MEETING OF THE PARLIAMENT

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Scottish Parliament

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[THE PRESIDING OFFICER *opened the meeting at 14:00*]

Time for Reflection

The Presiding Officer (Alex Fergusson): Good afternoon. The first item of business is time for reflection. I am delighted to welcome as our time for reflection leader His Excellency Archbishop Faustino Sainz Muñoz, the apostolic nuncio.

Archbishop Faustino Sainz Muñoz (Apostolic Nuncio): Mr Presiding Officer and members of the Scottish Parliament, I am truly grateful for the kind invitation that has been extended to me by the Scottish Parliament to lead the time for reflection today. I am aware of the parameters of the talk, which were clearly indicated by the instructions that were given about this short reflection. For me, as diplomat and archbishop, the task is particularly challenging, since I am aware that, as a diplomat, I must refrain from any interference in the internal affairs of a country and, as archbishop, I must avoid any remarks that may seem to take sides in a political debate.

So I thought that I would simply state, as a matter of information, how the Catholic church regards political life. The Catholic church places political activity in high regard and views those who engage in politics with much esteem. It does so because it believes that political activity

"exists for the common good: this is its full justification and meaning and the source of its specific and basic right to exist".

Those words are from the Vatican council document on the church in the modern world. In other words, the very raison d'être of politics is to promote what is good for individuals and communities as a whole. In fact, the church understands the common good as that which

"embraces the sum total of all those conditions of social life which enable individuals, families, and organisations to achieve complete and efficacious fulfilment".

Therefore, I say without any hesitation that a noble task has been entrusted to you, dear members of this Parliament, by your fellow citizens—a task that has as its goal the total and complete good of your fellow citizens and your country. That understanding of political life has been enshrined in the teaching of the church since the second Vatican council and has directed the church's relation with political activity ever since.

Pope John Paul II elaborated on that approach to political life on 4 November 2000, in the jubilee for members of Parliament and politicians in Rome. He stated that, since political activity is for the common good, it

"ought … to be carried out in a spirit of service"

and that

"Christians who engage in politics—and who wish to do so as Christians—must act selflessly, not seeking their own advantage, or that of their group or party, but the good of one and all, and consequently, in the first place, that of the less fortunate members of society".

Therefore, because politics, in the vision of the church, deals with the good of people, individually and collectively, the primary subject of the political system is the human person. As a result, there are matters and issues that arise that the church considers are related fundamentally to the dignity of the human person. Those matters are life, family, education, religious belief, justice and protection for those most in need in society. The church's approach to such issues is based above all on the nature of the human person as created in the image and likeness of God.

Consequently, you can understand why the church takes such an interest in those questions. It does so not in an attempt to impose its views or doctrines on society—and even less on any legislative body—but rather in a spirit of service to the common good and the nature of the human person, realities that transcend institutions but must rely on the good intentions of institutions to be protected and safeguarded. In that context, it is even foreseen that, at times, the church can offer its own expertise on those universal questions in collaboration with public authorities while always respecting the distinct competencies that each has.

Obviously, I am very much aware of the challenges facing you as lawmakers in a pluralistic society, which has many voices and different points of view about a whole range of issues. Nonetheless, a convergence can be found in keeping in mind the principles whose goal you have as legislators in a spirit of service to your country: to promote the common good and to respect the nature and dignity of the human person.

Once again, I thank you for this unique opportunity to stand before you, members of this august assembly, who have the truly noble task of serving your fellow citizens to assist them in attaining their highest aspirations.

NHS Independent Scrutiny

The Presiding Officer (Alex Fergusson): The next item of business is a debate on national health service independent scrutiny.

14:08

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): I am pleased to open this debate about building confidence in the process of proposing and agreeing change to local NHS services.

Members will recall that we recently concluded a public consultation on the role that independent external scrutiny might play in that process and the form that it might take. The consultation was extremely successful and generated more than 100 written responses. My formal response and decision on the future role of independent external scrutiny in the service change process will be set out next month, but this debate is an opportunity for Parliament to influence that decision directly, and I will consider carefully all the points that members make before I reach a final conclusion.

Margaret Curran (Glasgow Baillieston) (Lab): I am sorry to stop the cabinet secretary so early, as she is getting into her flow. Will she give us fair warning when she is about to announce her response to the consultation, so that we can all respond to it effectively?

Nicola Sturgeon: I give that assurance.

Before I take the decision, I will also reflect on the lessons of the successful applications of independent scrutiny in the NHS Ayrshire, NHS Lanarkshire and NHS Greater Glasgow and Clyde areas. In all those cases, we saw the value that independent scrutiny can add to the process and the positive difference that it is capable of making to outcomes. In the case of NHS Greater Glasgow and Clyde, it has led to important changes in the decision-making process and, in Ayrshire and Lanarkshire, it positively influenced the substance of health board proposals.

In all cases, public confidence has been enhanced, which is why I want to embed the value of independent scrutiny for the future. “Better Health, Better Care” commits us to a more inclusive relationship with the Scottish people—a mutual NHS, in which patients and the public are affirmed as partners, rather than as mere recipients of care. It means that the boards must develop the case for service change with the people they serve. The key principles of how that should be done are already set out in guidance. Briefly, that guidance states that proposals for service change should emerge naturally from a board’s day-to-day engagement with the people it serves. Local people should be proactively engaged in developing options for change, and the scale of the public consultation should be agreed with local people and be proportionate to the scale of the proposed service change.

Although that approach cannot guarantee support for a proposal, it is intended to demonstrate that the NHS listens, is supportive and genuinely takes account of the views and experiences of local people. The Scottish health council has a key role to play in quality assuring boards’ engagement processes. It does not pass comment on the strength of the case for a proposed change, or the evidence underpinning it. Public distrust of boards has been most obvious and acute around the reasons for change and the strength of the evidence supporting it; it is here, therefore, that independent scrutiny can enhance the process. The key purpose of scrutiny is to examine rigorously the evidence for service change and to provide an independent commentary on its strengths and weaknesses. That commentary can then inform option appraisal, consultation and decision making.

I want to address a thoughtful point that was made by Ross Finnie in an earlier debate. He said that if independent scrutiny had identified failings in boards, we should address those failings rather than embed scrutiny. With respect, that view somewhat misses the full value of scrutiny. It is true that the three reports so far have identified failings, and others in the future may do so, too. We should, of course, address those failings. However, it is not true that in every case in which the public oppose change and distrust a board, the board is wrong or has failed. Independent scrutiny may on occasion confirm the strength of a board’s case. That is as important in building confidence as exposing weaknesses in the board’s evidence.

I hope that I have clearly outlined the principle of independent scrutiny. Before I share my thinking on some of the more detailed issues of its operation, it is important that I repeat an important point. Independent scrutiny will not obviate the need for difficult decisions to be made. Proposing change to local health services is difficult to do, but sometimes it is necessary. A complex range of factors—clinical effectiveness; patient safety; workforce issues; finance; and the views of patients and the public—all have to be considered. Understandably, those finely balanced professional arguments can be difficult to understand and accept. There will be occasions when the evidence on some aspects of service change is inconclusive, or there may even be situations in which some of the evidence seems to point in different directions. However, decisions will still need to be made, and boards, quite rightly,

have a responsibility to make a judgment in such cases.

Ultimately, proposals for major change in the NHS are subject to ministerial approval. Any board should have confidence in submitting proposals to me, provided that they have set out the arguments openly, fully and fairly; that there is the clearest possible evidence base for their proposals—or where there is not, that they have been open about that and made a persuasive case nevertheless; that they have listened to and reflected as far as possible the views of the public; and that the proposals are in line with our national policy direction. "Better Health, Better Care" sets out that policy direction. It builds on the Kerr report, but it also challenges old assumptions in the light of better, more considered evidence.

We operate a clear presumption against the centralisation of key health services—an approach that is entirely consistent with work emerging from NHS Quality Improvement Scotland and from international analysis from Europe and elsewhere on the relationship between volume and outcome. That analysis shows that while there can be an association between volume and outcome—between concentration and quality—there is no general rule. Each case must be considered on its merits and the evidence must be tested.

I am glad to say that the principle of independent scrutiny was broadly endorsed during the consultation. However, I want to touch briefly on three detailed questions. The first question is, in what circumstances should independent scrutiny operate? I want to be frank: it would be expensive, time consuming and impractical if scrutiny were applied to all proposals for service change. The benefits of independent scrutiny will need to be carefully weighed against the costs, on a case-by-case basis. Scrutiny should be applied only to cases of major service change.

At the moment, the Scottish health council is working on what constitutes major change, but subjective factors will always be in play. That is why the decision on whether scrutiny should apply should be left to ministers. It is a matter of judgment, but I intend to set the bar high.

The second question is, when in the process should independent scrutiny take place? The consultation paper proposed that it should happen before full public consultation, and there was support for that approach. However, when issues relating to the evidence emerge later—as was the case recently in Greater Glasgow and Clyde NHS Board—it should be possible to reconvene the panel.

Scrutinising the evidence early in the process helps to ensure that there is an agreed evidence base for the subsequent decision-making process, which will include option appraisal. It should also ensure that an option is not discounted without due consideration of its merits.

The third and final question that I want to consider at this stage is, what form should independent scrutiny take? Members will not want any unnecessary bureaucracy to be set up. However, we want the scrutiny to be effective. The majority of respondents to the consultation agreed that our preferred option—an external scrutiny panel—would provide the most effective form of scrutiny. The reason they gave was the evident strength of the approach, which lies in the independence and skill mix of the panel members. In the consultation, we asked questions on such matters of detail, and we are analysing the proposals further. However, detailed answers to all the questions will be set out when I publish—with due notice—ministers' final decisions.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The cabinet secretary has made some very important points. She mentioned the skills mix within the independent panels. According to the consultation document, panel members will be independently appointed, and it will be important that their remit is focused. Does the cabinet secretary agree that the panel's remit should be focused on the evidence? The Scottish health council is working on the consultation process, and the panels should not tackle the consultation process or we will get mixed messages.

Nicola Sturgeon: I thoroughly agree. The delineation between the current role of the Scottish health council and the role of independent scrutiny panels is important. I have tried to emphasise that point.

It has become clear to me over the past few months that, if we are to avoid future public mistrust—which so clearly marked the original service reviews in the accident and emergency proposals in Ayrshire and Lanarkshire—we must develop the evidence for change with the public. Independent scrutiny will, I believe, build confidence in the decision-making process. It is not for those who undertake the scrutiny to make the decisions; rather, their job is to help build confidence in the evidence base that underpins those decisions. That, coupled with the reforms that are detailed in "Better Health, Better Care" to strengthen existing public consultation mechanisms, plus the possibility of there being elected health board members, will significantly reform and improve the process of consultation and public engagement. The NHS will be stronger and better for it.

