with Malawian counterparts and agreed a more detailed action plan that provides clear, focused direction on what will be delivered and who will be involved.

The aims are not simply what we think Malawi needs; they have been identified by the people of Malawi as their priorities and where they see Scotland having something to offer and being able to make an impact.

The action plan is not set in stone. It will be and is reviewed and revised regularly to ensure that it is still fit for purpose and developed to meet new and emerging needs. Again, that will be done in discussion and consultation with our colleagues in Malawi as well as with key stakeholders in Scotland.

The Executive's work in Malawi is supported by the international development fund. Initially, it was a commitment of £3 million per year for three years, but we were pleased to be able to announce last September that the fund had been increased by 50 per cent to £4.5 million per year for the remaining two years. I thank Murdo Fraser for his support, and I hope that, given his comments, that 50 per cent increase does not diminish it—I am sure that it does not.

Since the fund was set up in 2005, some 58 projects have been awarded more than £7.7

million, and a total of 35 projects based in Malawi have been awarded more than £5.25 million. As is often the case, it is not the amount that is spent but how it is spent that makes the difference. That is why all the support provided through the international development fund—whether through the main grant or through the small grant schemes—must fit strict criteria and must clearly meet the needs and aims that the people of Malawi have identified.

I do not want to talk too much about the “Frontline Scotland” programme other than to say, in response to the points that colleagues have made, that I, too, was particularly disappointed by the programme’s tone and the coverage it gave the issue. None of our international aid budget is spent on administration—administration costs are met from the Executive’s central budget—and the amount that we spend on administration does not equate to anything like a third of the budget that we have identified, as the programme claimed. The figure is closer to 7 per cent.

As Mark Ruskell correctly pointed out, of course some of the money that we put into assisting Malawi will be spent in this country, not least because many of the goods and other items that are needed to support Malawi are not available in that country and have to be sourced here.

The role of the Government is only part of the story. Our links with Malawi go deeper than those between our countries’ Governments. As we have heard throughout the debate, schools, churches, church groups and other civic organisations are active and keen to work together. That is a highly encouraging sign that the time is right to renew and reaffirm our links with Malawi.

From Shetland to Dumfries and Galloway, individuals and groups are working in their own way to make a difference and to keep Malawi at the forefront of our minds. That is why we have adopted a sector-wide approach and why, in addition to working closely with the Department for International Development and the Malawian Government to offer practical advice and support, we are brokering partnerships between Scottish institutions and their Malawian counterparts.

For example, in health we have funded Scottish midwives to train 140 clinical nurses and doctors and 12 instructors. Karen Gillon correctly identified the work that the RCN is doing in partnership with the nurses organisation in Malawi. That, too, is an Executive-funded project. Through the University of Strathclyde’s Malawi millennium project, the Executive supports the Chikwawa district hospital to provide equipment, to strengthen facilities and to offer environmental health training and basic child and maternal health training for village health assistants. We have supported Adam Smith College to prioritise ways in which Scottish

colleges can work with Malawi to strengthen the role of vocational education and training in its education system. A project that is being run by the Scotland Malawi Partnership to facilitate the exchange of skills and knowledge at higher education level has also received our support.

On governance, we have been working with the respective ombudsman offices on a programme of collaboration, which includes the promotion of human rights, the provision of services for vulnerable and hard-to-reach groups, computerised casework management and website development, and a programme of staff information exchange.

Through education, we can help not only to improve literacy rates and the general level of education, but to influence directly the thinking of future generations on, and their approach to, dealing with health issues and the prevention of disease. We can provide a broader understanding of sustainable economic development and help to establish sustainable, thriving and healthier communities.

An example of such work is our provision of assistance to Mzuzu secondary school, which is running an environmental project based on fish farming that teaches children in the school how to make the best use of their local resources.

Dr Jackson: Would the minister like to comment on the good work that the University of Stirling’s aquaculture department is doing with Mzuzu University, which will culminate in the setting up of fish processing and capacity building in that community? She might be about to come on to that.

Patricia Ferguson: Sylvia Jackson has made the point about that project—her intervention was timely.

The work that is being done in Mzuzu secondary school will help children to feed themselves and provide resources to sell so that they can support their families. The school is sharing its experience and expertise with another 10 schools in the area and two villages. That has the potential to benefit more than 15,000 people. The school, which is now a centre for excellence in education, ecological and environmental engagement and citizenship, is hoping to link with a Scottish school, to share its experience. School children in Scotland will benefit directly from the knowledge and expertise of pupils in Malawi in what will be a true example of partnership and information exchange and a blueprint for the future.

We know from our figures that school links have grown from around five two years ago to more than 70—the number continues to increase, which is borne out by members’ testimonies to the work in their constituencies. Links range from the

informal exchange of experiences between pen-friends to more direct involvement. For example, Stenhouse primary school has developed a leadership programme that will be delivered to senior teachers in the north of Malawi and cascaded by those teachers in their home areas. That course of continuous professional development will help to fill the professional development gap for teachers in Malawi.

Organisations such as the Scotland Malawi Partnership have been active in drawing together people with an interest in Malawi and providing a forum in which groups and individuals can exchange ideas and formulate new ways of working together. The partnership has been instrumental in the development of the Scotland-Malawi business group, which I hope will provide advice and support to the business community in Malawi to help it develop and become sustainable, so that it can be a key driver in the economy.

The Scotland Malawi Partnership's online pledge, which is mentioned in the motion, calls on MSPs and others

"to continue working to develop relations between Scotland and Malawi, for the betterment of both countries in a genuine partnership."

Like Karen Gillon, I urge members who have not yet supported the pledge to give serious consideration to doing so. I sincerely thank the partnership for the initiative.

We had in mind organisations and links such as I have described when we established the small grants scheme, which is part of the international development fund. I was pleased today to announce funding in excess of £260,000 to Scottish community organisations, schools and universities. The money will go to projects such as the Malawi trade school appeal, which aims to support the Samaritan Trust and provide tools and training for young people, to prepare them for work so that they can have independent and economically rewarding lives. Such projects are small but have the potential to have a big impact.

Through innovative approaches by groups and individuals, we in Scotland can make a big difference to people's lives in Malawi. Scotland has much to offer in skills and knowledge and its people are genuinely willing to become involved. Our commitment to Malawi is long term. By working in partnership, we can all help to build a better and more sustainable future.

13:13

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Health and Community Care

Medical Training Application Service

1. Bill Aitken (Glasgow) (Con): To ask the Scottish Executive what action it is taking to address doctors' concerns regarding modernising medical careers and the medical training application service. (S2O-12347)

The Minister for Health and Community Care (Mr Andy Kerr): I am aware of concerns about modernising medical careers and the medical training application service across the United Kingdom, but we need to keep a sense of proportion from our perspective in Scotland. Delivery of MMC in Scotland remains on track, thanks to the hard work of all those who are involved. We continue to work closely with the British Medical Association, the medical royal colleges in Scotland and national health service boards to manage the process. I am advised by senior clinicians who are involved that round 1 selection is going well and that we continue to enjoy their support in delivering the improvements to postgraduate medical education.

Medicine is a highly competitive profession and the recruitment process is rightly competitive, too. MMC provides doctors with an open, objective, transparent and competence-based approach to selection and recruitment that meets best practice standards. Doctors who have been unsuccessful and who have not been short-listed in the first round will be offered appropriate advice and expertise to help with future career planning for round 2. I encourage them to take advantage of that. Inevitably, not every applicant will be offered a specialty training post, but that is no change. In addition, we are participating in the UK-wide review that is being undertaken by the four health departments and the Academy of Medical Royal Colleges, which will be completed by the end of March, to allow for any necessary changes to be made ahead of round 2 in late April.

I apologise for the length of that answer, but the question was detailed.

Bill Aitken: I accept that there has been movement on the issue since my question was lodged. Will the minister confirm the extent to which the Scottish Executive will have input into the review that he mentioned? Does he plan to

attend the rally of junior doctors in Glasgow this weekend to speak to them so that confidence in the recruitment process can be restored?

Mr Kerr: I have been involved with the royal colleges and junior doctors and have had many meetings with the chief medical officer to seek to reassure doctors. In Scotland, we have managed the process of modernising medical careers professionally and our systems are working well. The member does not need to take my word for that; he can take the word of the Royal College of Physicians of Edinburgh, the Royal College of Surgeons of Edinburgh, the Royal College of Physicians and Surgeons of Glasgow and the Royal College of General Practitioners. I accept that we are to a degree suffering from matters elsewhere in the UK, but we in Scotland are nonetheless handling the process well. We can always improve, which is why we will play a substantial role in the review. Nonetheless, I want to reassure the member and junior doctors that the process is working well in Scotland.

Euan Robson (Roxburgh and Berwickshire) (LD): The minister may be aware that concerns have been expressed about doctors from other parts of the UK in effect flooding the application process in Scotland. I appreciate that those concerns are based simply on press reports, but has he talked to counterparts in other parts of the UK to be sure that there is an even process throughout the UK and that we do not have distortions in parts of the UK?

Mr Kerr: It has always been the case in medical education and training that people move round the country. We train many doctors in Scotland who work elsewhere in the UK and, likewise, many doctors who trained elsewhere in the UK come to work in Scotland. We are confident not only that we can manage the process well in Scotland, but that we can, through the process, retain those much-needed skills in Scotland, which is what I want. We need to keep our eye on the issue that the member raises, but the evidence to date suggests that Scotland is doing well on ensuring that we recruit and train medical practitioners in Scotland in a way that keeps them in the national health service in Scotland, which of course is good for patients and the NHS in Scotland.

The Presiding Officer (Mr George Reid): Question 2 was not lodged.

Health Care (Patient Experience)

3. Malcolm Chisholm (Edinburgh North and Leith) (Lab): To ask the Scottish Executive what action is being taken to ensure that the experience of patients informs the development of health care. (S2O-12362)

The Deputy Minister for Health and Community Care (Lewis Macdonald): NHS Scotland's focus on patient focus and public involvement, including in particular the establishment of public partnership forums, has ensured the routine involvement of local people in influencing local priorities and improving the design and delivery of the health services that they use. We have also established a patient experience programme, which will ask patients and carers directly about their experience of the health service and make better use of the information that we already collect from patients. The lessons that emerge from the programme will be used by national health service boards, supported by NHS Quality Improvement Scotland and the Scottish health council, to drive forward year-on-year improvements in the quality of the patient experience.

Malcolm Chisholm: I welcome the programme described by the minister and the work that NHS Lothian has been doing in that area for some time. Will the minister ensure that there is a focus on the full range of patients' qualitative experience of care, rather than simply patient satisfaction surveys? Will he ensure that the initiative draws on the work of those who are already experts in the field, such as the team at the cancer care research centre at the University of Stirling? Crucially, will he ensure that the information about patient experience is acted upon to improve patient care further?

Lewis Macdonald: I am happy to give Malcolm Chisholm assurances on all those areas. I pay tribute to the work of the cancer care research centre at the University of Stirling, which has, to a substantial degree, scoped out and informed the patient experience programme that we are introducing. The purpose of the programme is to build on the centre's work, to extend it beyond cancer to the whole range of patient experiences, to go beyond—as Mr Chisholm suggests—patient satisfaction surveys or complaints processes to gather as wide a range of qualitative information as we can about patient experience, and to ensure that that information is used to drive up the quality of patients' experience in the future.

Linda Fabiani (Central Scotland) (SNP): Many of us—some of that group are here in the chamber—attended a presentation the other night by the Long-Term Conditions Alliance Scotland. How much are ministers listening to people who suffer from chronic conditions, with a view to helping with self-management work and prevention?

Lewis Macdonald: Again, I am happy to assure Linda Fabiani about the extent of our engagement with the Long-Term Conditions Alliance Scotland, which was created partly in response to

propositions from the Health Department on shifting the balance of care, increasing support for those with long-term conditions, and bringing together the experience of different patient groups in order to inform the NHS. Ministers have met the alliance regularly and responded to its requests for meetings. At our request, the alliance has met the chief medical officer to address some of its issues of concern.

Small Pharmacies (Medicine Distribution)

4. Maureen Macmillan (Highlands and Islands) (Lab): To ask the Scottish Executive what impact the proposal by Pfizer to distribute its medicines through a single United Kingdom wholesaler will have on small pharmacies, particularly those in rural areas of the Highlands. (S2O-12372)

The Deputy Minister for Health and Community Care (Lewis Macdonald): As far as the impact of this proposal on pharmacies is concerned, the Office of Fair Trading is currently considering whether the proposal by Pfizer is uncompetitive. As regards the impact on patients, we have contacted Pfizer to express our concerns, including specific concerns in relation to patients in remote and rural areas.

Maureen Macmillan: The minister will be aware of my letter to him about the difficulty that Mr David Raeburn, the pharmacist in Strathpeffer, had in accessing a painkilling drug prescribed for a patient, which meant that the patient was, distressingly, without pain relief for a whole week. I understand that the matter will ultimately be decided by the OFT, but in the meantime will the minister tell me what reassurances he has had from Pfizer that patients will not be left in distress because of its actions?

Lewis Macdonald: As I said, we have raised our concerns with Pfizer—and we have had an initial response. We are continuing to have a dialogue with Pfizer to ensure that it fully understands the concern of those involved in the provision of medicines at local level, and others, that patients should not be disadvantaged by any changes that are made for commercial reasons.

John Scott (Ayr) (Con): The minister is aware of the concerns of small independent pharmacies about Pfizer's action on deliveries. The pharmacies see that action as threatening twice-daily deliveries, patient care and the smaller wholesalers. To be fair, the minister has perhaps already answered this, but will he assure Parliament that he will ensure that Pfizer's move to cut costs, and perhaps to establish an even stronger foothold in the market, will not endanger patient care in Ayrshire and the rest of Scotland?

Lewis Macdonald: The concerns to which John Scott refers have been raised directly with ministers by Maureen Macmillan and other members. I assure John Scott that we will reflect those concerns in our continuing discussions with Pfizer.