I am glad to have had the opportunity to set out my thinking today. I look forward to hearing a range of contributions from across the chamber.

14:19

Margaret Curran (Glasgow Baillieston) (Lab): I welcome this debate, which is of key interest to many of us in the chamber and throughout the country—especially those who are engaged in the challenging delivery of NHS services.

I welcome the cabinet secretary's commitment to giving us warning of her decision. Obviously, we have a strong interest in that decision and I am sure that we will return to it in a parliamentary forum again. In the light of many of the comments that she made, we will want to test some of the issues and explore their practical implications and what they mean for the development of health services in Scotland.

I want to use my opening remarks to put some of the issues that were raised in context. At the core of this debate is an attempt to strike a balance between ensuring effective and efficient decision making for a service that matters a great deal to people, and ensuring a proper and robust process of decision making that enables people, especially the key stakeholders, to have confidence in the system.

It is easy for us to state in the Parliament that that should be the case, but the issue is complicated in the detail and challenging in the delivery. People in Parliament and in the wider body politic in Scotland—particularly health service professionals—have to appreciate that we live in an environment in which there is a profound commitment to the national health service and in which people have great loyalty to their local health services, and that we have a responsibility to lead change as well as follow it. That is true of all services in Scotland, but it is particularly true of the health service—health has a resonance that really grips people. Health is extremely demanding of resources and there is huge public loyalty and commitment to existing services. [*Interruption.*]

That is not my mobile phone—at least, I am pretty sure it is not.

The Presiding Officer: Members should ensure that their mobile phones are turned off. One is switched on very close to Ms Curran's microphone.

Margaret Curran: I will move my bag, just in case.

Change is a constant in the area of health, in terms of technology, service improvement and debate. It is sometimes difficult to keep up with the changes, let alone meet the challenges. We must create an environment in which we are prepared to face and encourage change and not be frightened of it, even if, at times, there is resistance to that idea. Of course, that is not to say that change should be imposed on people and that we should never listen to voices that question that change. We must ensure that people are not frightened of change though, in a sense, we sometimes create forces that inhibit our attempts in that regard. Government has a key role to play. It must ensure that we create that balance between effective decision making and giving people confidence in the process of that decision making, without throwing the baby out with the bathwater and creating a system in which change is inhibited.

How do we get that balance? What is the mix of processes that will lead to people having confidence in the scrutiny of key decisions that are made? We have had this debate before in the chamber. Transparency and accountability are the common themes of the current debate, and there is obviously concern about those issues. I agree that there is a need to produce high-quality evidence and to test arguments. That is where some of the public debate must lie. Many people have argued against major service change because they have not trusted the evidence that was put to them. However, we must be careful that, in doing that, we do not set the bar so high that nobody could meet that evidence test. We must ensure that the evidence of those who give evidence behind closed doors is robust and that they are prepared to put that evidence into the public domain and engage with the public about their recommendations. We must have a broader democratic debate about, for example, some of the clinical arguments for change.

Furthermore, there is the issue of how independent the scrutiny can be and how we can ensure that it has genuine support. If independent scrutiny panels introduce an imperative that makes decision making better, ensures robust evidence, restores confidence to the decision-making process and ensures that it is not only vested interests that influence the process and make decisions—and that vested interests are subject to scrutiny and control—there is a strong case for independent scrutiny panels.

However, we must be prepared to examine the counter-arguments. Independent scrutiny panels cannot be used to endorse decisions that have already been made. We have to be upfront about that. They must have added value, and be used to improve decision making and, ultimately, the quality of service. There is a key link between the decision-making process and the outcome of the decisions. If the decision-making processes only serve themselves and do not ultimately lead to service improvement, they will not prove to be useful. They must be used to test clinical evidence and managerial decision making, and to bring to the fore, on a public platform, some of the arguments that have perhaps been used more privately in the past. I think that there would be

support for that from members all round the chamber.

The scrutiny panels cannot be used as a force of reaction, they cannot create inertia, and they should not be used as a means of stopping change. As has been said, change will always be required in the NHS and we cannot be afraid of introducing it. However, vitally, we must bring people with us as we do that.

How will all that be achieved? As I understand it, the ministers' decision is still to be finalised. We must be seen to give real independence and accountability to the process, and we must raise the standard of public debate about health and all the factors that go with it. The Government needs to clarify a number of matters; perhaps that will happen as we move on from today's debate, but I hope that the minister will address a number of them in her response to the debate.

The Government has said—and I listened to the cabinet secretary's speech today—that independent scrutiny panels must ensure that health boards base their decisions on proper evidence when they make major service changes in local NHS facilities. It is imperative that we have clarity in what is meant by the phrase "major service changes". I was not sure what the minister meant when she spoke about a "case-by-case basis"; we need to know the criterion for that, how it would be determined, and who would determine it. I think that the Scottish health council would have a role in that.

Nicola Sturgeon: The Scottish health council is considering the development of a tool that will help in making a decision on what is major and what is not. It has always been the case that such decisions—at the moment, only major changes must come to ministers for approval—ultimately rest with ministers. I ask Margaret Curran to accept that there will always be a degree of subjectivity. What might be a minor change in a large city would be a major change in, for example, a rural or island part of Scotland. It is therefore important that, in the final analysis, a minister can exercise a degree of judgment.

Margaret Curran: I accept that argument, but it is nonetheless important that if we suggest to people that we are introducing an element that can give them confidence about changes that really matter to them, and that we are introducing an element of independence into the process, we are seen to be doing that, rather than presenting the process as applying to some decisions only and not to others. NHS boards, the public and many local organisations that could be affected by the panels' decisions must be aware of when and how the scrutiny process will occur. We need a debate about how that moves forward.

If independent scrutiny panels are to educate the public, they must enable, facilitate and empower those who are affected to participate in a well-informed debate on the health boards' decisions. At this stage, we should not say that people are empowered only for some decisions and not for others, which are to be decided privately by the minister. If the Government goes down this road, it must face the full consequences. There is a current drive to make everything as public as possible; the Government must accept that it initiated that drive and it must live with the consequences.

It is important that the Government clarifies the panels' role in relation to public consultation. The review panel that was chaired by Dr Andrew Walker relied heavily on the Scottish health council—an authority that was set up by the previous Executive and which had the explicit goal of ensuring that the public are properly consulted on important NHS decisions. That element of consultation was vital. Without the help of the Scottish health council, the Walker panel could not have undertaken its work. It is vital that the Government clarifies the relationship with the Scottish health council.

The minister must today make abundantly clear the relationship of her policy with the presumption against centralisation. As a legal term, presumption has a very strong impact, particularly when it is viewed in a planning context. We must be clear on the role of the presumption against centralisation in that context. The minister should not present it as if all decisions will be independently verified if they will not be. There are still a number of details to be considered.

14:30

Jackson Carlaw (West of Scotland) (Con): The Scottish Conservatives acknowledge at the outset of the debate that the Cabinet Secretary for Health and Wellbeing's decision, made on coming into office, to establish an independent scrutiny process has proved an unqualified success. Almost at the stroke of a pen, Nicola Sturgeon acted to restore the badly bruised public confidence in decisions on major service delivery change. Both the SNP and the Scottish Conservatives fought last year's election on a pledge to reverse the damaging closures of accident and emergency departments and bring to an end the seemingly messianic obsession with the centralisation of acute health services. That promise has been emphatically delivered at Ayr and Monklands hospitals.

The establishment of an independent scrutiny process was a bold step, but by ensuring that decisions are reviewed afresh by experienced professionals who are one step removed and take

a broad view, public confidence in the conclusions that are reached has been restored. We owe a debt of gratitude to professors Andrew Walker and Angus Mackay and those who have served them so far.

The consultation on what future role an independent scrutiny process might have is appropriate, important and timely if public confidence is to be sustained. However, we should not lose sight of the reason why such a process proved necessary, because that should inform what happens next. The reason was surely the almost complete collapse of public confidence in the modern consultative process.

The public have become both wary and cynical of consultations, the outcomes of which appear to have been pre-determined. People's anger is aroused by the presentation of so-called options, many of which appear to have been drafted merely to be subsequently dismissed as either ridiculous or impractical. Indeed, several of the so-called options are often rubbished by the very organisation that has included them in its consultation. A clear impression is given that they exist as options only to reinforce the prejudice that underlies the preferred course of action of those who are consulting. That might be an unfortunate caricature of the actions of those involved but, to be frank, as far as the public are concerned the perception is the truth, even if it is not the reality. Even more unfortunately, it now appears that the perception was the reality in relation to the A and E departments at Ayr, Monklands and the Vale of Leven hospitals.

The modern consultative process is not unique to the NHS—for evidence of that, we need look no further than the Westminster Government's consultative process on post office closures—but it is particular to the NHS. During the past decade, many people joined consultations on major service changes in good faith and demonstrated the substantial public support that underpinned their local campaigns. It is no wonder that they recoiled in frustration and outraged disbelief when all that they had achieved was dismissed out of hand.

The previous Administration's record on the NHS is not without merit, but it suffered the public's disapprobation and contempt for its apparent arrogance in pressing forward with enforced major service change and never hesitating in the face of public anxiety or will. Perhaps ministers persuaded themselves that that was leadership. In response to the ministerial statement a fortnight ago on the decision to retain A and E departments at Ayr and Monklands hospitals, which arose from an independent scrutiny process, Andy Kerr vaingloriously railed against the fresh decisions that were reached, seemingly oblivious to the change in the public mood.

Labour supremacy in local government and at Holyrood is a thing of the past and Labour bombast and edict will no longer serve. Andy Kerr needs to wake up and smell the disinfectant and Margaret Curran needs to disassociate herself from what is a barren strategy and commit her party to supporting a future sustained role for both independent scrutiny—I think that she engaged in that in her comments this afternoon—and genuine public consultation.

Dr Simpson: Does the member accept that, following the 1999 Stobhill inquiry, interim guidance was issued in 2002 and a reform bill was passed that insisted on consultation? Does he agree that, although some consultations might have had flaws, that is partly because the Scottish health council was not established until 2005, by which time those consultations were under way?

Jackson Carlaw: No. As I said a moment ago, the public perception of some consultations that have been initiated on major service change—not just in the health service but elsewhere—has been that, although options were presented, they were not credible options and the organisations that were consulting sought to undermine the very options on which they canvassed views.

When the cabinet secretary launched the review, she said:

"Independent scrutiny will operate prior to public consultation on proposals for major service change and the conclusions will be reported to NHS Boards and Ministers."

Will she consider whether responsibility for ensuring that the options that are put are credible, and whether guardianship of any subsequent consultation process—one in which the views of the public are treated seriously—should be entrusted in future to the elected members of health boards? As long as they have access to advice to carry out whatever functions are bestowed on them, the public will be able to have confidence, knowing their obligation to ensure a proper and open consultation.

Whatever the future system, the existence of an independent scrutiny process has been vindicated. Indeed, given the decisions in Ayr and Monklands and on children's cancer services across Scotland, it is understandable that many in greater Glasgow now regret that the present Government was not in office when controversial change was forced on them. They are right to wonder just how safe that change will prove.

Although I understand and respect the cabinet secretary's pragmatic view that decisions reached years ago and now being realised cannot be subject to yet further review, I believe that there is a special case in greater Glasgow, which serves

such a vast community, not for fresh independent scrutiny of the immensely complicated infrastructural decisions that were reached, but for an external review of their implementation and the opportunities for service enhancement that might be accommodated to mitigate a sustained public concern by communities currently served by Stobhill and Victoria hospitals that was voiced again at public meetings just last week.

We all appreciate that the management and running of NHS boards is a huge undertaking. Boards have to get on with it and cannot have some permanently seated quango ranging casually across Scotland, second-guessing their every decision. That would paralyse the NHS.

If we can ensure renewed public confidence in the consultation process, the need for later independent scrutiny of decisions should diminish. We should work to achieve that end. The public have responded positively to independent scrutiny, and they clearly have confidence in it. We should ensure that they are reassured that no future Government will in the final analysis abdicate its responsibility in a welter of self-justification, but will instead reserve to itself the means to scrutinise independently what is recommended. All parties now need to accept such a process, and the cabinet secretary can be assured that we will look positively at whatever proposals finally emerge.

14:36

Ross Finnie (West of Scotland) (LD): No one has disagreed that we faced a position, which the cabinet secretary outlined, of a public lack of confidence in how health boards were reaching major decisions. We should not kid ourselves that the problem stopped there. Sadly, the public's confidence in health boards per se has been undermined in the process. What we face is the question of how to restore confidence both in health boards and, more specifically, in how they take major decisions.

As has been said, the major cause of the problem related to modernisation of the hospital estate and, in particular, the total lack of public confidence in the ability of health boards to carry out a public consultation that in any way appeared to take account of the public's views. Professors Walker and Mackay have extended those criticisms of how the boards operate. They have criticised boards' ability to introduce proposals that could stand up to robust scrutiny. They have criticised boards for being too ready to accept both arguments from the royal colleges for specialisation and data suggesting a shortage of specialists. They have criticised boards for being too quick to promote centralisation as the solution and for making unsupported assumptions about the ability of paramedics to stabilise patients before transfer and the safety of longer ambulance journeys.

That is all important, but we should remember that the proposals were drawn up by the executive directors of the health boards, who we believed had proper qualifications. They were supported by the non-executive directors as currently constituted. The criticisms of how the boards in question—and perhaps boards generally—currently operate are serious.

Dr Simpson: Does the member accept that an independent consultancy looked at the consultation process in at least two cases and in one case an independent individual—a pro-vice-chancellor of the University of York—looked at the evidence? Attempts were made by the health boards, albeit they were not successful.

Ross Finnie: That might be right, but I want to stick to the generality. There are serious issues facing the health boards in question and boards in general.

There is clear agreement that public consultation, patient safety, sustainability, sound evidence bases, value for money and rigorous and transparent public consultation are essential. The cabinet secretary's proposal, which she outlined clearly, is to embed permanently an independent scrutiny panel to oversee what is happening.

I am grateful to the cabinet secretary for considering the point that I made earlier. I do not think that I confused two issues and I will develop my point a little further. The cabinet secretary will remain the ultimate decision taker when big decisions are being taken. She and her department will rightly retain the role of setting the strategy for the provision of health care throughout Scotland and the local health boards are supposed to be responsible for the delivery of health care in their areas. The question is: will we totally restore confidence in those boards or leave a lingering doubt that they will be overseen by a third party when there are major changes? The cabinet secretary has argued the case for the former.

There will always be a case for any cabinet secretary to appoint independent scrutiny if they believe that the nature of a board or how it is performing gives rise to doubts about whether it can properly discharge its functions. That is different from the premise that a redefined, reformed and improved health board will start from the presumption that when major decisions are being taken, its decisions will be overlooked and second-guessed by some independent panel. That will give rise to difficulties in recruiting people of the right quality and calibre whom we want to serve at the top end of our health boards. I will return to the new proposals relating to non-

executive directors. However, whatever road we go down, I ask the cabinet secretary please to take steps to sort the problems that have been identified.

Nicola Sturgeon: Ross Finnie raises an important point. He is absolutely right. The independent scrutiny reports that we have received identified weaknesses that must be addressed in a range of ways. Many of our other proposals in "Better Health, Better Care" go some way towards doing that. However, does Ross Finnie agree that independent scrutiny potentially has a much more positive role to play than simply exposing such weaknesses? I will paint a scenario. Imagine a perfect health board that does everything right. When it proposes major change, the public will still view it with suspicion, because it will be seen as having a vested interest in the outcome of that change. Therefore, there is a role for independent scrutiny panels to quality assure evidence, in the way that the Scottish health council quality assures the engagement process.

Ross Finnie: I am grateful for the point that the cabinet secretary makes, but let us consider it, along with my final point. If there continues to be doubt about something and a need for the public to be satisfied by an independent body, what the cabinet secretary proposed will be brought into play. I do not entirely agree with its methodology, but I will not go into that this afternoon. The cabinet secretary proposes that the non-executive directors of health boards should have the clear confidence of the public because they are elected. What on earth is the point in having non-executive directors who will require support and training to ensure that they properly bring the executive directors to account in a way that, I accept, has never been done in the past, and then saying to the public that an unelected body will second-guess decisions? That will undermine the standing and status of the health board.

I remain open to further debate on the important subject of independent scrutiny, but I hope that we will consider further how reformed health boards, the problems of which have been sorted out and that have totally different elected structures, will restore confidence to the extent that we do not need the permanent embedding of independent scrutiny panels.

The Presiding Officer: We now come to speeches from back benchers. I allowed a little leeway with the opening speeches, as we had a little time in hand. We no longer have time in hand, so I ask for six-minute speeches, please.

14:45

Ian McKee (Lothians) (SNP): There will always be a balance to be struck in the health service between the desire to provide care as near to a person's home as possible and the quality of service, which might require its provision in a centre of excellence some distance away. Add to that the need to balance what individuals want against what the state thinks that it can afford, and it is no surprise that decisions are difficult to make. Sometimes, however, they are frankly wrong.

There are fashions in health as well as in any other area of activity and there are vested interests. Many years ago, a brave consultant at a hospital near where I worked argued that most antenatal care should be delivered in the community. His colleagues derided him, pointing to the pool of expertise that was available in a hospital and the inefficiency involved in specialists' having to travel to remote health centres. Yet, when he put his ideas into practice, antenatal care was not only delivered to a high standard; the outcome, in terms of healthy babies, was hugely improved. His critics had relied on gut instincts, whereas he used logic and triumphantly vindicated his stance.

We must admit that there is also a human desire among individuals—including hospital specialists—to associate on a daily basis with their own kind. On the positive side, that results in a symbiotic exchange of ideas and views, which is ultimately of benefit to the patients who are under hospital care. However, that undoubted benefit is negated if the result is treatment in a large hospital that is so far away from where they live that their clinical care is adversely affected. As I say, a balance must be struck.

So, who should strike that balance? So far, it has been the duty of the health board—a quango of executive officers and non-executive appointees. I have nothing but admiration for the vast number of people who are serving on health boards, who do their level best to maintain and improve health services in their areas; however, they do not always get it right. Sadly, as Jackson Carlaw has told us, the consultation procedures that they introduce sometimes seem to be more informative than genuinely consultative. The common perception is that although the boards ask for people's views, it does not matter what people say because the boards will have already decided what they want.

Ross Finnie: Is Dr McKee suggesting that the cabinet secretary's proposal to change radically the composition of the boards by introducing elected non-executive directors would not make a substantial difference to the situation that he has just outlined?

Ian McKee: Having elected members of health boards would be an enormous improvement. One of the problems at the moment is the fact that no one in an area knows who their health board

members are, and it is therefore difficult to regard them as representing people in the area.

Of course, there are occasions on which unpopular decisions must be made; however, people are not fools. If, for example, someone has a better chance of recovering from cancer by being treated in a highly specialised unit, they will not grudge the long journeys that are involved. Someone who lives in Fort William will not insist on going to the Belford hospital, for example, if they know that their treatment has a much better chance of success if they go to Glasgow for it. If they are shown the evidence and given a decent explanation, most people will accept such decisions. On the other hand, if they are just told that a local facility will be lost and they are not given a decent explanation, the result will be the kind of popular uprising that we saw after the decisions were made to close the accident and emergency departments at Ayr and Monklands hospitals.

That is why independent scrutiny of major health changes has a valuable role to play. There will be occasions—perhaps many occasions, as the cabinet secretary has said—when expert scrutiny of a controversial health board decision will result in that decision being upheld. Nevertheless, the decision must be based on evidence, rather than on fashion or whim. When a decision involves the closing down of local services, it must be clear to all why the presumption in favour of those services is being discarded.

In his speech in the chamber on 24 January, Dr Richard Simpson complained that the independent scrutiny body that criticised NHS Lanarkshire produced not a single piece of referenced evidence in favour of its determination; it simply restricted its role to criticism of the limited and flawed information base on which the health board had reached its decision. However, when a local service already exists—and there is a presumption that local services are best—surely it is up to those who advocate patients making long, tiring and inconvenient journeys to obtain treatment to produce the evidence for that being a good idea, not those who want to maintain an existing service. Until we have locally elected health boards—and we need to consider that again—independent bodies that scrutinise major decisions are the only way to restore public confidence in the health care decision-making process. I support that step.

14:50

Helen Eadie (Dunfermline East) (Lab): I welcome the chance to hear members' views this afternoon. One of the key issues for me is the opportunity to read in detail the responses to the consultation that the minister said has now concluded. I have not had the chance to do that yet. I hope that we will all have a further opportunity to reflect on what each of us says today and on what we have learned from the consultation feedback. It is vital to understand why we are where we are. In the context of the outcome in Fife, Scotland is not a good place to be at all, although many people will take a different view on that.

One of the threads that runs through the work of the Health and Sport Committee and Parliament is the need for much better information. I hope that the minister will address that point carefully, because I am concerned about responses to parliamentary questions that say that data are not held centrally. If we are to take informed decisions on health matters, information is very important.