Alasdair Morgan (South of Scotland) (SNP): As the minister will be aware, another concern that pharmacists have is the potential reduction in discounts under the new arrangement. Will the next review of reimbursement to pharmacists be undertaken quickly so that, if there is a reduction in discounts, there will not be a long gap before pharmacists receive a corresponding increase in reimbursement?

Lewis Macdonald: It is certainly our intention that there should be no loss of income as a consequence of the changes. We will continue to monitor the situation closely with a view to ensuring that NHS patients continue to receive the services and medicines that they require. Any commercial changes that are made in the marketplace will be taken into account in future reviews.

The Presiding Officer: Question 5 was not lodged.

Prescription Charges

6. Colin Fox (Lothians) (SSP): To ask the Scottish Executive what impact the recent increase in the cost of prescriptions will have on patients with chronic conditions. (S2O-12390)

The Deputy Minister for Health and Community Care (Lewis Macdonald): Some 92 per cent of prescriptions are dispensed free of charge, including all those for patients with one of a number of specified chronic conditions. For those patients with other chronic conditions who pay prescription charges, a pre-payment certificate will cover the costs of all the medicines that they need for up to a 12-month period. The cost of the annual certificate will increase from £95.30 to £98.70 from 1 April this year.

Colin Fox: Four years ago, the Executive promised to review national health service prescription charges for those who suffer from long-term conditions. The charges have since risen year on year and are now £6.85 for each medicine. The unfairness of the system, like the number of sufferers languishing in pain and financial hardship, has grown and grown, but the Executive has done nothing about the promised review. Can the minister explain why, unlike the National Assembly for Wales where his Labour colleagues have now abolished prescription charges completely, the Scottish Executive has failed to deliver even on the much-promised review of prescription charges? What does he say

to those who are predicting that, after four years of silence, he intends to announce a sudden prescription charges policy U-turn in the pre-election period so that he can play political games with patients who have long struggled to get by and who badly need NHS treatment that is unavailable because of the prohibitive cost of prescriptions?

Lewis Macdonald: Clearly, the matter is too serious to play political games with. If there were glib and simple answers to the questions raised, they would no doubt have been heard by now. We are seeking to take into account all the responses to the consultation—we have indeed carried out the review to which Mr Fox referred—and we will continue to consider those responses carefully. We will publish our response in the near future.

Shona Robison (Dundee East) (SNP): Given that we are still waiting for those options for reform and that the Parliament has only two weeks until dissolution, when and how will the outcome of the consultation be made public? Does the delay in publishing the report not do a great disservice to organisations such as the Long-Term Conditions Alliance Scotland, which my colleague Linda Fabiani mentioned, which has campaigned for some time for those who have a long-term condition to be exempt from prescription charges? Is not this unacceptable delay totally kicking the issue into the long grass?

Lewis Macdonald: I am sorry to hear that Shona Robison is disillusioned, but I can tell her that we are seeking not to disillusion others. We want to provide an informed and thoughtful response to the consultation and we intend to do that as soon as we can.

National Health Service (Best Value and Efficient Government)

7. Margaret Jamieson (Kilmarnock and Loudoun) (Lab): To ask the Scottish Executive what guidance has been issued to NHS boards to take account of co-location and dispersal of non-patient interface services to meet best value and efficient government objectives. (S2O-12370)

The Minister for Health and Community Care (Mr Andy Kerr): NHS boards are expected to implement Scottish Executive policy on public service reform and relocation. Work is being taken forward on shared support services for NHS Scotland and consultation with NHS boards has taken place. The preferred option provides for shared support services centres at each mainland health board location. Two of those centres will also provide national support for finance and procurement and for payroll operations. A final business case is currently being developed. In addition, the relocation and co-location of a number of special health boards in Glasgow was

announced in June 2005 as part of the Scottish Executive's relocation policy.

Margaret Jamieson: Will the minister investigate Ayrshire and Arran NHS Board's current proposals to build modular office accommodation for non-patient interface staff at a cost of £2 million without considering the facilities that are being made available by local authorities, which are pursuing a regeneration strategy that is contained in their agreed community plan?

Mr Kerr: I am always happy to consider issues that members raise. In Ayrshire and Arran in particular we see many good examples of partnership working between the national health service and local authorities. I understand that the new unit is intended to house administrative and executive staff. Relocating them from their current location will release a capital asset, given the lease that will expire. The new building—a modular unit at Ailsa hospital with a life expectancy of 50 years—will be a modern suite of office accommodation. I have managed to ascertain that it looks like a reasonable investment to make, but I will seek to consider whether opportunities might have been missed to work in partnership with other public sector organisations, such as local authorities, and how that might affect regeneration activities. We are always keen to have partnership working, but we must also ensure that we look after our national health service in a way that allows staff to continue working in good accommodation.

Cataracts (Fife)

8. Christine May (Central Fife) (Lab): To ask the Scottish Executive how it is improving the diagnosis and treatment of cataracts in Fife. (S2O-12374)

The Minister for Health and Community Care (Mr Andy Kerr): NHS Fife, alongside other NHS boards throughout Scotland, is taking action to transform patients' access to fast, high-quality cataract services. Five years ago, an elderly person might easily have waited more than a year between seeing their general practitioner and having a cataract operation. Today, most patients are being operated on within 18 weeks of seeing their GP or optometrist. On behalf of all patients in Scotland, we have set the NHS the target of no cataract patient waiting more than 18 weeks between referral and treatment by the end of this year. Some boards, including NHS Fife, have already met that target and the rest are on track to achieve it.

Christine May: The development of the service at Queen Margaret hospital in Fife has resulted in a stratospheric improvement in referral, diagnosis and treatment times for cataract sufferers throughout Fife. Will the minister join me in

wishing well all the patients who have been treated, and in commending the partnership working among all the health care staff—primary care staff as well as acute care staff—who are involved?

Is the minister familiar with the work of the Fife Sensory Impairment Centre in Marilyn Livingstone's constituency of Kirkcaldy, which I visited on Monday, and will he comment on how such centres can support not just cataract patients but all those with a visual or other sensory impairment?

Mr Kerr: It is right to recognise the achievement of NHS Fife in introducing one-stop clinics, reducing the number of times that a patient has to travel to hospital and allocating resources to provide a purpose-built cataract assessment and treatment unit.

As a result of those and other investments and improvements, the board now carries out 1,800 cataract operations a year, which is up from 1,000 operations just four years ago. I recognise that the investment, new skills, new equipment and a new resource are coming to bear on patients.

Cataract operations can improve quality of life for many patients and it is good to see them getting treated so quickly.

I read about the Fife Sensory Impairment Centre with interest. It is highly regarded as a model of good interagency working and works extremely well as part of the eye care strategy. The pump-priming fund that the board made available to it has allowed it to develop. As Christine May said, it presents an example of good practice, which many others throughout Scotland should follow.

Prescription Charges

9. Margo MacDonald (Lothians) (Ind): To ask the Scottish Executive what plans it has to extend the list of conditions exempt from prescription charges. (S2O-12404)

The Deputy Minister for Health and Community Care (Lewis Macdonald): We are currently considering responses to our recent consultation on prescription charge and exemption arrangements and we will announce our conclusions in the near future.

Margo MacDonald: I impress upon the minister the particular complaint of asthma sufferers, who might be asked to have three different types of inhaler to deal with three different aspects of their condition. Those inhalers are delivered via three different prescriptions—at £6.85 each, we see how expensive it gets. Given that the yearly prescription charge is almost £100, people who suffer from asthma have a particular case. I make a plea to the minister to come up with a favourable response.

Lewis Macdonald: I appreciate the points that Margo MacDonald makes. A number of the responses to the consultation reflected such concerns from people with asthma. With the recent launch of personal asthma action plans, we have endeavoured to respond to some of those concerns. In addition, we have provided nurses with specific training on the condition. I am pleased to say that, when some of the campaigners on asthma were in the Parliament yesterday, it was clear that they got a positive response from members of all parties.

We are carefully considering prescription charges and we will respond as soon as we can.

Southern General Hospital (Maternity Services)

10. Ms Sandra White (Glasgow) (SNP): To ask the Scottish Executive whether its capital investment group agreed at its meeting on 6 March 2007 with the recommendation of NHS Greater Glasgow and Clyde's expert body that public-private partnership/private finance initiative should not be the preferred procurement route for the modernisation of maternity services at Glasgow's Southern general hospital. (S2O-12341)

The Minister for Health and Community Care (Mr Andy Kerr): The outline business case for the modernisation of maternity services at Glasgow's Southern general hospital was recommended for approval at the capital investment group meeting on 6 March. Given the nature of the project, and particularly the elements of refurbishment and the interface with the existing estate, NHS Greater Glasgow and Clyde considered public capital funding to be the most appropriate procurement route for the project. Provision of the capital funding has been made available within NHS Greater Glasgow and Clyde's capital plan.

Ms White: I thank the minister for his support in opposing the use of PPP in this case. Lack of ability to profiteer was one reason for rejecting PPP as the procurement route. Will the minister ensure that private companies do not continue to make huge profits from PPP projects? The initial cost of the Edinburgh royal infirmary was £180 million, but the final cost will be £900 million. Will the minister commit the Executive to rejecting the use of PPP in Glasgow's new children's hospital?

Mr Kerr: The member should raise her game. She compared the initial capital cost of a building with 30 years of full maintenance and cleaning of that building with all the risk transferred to the private sector. As ever, the Scottish National Party lacks an understanding of economics and puts political dogma before the needs of patients. The public capital investment that we are making in Glasgow could not be afforded by the SNP under its ludicrous proposals for the management of our

economy and the £11 billion black hole in its plans.

The member should raise her game and understand that the interests of patients come first. The project in Glasgow will be built by the private sector. Of course, as the SNP is so anti-business, it could not even make a profit of that.

Environment and Rural Development

Flood Prevention Schemes

1. Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive what action has been taken to progress flood prevention schemes throughout Scotland. (S2O-12387)

The Deputy Minister for Environment and Rural Development (Sarah Boyack): It is for local authorities to take the initiative in promoting flood prevention schemes. Schemes follow a statutory procedure under which they are made and advertised by the local authority and then submitted to Scottish ministers for confirmation.

For our part, we are committed to helping local authorities' efforts to increase protection for communities that are affected by flooding by investing in flood alleviation measures and flood defences. For the period 2006 to 2008, we made £75 million available to local authorities to support their flood prevention schemes, and we have increased the grant rate to 80 per cent of eligible costs.

The Executive has also published research findings on the implications of climate change for flood risk and we require local authorities to take those into account when they design flood prevention schemes.

Elaine Smith: I know that the minister is aware of the problem of flooding in the Whifflet area of my constituency as I raised it with the Executive some years ago and I discussed it with her recently. Can she give me further detail on the flood prevention work that is taking place in Whifflet and update me on the status of the work, which has been delayed? Can she reassure my constituents that they will soon be able to live and work free from the distress and upset that are caused by the flooding of their homes and businesses?

Sarah Boyack: Yes. I am happy to do that. I met Elaine Smith to discuss the matter, which is a long-standing issue on which she has campaigned.

Some 34 properties are affected by the major investment programme. When the work is complete, they should be removed from the flood risk register. I understand that the project was delayed because Scottish Water discovered

ground problems that made excavation difficult and it had to do extra work. However, it is still on track to complete the work by June. I will certainly encourage Scottish Water to keep Elaine Smith abreast of developments as the project progresses.

Alex Johnstone (North East Scotland) (Con): Given that detailed research is being done into future needs arising from the impact that global warming might have, has the minister's department estimated the additional capital funding that might be required and considered future budgets in the light of that? If so, do those estimates include the need for work on coastal protection as well as flood prevention, given that global warming will make the situation in coastal areas more severe?

Sarah Boyack: In April 2005, a major United Kingdom research project—the foresight project—considered future flooding problems. That provides a challenging vision of flood and coastal management for the UK between 2030 and 2100 and it contributes significantly to our understanding of the longer-term challenges.

In the next parliamentary session, flood maps and increased investment will be in place. The key issue is working out our priorities, which means working out what communities it is possible to protect, particularly in coastal areas. In landward areas, the new planning guidance will deal with major planning issues, and managing the whole process will also raise issues.

We have done a lot of work and we are trying to be more joined up through the national flooding framework, but we have major challenges for the future. The Parliament will have to debate the subject in future years.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The Flood Prevention (Scotland) Act 1961 locks us into building hard flood defences. What consideration is the Executive giving to funds that will allow us to put in place softer flood defence measures, which are effective? The minister will be aware of WWF's good work on the River Devon to reduce the flood risk to surrounding communities.

Sarah Boyack: The member makes the valuable point that many of the procedures and much of the legislation guiding how we act on flooding could be regarded as out of date. The Executive is working on that.

Earlier this year, I spoke to the flooding issues advisory committee about flooding. That committee now has a definition of, and principles and objectives for, sustainable flood management. It believes that that will help all stakeholders to become involved when we manage and plan schemes, so that we take a more strategic

approach to managing flood risk as well as new types of flood defences. Work on that continues and I hope that we will consult on that in the summer. I urge members around the chamber to get involved and to add their constituents' experience to that consultation.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I know that the deputy minister cannot be involved in a decision about the Water of Leith flood prevention scheme, because it affects her constituency, as well as mine. However, will she convey to the minister, Ross Finnie, the extreme frustration and anger of many of my constituents that, three years after that vital and necessary scheme received planning permission, no Executive decision has been taken about it? What progress has been made since I previously raised the matter at environment and rural development questions? When exactly will Ross Finnie say something about it?

Sarah Boyack: As the member is correct to say, I agreed not to participate in the decision about that scheme, on which my views are well known, so I have not seen the paperwork. However, having consulted the minister, Ross Finnie, I am allowed to say that he will announce a decision very shortly.

I say to Malcolm Chisholm that every week that goes by reinforces to me the need to have a new and modern system in place, so that we can introduce such schemes faster and more effectively to protect the households that are affected by the devastation of flooding.