The Labour Party's view, as I understand it, is that there are arguments for and against the independent scrutiny panels, but I would like answers to some important questions. Under what circumstances will a panel be called in? What impact would that have on the outcome of any deliberations? For example, will a panel be called in only when the minister disagrees with the health board, as in the case of St John's hospital? Will the panel be called in before or after the health board has considered an issue? I know that the minister has answered that question to some degree, but she mentioned the possibility of an independent scrutiny panel sitting before a decision is made, and that situation could have all the difficulties that we had in Fife. The public get very sceptical—the public are sceptical about most things in life—and if people see an independent scrutiny panel agreeing with the health board, they will turn round and ask, "Is it a fix?" We must think about that very carefully. For me, the jury is out, which is why I would like to read the consultation responses.

There are also issues around the remit of the independent scrutiny panels. Will they be responsible for considering the evidence base for the local health board's decisions, or will they also examine the public consultation process? If they do both, will they then impinge on the responsibilities of the Scottish health council?

Nicola Sturgeon: I answered that point in response to Richard Simpson. The Scottish health council's job is to quality assure the consultation. The envisaged role of the independent scrutiny panel is to do a similar job with the evidence base. The roles are clear and carefully delineated.

Helen Eadie: I respect that the minister answered Richard Simpson's question, but I want to read the consultation responses on that point. The minister has given her view but I would like to hear the Scottish public's response before our minds become too set on where we should be

going.

Concerns have been expressed that the consultation processes that the panel has carried out so far have been flawed and less thorough in comparison to those undertaken by the health boards.

Ross Finnie made a first-class point when he talked about where we are going with directly elected health boards and independent scrutiny panels. Would panels decrease the power of local health boards? The SNP's support for direct elections to health boards lends weight to empowering health boards, as they would have members who are directly accountable to the public. Will ministers clarify their position on that? Ross Finnie made the point much more eloquently than I can and I agree with what he said.

If scrutiny panels are to be established, I agree that a non-clinical person should act as the chair of a panel. I would be happy to support that. That person would understand the scrutiny process and would be publicly appointed and accountable to ministers.

Above all, I hope that no attempt will be made to abdicate ministerial responsibility. I hope that no one will pass the buck back to independent scrutiny panels. In parliamentary debates and in the First Minister's answers, we often hear that something is a matter for local outcome agreements. The Government does not say clearly where the buck stops and how it will have measurable outcomes that reflect what we in the Parliament want nationally that will deliver for the people of Scotland.

There are many questions. I hope that ministers will give us the chance to have a further debate after we have reflected on what each of us has said today.

14:57

Willie Coffey (Kilmarnock and Loudoun) (SNP): Let us be clear about the importance of the subject that we are debating. We are discussing not the advantages and shortcomings of service models, but a Scottish Government proposal that major changes to existing health services should be subject to independent external scrutiny. It is an important proposal that all members should understand would open up political decision making to unprecedented scrutiny. A mechanism would be put in place to ensure that when major changes to health services were planned, the public would have access to clear independent assessment of the bases for those changes.

It has been difficult in the past months—and perhaps it is even now—to work out whether some members of the previous Administration think that the proposal is good. It is even difficult to know whether a cautious welcome has been offered today—I do not think that even that has been given.

As she actioned for Monklands and Ayr, Nicola Sturgeon proposes, as a feature of decision making for Scotland's health services, to base such decisions on robust evidence—that term has been used quite a few times today—and to make them subject to clear independent scrutiny before they are implemented. That would ensure that the outcome of a change could be justified as being in NHS patients' interests.

From watching the mishandling over a long time of accident and emergency services in Ayrshire, I have a particular view of such events. I recall various presentations by Ayrshire and Arran NHS Board to East Ayrshire Council meetings at which the entire council opposed the board's plan to close Ayr's accident and emergency unit. The board did not estimate the number of people who would bypass Ayr hospital in an ambulance in an emergency or take any consideration of the concerns of relatives who faced travelling four hours or more to visit family members if they turned out to be in Crosshouse hospital near Kilmarnock. Such widespread public concern that was being ignored by a health board would be very much in the mind of an independent scrutiny panel.

The Ayrshire A and E services provide a case study of how the previous Administration conducted its business. As early as 1999, questions were being asked about the future of the A and E service at Ayr hospital. The then minister said that the health board had no plans to close the service, but events over the life of the previous Administration show the failure to keep the A and E service at Ayr up to date. That failure to invest was used as an excuse for closing the service, hugely against the local population's wishes.

As the independent scrutiny report on the Ayrshire A and E proposals makes clear, the health board has pursued solutions based on selective reading of international—and in some cases old—evidence of the impact of particular service models. The national framework for service change contained fine words about developing options with people, not for them. As the Cabinet Secretary for Health and Wellbeing said, it is important to stress the partnership role of all users of the health service rather than only the direct recipients of the service. The scrutiny panel found little evidence that that had been done. Those of us who experienced at first hand the anger of the people of Ayrshire at the way the change process was being handled could have told the scrutiny panel that, had we had the opportunity to do so.

Setting up independent scrutiny panels is a positive step for decision making in the NHS. The terms of reference for the panel that was set up to look into Ayrshire and Lanarkshire A and E services has been attacked. The panel was asked to ensure that services are safe, sustainable, evidence based and represent value for money. It was also charged with ensuring that services are robust, patient centred, and consistent with best practice and national policy. An important part of its remit was to ensure that service planners take account of local circumstances and the views of individuals and communities. Those strike me as appropriate tests to apply to new services. Perhaps most important, in the light of the experience of the Ayrshire A and E review, the public should be confident that all viable service options have been considered, including those that start from a basis of recognising the strengths of local services and community links.

The outcome of the independent scrutiny process has been warmly welcomed, not least by Ayrshire and Arran NHS Board, which now sees a clear way forward in developing services for its community. I am confident that the Government's proposals will be warmly welcomed by NHS professionals, patients and the wider community.

15:02

Nanette Milne (North East Scotland) (Con): While preparing for the debate, I looked back over several debates on service changes proposed by health boards in many parts of Scotland. They do not generally make very happy reading.

In 2004, we heard the fears of the people of Caithness that a predicted loss of their consultant-led maternity services would result in mothers having to travel more than 100 miles to Inverness, on poor roads, often in bad weather, or stay in bed-and-breakfast accommodation or hospital wards immediately before their expected delivery date. Fortunately, active campaigning resulted in common sense prevailing, as when services were retained at the Belford hospital in Fort William, which has a proud record of trauma management.

The Vale of Leven hospital was not so fortunate. In the two years following the closure of maternity facilities there, 11 mothers gave birth in ambulances en route to hospitals in Glasgow or Paisley.

In April 2005, many of us attended an excellent public debate on reshaping the NHS, which was attended by patients, campaigners and NHS professionals across the spectrum. It became obvious that people want a safe, accessible and sustainable NHS that is delivered locally wherever possible. Centralisation was accepted as necessary for highly specialised treatments only. There was a clear demand for more meaningful public involvement in the planning and organisation of services.

People wish to retain local services wherever that is possible, especially in more remote and rural areas where, over the years, facilities have developed around communities. The hope was expressed that the Government would listen to the voice of local people and work with them to achieve a health service that was able to respond to all who wished to use it, that would be the pride of Scotland and that would give satisfaction to all who worked in it.

The Kerr report backed up those aspirations: it recommended that health care be delivered as locally as possible. But, by 2006, in the wake of Kerr, it was obvious that there was widespread concern about some proposed reconfiguration of health services. Some changes were welcome, but others—such as the well-known proposals to close A and E units at Monklands and Ayr hospitals—provoked intense and sustained campaigns against them. Those campaigns had the backing of politicians of all parties and of local people. They also had medical opinion on their side. Similar campaigns in the Borders put a strong case to ministers to retain hospitals in Jedburgh and Coldstream. Unfortunately, they were not successful.

In Grampian, there were active campaigns to retain maternity services in Aberdeenshire. Local people branded NHS Grampian's consultation merely cosmetic. That view was supported by the Scottish Health Council, which initiated further consultation. Only after that—and the further lobbying of ministers—was agreement reached to retain the capacity to give birth at Aboyne and Fraserburgh hospitals, which gave a measure of choice to the mothers-to-be who did not wish to travel many miles to give birth in Aberdeen.

We all agree that the public has a right to be consulted about major service change. Such consultation must be genuine and meaningful. When whole communities feel that that is not the case and responsible elected members of all parties support local opinion, ministers should be wary of taking decisions that are contrary to that weight of opinion.

Such decisions were not uncommon in the previous Administration. Often, public opinion was heeded only after strenuous local campaigns that cost a lot of time, effort and—sometimes—cash. The result was cynicism and a public perception that the Government was hell-bent on centralisation. Far from local people being involved in service redesign, they were brushed aside and ignored.

The Cabinet Secretary for Health and Wellbeing's decision, soon after coming to office, to set up an independent scrutiny process with regard to A and E services at Ayr and Monklands was very welcome and it has already gone some way towards restoring public confidence in decisions on major changes to service delivery. I welcome the consultation, which has just finished, on the establishment of an independent scrutiny system and concur with the British Medical Association's view that an expert panel might well prove to be the most effective way of providing independent scrutiny of proposed options for significant operational change and that such scrutiny must not only be evidence based but focus on the criteria of safety, sustainability and value for money for NHS boards.

I agree that panel members, however they are selected, should have the skills, experience and stature to inspire public confidence and that their findings should be put into the public domain. Such an approach should go at least some way towards increasing public confidence in how changes are progressed. If the health service is to be responsive to increasing demands and improvements in technology, there is no doubt that change will be required and that, at times, very difficult decisions will have to be made. In such cases, independent scrutiny of proposals will restore public faith in the consultation procedure and help to gain co-operation when necessary changes have to be implemented.

I hope that the consultation, the responses to which are currently being considered by the Government, will lead to a process that gives the public confidence that proposals for service change are indeed in the best interests of the communities at their receiving end.

I do not profess to have any detailed suggestions on how an independent scrutiny strategy might be implemented, but I look forward to the Government's proposals with great interest and an open mind.

15:08

Malcolm Chisholm (Edinburgh North and Leith) (Lab): After reading the consultation document and some of the responses to it, I support the concept of independent scrutiny that has been outlined and am inclined to support the third option. As it makes clear, such an approach is not entirely new. Indeed, the first sentence in the section that outlines the third option says:

"The NHS has used the approach of an independent, expert panel a number of times in the past",

and it gives the example of the group that reviewed maternity services in Glasgow—which, as it happens, I announced in a parliamentary debate in 2004.