Mr John Swinney (North Tayside) (SNP): On the management of flood risk, I wrote to the minister and raised at environment and rural development questions some weeks ago the possibility of allocating some unspent resources from the flood prevention budget to strategic studies of areas such as the River Tay catchment area, which produces several flood risk difficulties in my constituency. Has she considered undertaking some of that strategic work in concert with Perth and Kinross Council and other authorities, to identify ways of alleviating the flood risk by using information that is available today?

Sarah Boyack: The member's suggestion is helpful. Our officials are considering how we can think more up front about better managing flood risk, rather than just putting in place physical schemes. That work continues.

Land Reform (Scotland) Act 2003 (Countryside Access)

2. Dennis Canavan (Falkirk West) (Ind): To ask the Scottish Executive whether it is satisfied with the implementation of the provisions of the

Land Reform (Scotland) Act 2003 in respect of access to the countryside. (S2O-12342)

I declare an interest as president of the Ramblers Association Scotland.

Members: Hear, hear.

The Deputy Minister for Environment and Rural Development (Sarah Boyack): I am satisfied with the progress that has been achieved in implementing the access provisions of the Land Reform (Scotland) Act 2003. However, there will be scope within the wider review of the act, which we have indicated will be undertaken during 2007, to consider any matters relating to the access provisions.

I welcome the appointment of Dennis Canavan to the post that he mentioned. Future ministers will have to listen carefully to his representations.

Dennis Canavan: Is the minister aware of the complaints that have been made about the diversion of access funding, given that local authorities received £29.2 million in access funding up to March last year but spent only £17.4 million on access-related activities? Is she also aware of complaints that have been made that the access code is being breached in some areas, including on Balmoral estate, and that some landowners are challenging the 2003 act in the courts? Will she investigate those complaints and remind local authorities that they have a statutory duty to uphold and facilitate access? Will she remind them that selfish landowners must not be allowed to undermine one of the most radical and progressive pieces of legislation that the Parliament has passed?

Sarah Boyack: Further funding of £8.1 million for 2006-07 and 2007-08 for access-related activity has been made available to local authorities across Scotland in the grant-aided expenditure assessment. That money is not ring fenced, but I hope that local authorities will take seriously their responsibilities to implement the provisions of the Land Reform (Scotland) Act 2003.

The principles of the act were widely supported, and its provisions have secured wide acceptance in practice. However, I am interested in Dennis Canavan's concerns. I would be concerned if people were to believe that landowners are ignoring or deliberately breaching the access code. Obviously, I do not want to comment on any court cases, but I point out that the access code was the subject of wide consultation and a lot of discussion and negotiation. The final wording was not reached easily, but local authorities, landowners and groups representing those interested in securing wider access were involved in putting it together. I would be grateful if Dennis

Canavan would write to me about any particular examples that I need to be made aware of.

Mr Alasdair Morrison (Western Isles) (Lab): Will the minister provide an update on the latest situation with the Pairc court case, which involves crofters from the Lochs area of Lewis? Those crofters are trying to secure the land that they live on, in spite of the best efforts of an absentee landowner, who is trying to thwart the crofters' legitimate aspirations. That landowner is similar to the landowners to whom President Canavan referred. Furthermore, will the minister outline what the Executive is doing to help to ease the problems that are posed by interposed leases?

The Presiding Officer: The minister must be careful, as sub judice considerations may be involved.

Sarah Boyack: The Scottish Land Court is now considering the Pairc case. A contribution of £16,000 has been received from Highlands and Islands Enterprise. It is expected that the first substantive hearing will take place in June. Matters are therefore progressing.

On interposed leases, section 35 of the Crofting Reform etc Act 2007 will enable community bodies to purchase any lease with a commercial value over croft land that they wish to purchase under the Land Reform (Scotland) Act 2003. The provisions of the 2007 act will come into effect in June—I recently announced that crofters will be able to take advantage of the provisions from June. The two acts will work together from that point.

Stewart Stevenson (Banff and Buchan) (SNP): I return to the issue of access. There appeared to be difficulties with the definition of "curtilage" in relation to access. I was among the majority who agreed that "curtilage" should not be defined in the act. In the light of the legal actions that have been taken, is it time for us to reconsider the difficulties that might arise as a result of the lack of a formal legal definition of that word?

Sarah Boyack: As I said, we intend to carry out a wide review of the Land Reform (Scotland) Act 2003 in 2007. I do not want to comment on any court cases. If members who were on the committee that examined the 2003 act have specific concerns—I know, from questions that Pauline McNeill has asked me, that concerns exist—we would be keen to hear from them.

Pauline McNeill (Glasgow Kelvin) (Lab): Does the minister agree that the Scottish outdoor access code was intended to be a guide to the Land Reform (Scotland) Act 2003 for all matters within that act and that it was not meant to deal with responsible access only, but was meant to deal with what land was accessible? Does she further agree that the spirit of the act was to

provide no less access than was previously enjoyed and that there is a danger that Parliament's will when it passed the 2003 act, which was to give wide access, might be undermined by some local authorities and court decisions? Can the minister reassure me that, when the act was passed, it was compliant with the European convention on human rights and that it is still compliant? If she has any concerns about the act's not being compliant, will she advise members of that?

Sarah Boyack: The Executive certainly has no concern about the 2003 act's not being compliant with the European convention on human rights.

I would be concerned if Pauline McNeill took the view that we are getting less access. That was absolutely not the intention of the act. Again, I say to members that we will review the issue during 2007. It is difficult to discuss this in the chamber, although I know that the bill was debated line by line in detail by the committee. A review is the proper way of assessing the issues.

If members have concerns in the meantime, it would be appropriate for them to contact ministers.

Scottish Natural Heritage (Single Farm Payment)

3. Mr Jim Wallace (Orkney) (LD): To ask the Scottish Executive what discussions it has had with Scottish Natural Heritage regarding levels of compensation paid under management agreements following the introduction of the single farm payment. (S2O-12396)

The Deputy Minister for Environment and Rural Development (Sarah Boyack): Ministers have asked Scottish Natural Heritage to bring forward proposals to resolve the difficulty that has arisen. Those are expected in the next six to eight weeks.

Mr Wallace: The minister will acknowledge that I have been in correspondence with her and her predecessor for some time about this matter. Indeed, we are dealing with farmers whose management agreements are up for review or, in some cases, renewal. They are the very people who were pioneers in accepting management agreements over land that had been designated as sites of special scientific interest. Does the minister agree that it seems very unfair that they should now be penalised with any loss of income because of the introduction of the single farm payment, as a result of decisions that they took 20 years ago not to increase the number of livestock units? Although it might not be possible to do anything through the single farm payment mechanism, it is open to ministers to give financial guidance to SNH to ensure that proper compensation is made available.

Sarah Boyack: The issue is complex. Jim Wallace has made several representations to me and previous ministers. SNH is clarifying the position in relation to state aid. That must be done properly. It also has to check whether there are any vires issues. Unfortunately, investigating the scope and financial implications of the issue has been a significant task for SNH, which has involved examination of the basis of payment and determination of the number of production units involved for all the management agreements that were active during the single farm payment reference period of 2000 to 2002. As Jim Wallace rightly points out, the majority of those agreements were negotiated individually and many date back to the 1980s. I am very keen that this matter be resolved. As I said, we expect to receive SNH's proposals within six to eight weeks and I am keen that that date will be stuck to.

Scottish Water

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

To ask the Scottish Executive on how many occasions it has reviewed the current structure of Scottish Water since its creation. (S2O-12340)

The Deputy Minister for Environment and Rural Development (Sarah Boyack): None. Our focus has been on supporting Scottish Water to deliver dramatic improvements to drinking water quality, the environment and customer service at the same time as making huge cost reductions.

Derek Brownlee: Given that Sarah Boyack's boss seems to have moved from ridiculing the concept of Scottish Water as a mutual company to supporting it, does not it seem rather odd that the Executive has not even considered changing the structure of Scottish Water?

Sarah Boyack: No. We have been down these tracks before. Scottish Water is doing a very good job. Record levels of investment are being made throughout the country. Day after day, I see press articles about improvements in rural Scotland. The £2.45 billion investment programme is huge. Scottish Water is considering its structures to see how it can deliver improvements to the quality of customer service—that issue is firmly on its agenda—and it is looking forward to managing the issue of retail access and competition.

On proposals to change the structure of Scottish Water, the Executive is firmly implementing its partnership agreement commitment.

Financial Instrument for Fisheries Guidance Funding

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

To ask the Scottish Executive how the fishing and fish processing industries in the north-east will benefit from the latest round of funding allocated

through the financial instrument for fisheries guidance programme. (S2O-12360)

The Minister for Environment and Rural Development (Ross Finnie): Of the £2.3 million of financial instrument for fisheries guidance funding announced in the latest round of awards, £0.95 million went to fisheries businesses in north-east Scotland. The investment in fishing vessel modernisation, processing plant and port infrastructure projects will contribute to enhancing the sustainability and profitability of the sector while safeguarding long-term employment.

Richard Baker: I thank the minister for his helpful answer. Does he agree that, although there is much good news in the fishing industry, this investment is especially welcome for people in the fish processing sector, given that a number of fish processors specialising in Scottish stocks have gone out of business over the past few years? Will there be continued dialogue between the Executive and processors to ensure that maximum benefit for the industry is gained through the funding, so that it may have a rosier future ahead of it?

Ross Finnie: Five processors in the area benefited from the latest round of funding. I agree entirely that the focus must be not just on fishing but on the whole chain. For that reason, we are and will continue to be in dialogue with the sector, especially on the allocation of the new funding that will shortly become available not from the financial instrument for fisheries guidance but from the European fisheries fund.

Community Buyouts (Neilston)

6. Mr Kenneth Macintosh (Eastwood) (Lab):

To ask the Scottish Executive how it can support and learn from local residents such as those in Neilston responsible for the successful community buyout of the former Clydesdale bank. (S2O-12376)

The Deputy Minister for Environment and Rural Development (Sarah Boyack): I am delighted that the Neilston Development Trust has been successful in buying the former Clydesdale bank building. The Executive sought to offer advice and assistance throughout the process to enable the local community to take advantage of the provisions of the Land Reform (Scotland) Act 2003 on the right to buy. As we move forward to review the act, we will want to draw any lessons about its operation from the experience of those involved.

Mr Macintosh: I thank the minister for her positive answer and for the support that the Executive has provided. Is she aware that the Neilston buyout is a particularly good example of how the land reform legislation can be used to

support regeneration of communities in more urban areas, especially some of the former industrial towns and villages in Scotland? Is she also aware that, even with the overwhelming support that the people of Neilston showed for this community buyout of a main street property, the population voting threshold and other aspects of the legislation almost derailed the project? Will she agree to look at how the legislation works, especially for similar-sized communities, so that we do not raise expectations about community buyouts only to dash them?

Sarah Boyack: The member makes some interesting points. In the local area to which he refers, it was a challenge to get a high turnout in the ballot. Although the 50 per cent turnout that the 2003 act requires was not achieved in Neilston, an overwhelming majority of those who voted—1,122 out of 1,156 people—supported the proposal for community buyout. In those circumstances, ministers believed that there was strong justification for approving the right to buy. We are interested in hearing local communities' views on the issue, but we set the 50 per cent target to ensure that there is genuine support in communities for such proposals.

Ken Macintosh asked about the work that has been done with communities, especially regeneration communities. We have worked with Communities Scotland to ensure that it helps communities to build the capacity to submit proposals and that communities are assisted to understand the implications of asset ownership, so that they can look at its benefits and the key management issues that they must consider. In each of the financial years 2006-07 and 2007-08, £250,000 has been made available to ensure that communities in urban areas that are interested in the community right to buy get the chance to examine those issues. We hear what Ken Macintosh is saying, but ministers will consider in depth the issues that he raises when they review the 2003 act.

Motion without Notice

14:58

The Presiding Officer (Mr George Reid): I am minded to take a motion without notice.

Motion moved,

That, under Rule 11.2.4 of Standing Orders, Decision Time on Thursday 15 March 2007 be taken at 4.15 pm.—
[Ms Margaret Curran.]

Motion agreed to.

Custodial Sentences and Weapons (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-5632, in the name of Cathy Jamieson, that the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

14:59

The Minister for Justice (Cathy Jamieson):

It is often said that a week is a long time in politics, but the past four years seem to have flown by as we have worked on comprehensively reforming our criminal justice system. That has not been change for the sake of it, but change that has been needed to reflect the times in which we live.

The public rightly expect their elected politicians to tackle crime and create safer communities. To do that, we need a criminal justice system that is fit for the 21st century. That is what we are delivering, and the bill that we have considered today will add to the reforms that are already in place.

Our reforms have had one clear and overriding objective: to reduce the number of victims of crime. The best way to do that is to tackle reoffending. Too many offenders are caught up in a cycle of reoffending, and the current system of automatic unconditional release, under which the vast majority of offenders are released at the halfway point of their sentence without any restrictions or support, does nothing to tackle the problem. It does not serve the public well, which is why we committed ourselves to putting an end to the present discredited system.

Under our proposals, all offenders sentenced to 15 days or more will be managed for their entire sentence, through a combination of custody and community. The new regime takes account of their crime, the risks that they pose and, crucially, their needs, in a way that also takes proper account of public protection. We believe that the regime will achieve the right balance between punishment and deterrence, public protection and rehabilitation.

The custody part—the punishment element—will be a minimum of 50 per cent of the sentence. However, if the court feels that a longer punishment is right, it will be able to increase the custody part to 75 per cent of the sentence. Critically, the remainder of the sentence will be spent on licence in the community. Licence conditions will both test and support offenders, giving them the chance to change their lives if they are prepared to take it, but equally making it clear

that any breach of the conditions will be dealt with and taken seriously.

The new system is not a soft option or an option to empty our prisons, as some people have tried to characterise it. It is a smart option to tackle the underlying causes of criminality. As the First Minister said earlier today, it is prison plus: prison plus restrictions, prison plus supervision and, if the offender does not co-operate while on licence, prison plus more prison.