Independent scrutiny represents another step towards establishing an open and effective procedure for bringing about service change that is based on developing options with people, not on presenting options to them. It is fair to say that such an approach has been evolving over a number of years and that, as I say, this is the next stage in the process.

Some NHS boards have been much better at this type of approach than others. Returning to the example of maternity services in Glasgow, I felt that there was great frustration that direct intervention was possible only at the end of the process. It would be useful to be able to intervene before formal consultation takes place—although I realise that under the proposals such intervention would be made not by the minister but by the scrutiny panel. That is consistent with the approach that was adopted in the Kerr report, which said that all options for service redesign must be considered before centralisation on grounds of resource or workforce constraints is considered.

A key question for a scrutiny panel is whether all the options have been examined. In relation to the Vale of Leven hospital, the scrutiny panel recently said that all the options had not been properly considered, which was a reasonable intervention at that point. The scrutiny panel's key task of assessing whether all the options have been considered is part of its more general commentary. It is useful to have a check in the system at that point, which will be crucial in giving people more confidence in the process, and it might potentially lead to a wider range of options being available—I say "potentially" because there might be little need for comment if a health board has done its job properly.

In my day, I always used to commend Tayside NHS Board and lament the fact that other health boards did not engage the public and put forward options to the same extent. If they had, the whole process would have proved much more successful. Perhaps we should hope for a withering away of the scrutiny panels in time, as boards get better at producing a range of options with a comprehensive evidence base.

Part of the purpose of the debate is to ask questions. Margaret Curran and others have done that, and I am sure that the minister will reply to them. An obvious question is about the nature of the panels. As it happens, last night, I asked a health activist in my constituency what she thought of them. Her response was that it depends who is on them. That is a crucial issue, although the way of forming the panels that the consultation recommends seems entirely reasonable. It might

be desirable for a wider range of groups to be approached on the nomination of panel members but, apart from that, the general approach seems right.

There is also the issue of the degree of change that will be referred to panels. People have asked about that in the consultation responses and elsewhere, and the cabinet secretary has substantially addressed it. It is vital that there is clarity on the respective roles of the Scottish health council and the expert scrutiny panels. In general, people seem content with the proposed arrangements, but there might be an issue if boards work collaboratively to develop options for change. Will the scrutiny panel look only at the options, or will it look at how they have been developed? That question might already have been answered, but I have no doubt that it will be dealt with in the summing-up speech.

The key question is what happens when the evidence is contested. Page 12 of the consultation document says:

"The board would be able to reflect their conclusions"—

the panel's conclusions—

"in the final proposal for public consultation."

Does that suggest that the board can take or leave the panel's recommendations? A few questions remain to be answered but, in general, as the consultation responses indicate, there is overwhelming support for the external scrutiny process and I am happy to lend my support to it.

15:13

Stuart McMillan (West of Scotland) (SNP): I welcome the debate and the introduction of independent scrutiny panels. I fully agree that every circumstance must be examined on a case-by-case basis and that the independent scrutiny panels should examine proposals before they are put out to full public consultation.

Every member will have their own experiences of health board consultations. As a West of Scotland MSP who stays in Inverclyde, I can assure the Parliament of the Inverclyde public's lack of confidence in the former Argyll and Clyde NHS Board. There is now an attitude of healthy scepticism towards Greater Glasgow and Clyde NHS Board.

It is obvious that the Parliament wants a strong, successful NHS. One way of ensuring that we take the public along with us is to ensure that the mechanisms are in place that will allow us to restore confidence in health policy decisions. I am sure that the introduction of independent scrutiny panels will aid the achievement of that aspiration.

The only constant in the delivery of public and private services is change—no change in the NHS is not an option—but if changes are proposed, it is vital that all the facts and figures and every conceivable piece of information be made available. Consultations that do not enjoy public confidence are not worth the time and resources they take up.

I was delighted that the cabinet secretary established an independent scrutiny panel to consider maternity services in the NHS Greater Glasgow and Clyde area. I took part in the consultation by attending a public meeting and providing a written submission. I also met panel members when they came to the Parliament.

When the panel reported, it suggested that the board maintain community midwife units at Inverclyde royal hospital and the Vale of Leven hospital. It suggested that the CMUs be maintained for three years, to provide a community education programme. I welcomed that suggestion, as did other people, but the board rejected it and still intends to remove vital services from the IRH and the Vale of Leven hospital. Two important points arise from that experience: the strength and status of independent scrutiny panels; and the continuing lack of public confidence in health boards. Ross Finnie talked about that in detail.

I agree with Ian McKee that the provision of evidence in consultations is vital. The public might not always agree with the outcome, but it will help if people can be taken along in the process. Independent scrutiny panels will provide a useful mechanism for holding health boards and the Government of the day to account. I hope that public confidence in health boards will improve as a result. If the public have no confidence in boards or other public service providers, we have major problems. It is imperative that the Government of the day get things right. I know from my experience in Inverclyde that public confidence is at a low ebb.

Independent scrutiny panels must fully consider comparative models in other health board areas. When the independent scrutiny panel considered NHS Greater Glasgow and Clyde's proposals for maternity services, I put forward information about NHS Tayside and the CMUs in Montrose and Arbroath. The information had not been brought to the panel's attention until then, so it was important that it was provided.

I agree with the presumption against centralisation. Services should remain as local as possible, provided that they are safe and viable. I am sure that the establishment of independent scrutiny panels will go some way towards ensuring that that happens.

15:18

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to take part in the debate and I welcome the consultation and discussions on independent scrutiny, which I am following closely.

The health of the nation is important. The health budget in Scotland grew by almost 40 per cent between 2000 and 2007, to about £11 billion, so it has a big impact on people's lives. A number of issues must be tackled: our population is getting older; we have made progress on the big three—cancer, heart disease and stroke—but much work remains to be done; and we must continue to consider health inequalities. There are big issues in Glasgow and central Scotland to do with how we tackle the health of people who live in areas of social deprivation. We must consider independent scrutiny against that background.

Major decisions about accident and emergency and primary care services will continue to have to be made. When such decisions are made, emotions run high. We need to balance communities' and patients' requirements with clinical requirements. Independent scrutiny can be useful in pulling together and balancing all those points of view, but it is important that that role is not pre-empted in any way, as has happened in recent cases. Independent scrutiny panels must be set up correctly. As Malcolm Chisholm rightly said, that is in part about organising efficiently the process of appointments to panels. We need the correct level of expertise and a proper vetting process. We need to balance clinical and community interests and we need transparency in the appointments process. Overall, scrutiny panels need accountability, so that people do not feel that their views are being ridden over roughshod.

Once a panel has been set up, it is crucial that the process is absolutely clear so that people know what job the panel is undertaking. The process should be logical from start to finish and people should be aware of what will happen at each stage so that, at the end of the process, whatever decisions are taken, the various parties feel that the process has been followed fairly.

Important points arise about evidence and data gathering. I do not agree with some of Ian McKee's points about presumptions and proving a case. It is incumbent on independent scrutiny panels to collect relevant data and to ensure that they are accurate, so that they can make decisions. Recently, several decisions have been criticised because they were based on out-of-date data or, in some instances, not enough data.

A big issue is the fact that these matters are complex. Stuart McMillan mentioned modelling, which is often used. A lot of data are fed in, assumptions are made and scenarios are built up—the process can be complicated. It is important that that part of the process is explained properly to the public, politicians and professionals, so that people are aware of the impact of the modelling and the outcomes of that process. That part of the process can be important for the ultimate decisions, so it is important to get it right.

Health is a major issue in the 21st century, so it is important that, if we go down the independent scrutiny panel route, we get it absolutely right. The process must be fair and transparent. The correct appointments must be made, the process must be clear and there must be a correct balance between health care, communities and professionals. I acknowledge that the debate on the advantages of independent scrutiny is on-going. I am listening to that debate and I will continue to follow it with interest.

15:23

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): This has been an interesting and free-thinking debate. I hope that I am right that the Scottish Government has not firmed up its opinions, although the cabinet secretary laid out her position clearly. She pointed out that the recent public consultation has been completed and gave her view that independent scrutiny has recently played a successful role. She made the important point that local people's involvement will be crucial in the future. She also mentioned the public distrust of health boards the length and breadth of Scotland, on which almost every other member in the debate touched. That distrust is unfortunate, but I accept that it is probably a fact. I was struck by the cabinet secretary's remark that independent scrutiny, whichever way we decide to go with it, does not equal avoidance of difficult decisions—an important point.

Margaret Curran reflected that point when she said that decision making must be robust and that we should not be frightened of change, locally or nationally, because that would be a dereliction of duty that would lead to atrophy and which would fossilise the health service once and for all, when it should be a changing scene. Margaret Curran also rightly made the point that the Government has a role. The cabinet secretary mentioned in her speech that, ultimately, ministers will rightly play a central role.

Many speakers touched on centralisation. Jackson Carlaw made the great statement that there is a "messianic obsession with … centralisation". I am not sure that that is absolutely true—I will touch on that in a second. The need to sustain and win back public confidence and the

fact that the public are wary of consultation are points that echo with us all.

Members asked who should be involved if we go down the independent scrutiny panel route. If I am permitted, I will digress briefly on what Nanette Milne said about my constituency. When it came the decision on whether maternity services would continue to be delivered in Caithness and whether patients would be transported many hundreds of miles through snow to Inverness, one of the problems that we faced was that we had a kind of independent scrutiny in the shape of Professor Andrew Calder, whom the health board brought in to examine the issue. His conclusions were not helpful in any way and failed to recognise some of the key issues, such as remoteness, ambulance travel and inclement weather. If we go down the independent scrutiny panel route, the membership of the panels will be crucial.

One of the factors that bedevilled us in Caithness was the perception that Highland NHS Board was Inverness-centric and did not include representation from some of the remoter areas. That was a continuing problem that engendered suspicion and will have to be examined.

Ross Finnie argued—I totally support him—that a general lack of public confidence is undermining the present health boards, and that we should tackle that problem at source and seek to build confidence in them. Jackson Carlaw made the interesting argument that, when health boards work, the need for independent scrutiny will disappear. Perhaps Dr Ian McKee was alluding to that when he said something similar at the conclusion of his speech.

That somewhat begs the questions: why do we need to embed independent scrutiny at this stage if we recognise that the health boards are wrong and that, once they are put right, we will not need it and why not put the health boards right sooner rather than later? That was the main thrust of Ross Finnie's argument. The Liberal Democrats remain unconvinced that independent scrutiny should be embedded in the structure of the NHS. As Ross Finnie said, to do so would leave a lingering doubt about the ability of the health boards. I say to the cabinet secretary that I am not seeking to be contentious on this point—there is a genuine dialogue to be had on it. However, the image of an unelected body second guessing new health boards that have a democratic element would leave me deeply concerned.

Today's dialogue has been useful, but we must continue to explore the matter during the weeks and months ahead. I hope that what we ultimately decide collectively will be what is best for health in Scotland.

15:29

Mary Scanlon (Highlands and Islands) (Con): This has been a good debate. I welcome the constructive speeches from the Labour Party members, including Margaret Curran and James Kelly, who made an excellent speech.

Jamie Stone omitted to tell members that the independent scrutineer who examined the Caithness maternity services never travelled up the A9. He tended to fly into Wick airport, as I remember. If anyone is to scrutinise health services in Scotland, they need at least to travel by road.

Jackson Carlaw—my colleague—talked about credible options being proposed. That is critical. We have all seen health boards in the past argue for one favoured option. Independent scrutiny panels can scrutinise only the proposals and options with which they are presented: we should not expect them to come up with other options by themselves.

My second point concerns an issue that was raised by Ross Finnie about the timing of the independent scrutiny panels against the background of directly elected health boards. Asking unelected independent scrutiny panels to challenge elected health board members could present difficulties. Maybe—just maybe—we are setting the precedent for independent scrutiny of major change in local government. I am not sure whether our councillors would be too happy about that. The consideration of panels should take into account the fact that a number of health board members may be directly elected.

I have some further points for consideration, including an issue that was mentioned by the Cabinet Secretary for Health and Wellbeing. I understand that more work is being done on major service change. The Convention of Scottish Local Authorities and others raised that point in the consultation. What is the definition of "major service change"? For example, Orkney and Shetland NHS Board may decide to reduce a visiting consultant's time on the islands. That would not be considered a major service change, but to people living in the northern isles, a trip by air or ferry to Aberdeen for a check-up is a major change. [*Interruption.*] I am being constructive. A small change for a health board could be a major change for patients.

My second point is on the evidence for change. I am concerned about the scrutiny panels taking into account—or not, as the case may be—the cost implications of their decisions, and which services may be cut as a result of decisions and recommendations. To an economist, that is the opportunity cost. A major change proposal, examined by the scrutiny panel, could lead to

cutbacks in services that are not considered to come under the heading of major change. For example, retention of a service could have severe implications that might lead to cuts in areas such as podiatry and physiotherapy, but it could also undermine service development, for example in cardiac rehabilitation. The independent scrutiny panels do not just need to look at the options in front of them; they need to know the cost implications of the options. I understand that the panels have to take into account value for money, but do they also have to take into account cost pressures and efficiency savings—which I agree with—that face health boards? That is a central question, especially given that people who will be affected by changes need to understand that the recommendations that will be made by the independent scrutiny panels can be overturned by boards and ministers.

Nicola Sturgeon: Mary Scanlon has made a number of interesting points, but does she accept that it is not envisaged that independent scrutiny panels will be asked to take decisions for boards or to substitute their decisions for those of boards? They are being asked to assess whether the evidence that underpins the proposal is robust and whether all legitimate options have been properly considered.

Mary Scanlon: I appreciate that, but if the public hears an independent scrutiny panel saying, "This evidence is robust. This is good. This stands up. This is what the public wants", its expectation is that what is favoured by the ISP is what will happen.

A crucial point is that the overturning of the recommendations of independent scrutiny panels by boards and ministers could lead to conflict between the proposals of independent scrutiny panels and those of health boards. That would be in no one's interests.

As many members have said, we must acknowledge that change is not always bad. It may not be what we are used to—it may not be what it has aye been—but innovation and change in service delivery can be necessary and beneficial. We should not assume that an independent scrutiny panel is a block on change. MSPs need to be positive in supporting local changes.

I want to raise a point that was first raised by Highland NHS Board. When summing up, will the minister confirm whether the Government will fully fund the independent scrutiny panels, as opposed to the health boards having to fund them?

In responses to the consultation, NHS Highland asked how the conduct and effectiveness of the panels would be monitored and assessed. NHS Lothian asked whether more of the scrutinising role could be given to Audit Scotland. That is worth considering. I hope that those and other questions will be answered when the Government analyses the consultation responses.

15:36

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The problem that we face has arisen because of the historical situation. Until about 2000, when the Parliament really got going, a culture of paternalism, secrecy and disdain for the public, the patients and even the staff was evident in the process of producing major change. As Ross Finnie said, significant damage has been done to the public's confidence in our ability to achieve major change.

The previous Government tried to respond to the situation. There was interim guidance on consultation in 2002. The landscape was decluttered with the creation of single territorial health boards—the number of boards was reduced from 42 to 14. Local authority representation on health boards was introduced, in order to give a degree of local accountability. Partnership forums were set up, so that staff were represented on the boards. Then there was the embodiment of reform in the National Health Service Reform (Scotland) Act 2004, which led to the setting up of the Scottish health council.

As the cabinet secretary said, we need to be clear about the specific roles of each of the organisations. If we reclutter the landscape with a vast variety of individuals, who will produce competing opinions, we will be no further forward in improving public confidence.

The Scottish health council appeared only in 2005, and it gave a post hoc commentary on the consultation process in Lanarkshire and in Ayrshire and Arran. It made significant criticisms in both cases. Jackson Carlaw mentioned one particular criticism, which was that the boards narrowed the options before even starting the consultation process. In one instance, the status quo was removed from the possible options. Jackson Carlaw also pointed out that, in other instances, the boards produced options that were not credible and would have been dismissed out of hand in the first round of consultation.

We need an independent body that considers the consultation process, and we need the Scottish health council. The question that is before us today is this: Do we need the independent scrutiny panels to examine the evidence? Before we can answer that, we have to decide at what point an independent scrutiny panel—whether it be an expert panel or any of the three possible options—would actually examine the evidence. If scrutiny were always post hoc—after the board

had chosen its preferred option—confidence in the board system would not be restored but would be further undermined.

The evidence must be considered at the outset, which is also when the consultation process must begin. The board should say, "This is the problem about which we want to consult the public", and the board could then give options X, Y and Z, based on evidence A, B and C. The independent scrutiny panel would then consider the evidence that the board had produced, and possibly say, "Yes, that is a reasonable body of evidence for the changes." The Scottish health council would consider the proposed consultation process.

The Minister for Public Health (Shona Robison): Does Dr Simpson accept that that is exactly what we are suggesting? I think that the cabinet secretary laid that out quite clearly.

Dr Simpson: Yes—I am not criticising the Government's position. I am merely saying that it is not correct, as some members have assumed, that the independent scrutiny panel will come in later.

All members in the debate have agreed that change is inevitable. I have already said that all options must be consulted on, not just a few. I believe that the problem, not the options, should be presented first. Members have referred to the fact that there should be transparency at every stage. Change has to be evidence based and sustainable. It must improve health, and I believe that it must do so significantly. That is where the balance of judgment comes in. Change must be driven not by provider needs but by the evidence that is presented and the scientific data that are available. It should take into account issues such as transport and inequalities in health, which some of the consultations have failed to pick up on.

We need to recognise that some of the decisions that we will be faced with in the future will be balanced decisions and that the decision that is reached will depend on which experts have been asked to contribute. Mary Scanlon and Jamie Stone referred to the Andrew Calder consultation. In that case, an erudite and respected man came up with proposals but failed to take into account the fact that some people must travel down a pretty difficult road to get to Inverness to give birth. There is expert evidence and expert evidence.

We need to know whether the independent scrutiny panel will replace the consultancy reviews that are undertaken by boards. A number of boards have appointed independent reviewers to check that the boards' evidence is robust. I presume that those people will not be necessary if we have an independent scrutiny panel.

Malcolm Chisholm and others referred to the need for a skills mix in the independent scrutiny panel, but who will decide on that? The process must be robust. The appointments cannot be made by the minister in a political way. I know that that is not the intention, but it must not happen.

When would the panel be brought into being? The cabinet secretary has indicated that that would depend on whether the change was major and also said that what might be a major change in one area might not be major in another area. However, we must be clear about the criteria, because we cannot have independent scrutiny panels brought in because there is a public campaign or a lot of noise around an issue.

Nicola Sturgeon: Could Dr Simpson outline the criteria that were operated by the previous Government and this Government about what needs to be called in by a minister for approval? At the moment, the same subjectivity applies.

Dr Simpson: As the cabinet secretary herself said, the Scottish health council is working on the criteria that define major change. I am just saying that we need to be clear in respect of establishment of the independent scrutiny panel.

We are all concerned to maintain public confidence. Whatever system we end up with must inspire public confidence. However, that does not mean that the outcomes will satisfy everyone: indeed, the Scottish health council's report on the situation in Lanarkshire said that it has no role in commenting on the desirability of the options and that the decisions that might be reached might not be the ones that the public think are best. Sustaining public confidence does not obviate the need for taking difficult decisions.

The most important problem is the cluttering of the landscape. If we are to have a substantial number of local councillors involved in community health partnerships and boards, directly elected health boards that are democratically accountable to their constituents, and Parliament and the minister, we must handle the involvement of the independent scrutiny panel carefully if we are not to end up in significant difficulties. There could be conflict rather than conflict resolution.

We need independent scrutiny of evidence. That must be in place in order to ensure public confidence. However, the timing of that scrutiny, the timing of the appointment of the panel, the timing of its intervention and the way in which it intervenes are all matters that must be clarified before a final decision is reached.

15:44

The Minister for Public Health (Shona Robison): I thank members for their contributions to a very constructive debate and I reassure them, as the Cabinet Secretary for Health and Wellbeing did earlier, that those contributions will help us to decide on the form of independent scrutiny that will be applied to proposals for major changes in local NHS services. As the cabinet secretary stated, she will make an announcement on the detail of the process next month—she gave an assurance to Margaret Curran on that. That will allow us time to reflect on the points that members have made today—to which I will return—and the valuable lessons that are to be learned from the recent independent scrutiny panels in Ayrshire, Lanarkshire and Clyde.

I have heard members on all sides of the chamber agree that NHS boards must work with local people and communities to rebuild the public's confidence in developing service improvements. The cabinet secretary set out some of the key messages that have emerged from our consultation and which have been echoed in the debate. Boards must present clear evidence-based arguments about the need for service change before they develop options—a point that I raised in my intervention on Richard Simpson.

Boards must proactively engage local people at the earliest possible stage of the change process and work with them to develop proposals for service improvement. It will be important that they be guided by a general presumption against centralisation. The starting point for decisions on delivery of health services has to be that the NHS is a public service: a service that is used for and is, of course, paid for by the public—a mutual NHS. Boards must take full account of local circumstances in reaching decisions about service improvement, and must seek and take on board the views of local people.