Phil Gallie (South of Scotland) (Con): Will the minister give way?

Cathy Jamieson: Indeed.

Phil Gallie: I thank the minister for giving way with her usual courtesy, but how on earth can she guarantee that the licence conditions will be met in full? Bail conditions, for example, are already breached across the country with no apparent penalties applied.

Cathy Jamieson: Mr Gallie always raises questions about bail and people's responsibility to comply with conditions. The onus is absolutely on the offender: if conditions are put on the licence, the offender has a responsibility to comply with them. Offenders will get support that is proportionate to the nature of the risk that they pose, and if they need assistance in dealing with housing or access to employment, for example, that might be factored into the licence conditions. However, let us be clear: it will be made plain to the offender that they are expected to comply with the licence conditions. They will get help and support, but the responsibility is ultimately on them to comply. If they do not comply, they could find themselves back in prison, which does not happen in all circumstances at the moment.

We have not pressed ahead with these changes without having regard to the key interests who will be responsible for putting the measures into practice—it is important to recognise that in response to what Mr Gallie said. The support and the conditions will be proportionate.

The changes that we made at stage 2 clearly demonstrate our willingness to listen, make changes where necessary and work with our partners to improve bills. We have done that all the way through our extensive programme of justice reforms. We have listened and as a result we have made changes.

I know that people have raised concerns about resources, the viability of custody and community structures and the impact on the Scottish Prison Service and on community supports. Some people have suggested that we have been too adventurous in trying to do more for all offenders who receive sentences of 15 days or more. Let us be clear: the bill will have an impact on prisoner

numbers and more resources will be needed, but we have been open about that and the costs are reflected in the financial memorandum.

We face an enormous challenge to build an operational structure that will deliver the new measures effectively, efficiently and proportionately. The fact that what we seek to do is difficult is not a reason for not making changes. The public expect us to make changes and it is our responsibility to proceed with them.

We must break away from the artificial restrictions of the established processes and respond imaginatively to the challenge of dealing with those offenders who, for the first time, will get real help to address—and, ultimately, to change—their offending behaviour. We are right to continue to consider ways of better protecting the public from high-risk offenders and we are right to put in place programmes to deal with the causes of offending and to focus on reoffending.

The vast majority of offenders will be less likely to reoffend when they have a home and a job or training to go to and when their addiction problems are addressed. One of the greatest strengths of the new system is that it will cater for the full spectrum of risk and needs. That is why I have set up a high-level planning group to steer the implementation work, as the deputy minister mentioned this morning. We want there to be less reoffending and fewer victims; we want offenders to make something of their lives; and, ultimately, we want safer communities.

The bill also puts in place the final elements of the First Minister's five-point plan on knife crime. I know that the reasons for those changes are well understood, as we heard this morning. I welcome the support of members of all parties for our proposals, which will add to the tough measures that we have already taken by placing further restrictions on the sale of dangerous weapons.

I move,

That the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

15:07

Mr Kenny MacAskill (Lothians) (SNP): Although there are aspects of the bill that we fully support, there are parts of it that still cause us significant concern. We are grateful to the minister for the many changes that have been made to ameliorate some of the problems that were flagged up at stage 2 and for the meetings that the Executive offered to hold to identify whether an accommodation could be reached. However, some difficulties remain, and we should bear in mind the maxim, "legislate in haste, repent at leisure."

I turn first to the aspect of the bill that deals with weapons, which the minister mentioned at the end of her speech. In her comments this morning, Ms Lamont made the valid point that although that aspect of the bill has been ignored, it is of fundamental importance, in that it addresses the supply and availability of weapons such as swords, which are of great significance to our communities and to society as a whole. The sale of swords is a social problem, but we must ensure that the response is proportionate and that people who have a legitimate need to access them—because, for example, they are involved in thespian activities, highland dancing or historical societies—are covered. I believe that the bill addresses such issues and, to that extent, we fully support it, just as we fully support all the measures that the Executive and the Parliament have taken to address the knife culture that exists in Scotland. The problem cannot be tackled solely through legislation, but legislation is necessary and the Executive has our full backing for the provisions.

However, the sentencing aspect of the bill gives us greater cause for concern. We are aware that the present system is in disrepute, but the Conservatives' constant mantra about ending early release is unhelpful. The problem is that the public want a sentencing policy that they can understand. I remember being addressed by learned sheriffs who said, "What is the problem? We all know that a two-year sentence means one year." Any judicial system and any law must be understandable to ordinary men and women in the street. Aspects of law such as information technology law and media law require expert input, but if an offender is given a sentence, that sentence should be understandable to the victim and to the broader community; it should not be understandable only to those who are familiar with the lexicon and the jargon.

We believe that what the Executive seeks to do will be beneficial—a clear statement should be made in open court of what the custody period will be. As far as we are concerned, the bill makes it quite clear that the sentence that is given is the sentence that will be served. The Tories can argue about that, but ultimately the length of the sentence will be made clear to victims and communities.

There must be a community part to sentences if we are to address the fundamental problem of reoffending rates. We cannot lock people up for many years, or even just for a few months or a few years, and then simply open the door and kick them out. We must tackle reoffending not just by punishing people but by providing care, whether that is wraparound care, monitoring and assistance or supervision.

However, problems with the bill remain. The minister appears to be rather too laid back about the substantial increase in prison numbers that the bill will generate. It is manifestly wrong that prison numbers should increase by the figures that have been bandied about, when there will have been no increase in criminality to justify that. Prisoner numbers will increase by approximately a seventh without there being an increase in offending, at a huge cost to the taxpayer. That will not necessarily tackle the root problems.

We need fundamentally to consider what our prisons are for. The Scottish National Party thinks that prisons are for ensuring that dangerous people are taken away for the protection of communities and for formally punishing people who have committed serious offences, the opprobrium of society for which can be demonstrated only by a custodial sentence.

We must ensure that people who are flotsam and jetsam and have problems to do with drink, drugs or deprivation—whether or not their inadequacies are of their own doing—are taken out of the judicial system. If we do not ensure that people at the lower end of the scale are taken out of the system before the new arrangements kick in, we will simply increase the number of prisoners, with no benefit. We must also ensure that the consequential requirements for the provision of social work services, care and other services are met. The Parliament has produced too much legislation that has introduced requirements for local authorities, social work departments, police services or prisons without putting in place the necessary resources. We must ensure that prison numbers are static, if not reduced, by keeping out of prison people who should not be there because they are not a danger to communities and have not committed criminal offences. We must ensure that the resources are in place before the bill is implemented.

15:12

Bill Aitken (Glasgow) (Con): I apologise for being slightly late for the minister's speech. I was debating the matter on television with Bill Butler.

During this morning's stage 3 proceedings, the Deputy Minister for Justice seemed extremely upset—with some justification—that people have completely lost sight of part 3 of the bill, which addresses knife crime. As I said, there is no difference between our parties in that regard. We have to do something about knife crime. I do not seek to downgrade the proposals in the bill when I say that they will certainly do no harm. It is worth implementing them, but we will have to wait and see how much good they do. We support that aspect of the bill.

A general point about resources emerged from this morning's proceedings. During my brief lunch break, I looked again at the letter from Sacro that expresses that respected body's serious concerns about the availability of resources. Those concerns are shared by local authorities. Despite what both ministers have said, I am not satisfied that the Executive has given sufficient credence to the potential difficulties.

Cathy Jamieson: Will Mr Aitken enlighten members on the cost of the proposals in the amendments that he moved this morning, which were unsuccessful? What impact would those proposals have had on the issue that Sacro and others raised?

Bill Aitken: The minister will appreciate that if the amendments in my name had been agreed to they would have had an impact on the prison estate and another prison would have been required. She will shortly find out the precise costings of the policy, when we publish our election manifesto.

I return to the need for clarity in sentencing. Let us consider the matter from the victim's point of view. In the current system, when the court imposes a sentence of four years for assault, the victim is less than delighted to be confronted some two years later by the person who assaulted them. Under the hotch-potch of proposals in the bill, a sentence of four years will involve two years spent in custody. That is misleading and is not the way in which the matter should have been dealt with.

Let us look again at the existing position, when people are released on licence with part of the sentence unserved. There is a facility, under the existing legislation, for a person who reoffends to be brought back before the court, dealt with for the new offence and then returned to the original sentencing court so that consideration can be given to the unexpired period of the original sentence.

Cathy Jamieson: I hope that Bill Aitken agrees that it is important to make a distinction between prisoners who are released on licence and shorter-term prisoners who are currently released unconditionally, with no licence. The courts are not able to bring back those shorter-term prisoners as he has described. We are putting in place a fundamental change to the present system and improving it significantly.

Bill Aitken: I accept the minister's point in part, but if someone reoffends during the unexpired period of their sentence, they can be brought back to the court to be dealt with. In that respect, the bill is redundant.

Much mention has been made—Mr MacAskill mentioned the matter again today—of people at the lower end of the scale. The example that is

usually given is that of shoplifters. Shoplifting is hardly a capital offence by anybody's standards, but what should we do with a person who consistently and persistently offends without the offences being dealt with? If someone is arrested five days out of seven on shoplifting charges, they will eventually have to be locked up for the protection of the shopkeepers. In one instance of which I am aware, a shopkeeper threatened, and would have carried out, physical violence against the person who was robbing his shop every day.

Mr MacAskill: Will the member take an intervention?

Bill Aitken: I am sorry, but I am in my last minute.

Offences at the lower end of the scale are not a serious matter, but when there is an accumulation of offences, something must be done, and I do not think that such situations will be dealt with under the bill.

It is a pity that the knives element of the bill has been lost sight of, as it is fine. Basically, as I said this morning, the bill will not do what the Executive claims—it will not end early release. On that basis, I am sorry, but we cannot support it.

15:17

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): We will support the bill today, as we did at stage 1, although we share many of the concerns that were outlined by Kenny MacAskill.

The bill is only one part of an effective approach to cutting crime. The other part will be—as the deputy minister said this morning—the responsibility of the Parliament in the new session, after May. The bill focuses almost exclusively on sentence management rather than sentencing practice and policy. I say “almost exclusively” because there are welcome measures for restricting the sale of knives and banning swords—except for wholly justified circumstances. Those aspects of the bill, inevitably, have not been given the consideration that other parts of the bill have been given, as there has been considerable consensus on them. I think that those provisions will make a difference.

In Scotland, two thirds of offenders who are convicted of breach of the peace and just under half of those who are convicted of shoplifting go to prison for less than three months. For those offenders, we ask whether prison works. More than two thirds of them reoffend within a year of their release from prison. Prison sentences do not appear to work, either for those offenders or for our communities.

Between 50 and 80 per cent of prisoners have writing, numeracy and reading skills below the level that is expected of an 11-year-old child, and prisoners are 13 times more likely than the general population to be unemployed. In addition, between 60 and 80 per cent of prisoners were using drugs before their imprisonment. Three quarters of young people in custody in Scotland have a history of regular school truancy, less than half of them had attended school regularly, and only a third of them have any qualifications. Of course, short-term prison sentences do not work for those young people.

For adults who enter our prisons, the indicators are clear: drug or alcohol misuse; a lack of stable employment; and literacy and numeracy skills below the level expected of an 11-year-old child. For youth offenders, the indicators are just as clear: a history of contact with social work services—and, frequently, with the police and the reporter for their local authority—and no qualifications.

According to the Conservatives and others, putting adults and young people with very short sentences in jail with offenders of the same social make-up will reduce reoffending. Such a claim shows complete ignorance of the evidence, which was certainly clear when it was presented to the committee.

I do not doubt the integrity or sincerity of the Minister for Justice or her deputy. Indeed, I have considerable respect for them; it is a pleasure to work with them, because they listen to suggestions and respond positively. They know that short-term prison sentences are useful only for giving communities or individuals respite from violent or dangerous people. Moreover, they welcome the fact that more community than custody disposals are being handed down, which is a major step forward.

However, there is no commitment to address the problem of very short-term sentences. By not tackling the issue head-on, we are telling communities throughout Scotland that we are happy to tolerate, for example, the fact that more than 60 per cent of offenders commit another crime on their release from jail. The Conservatives seem to be happy that their approach will make no difference to the underlying problems facing individual offenders and that, therefore, further crimes will be committed.

I felt frustrated at stage 2, because I wanted to lodge amendments that would have introduced conditional sentences for offenders who were given less than six months or which would have given a judge or justice of the peace the discretion to vary the custody part of a sentence from 0 to 100 per cent. However, those amendments were judged not to be within the scope of the bill, and

the convener did not permit them to be lodged. Of course, such decisions are at his discretion. Nevertheless, if I had been allowed to lodge my amendments, we could have had a better debate on the bill.

I have not been an MSP for as long as some other members but, in my four years in the Parliament, I have not heard such sheer hypocrisy as I have heard from the Conservatives, both this morning and at lunch time, with regard to the bill. Under their policy, a person who is sentenced to two years would serve four months out of jail; indeed, Bill Aitken confirmed that someone on a four-year sentence would serve eight months in the community. The Conservatives keep telling us that people should serve their full sentence in prison, but that is not even their policy.

The Conservatives also say that they are on the side of victims. However, saying that victims want more and more punitive responses to offenders shows a complete misunderstanding of the situation. For example, victims of crime have told me that they simply want a system that ensures that the offender does not reoffend.

We are halfway towards meeting that aim with this progressive legislation; the Parliament in the next session will have to complete the other half of that work.

15:22

Jackie Baillie (Dumbarton) (Lab): I thank the Justice 2 Committee clerks, our advisers, the ministers and their officials and everyone who gave evidence and helped to shape the bill.

I very much welcome the bill for two reasons. First, despite Bill Aitken's deluded attempts to rewrite history, it delivers Labour's commitment to end automatic unconditional early release, which, as we have been reminded several times today, was introduced by the Tories. Secondly—

Bill Aitken: Will the member give way?

Jackie Baillie: Of course.