Independent scrutiny will provide a way to improve existing processes to ensure that comprehensive information and advice are available to inform public debate. However, boards should inform and engage with local communities day to day, and proposals for service change should, as far as possible, emerge naturally from such engagement with the communities that they serve. Today's debate has included discussion of the recent examples of independent scrutiny panels in Ayrshire, Lanarkshire and Clyde, and consideration of some of the wider issues concerning national planning of health services in Scotland and how independent scrutiny will work in the future.

I will reflect on and respond to some of the issues that members have raised. Margaret Curran asked for clarity on what "major service change" means. Mary Scanlon and other members asked similar questions. As the cabinet secretary said, the Scottish health council is developing a tool to help to define major change, which has to take account of the fact that a major service change might be different in a remote and rural area than it would be in an urban setting. The decision will ultimately rest with ministers and their judgment. It is already the case, as the cabinet secretary said, that some decisions come to ministers and some do not. That is not a new concept. There will always be an element of judgment, but the important—and new—thing is that we are introducing independent scrutiny into that process.

Margaret Curran: I accept the logic that the minister has outlined, but will ministers make clear the criteria on which they judge whether decision should go to independent scrutiny that?

Shona Robison: Yes, of course. That is part of what the Scottish health council is working on. Ultimately, such decisions will always be subjective. We can lay out the criteria that lead to a decision, but they will always be subjective and will differ depending on the setting. We will require such flexibility. Margaret Curran also asked how the presumption against centralisation links in to the independent scrutiny process. A clear policy context to that is set out in "Better Health, Better Care", within whose principles health boards should operate when they propose service changes. They do not operate in a policy vacuum.

Ross Finnie talked about plans that are drawn up by executive directors and supported by non-executive directors, the implications for how boards operate, and the possibility of their being challenged. Changes are required to the ways in which boards operate, of course, and lessons have to be learned. Everybody accepts that. Health boards and others should take steps to improve the ways in which they go about their business, and that is happening already. Direct elections are part of that improvement, but they are about more than that: they are about better governance more generally. The independent scrutiny process will quality assure the evidence that is to be presented, just as the Scottish health council quality assures the consultation process. The aim of that approach is to rebuild, improve and build up the public's trust in the health service.

Malcolm Chisholm asked what would happen if a board ignored a panel's comments. It is important that the cabinet secretary would consider that as part of her deliberations, given that the final decision is to be made by her. However, we do not expect that to happen. I am sure that health boards want to improve their reputations. They would not want to run counter to the general direction of public feeling—or

Government feeling—on a matter. I am positive that boards will take on board panels' comments.

Mary Scanlon asked about funding of the independent scrutiny panels. I reassure her that we will, of course, fund their work.

I hope that I have responded to some of the key points that were made and the key questions that were asked during the debate, but I return to the principles and process for a moment. We believe that independent scrutiny should, as far as possible, fit with existing board processes in order to avoid delays and extra bureaucracy in implementing necessary change. Richard Simpson made the point that we should avoid extra bureaucracy. The independent scrutiny panel will begin to gather information and evidence and assess options at the option-development stage of change. Because scrutiny will begin early, it should not add significantly to the resources or timescales that will be required to consider and implement service changes.

Feedback from the Scottish health council confirms that, if the public are able to contribute fully to the development of options and are to be satisfied that the full range of viable options is being considered, that is likely to lead to effective involvement and consultation, and trust will be established and maintained.

When health boards propose major changes to valued local services, it is their responsibility to make a clear case for change that is backed up with robust evidence, and to engage effectively with local communities in doing so. There will be cases in which, although public opinion opposes change, there are grounds for making it. As the cabinet secretary said, we will not shirk tough decisions. However, in order to get to that point in a way that builds as much public confidence as possible, we must have a consultation process in which the public have faith. Independent scrutiny is a key component of that.

The Scottish health council will continue to be responsible for quality assuring the public engagement and involvement processes that NHS boards follow.

Mary Scanlon: Will the evidence base that is presented to the independent scrutiny panel include the cost implications of service delivery and the cost pressures that the health board is facing in relation to efficiency savings?

Shona Robison: Costs are always part of the evidence that boards put forward. They will be scrutinised in the independent process. Along with clinical evidence, financial information is part of the important evidence that has to be scrutinised.

The Scottish health council does not have any direct responsibility for assessing the information and evidence that will be provided in support of the case for service change. The council has supported the recent examples of independent scrutiny by providing a central secretariat. Feedback suggests that the secretariat role is crucial in providing high-quality administrative support to panels.

In briefly reflecting on the experiences of the first two independent scrutiny panels, we have learned that small panels of independent experts can quickly get to grips with complex NHS service issues and provide informed commentary on board proposals and the evidence that underpins them. We can see the merit in the view that was expressed by many people during the consultation that, in appropriate cases, such focused commentary by a small panel of independent experts will help to provide the public with the relevant information and confidence to engage in meaningful consultation about the choices that are being offered and changes that are being proposed.

The work of the recent panels clearly shows that independent scrutiny can and does work. Our guidance on informing, engaging and consulting the public in developing health and community care services, and the Scottish health council's role in ensuring that boards comply with it, will mean that services are developed with the people, not for the people. That approach will mean that services are changed only for the better.

Today's debate has added to our recent consultation on the future of independent scrutiny, and I thank members for their constructive contributions. We look forward to making an announcement on the process next month.

Home Detention Curfew

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-1486, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on consideration of the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36), and on motion S3M-1488, in the name of Kenny MacAskill, on the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008.

I call David McLetchie to move motion S3M-1486.

15:57

David McLetchie (Edinburgh Pentlands) (Con): I am pleased to deputise once again for Bruce Crawford—on behalf of the bureau rather than the Government, I hasten to add—in moving the motion on the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008, which is a negative instrument.

For the benefit of members, I will clarify the procedure. The Parliamentary Bureau has agreed to set aside an hour for a debate on the two instruments.

The first, on which I will move a motion on behalf of the bureau, is a negative instrument. The framing of the motion reflects the decision of the Justice Committee, which first considered the instrument, to recommend

"that nothing further be done"

under the instrument.

The second motion, which Mr MacAskill will move, is on an affirmative instrument that requires the approval of Parliament.

Members should not take Mr Crawford's name on motion S3M-1486 as reflecting either his or the Government's position, which will no doubt be revealed in due course.

I am happy to perform the formal function of moving the motion.

I move,

That the Parliament agrees that nothing further be done under the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36).

The Deputy Presiding Officer: I am tempted to say that all will now be revealed, but I call Kenny MacAskill to speak to and move motion S3M-1488 and to speak to motion S3M-1486.

15:59

The Cabinet Secretary for Justice (Kenny MacAskill): I am grateful to Mr McLetchie for giving that explanation to Parliament.

I welcome the opportunity to come before the Parliament to argue for a straightforward, commonsense measure. The draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 does not change the criteria for access to home detention curfew. High-risk offenders will still be excluded, and everyone will still have to serve a quarter of their sentence first. The draft order does not change how HDC operates or how prisoners are assessed to determine their suitability for the scheme. All that I propose is to use the flexibility provided for in the previous Administration's legislation to enable low-risk, short-term prisoners to be out on home detention curfew for slightly longer—for the last six months, rather than the last four and a half months, of their sentences.

Given those facts, I was surprised by the Justice Committee's rejection last week of the draft order in its present form. However, I am confident that the Parliament as a whole will take a broader view and support such a modest and reasonable measure. [*Interruption.*] I will not take interventions at the moment—there were plenty of opportunities to discuss matters at the Justice Committee.

In considering the draft order and SSI 2008/36, I want fellow members to bear in mind the fact that during the prisons debate only three weeks ago—on 21 February—I reported that the prison population had reached an all-time high, that it had been 8,026 on the Friday before and that it was 8,045 on that day. Today, the prison population is 8,067.

The Justice Committee sought to insert a sunset clause in the draft order, but members did not appear to object to the extension of HDC in principle. The clear implication is that the Government needed only a short-term solution to a short-term problem, which would be solved when Addiewell prison opens. If only that were true. We are talking about a significant problem. The trends that have led us to the position that we are in are inherited—they have been building up throughout the country for many years. The continuing increase in the prison population and the need to refurbish or rebuild parts of the prison estate to ensure that that they meet health and safety standards and standards that are considered acceptable today has put the prison service in Scotland under intolerable strain. The Government recognises that we live in Caledonia, not utopia. That is why we have committed ourselves to three new prisons.

HM Prison Addiewell will, of course, buy the Scottish Prison Service some relief, but it is not the total solution. On current trends, even when that prison comes on stream, the SPS will still operate well over prison design capacity. I am not here to argue for a quick fix; I am here to argue for one element of our integrated strategy on the better management of offenders in Scotland. As part of that strategy, I made a commitment to the Justice Committee. I said that when Addiewell opens, I will review the whole operation of the HDC scheme. The committee rejected that offer, which was made on the parliamentary record. I regret that rejection.

We are well aware that Scotland has the third highest imprisonment rate in Europe—approximately 141 people per 100,000 of the population are imprisoned—but there is nothing to confirm that Scots are genetically more prone to criminality than other people. At a time of reducing offending patterns, it is perverse that an increasing number of people are incarcerated. Our prisons cannot be repositories for those who suffer from underlying mental health problems or drink or drug addictions. We need to reverse the trend that exists. The Government is taking steps that will begin to address the problem over the long term.

There are members who support alternatives to custody. We must begin to take that agenda forward and ensure that alternatives are not seen as a soft option—they should be seen as a credible option. Rather than our having the injury of crimes that have been committed compounded by the agony of having to provide free bed and board, those who harm or damage our community must pay with the sweat of their brow for the harm that they have caused. We are working towards that, and we believe that it is the Government's and the Parliament's duty to acknowledge the problems that exist, take responsibility for them and take action to help alleviate the pressure on the prison estate.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Will the minister take an intervention?

Kenny MacAskill: No, I will not.

The existing HDC scheme, which the previous Administration introduced in July 2006, provides for the early release of short-term prisoners—those who are serving between three months and four years—for a period of between two weeks and four and a half months. There are around 330 people on home detention curfew right now. The scheme provides for early release from prison, but people on it are subject to control under curfew, which normally lasts around 12 hours a day. The hours when the curfew applies and the extent of curfew control may vary, but compliance with the curfew is monitored by electronic tagging.

As I said, I ask members to support motion S3M-1488, which will extend the maximum period for which the current group of prisoners who are eligible for release can be released on HDC from four and a half months to six months. The legislation that governs the HDC scheme requires that prisoners in custody must serve at least a quarter of their sentence, so the full period of six months will apply only to prisoners who have been sentenced to two years or more.

Bill Butler (Glasgow Anniesland) (Lab): Will the minister take an intervention?