Bill Aitken: Where has the member been for the past 10 years? After all, the Labour Party has had that long to change the current flawed system.

Jackie Baillie: The difference is that we are changing the system now. The record will show that the Tories did not do so and that, in fact, they wasted opportunities to make changes that would have benefited communities.

This bill is also important because it completes a very robust package of measures to tackle knife crime.

I want to start with sentencing, because considerable public concern has been expressed

not only about the issue of early release but about the appropriateness of the sentences that are being given. The bill lays the foundations for the clear and transparent system of sentencing that we all want.

As the First Minister said earlier, with the introduction of custody and community sentences, when a judge says to an offender, "You will spend X years in jail," that is exactly what will happen. The offender will spend the whole of the custody part of the sentence in jail, with no prospect of early release. It is also worth remembering that the custody part can be increased to 75 per cent of the overall sentence.

The Executive has struck the right balance between custody and rehabilitation, because it is not enough simply to lock people up in the knowledge that, when they are released, they are likely to find themselves in a revolving-door scenario of reoffending and then being sent back to prison.

We have to ensure that the community part of the sentence works and that there are better opportunities to reintegrate people in their communities. When there is a seamless continuation of rehabilitation programmes—when programmes start in prison and then continue in the community—we know that the programmes can be successful in addressing offending behaviour and reducing the risk of reoffending.

Unlike the previous system, the community sentence will have conditions that make clear what is expected of the prisoner. For example, there might be a requirement to attend drug or alcohol counselling, a restriction on travel or movement, supervision by the police, or even tagging. I am pleased that the minister has made clear that serious breaches will be dealt with swiftly, with offenders being recalled to custody.

I want to turn quickly to part 3 of the bill, which covers the restrictions on the sale of weapons. I have had hundreds of postcards from constituents who—because of their real experiences in the constituency—asked that the Executive restrict the sale of knives and swords. That is exactly what this bill will do, so I am glad that my constituents' voices have been heard. The bill adds to the Executive's earlier actions to double the length of sentences for possession of a knife, to increase the powers available to the police and to increase the minimum age for the purchase of a knife. Today we are going further, introducing the licensing scheme for the sale of non-domestic knives and banning the sale of swords. The bill completes the work that was started with the Police, Public Order and Criminal Justice (Scotland) Act 2006.

Each year, people are injured—and some people die—at the hands of knife-wielding young men. In many cases, the attacks are not premeditated but spring from the mistaken belief that people who carry knives are somehow protecting themselves. The statistics tell us that that is an incredibly foolish view. If, through the measures in the bill and a process of education, we can help to end the needless bloodshed that is cutting short young lives, the bill will have made a considerable difference. My community welcomes the proposals and I urge members to support the bill.

15:26

Patrick Harvie (Glasgow) (Green): This morning, Johann Lamont said that there had been attacks on the bill from both sides—from some who appear to want nobody to be sent to prison and from others whose attitude is more, “Lock ‘em up and throw away the key.” Any rational person would take a position somewhere between those two extremes.

The bill takes as its starting point rational principles: that prison is only one way to manage offenders, and not necessarily the best way; that people who are released from prison should be required to co-operate with some form of community supervision and should expect to receive some form of support in the community to help them to avoid reoffending; that the regime should be clear and comprehensible; and that we should focus on high-risk offenders in the interests of protecting the public. Sadly, however, I cannot agree that the bill as it stands will achieve those aims or put those principles into practice.

Prison can and must be used to protect the public from some dangerous offenders, but it can do so only if the time spent inside is used properly, by challenging behaviour, supporting recovery from addiction, teaching basic skills and encouraging better attitudes. If we do those things, we will release people who are less likely to reoffend.

We do not, however, do those things. We pack ever more offenders, including those who are not a threat to the public, into ever more overstretched and overburdened prisons, thus reducing the scope for meaningful work with offenders during their time in custody. We often release them even more damaged than when they went in. As a result, reoffending rates continue to be unacceptable. If we do not reduce prisoners’ chances of reoffending, we protect nobody.

Bill Aitken gave a particular example, but I do not believe that sending even a petty repeat shoplifter to prison protects the shopkeeper unless the time the offender spends in prison reduces the

likelihood of their reoffending when they come out. If that does not happen, a short prison sentence is worth little in the way of deterrence, little in the way of rehabilitation and little in the way of public protection. If a sentence is not worth those things, what is it for?

It is possible to express differences of opinion on this subject without accusing one another either of not caring about victims or of being on the side of criminals. In this morning’s session, and again during First Minister’s question time, there was a little too much of that uncomfortable “tough on crime” rhetoric, which helps nobody. Whoever feels that they are winning the “tough on crime” trophy always ends up accusing those who disagree of being on the side of the criminals. We can do a little better than that.

In reality, the interests of victims and criminals are not opposites. By giving offenders the best chance of changing their lives and offering them the greatest support to overcome addiction and other problems, we can prevent the creation of more victims in the future.

Despite the good principles behind much of the bill and despite my support for some of its aspects, such as those relating to the sale of weapons, I find myself struggling to justify support for it. The bill could have damaging consequences not only for the overstretched prison system but for criminal justice social work services. The Executive tells us not to worry, as it can build more prisons. That is exactly the kind of predict-and-provide mentality that still holds sway in its transport policy—“Too much congestion? We’ll build more roads.” I fear that custodial sentences will eventually result in filling up whatever space we make available and that we will be back in this chamber at some point asking why rehabilitation is not having the desired effect.

If we had passed amendment 44, in the name of Colin Fox, I would have found the bill more palatable. As it is, I am unable to support it. Although I do not agree with the statement of one expert that this is the worst bill that has come before us—that goes too far; I am sure that I could find even worse Executive bills—I find myself struggling to justify it as it stands.

15:31

Gordon Jackson (Glasgow Govan) (Lab): The minister is right to say that the bill represents a fundamental—and good—change in the way in which we do things.

There was no lack of clarity before. When a sentence was passed, most people knew that the offender would not serve all of it. Indeed, in some ways, the new system has less clarity. In the past, a prisoner had a date on their door and knew what

was happening, whereas that will not be the case from now on. However, the bill will establish a much better way of doing things.

The previous arrangement, whereby people served half or two thirds of their sentence before simply walking out the door, did not make sense. Bill Aitken made the valid point—the only one that he made—that that arrangement made sense only in the day when governors could take away remission. I am not sure how often they did that in practice, but at least if people misbehaved remission could be removed. However, once that power passed into history, there was no point in having that system.

My friends on the Tory benches have the sheer effrontery to condemn what we are doing and say simply, “There should be no early release. Whatever the sentence is, people should simply serve it all.” One has to ask what that would mean in practice. At the moment, a judge can give someone three or four years or whatever. Do the Tories believe that, if the person had to serve all of their sentence, judges would keep giving the same length of sentence? The resource implications of that are unthinkable. It is much more likely that judges—who are not stupid—would simply halve the sentence. When a judge sentences someone to three years under the present system, they are saying that that person should be in custody for 18 months. If the offender had to serve all of their sentence, the judge would simply give them an 18-month sentence. The result would be the same: people at the end of their custody period would simply walk out the door and there would be no control, no supervision, no licence—no nothing.

However, we are bringing in a big change. It is important that people have their sentence managed throughout and that, once they are in the community, there is monitoring of how they behave. The big change, which the Tories simply have not tackled, is that we are abandoning the idea that we should lock people up, leave them alone and, at the end of their sentences, let them walk out the door to do whatever they want.

Phil Gallie asks whether we can guarantee that people will behave during that period, but no one can guarantee that someone will not reoffend once they are released from prison. However, the bill represents an attempt to make a difference.

To some degree, however, I understand what Patrick Harvie is saying, although I think that he is in danger of throwing the baby out with the bath water. He is saying that he cannot support a bill that has a lot of good in it simply because he has some concerns about it. I think that he is being a little overpessimistic, but I also have some concerns about the bill. There are huge resource implications in terms of social work involvement and justice involvement, which have to be worked out.

I agree with Kenny MacAskill that, if we are to produce such measures, we must consider the whole package and think about how we can drop people off the bottom, because we still send to jail people who should not be in custody at all. We should consider the argument that short sentences are not good—there is a real debate to be had on that. I am with Kenny MacAskill in saying that we must consider resources and ensure that the bill does not simply increase our prison population. However, Patrick Harvie is a little overpessimistic, because the bill is worth a try. To use a justice expression, the jury is out as to how the bill will work in practice, but it is innovative and bright and will be a fundamental change for the better, so it is worthy of support from the Parliament.

15:35

Colin Fox (Lothians) (SSP): At First Minister's question time today, the First Minister said that the bill will end the Tories' provisions on the automatic early release of prisoners. Of course, it will do no such thing, because it will replace those provisions with Labour's provisions on the automatic early release of prisoners. Offenders will continue to be released early, before they have served the full period that the sentencers hand down.

The bill promises to address the public's confusion and irritation about the present situation, in which six months means three months, a year equals six months and people commit crimes while they are out on licence. However, the truth is that that situation will continue under the bill: the first 50 per cent of people's sentences will be served in custody and, unfortunately, it is likely that prisoners will commit crimes while out on licence, because the supervision will be based on no more than a promise of good behaviour. The bill will fail to deliver on the promises. Who says so? For one, the Justice 2 Committee, which stated in its stage 1 report that it

“supports the ... objectives of the Bill”—

members can read those for themselves—but

“calls into question whether the measures in the Bill, as currently constituted, can achieve the stated objectives.”

The members of the Justice 2 Committee are not the only ones who have criticisms and believe that the bill will fail. The Scottish Consortium on Crime and Criminal Justice

“regrets very much that the Scottish Executive is choosing to follow a path that, far from achieving the above goals and intentions, would incur huge costs and have serious negative ... consequences for the criminal justice system and for the safety of Scottish communities.”

Time does not permit me to read out the evidence from Sacro, the community justice authorities, Professor Andrew Coyle and the Sheriffs Association, all of whom criticised the bill and

suggested that it will not achieve the transparency that is sought.

It is a pity that the bill is flawed, because it has some sensible aspects, such as the restriction on knife ownership and the emphasis on community sentences. As the minister knows full well, I have commended on the record the Scottish Executive and the justice system in Scotland for the fact that, for the first time, we now dispose of most cases through non-custodial options. I welcome that. However, we are sending more people to jail for longer, which is especially curious when, by all accounts, we have a falling crime rate. I want more sentences to be served in the community, with properly supported and supervised offenders and appropriate risk management in tandem with thorough protection for the wider community. However, the bill will not provide that.

Like other members, I am staggered by the complacency of the Executive, which is prepared to see prisoner numbers—which are already at record levels—continue to rise, especially given the appalling reports of overcrowding that we receive every year. The Executive has a dead-end strategy. The minister says that nothing in the bill will require judges to change their sentencing practice, yet virtually every witness from whom the Justice 2 Committee heard suggested that judges will change their practice. The Scottish Prison Service expects the daily prisoner population to rise by 1,100. That is the reality with which we are grappling.

The bill gives the public unrealistic expectations and will result in the inappropriate use of scarce resources. In reality, much of the evidence that the committee received was that the bill will put us in danger of reducing public confidence by putting resources in all the wrong places, which will not serve the best interests of the victims of crime. The bill represents exceptionally poor value for money. About £200 million will be spent on two new prisons for 1,100 extra prisoners, more prison staff will be required and 10 per cent more criminal justice social workers will be needed—I could go on and on. The bill will result in more people going to jail for longer—precisely the opposite of the advice on what works that the committee was given repeatedly in evidence.

Any bill that could add 20 per cent to our dangerously high prison population is wrong-headed. The bill will put badly needed resources for tackling crime in the wrong place. I voiced my criticisms in the committee at stage 1 and stage 2 and I cannot support the bill at decision time.

The Deputy Presiding Officer: We come to closing speeches. We are behind the clock, so I am obliged to Jeremy Purvis for waiving his second speaking slot.

15:40

Phil Gallie (South of Scotland) (Con): It is with disappointment that I rise today. I had great hopes for the bill. Like Bill Aitken and others, including Colin Fox and Patrick Harvie, I feel that there are a number of good elements in the bill that I would have liked to go along with. The knives element has been referred to. I cast my mind back to my Carrying of Knives etc (Scotland) Act 1993, which was a first step towards protecting the public from knives. The bill builds on that, which I welcome.

A number of issues are worth picking up on. During the discussion of Bill Aitken's amendments to section 6 this morning, the minister tried to say that protection of the public is included in the custodial part of sentencing. However, section 6 includes the words

"ignoring any period of confinement which may be necessary for the protection of the public".

Why did the minister argue against amendment 20, which sought to remove those words?

The Deputy Minister for Justice (Johann Lamont): The member obviously did not listen to my earlier explanation. When sentencing, judges take into account whatever they choose to take into account, including public protection. The custodial part is then established as part of sentence management. Any extension to that is determined on the basis of identified risk and is established during the period of the custodial sentence. It is simply not true to say that in establishing the sentence—the punishment for a crime—public protection cannot be taken into account.

Phil Gallie: If it is simply not true, minister, why on earth leave those words in the bill? They could have been removed. Given what the minister has said, it would not have done any harm. It is a piece of nonsense.

On automatic early release, Colin Fox commented that instead of Tory early release—which we were criticised for introducing—we have Labour's early release. Kenny MacAskill said that if we legislate in haste, we will repent at leisure. The Tories legislated in 1995, and by 1997 we had repented. We built the repeal of automatic early release into the Crime (Sentences) Act 1997, but the Labour Government did not implement that element. We have had eight years of a Labour and Liberal Administration, and the Executive has failed to address that problem. When Jack McConnell stands up in the chamber, he is always pointing to the Tories and saying, "It was your fault." It was the Labour and Liberal Administration that turned its back on the problem and failed to address it.

Jeremy Purvis: Will the member give way?

Phil Gallie: I am sorry, but I am in my last minute.

Patrick Harvie's points on education and addressing addiction were worth while. There is a need for longer terms in prison to allow the authorities to address those issues. To some degree, our prisons should turn into educational establishments. If we can do that, offenders will be better citizens when they are released. However, prison also exists to protect society. I disagree with what Patrick Harvie and Jeremy Purvis said about short sentences. In some cases, short sentences alleviate the effect on those in the community who are worst affected by criminal activity.

Sadly, I cannot support the bill. I welcome the fact that the Executive has gone along the right lines in part. After the May elections, when we have a stronger Tory group, I advise the Executive to listen to what the group says. The Labour group could depend upon us to give it backing for real change.

15:44

Stewart Stevenson (Banff and Buchan) (SNP): I say to Phil Gallie that, if this is legislating in haste, I would hate to see us taking our time. After 10 years, it is probably time that we got round to dealing with the issues.

Let me make a simple but important semantic point. It is a bit unhelpful to use language that talks about offenders serving at least 50 per cent of their sentence in prison. That could suggest that we are continuing early release even though, in mechanical terms, we are doing something quite different. Under the bill, offenders will be given a custodial sentence and a period of supervision afterwards. For that reason, despite our reservations about some of the details, we will support the bill at decision time. I hope that the language that sheriffs use when they impose a sentence on those who have been convicted is, "You shall go to jail for eight years"—or 10 years or four years or whatever—"and you will be subject to a period of supervision of a similar duration thereafter." There will then be no excuse for newspapers to report in terms other than that an offender was given a particular sentence that carries certainty as to when he will be released. There will be no excuse for victims who hear the sheriff's sentence to misunderstand the effect of what is said. Those language issues perhaps still need to be addressed. I hope that sheriffs will listen to today's debate and take tent.

A previous speaker said that the bill will not empty our prisons. On the face of it, that is true, which is a matter of concern. There is not, I think, a huge divide between the Executive and the SNP

on the objectives for our prisons, but we still lack certainty about whether the Executive will engage in effective action to ensure that the increase in one part of the prison population that will result from the increase in the amount of time that people spend in prison is balanced by a reduction in the number of offenders for whom—to use the unique Tory phrase that I agree with—it might be said that prison is a place where the bad are sent to be made worse. That phrase certainly applies to too many short-term prisoners. Of course, it is difficult to re-engage prisoners with society by locking them up away from society, therefore any measure that requires that part of the court-imposed sentence be served in society so that offenders can re-engage and reconnect with society is helpful.

One of the archetypal offenders to which reference has been made is the shoplifter. I say to Bill Aitken that banging up shoplifters for longer periods of time simply will not work. What kind of person is the typical shoplifter? By and large, she is a female heroin addict. For the female heroin addict, the fundamental problem with which she is afflicted ain't gonna be dealt with in an effective way in prison.

Jackie Baillie: What is the statistical basis for the member's assertion?

Stewart Stevenson: The statistical basis is that the recovery rate with heroin addiction treatment is 10 per cent worse in prison than in the community.

The Deputy Presiding Officer (Trish Godman): One minute.

Jackie Baillie: The member has not answered my question.

Stewart Stevenson: I am in my last minute. Jackie Baillie asked a question and I answered it.

We need to ask whether the bill will address some fundamental questions. Will it make the system work better? Yes, to an extent. Will it help to rebuild public confidence in the criminal justice system? Yes, to a certain extent.

As ever, I listened with interest to Gordon Jackson, because he brings real-life experience to these matters. However, he missed an important point when he claimed that everyone knows that when a sheriff sends someone to jail for four years, they will be out in two. It might be true that professionals know that, but it is certainly not true for the public. Gordon Jackson needs to consider that.

Prison represents one key thing, which is failure: failure for the prisoner, failure for the victim who has suffered at the hands of the prisoner and failure for the system that we hold responsible. Success is when we reduce the number of people going to prison. We will never reduce it to nil, but I

hope that we have started to build a new system that will send fewer people to prison and deliver increased public safety.

15:50

The Deputy Minister for Justice (Johann Lamont): I thank the members of and clerks to the Justice 2 Committee for all the work that they have done to take the bill through stages 1 and 2; the Finance Committee and the Subordinate Legislation Committee; and the bill team and officials and Cathy Jamieson, the Minister for Justice, for their support and tolerance of me, given that I came to the bill at a much later stage than everyone else.

The First Minister made a commitment to end automatic unconditional early release and provide more clarity in sentencing. The bill will deliver exactly that.

Throughout the parliamentary process, we have listened and responded where appropriate by amending the bill. One of the key sections, which deals with the custody part of sentences, has benefited greatly from that scrutiny and I believe that the provisions are now much clearer as a result, given that they build on the core principle of transparency, which was identified at the beginning.

We listened to what people said about the different tests for recall to custody and re-release. It was argued that a revolving-door situation would be created. We amended the provisions at stage 2 to ensure that the same test—that of public interest—would be used for both levels of consideration.

The bill now makes it clear what basic conditions will be put on the community licence. Victims and communities have the right to expect that wrongdoers will be dealt with appropriately. These measures are about what happens when the court decides that prison is the right sanction.

We realise—and the financial memorandum shows—that there will be demands and new resources. It is not just about more money; we need to ensure that we are making the most effective and efficient use of the existing resources and that, from the start of the process through to the end—from the courts to the community—the process is measured and proportionate.

Today, it has been something of a challenge to address those real concerns while having to deal with some of the more grotesque elements of Tory misrepresentation of the bill. While we have been making and developing policy, the Tories have been content to make mischief. They say that it has taken eight years to get to the stage of ending automatic unconditional early release, but they

would prefer to vote against the bill—which addresses that matter—and leave the situation as it is. They are content to put the scribbles from the back of an envelope on to the marshalled list, as represented by the poor-quality, inconsistent and illogical amendments from Bill Aitken, rather than do the hard work to establish a policy that can gather support. I might be wrong, but, as far as I am aware, there was no member's bill from the Tories that identified another approach to early release at any stage in the past eight years.

We have taken on the challenge of developing policy that considers the evident tensions and conflicts around the agenda of tackling offending, keeping communities safe and addressing the issues that create offenders in the first place.

We acknowledge the point that Kenny MacAskill made about victims. I contend that not just the bill but a range of approaches that the Executive has taken have given real priority to, and understood the needs of, victims precisely because we have spoken to them. The system is giving victims unprecedented support—the court system itself has been forced to change its habits.

We acknowledge that there is an issue with short sentences, but there is also an issue with previous convictions. We often hear about the shoplifter who refuses to change, but some people are involved in what might seem like small individual offences; such offences can have a huge impact on communities and should not be dismissed as being not worthy of challenge.

I was stunned at the suggestion this morning that I was soft on crime. Kenny MacAskill also suggested that I was laid back and complacent. Those two characteristics have never been ascribed to me before and I assure him that they do not represent my position on the bill—far from it. The Convention of Scottish Local Authorities said that it is important to take a measured approach to the implementation of the bill, to work closely with the professionals who have to deliver it and to ensure that there is pace around that, so that confidence can be built.

Kenny MacAskill, quite rightly, highlighted the importance of making progress on this matter. That is rather ironic, given that he is a member of a party that would spend huge amounts of time and resources on dealing with the constitutional separation of our country, rather than on focusing resources where there is need.

We were also told that the bill is about sentencing. There has been a shift towards more community disposals rather than custodial sentences, and people are beginning to have confidence in that, but the bill is about what happens when the judgment has been made that there should be a custodial sentence.

As Kenny MacAskill said, there is an issue about having to spend more money while there are not more offenders, but the current system masks the level of offending. It does not address offending behaviour or deal properly with those who leave prison and continue to offend. Under the bill, if someone is serving the supervision part in the community and there is a breach of licence, action will be taken against them. We will not reduce the numbers in prison simply by saying to people, "You're not getting to go to prison." We will reduce the numbers when we give people the opportunity to confront their offending behaviour and opportunities to participate in work and in the life of their community so that they realise that offending behaviour is inappropriate.

It is the role of the justice system to support people in addressing their underlying problems. Work to support people to do that is not separate from the justice system. We would do nobody any favours by artificially reducing the level of offending or by not being prepared to confront people who have those problems.

We recognise that there is an issue about financial resources and we have made commitments in relation to that.

I have to say to Patrick Harvie that life is tough and that we have to make hard choices. Finding it hard to justify something is not good enough for a legislature. Members have to decide to support the legislation, to oppose it, or to propose alternatives. As far as I am aware, the Green party has not engaged in the process at all.

Colin Fox said that the increase in the number of prisoners will come from changes in sentencing practice, but that is not the case. The important point is that we are willing to confront the issue of recall for those who breach their licence conditions. That is where the increase will come from. It may be that being mischievous keeps Colin Fox going. There are people who have concerns about the bill, but there is not blanket opposition to it, as he suggested. People realise that the bill represents a step forward from the existing approach.

As I have said before, there are issues about short sentences, which merit further consideration.

I will finish by commenting briefly on weapons.

The Deputy Presiding Officer: Minister, you really need to sum up.

Johann Lamont: Jackie Baillie made the point that communities want the provisions on weapons and recognise that they are part of a package. The important measures in the bill will address behaviour that too often ends up with young people losing their lives.

I thank everyone in the Parliament who played their part as the bill progressed. I trust that those members who want our communities to be safer, who want us to address offending behaviour, who want clarity and who want to deal with the weapons issue will join me in supporting the bill at decision time.

Scottish Commission for Public Audit

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-5626, in the name of Donald Gorrie, on behalf of the Procedures Committee and the Scottish Commission for Public Audit.

15:58

Donald Gorrie (Central Scotland) (LD): In case any member is confused, this debate is not on the issue about which the Procedures Committee wrote to the Presiding Officer to say that it was concerned that the Parliament will not get a chance to debate a major report that we produced. This debate is on a different issue. It is also important, but it is quite separate.

The Scottish Commission for Public Audit is a committee, in effect, that is made up of five members. It was established under the Public Finance and Accountability (Scotland) Act 2000 and it considers the activities of Audit Scotland from the Parliament's point of view to ensure that it uses its resources as well as possible. The convener of the commission, Margaret Jamieson, wrote to the Procedures Committee to say that she thought that the commission could be better recognised under the Parliament's rules. Technically, the commission is not a parliamentary committee, but it is an official committee and it is important that it gets its fair share of attention.

Many of our proposals will turn informal arrangements into formal arrangements in standing orders. I will describe the main items. Transcripts of the commission's proceedings should be published in the same way as are *Official Reports* of committee meetings. Such transcripts are produced informally at the moment, but we are saying that they should be enshrined in the rules.

Similarly, minutes—which are different from transcripts—should be published and the proceedings should be broadcast. Such publication and broadcasting can and do happen, but we will put it into standing orders that they will happen.

In addition, people should know about the commission's activities, so its meetings should be advertised in the *Business Bulletin* in the same way as are meetings of ordinary parliamentary committees. The commission's meetings will be mentioned in a separate space, but they will be duly advertised so that people who follow our activities carefully know that meetings are scheduled and can follow proceedings.

Those are the changes that will be made. They are encapsulated in less than a page of standing orders, which is not unduly onerous. What Margaret Jamieson has asked for the commission to have is reasonable and the committee readily accepted what was asked for. I hope that the Parliament accepts the changes as a sensible and non-controversial improvement in our rules.

I move,

That the Parliament notes the Procedures Committee's 10th Report, 2006 (Session 2), *Scottish Commission for Public Audit* and agrees that the changes to Standing Orders set out in Annex A to the report be made with effect from the day after the Parliament is dissolved at the end of the current session.

16:01

Alasdair Morgan (South of Scotland) (SNP): I am glad that the Presiding Officer urged the Deputy Minister for Justice to hurry, because I am sure that some members have much to say on this matter—although I am not one of them.

The proposals that relate to the official report, the minutes and broadcasting are eminently sensible. We should make the work of an audit function as widely available and publicised as possible. I suspect that the broadband and internet facilities of Scotland will not be overloaded by people watching live broadcasts of the committee, but the opportunity should exist and people should know that that is available.

There is a contrast between this debate and yesterday's debate on a Standards and Public Appointments Committee report. Commenting on yesterday's debate, people outside the Parliament accused us of trying to hide our proceedings from the public and slipping things through on the quiet. The Procedures Committee's proposals are much more typical of what the Parliament is about. We are perhaps struggling to bring to an unwilling and uneager public all the minutiae of all our discussions—would that more people participated in them and noted what is going on, and would that more people even in the Parliament knew what the Scottish Commission for Public Audit is about.

I am glad to support the motion.

16:03

Alex Johnstone (North East Scotland) (Con): For Procedures Committee members, the subject has been one of the less exciting but more interesting issues that we have had to examine. I knew of the Scottish Commission for Public Audit's existence because, as a Conservative business manager some years ago, I once appointed Annabel Goldie to the commission.

People who are unaware of the commission's activities should be aware that it appears to audit the auditors. Perhaps that description is slightly excessive, but the commission certainly regulates the regulators. For that reason, it is important to remember that although the commission is not a committee of the Parliament, it is a committee that operates in the Parliament, and it has been lucky enough to benefit unofficially from many structures and facilities that are available in the Parliament.

The commission's convener proposed formalising the unofficial arrangements, to ensure that we can officially offer Parliament facilities—the use of the official report and the advertising of meetings in the *Business Bulletin*—and give the commission equal merit to other committees in the system for finding a room in which to hold meetings. That would be a great benefit to it, as I understand that it has sometimes struggled to find places to hold its meetings.

It is important to remember that the proposal is not to make the commission an official committee of the Parliament; it is simply to extend equal use of the Parliament's facilities to it. It is important for the commission to retain its independence from the Parliament because its independence is key if it is to be the regulator of the regulators or the auditor of the auditors. The proposals will give the commission the facilities it has asked for and will allow it to retain its important independent station in the Parliament's structure.

The Deputy Presiding Officer: Margaret Smith is not here, so I call Margaret Jamieson.

16:05

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I apologise for getting a bit excited about the possibility of being unable to speak in the debate.

We are debating an important issue. Many people think that only anoraks look at accounts and audits. As the convener of the Scottish Commission for Public Audit, I assure members that I made representations to the Procedures Committee because we believed that the commission was not being recognised in the same way as other parliamentary committees.

The current operating procedures are inconsistent with the principles of the Parliament. As has been said, we do not have the opportunity to have *Official Reports* of our public proceedings published, we do not have a listing in the *Business Bulletin*, and our public sessions are not broadcast. Therefore, despite our best efforts, we cannot be open, accountable and transparent to members of the Scottish Parliament and—more important—to members of the public.

Some might argue that the commission should not be put on the same footing as other committees of the Parliament, as it was not established by the Scotland Act 1998, but we would challenge that argument. The SCPA was established by the Public Finance and Accountability (Scotland) Act 2000, which gave it powers to examine Audit Scotland's proposals for the use of resources and expenditure, and to report on those proposals to the Parliament; to appoint a qualified person to audit Audit Scotland's accounts; and to publish and lay before the Parliament a copy of Audit Scotland's accounts and the auditor's reports on them.

Members are aware of the work that Audit Scotland undertakes in the public sector. It is reported in a very public way. Sometimes, Audit Scotland is very critical of the public organisations it examines. We must ask ourselves why Audit Scotland and the SCPA should be treated differently. As the watchdog of the public watchdog, the SCPA thought that it must request equal treatment in order to reassure the public that Audit Scotland was being held to account as Audit Scotland holds others to account.

I ask members to support the motion.

The Deputy Presiding Officer: We move to the winding-up speeches. Karen Gillon has seven minutes.

16:08

Karen Gillon (Clydesdale) (Lab): That is not funny.

Here we are again in the Scottish Parliament debating significant matters of great interest to the people of Scotland. Anybody who tries to argue that the Procedures Committee's work is not at the heart of devolution and that it does not express the will of the Scottish Parliament, which all members—

Alasdair Morgan: Will the member give way?

Karen Gillon: Happily.

Alasdair Morgan: Will the member comment on what the head commissioner—I assume that that is her title—said about the commission auditing the auditors? Yesterday, I replied to a constituent who had complained about the ombudsman. In effect, they asked whether we should set up a body to monitor the ombudsman. How far should we take the process? Should it go on until everyone on the commission is monitoring everyone else? Perhaps Karen Gillon might like to reflect on that in the five minutes that remain to her.

Karen Gillon: That is a very interesting point. There is always a balance to strike when deciding

at what point a process should be ended. No matter what the outcome, there are always occasions when people will want to go further. It is important to draw a line in the sand and say, "This is the process in Scotland. This is the procedure we will go through" and, once we get to the point we have decided on, that is the end. People need to know when that point has been reached.

Auditing the auditors and ensuring their financial accountability is one thing, but the ombudsman is there to do a specific job and has a specific purpose. People will either be satisfied or dissatisfied with the outcome, but the process will be the process.

Alex Johnstone: Is it not the case that the carefully considered point that we discussed at great length when we considered the report was that while we are extending the Parliament's facilities to the Scottish Commission for Public Audit, we are not taking any action that will interfere with its independence? The commission's independence ensures that we have some logical end to the process. There is therefore no argument that we should have someone to regulate the regulator who regulates the regulators.

Karen Gillon: That is an important point. We did consider it in some detail, so that we reached a balance between the independence of the commission, its public persona and accessibility to everyone.

Ultimately, it is for members of the Parliament, elected by the people of Scotland, to hold to account the organisations that we appoint and bring into being. We are held to account through the ballot box. We are responsible to the people of Scotland and we must take that responsibility seriously. So, when we set up bodies, agencies or ombudspople, it is for the Parliament to monitor them effectively and take any necessary action if they are not fulfilling their responsibilities.

The commission fulfils a very important role. That is why it is important that its proceedings be made available on the public record. However, as Alex Johnstone rightly says, Parliament should not interfere with its independence.

I know that members will have read the report in some detail.

Phil Gallie (South of Scotland) (Con): Will the member give way?

Karen Gillon: Mr Gallie is very welcome.

Phil Gallie: I recognise the importance of the issue and the expertise in our auditing systems that has been referred to. Given the fact that the European Union has failed to get its accounts audited for a number of years, does the member

think that we could use our experience to give the EU a bit of a hand?

The Presiding Officer (Mr George Reid): Miss Gillon, you have two minutes.

Karen Gillon: I apologise to Mr Gallie; I should have borrowed the earphones that he traditionally wears in the chamber—I could not hear the middle part of his intervention. I am grateful that he did not manage to mention the European Union in this very important debate, given that he will not be with us in the next session of Parliament.

The Presiding Officer: He did.

Karen Gillon: That must be what I missed. It is an aspect of the Parliament that will be sadly lacking after 3 May because Mr Gallie will not be here.

Members are obviously aware of this issue and I am encouraged by their attendance in the chamber this evening. One thing that I am sure of is that if I am back in this place after 3 May I will not be the deputy convener of the Procedures Committee and I will not have to sum up these debates in which no member is remotely interested. *[Laughter.]* Donald Gorrie always manages to get the speaking notes and the first speech.

The Presiding Officer: You have one minute more. *[Laughter.]*

Margaret Jamieson: Keep going.

Karen Gillon: Members must understand that to be confronted by a request from Margaret Jamieson—

Pauline McNeill (Glasgow Kelvin) (Lab): Will the member give way?

Karen Gillon: I am in my final minute. *[Laughter.]*

If a member is confronted with a request from Margaret Jamieson, they are not likely to say no. The Procedures Committee considered her request very carefully and came to the right conclusion, which is a positive conclusion for the Parliament and one that will serve us well as we enter our third session.

I commend the motion to Parliament and urge all members to support it.

Decision Time

16:15

The Presiding Officer (Mr George Reid):

There are only two questions to be put as a result of today's business. The first question is, that motion S2M-5632, in the name of Cathy Jamieson, that the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

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

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 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)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Curran, Frances (West of Scotland) (SSP)
 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)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Johnstone, Alex (North East Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Martin, Campbell (West of Scotland) (Ind)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Petrie, Dave (Highlands and Islands) (Con)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (Sol)
 MacDonald, Margo (Lothians) (Ind)
 Sheridan, Tommy (Glasgow) (Sol)

The Presiding Officer: The result of the division is: For 89, Against 23, Abstentions 3.

Motion agreed to.

That the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

The Presiding Officer: The second and final question is that motion S2M-5626, in the name of Donald Gorrie, on behalf of the Procedures Committee, on the Scottish Commission for Public Audit, be agreed to.

Motion agreed to.

That the Parliament notes the Procedures Committee's 10th Report, 2006 (Session 2), *Scottish Commission for Public Audit* and agrees that the changes to Standing Orders set out in Annexe A to the report be made with effect from the day after the Parliament is dissolved at the end of the current session.

Red Deer (Rum)

The Deputy Presiding Officer (Murray Tosh): The final item of business today is a members' business debate on motion S2M-5492, in the name of Jamie McGrigor, on Rum's red deer. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes that the red deer is an iconic part of the image of Scotland; further notes that, because of its isolation, the red deer herd on Rum has arguably the purest bloodline in the country and has been the subject of scientific research, and considers that Scottish Natural Heritage's plan to cull Rum's red deer solely to protect the trees that it has decided to plant on the island without any protective fencing is to be condemned.

16:18

Mr Jamie McGrigor (Highlands and Islands) (Con): I am grateful to the BBC's "Landward" programme for alerting the public to the subject of this debate. The programme is a great champion and watchdog of rural stewardship and a great credit to the BBC. I am also grateful to the many people who have sent letters and e-mails, and to the academics Professor Tim Clutton-Brock from Cambridge, Jo Pemberton from Edinburgh and Steve Alban from Aberdeen for their invaluable information on the deer project and the natural environment on the isle of Rum.

Let us make no mistake. The subjects of this debate—the island of Rum and the herds of red deer living there—are national treasures and an important part of Scotland's natural heritage. I am not alone in saying that. I represent a large number of people who have written letters and e-mails because they have been horrified by the suggestion that Scottish Natural Heritage might cull the red deer herd on Rum from its present level of 1,200 to 1,300 animals down to a population of 300 to 400.

The reason that SNH gives for the proposed cull is to regenerate trees in Rum without using appropriate fencing. It is using the basis of four deer per square kilometre, which would be a tiny stocking density compared with the current figure. That would be a calamity. Remembering that Rum is publicly owned, I maintain, along with many others, that that flawed policy will result in a very low regeneration of trees at the expense of the destruction of the most important red deer herd in Scotland, which is a vitally important asset.

The herd has been the subject of a 35-year research project, sometimes referred to as the Kilmory project. The findings will increase in importance because they will be of huge value in monitoring the effects of climate change and global warming on a group of mammals on which

there is already such a databank of knowledge. No other deer herd in the world has been monitored to such an extent, and it would be an act of extreme folly and—dare I say—ecological vandalism to destroy or harm in any way the subjects of such an important scientific project. The red deer herd on Rum has never been infiltrated by sika deer, which is most unusual in Scotland. It is remarkably pure.

As I have said, there are between 1,200 and 1,300 deer now on Rum. They have already been culled from the 1,600 that were there some time ago. In the north block, which is the research area, there are 300 deer, and most of our current understanding of the ecology of red deer in Scotland is based on the research done in the north block over the past 35 years. For the past 30 years, all 300 deer using the north block have been individually identified and their reproductive success or failure and their longevity and condition have been closely monitored.

SNH talks about overgrazing on Rum, but where is the evidence of that? Who says that there is overgrazing? A leading British expert on grazing ecology, Professor Michael Crawley, has been to examine the ground, and he disagrees with SNH's assessment. The number of deer remains constant and healthy, which is not a situation consistent with overgrazing, and there is certainly no evidence of any reduction in the diversity of plant species in the north block.

Professor Steve Albon of Aberdeen, who has studied Rum for 30 years, is adamant that there is very rich flora on Rum but that it is short, rather than rank and overgrown—perhaps the difference between stubble and a beard. The plants can obviously cope with the present grazing level.

Professor Albon reminded me that there has been continuous research on Rum since 1957, when the island was taken into public ownership. This year is the golden jubilee of its status as a true open-air laboratory. He said that the knowledge of managing red deer that has been gained from the project was internationally acclaimed to be of enormous importance and that there was still a great deal to be learned about the reaction of red deer to climate change.

People like to watch red deer. That was amply shown by the huge popularity of the BBC's "Autumnwatch" programme with Bill Oddie and Kate Humble. The programme brought images of red deer into many people's living rooms, and they were delighted and excited by the natural behaviour of such magnificent, beautiful and intelligent creatures. It is not surprising that people worry about the fate of hero stags such as Maximus, Brutus and Caesar, and would be appalled by their slaughter. What reasons would

SNH give the public for why any such slaughter is necessary? What would be the value of it?

I would like to think that another Executive body—VisitScotland—has noted the popularity of the Rum deer on "Autumnwatch" and is planning to promote an obvious Scottish tourism opportunity rather than allowing it to be rubbed out. That would be joined-up thinking.

Rum is an exceptional place. It lies within the red deer refuge, which, I remind members, was created in 1999 by a variation to the Wildlife and Countryside Act 1981. The refuge also includes the outer Hebrides, Islay, Jura and Arran, but it is hardly a refuge if slaughter takes place.

Rum is also the nesting home of one third of the world's population of Manx shearwaters and many other huge colonies of different sea birds. It was also the launch pad for the reintroduction of sea eagles into Scotland.

Since the two "Landward" programmes and the furore that has followed on the Rum issue, both Scottish Executive answers to my written questions, and a reply from Ian Jardine of SNH to my letters, have indicated a more conciliatory approach to killing the deer on Rum. I am very glad of this apparent softening of attitude, and I cautiously thank them for listening. As SNH moves into planning its policy for the next 10 years, I respectfully implore it to work hand in hand with those running the continuing deer project. That project must go on for another 35 years—at least.

One letter that I received from a constituent in Wester Ross asked:

"Why can't SNH fence their trees like everybody else?"

That is the key point. There are no capercaillie or black game on Rum, so that old argument is not relevant. SNH could use conventional deer fences or the new electric fence system that the Scottish Gamekeepers Association would be only too happy to show it. That fence system is lower than a normal stock fence, but extremely effective. It is best to have circular plantations and to build jump-outs so that deer that are trapped inside a plantation can be driven out.

Any significant cull of the deer on Rum will ruin the deer project, because the figures on which the deer monitoring calculations have been done will no longer be constant.

It is quite possible for this famous red deer herd to live in sustainable co-existence with a tree regeneration programme. However, it will be necessary to use appropriate fencing to achieve results that are good for both projects and good value for the public.

16:25

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The island of Rum contains one of the oldest-known sites of human habitation in Scotland and it was not so long ago that it had a population of well over 400. In the 19th century, the cousin of the laird, Dr Lachlan Maclean, discovered that he could increase the island's rental value from £300 per annum to £800 by substituting sheep for people and about 400 souls were forcibly repatriated from Rum as a result. Today, the population of the island is very small. The matters that Jamie McGrigor has raised focus on another sad chapter in the beleaguered history of Rum.

I support the motion and congratulate Jamie McGrigor on it, because I know that the proposed cull has caused a great deal of concern among a wide spectrum of people—it is wrong to say that the objections were stimulated by any one body. SNH's plans for a deer cull go well beyond what is reasonable. One is reminded of the slaughter of deer at Glenfeshie not so very long ago, which stimulated an outrage. Glenfeshie and Rum are both in my constituency and I am well aware of the strong emotions that are aroused. The fact that the deer is a symbol of Scotland has been brought home to a great many more people by the "Landward" programme. The idea that that animal, uniquely, should be subject to state slaughter seems to be at odds with the approach to animal welfare issues that is adopted with every other species. It seems that deer is not only the unprotected species, but the species that is picked out for state slaughter by SNH, with the connivance of the Executive and other state agencies. Quite frankly, that is simply wrong and I welcome the opportunity that the debate gives us to say so.

The policy of not fencing forestry is misconceived and has been shown to fail. A recent expert report has highlighted that the conventional wisdom that is apparent among Deer Commission for Scotland and SNH ranks, according to which deer are the source of the problems on our landscape and our hills and the cause of overgrazing, is incorrect. Sheep and cattle have been found to be the main contributing factors. Any justification for the slaughters that have taken place has been removed by that recent report, which—we are told—was not published until it had been peer reviewed.

I hope that SNH will change tack. Along with others, I raised the issue with Andrew Thin, who is the chairman of SNH. He replied stating that the deer cull this winter would be a normal maintenance cull—in other words, deer would be culled only to maintain a steady population. He said that he could not predict future culls until

there had been proper consultation on the new management plan, but that SNH would most certainly involve local people and all other interests in the process and would certainly make public the results.

SNH's plans for forestry on Rum were put forward as part of a woodland grant scheme, which, initially, proposed blankets of forestation. I am informed by someone who was close to the situation that SNH then discovered something that one would have thought that it would have known—that a certain conservation designation applied, which stopped them from planting pine trees over the bogland that covers most of the island. In other words, SNH was aware that its own plans were incompetent because of the designation that applied to part of the land. It is a pretty rich irony that SNH, which is supposed to be in charge of designations, was apparently not aware of the consequences of a designation for its own forestry plans. The plans had to be changed.

The real victims are the community of Rum. There should have been two plans for Rum: on forestry and on community development. SNH has been supposed to promote community and social development on the island since around 1997, but since then people have left Rum, an uninsured house has burned down and not been replaced, businesses have been stymied and the efforts of people such as Charles King—and Andrew Thin, before he became chairman of SNH—have come to nothing.

The problem is that SNH has control over the island—Rum is a company island. I wrote to Ross Finnie to suggest that that should change, because SNH was set up not to control islands but to advise on the environment and natural heritage, but he dismissed my suggestion out of hand. Since then, more people have left the island and the community is insecure. It would be unfair to name people who live on the island, because there are so few of them, so I have chosen not to do so.

The situation is a bloody tragedy for Scotland and the Executive has turned a blind eye to it. This most recent chapter in Rum's history is a sad one. The proposal for a cull has aroused anger, because it is not supported by the people of Scotland or by the experts. The advice of people who know about the subject, such as the Scottish Gamekeepers Association, has been consistently ignored, despite the fact that I suspect that SGA members have more knowledge of the Highlands' red deer population in the tips of their fingers than have all the so-called experts who are in charge.

I hope that there will be a chance for a new start in May, so that we can listen to the experts and say no to the proposals for the cull of red deer. Jamie McGrigor was right to highlight the issue.

16:32

John Farquhar Munro (Ross, Skye and Inverness West) (LD): As Jamie McGrigor said, the red deer on the island of Rum are a unique breed. Extensive culling of the deer population, as is proposed, would be a retrograde step.

There is a regular annual cull of hinds and stags on Rum, which are selected by professional, experienced stalkers. The herd has been maintained at an appropriate and manageable level, which has protected the natural environment for many decades, as anyone who visits the magnificent island of Rum can see.

However, there is a mistaken perception, which is constantly voiced and enthusiastically promoted by conservation groups—or people who would have us believe that they represent conservation groups—that, unless we accept their advice, our countryside will be destroyed and our natural environment will be irreparably damaged. What nonsense. During the past decade, we have been bombarded by reports of a vast increase in the red deer population in rural Scotland, which many members will remember culminated in the indiscriminate and disgraceful mass slaughter of red deer at Glenfeshie. That cull went ahead very much against the wishes of the local people and in particular the local estate.

The evidence is that deer numbers have not increased. The fact is that, as a result of a great expansion in cultivated and natural regeneration in rural Scotland, large areas of red deer habitat have been fenced off. That has resulted in concentrations of deer in areas where they were not normally seen previously, foraging for their food in areas that are strange to them because their natural habitat has been fenced off. That gives the mistaken impression that the deer population has increased when, in fact, the reverse is true.

The island of Rum has undertaken an annual cull, which has been executed professionally by experienced gamekeepers to ensure that a sustainable balance has been maintained between the animals and their environment. I urge the Scottish Executive to intervene, at an early date, to prohibit any suggestion of a mass cull of red deer on Rum. We should allow the professional gamekeepers to continue their deer management on Rum, as they have successfully done for many decades. If that is allowed to happen, we may continue to enjoy the sight of these magnificent animals in their natural surroundings—which, on the island of Rum, can be described only as unique and magnificent.

16:35

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I thank Jamie McGrigor for bringing this

topic to Parliament. I am sure that many of us have received e-mails and letters from people—not just from the Highlands and Islands—who are concerned about the issue.

Culling is always an emotive issue as well as a complex one, and it is important in any debate to be clear about the reasons for discussing the matter in the first place. The minutes of the SNH north areas board meeting of 22 February say:

“the key priority for the reserve is to bring back into favourable condition the open upland and grassland habitats that are of international ... importance. In order to achieve this, a reduction in grazing pressure is essential – regardless of tree planting and the pros and cons of deer fences.”

Jamie McGrigor's point about pure bloodlines has some merit. Due to the isolation of deer on Rum, cross-breeding with sika deer is not the problem that it is on the mainland. Also, as the motion makes clear, the Rum deer population has been studied extensively and the resultant greater understanding is of benefit not just to estate managers but to rural communities as a whole and to academics.

The red deer is an iconic image of Scotland. It is telling that the subject of Landseer's famous painting, “Monarch of the Glen”, is depicted against a backdrop of what we now call deer forest—a bare, denuded hillside that has been degraded by trampling and overgrazing. Admittedly, much of that is dependent on the eye of the beholder. In a previous debate, Mr McGrigor described our historic landscape as

“jungle that our ancestors painstakingly cleared”.—[*Official Report*, 7 October 2004; c 11103.]

I ask him to consider our magnificent woodlands as well as our rich agricultural land, for which we are indebted to our predecessors.

Landseer's monarch is, indeed, a royal stag bearing 12 points. However, with the benefit of scientific research—much of it conducted on Rum—we now know that the beast is, in some respects, as degraded as the habitat to which red deer have had to adapt. Historically, red deer were a good third larger than the beasts that we see nowadays and boasted up to 22 points on their antlers.

Red deer are naturally woodland animals. Eighty per cent of mainland European red deer live in woodlands and they are significantly larger than their Scottish counterparts. Rum is, in some respects, a naturally wooded island, although one from which both woodlands and deer have, at times in its history, been eradicated altogether by human activity. Pollen analyses from the peat cores, along with historical records, indicate the presence of mixed woodlands, and Rum was described as “wooded” as late as the 17th century.

Rum still has some wooded areas. The deer in those areas are larger than their open-hill counterparts. Mr McGrigor might be interested to note—again, from the SNH north areas board meeting—that the deer in the area that has been identified for planting in the coming spring are at a low density, with no further reduction required.

So where does that lead us? Red deer are naturally woodland animals and Rum is naturally in part a woodland island. Contrary to what the motion says, the proposed cull is not solely to protect trees, so I cannot support the motion. Nevertheless, I commend Jamie McGrigor's endorsement of the research that has been conducted on Rum and his call for caution in planning a far-reaching species and habitat management programme. I will listen with interest to what the deputy minister has to say in her concluding remarks about the direction of this programme of management.

16:40

The Deputy Minister for Environment and Rural Development (Sarah Boyack): I, too, congratulate Jamie McGrigor on securing this members' business debate. Given the wide public debate on and media interest in the matter, it is appropriate that members are able to raise their concerns with us.

Very difficult situations can arise when nature conservation objectives come into conflict. The situation on Rum is a classic example of that, and I feel that the review of SNH's management plan, which will take place later this year, will be the best place for the debate on how to manage and meet the different concerns with regard to the proposals for the island.

Before the debate, I discussed the matter with the chair of SNH, Andrew Thin, who assured me that the organisation will be open and inclusive in its approach to the review of the management plan, with the aim of balancing the reasonable objectives of different interests while meeting SNH's legal obligations.

Fergus Ewing: Will the minister give way?

Sarah Boyack: No. I confess that I was tempted to intervene on the member's speech but, at this point, I would rather keep going.

I urge all colleagues to make their constituents aware of the forthcoming consultation so that they can make their views known.

I have also secured an assurance from the chair of SNH that there are no plans for a reduction cull this year. However, there are plans for a maintenance cull similar to those in previous years to ensure that there is an appropriate number of deer on Rum. I hope that that reassures those

involved in the important research that is being carried out on the island—which is what prompted Jamie McGrigor's motion—and those who have raised their concerns with the members who have spoken this evening.

Fergus Ewing: With regard to the number of deer on Rum, Andrew Thin, in an e-mail to the Scottish Gamekeepers Association dated 25 May 2005, said that he was not sure why stalking had been lost

“as there have been good numbers of deer on Rum for decades without threatening any of the designations”.

Why has he changed his tune since becoming chairman of SNH?

Sarah Boyack: I will come on to that. I spoke to Andrew Thin yesterday, so my information about SNH's current plans is up-to-date.

I want to concentrate on why Rum was designated a protected island, the implementation of the management plan, and the long-standing research that is being carried out on Rum. As colleagues have observed, the red deer on Rum are not native to the island, but were reintroduced in 1845 after having become extinct. Since that time, they have been in a refuge and, as a result of that and the fact that they are protected from interbreeding with red-sika hybrids, we have been able to study the long-term development of one of our most iconic species.

As colleagues have said, there are other refuges in the outer Hebrides as well as on Arran, Islay and Jura, and most of Britain's estimated population of one third of a million are to be found in the Highlands and Islands. Getting the number of deer in a given area right depends on an assessment of the number of deer the area can support. While I was preparing for this debate, I found it interesting to examine SNH's 10-year management plan, which was approved before the Parliament was created and was intended to ensure the effective management of nature conservation on the island. I am told that it was assumed in 1998 that the number of deer would be brought down to a much lower level than is currently the case. Over the years, SNH has carried out a maintenance cull to keep deer numbers at the current level of 1,200 animals.

Colleagues have talked about the problems with deer. There are no natural predators on the island and culling is the most important means of controlling them. If there are too many, there will not be enough food and real problems will arise, as has happened in other parts of Scotland.

Mr McGrigor: Will the minister take an intervention?

Sarah Boyack: I might take an intervention later.

Deer influence the composition and structure of vegetation. That has to be managed by those who are looking after the features on the island.

It is important to put it on record that SNH has to deliver effective management of Rum to meet a range of objectives. Notwithstanding Fergus Ewing's antipathy to SNH's involvement on Rum, that is its job. Surveys have shown that the national and European designated habitat features on the island are in an unfavourable condition because of trampling and overgrazing by deer. SNH has a statutory responsibility to avoid deterioration on the island. A small number of feral goats live on the island, but the Macaulay Institute research Fergus Ewing quoted is not relevant in this case because we know there is a problem to be addressed.

More detailed survey and monitoring work to assess the nature and scale of deer impacts is currently being discussed to inform the best way forward. That is where the suggestion of a reduction cull has come from. However, I want to repeat Andrew Thin's assurance that there will be no more than a maintenance cull this year.

SNH is in discussion with the University of Cambridge and the University of Edinburgh about the management of the herds on Rum and about their scientific research. SNH will take their comments into account in its consultation.

I want to correct the suggestion that Jamie McGrigor and Fergus Ewing made, that the only reason there are discussions on plans to cull deer on Rum is to protect the trees that SNH has decided to plant without any protective fencing. The issue is much more complex. SNH is trying to protect a range of habitat features. The consultation on the management plan will have to look into all the issues.

I am told that SNH is planting trees without using deer fences because of the landscape impacts, the restrictions on the movements of deer, interference with public access, and the logistical difficulties with large-scale fencing operations. The latter is a particular problem on Rum, which has remote and difficult terrain.

Fergus Ewing: No—

Sarah Boyack: I am sorry. Fergus Ewing may disagree, but that is what I have been told.

Fergus Ewing: Has Sarah Boyack ever been to Rum?

Sarah Boyack: Yes, I have been to Rum.

Mr McGrigor *rose*—

Sarah Boyack: Some additional tree planting will take place this year in line with the current management plan. That will be done in areas

where deer density is currently low—in the east and south-east of the island, and not in the north.

I am happy to take an intervention from Jamie McGrigor now.

Mr McGrigor: Thank you. The terrain on Rum is no more difficult than lots of places on the mainland. There are several ways of building fences. There is conventional fencing; there is electric fencing, which can be powered by wind turbines if necessary; and there is fencing that locks together and can be moved to another plantation once the first one has grown up. I therefore do not understand SNH's argument about refusing to use fences. That is the key to the issue.

Sarah Boyack: There is no suggestion that SNH is refusing to use deer fences around plantations. It is avoiding them because of landscape impacts, hindrance to recreational access, interference with the movements of deer and logistical difficulties. I am happy to get SNH to write to Jamie McGrigor, but I am told that, because Rum is an island and because of its nature, it is particularly difficult to get equipment there and then around the island.

Rum is a wonderful place. It is host to a range of important plant species and to birdlife—and it is a refuge for red deer. In consideration of a future management plan, all those issues will have to be weighed up.

We have focused on deer tonight, but the points that Mark Ruskell made also have to be taken into account. There are many key features on Rum, which is why it was designated a protected island. There is birdlife; upland, coastal and aquatic habitats worthy of protection; special areas of conservation; sites of special scientific interest; and a range of species that are nationally scarce. Many issues of management of species and habitats arise. The deer have to be part of the discussion, but they are not the only issue that SNH has to consider.

The part of the motion that I very much agree with is that red deer are an asset and are iconic to Scotland. They are valued by all concerned. They will continue to be an integral part of Rum for years to come.

I invite colleagues to ensure that they are in dialogue with SNH. When the consultation on the management plan comes round, SNH will be willing to listen to people's comments. I hope that it will be a constructive process. SNH is willing to listen.

Meeting closed at 16:49.

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