Kenny MacAskill: No, I will not.

The provisions will not mean that more short-term prisoners will be released on HDC. They will mean that the same prisoners who are assessed as suitable for HDC can be released up to six months, rather than the current period of four and a half months, early. The effect will be to create a little—very much needed—space in the prison estate. We have no reason to believe that prisoners who are released on HDC for six months rather than the current four and a half months are likely to breach their conditions.

The law excludes certain categories of prisoner from consideration for the scheme, including those who are subject to the sex offender notification scheme and other schemes. That will remain the case, and correctly so.

If the prisoner meets the criteria for consideration for release on HDC, that must be supported by a positive assessment in which the offending history of the prisoner is taken into account. The assessment is provided by social work services and takes account of the views of the people who are living at the address to which the prisoner is to be released and other matters relating to domestic violence or child protection issues.

Seventy-nine per cent of prisoners successfully complete their period on HDC, and the majority of prisoners who breach the terms of their HDC licences are recalled to custody, which shows how seriously the Government treats breaches.

In introducing HDC in 2006, the previous Administration considered that it could be used flexibly and was an appropriate tool to ease reintegration. We agree. HDC may not, in itself, stop future reoffending; nor does it give someone employment. However, it allows an individual to be reintroduced into the family and, because of its restrictive nature, it gives them an opportunity to break ties with peer groups and reduce offending behaviour. It also allows prisoners the opportunity to follow up contact that was begun in prison with outside agencies that can support their rehabilitation. It does all that with the assurance that if the prisoner does not take the opportunity

that is afforded by HDC and commits a breach, they will be returned to custody. That view was reinforced down south by a National Audit Office report.

For all those reasons, we are moving the motion in my name and addressing the motion that was moved earlier by Mr McLetchie. There is a crisis in our prisons. We cannot have the Tories or Labour playing narrow, sectarian party politics in a way that jeopardises good order in our prison estate. I move the motion to ensure the safety of our prisons and to allow our excellent prison staff and governors—and members—to do their job.

I move,

That the Parliament agrees that the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 be approved.

16:06

Pauline McNeill (Glasgow Kelvin) (Lab): Labour introduced the home detention curfew scheme as part of a package of measures that included the upgrading of the prison estate, with quick-build options for new places, and the passing of the Management of Offenders etc (Scotland) Act 2005, which was aimed at addressing the revolving door and short-term offenders. HDC for up to 130 days was introduced for short-term offenders, with strict eligibility criteria. By contrast, the present Government, under similar pressures, has responded with the single measure of releasing the necessary number of prisoners to create slack in the system, rather than responding as we did, in the context of wider objectives.

Today, we are asked simply to extend the scheme with no context—not as a matter of principle or out of a belief in HDC as an integration model, but as a mechanism for immediately reducing prison numbers. The scheme has not been properly assessed and, to date, there have been 26 recalls for reoffending. Before an assessment has been carried out, we are being asked to broaden out the scheme substantially to short-term and long-term prisoners—the cabinet secretary did not mention that.

The cabinet secretary says that he is under extreme pressure to release more prisoners in order to relieve overcrowding in the system. Parliament is being asked to extend the scheme immediately to include more serious criminals serving long-term sentences, who are to be released up to six months early. That could mean that a long-term offender serving six years could be out in the community in two and a half years, if that was granted by the Parole Board for Scotland. That is not right in principle, and it does not reassure the public about anything.

Home detention curfew was not designed as a way of offloading unwanted prison numbers. Labour cannot and will not support the proposals without strict conditions, which we tried to impose at the Justice Committee last week. I am at a loss to understand why the cabinet secretary could not respond to the pleadings of Bill Butler, who made it clear that Labour would support the Government if only it would commit to an end point for the provisions in a genuine attempt to respond to members' concerns.

I refuse to accept that it would have taken another eight weeks to revise the provisions. I know that if a matter is urgent, it can be dealt with sooner. In my former role as a convener, I asked Labour ministers to take Scottish statutory instruments off the table and forced some compromises. The cabinet secretary should have seen that there was a compromise on the table. His failure to work with members of the Justice Committee who have real concerns about the issue does not bode well for the future. He has asked us to sign a blank cheque and to extend the scheme with no power to ensure that we can pull it back if we do not like what we see. We are asked to take it on trust that he will review the situation in January, when the new prison opens and 700 new prisoner places are available. When that happens, it will negate the cabinet secretary's reason for extending the scheme in the first place.

We are being accused of playing politics with prisons, but the cabinet secretary is playing politics with the committees of the Parliament. As has been said, minority government is meant to be about compromise. He should have worked around the committee's concerns. If he had come to a compromise, we would have agreed a way forward and we would not be having this hour-long debate today.

The cabinet secretary has tried to persuade me on several occasions that the Government is on track to build the new prison at Bishopbriggs. If there is any urgency around prison overcrowding, I call on the Government to get that work started immediately, give us the timetable and show us that it means to find real solutions to prison overcrowding.

Someone has to protect the public's interests in this debate, and we believe that that is what we are doing. Long-term prisoners are, by definition, more serious offenders, and the case has not been made to include them in the scheme. Every day this week, the press has run a story about prisoners on early release offending while they were being trusted in the community. Although we know that it is impossible to assess risk on every occasion, the public is already confused and alarmed by some of those stories, and we are not

about to compound that public concern by agreeing to the proposed measures.

The SNP Government must demonstrate that it is not soft on prisoners and that it will pay more than lip service to new community sentencing measures to create alternatives to prison. That means putting money on the table for community sentences. We have not seen that money yet, but if the Government provides it, it will show us that it means what it says. If the Government is serious about managing the prison population in the long run, it should do so within the context of managing prison numbers.

We cannot support the Government's proposed measures today. It had a chance to compromise and it did not take it.

16:12

Bill Aitken (Glasgow) (Con): When the cabinet secretary's proposals came before the Justice Committee, they were rejected and they should be rejected again today.

The proposals should be rejected on a number of grounds, not least of which is the fact that they represent the negation of the principal duty of a Government, which is to safeguard the public. Despite what Mr MacAskill has said today, public safety cannot be guaranteed. Such matters are inevitably difficult, but the risks to the public will inevitably increase when high-tariff prisoners are released after serving, in some instances, a derisory proportion of their sentences.

The second reason why the proposals should be rejected is that they represent a reduction in the deterrent effect of prison. The message goes out loud and clear: "Get six years and you will serve 18 months". The law does not mean what it says and it certainly does not say what it means.

The proposals should be rejected because they are an underhand attempt to reduce the prison population by stealth. That is what all this is about. I concede that there is a problem, and the cabinet secretary could be forgiven for thinking that he did not create it, because he did not. It is bizarre that the Addiewell complex, which was designed and is being constructed to replace the Low Moss facility, is not ready, but the Low Moss facility has been demolished. Whose planning was that? Serious questions need to be asked of the previous Executive and the Scottish Prison Service.

However, the cabinet secretary is being a little bit more than disingenuous: he says, quite correctly, that the SNP is committed to building three new prisons, but he conveniently forgets that two prisons will be disposed of during that exercise, with the result that we will have one more prison.

Margo MacDonald (Lothians) (Ind): If we discover, during the course of the investigation into the length of time that it has taken to produce the new prison, that a shortage of craftsmen and skilled construction workers is the cause, how will the member accommodate the rising number of prisoners?

Bill Aitken: I point out to Margo MacDonald that the Conservatives would not have been left in that position. Our manifesto indicated that a further prison facility was necessary, we budgeted for it, and a more than adequate workforce would have been available to produce the desired result.

Margo MacDonald's point is a bit of a red herring. The fact that we are a facility short at the moment is not the responsibility of the present Administration; Mr Ewing may want to intervene on that point. Nevertheless, the Government should be asking hard questions about how we got into this position.

The Minister for Community Safety (Fergus Ewing): Mr Aitken recognises the level that overcrowding in prisons has reached. The Government has come forward with the solution that is needed to address the problem. If the Conservatives do not accept our solution, what solution do they propose? If Parliament votes against our proposal today, what will the member say and do if the warnings of governors of prisons such as Barlinnie come true?

Bill Aitken: I will tell the governors of Barlinnie and other facilities to get on with things. There is some contradictory evidence. Why, for example, is the Kilmarnock facility never completely full? Is there a deep-laid plot by the Executive and the SPS to ensure that it is not utilised to the extent that it could be? I am afraid that the minister's arguments will not wear.

By the cabinet secretary's admission, 21 per cent of offenders who have been released on HDC have breached the terms of their licences. I concede that many of the breaches are not significant, but it is hardly encouraging that, in the space of four and a half months, 21 per cent of offenders have breached their licence. The obvious corollary of that is that, within six months, about 28 per cent of offenders will breach their licences. We should look at what has happened down south, where many offenders who have been released early have committed serious crimes. The same will inevitably happen here if we go down this road. We should recognise that the scheme has been an unmitigated disaster.

In the SNP's soft-touch Scotland, decent law-abiding citizens will pay the price. If the proposals become reality, Kenny MacAskill should draft a standard apology letter to all the victims that the legislation will create unnecessarily. He had the

opportunity of an opt-out, but last week he failed to take it. He should not get the opportunity to avoid the issue today.

16:17

Mike Pringle (Edinburgh South) (LD): As we have discussed several times in the chamber recently, the Scottish prison system is at saturation point. As we have just heard, Bill McKinlay, the governor of Barlinnie prison, was quoted in a national newspaper as saying that very soon the prison will have to stop taking prisoners. Bill Aitken mentioned the Conservatives' commitment to build another prison. Is he suggesting that, if they had been in government since May, they would have built another prison by now? I doubt that.

I apologise for the absence of my colleague Margaret Smith, who is not well. Recently she and I had a discussion with Andrew McLellan, Her Majesty's chief inspector of prisons for Scotland, who was quick to point out how serious the situation is. Overcrowding is preventing the rehabilitation of offenders. Every day, as more prisoners are sent to Scotland's overcrowded facilities, the situation becomes worse. Today we heard the latest figures, which have risen again. Primarily for that reason, I support summarily extending the eligibility of offenders for HDC, at least until the opening of the new Addiewell facility, when the matter can be reviewed.

Bill Butler: Will Mr Pringle indicate why the Liberals did not support the sunset clause that would have achieved the compromise that he has just advocated?

Mike Pringle: I am not sure that a sunset clause would be legally competent, and I did not think that such a clause was the right approach. We are where we are, and the legislation that I hope we will approve today is the right way forward.

A few issues have been raised, notably regarding risk assessment. I point out that there is no move to change the nature of the current risk assessment procedures—the proposal is to change only the HDC period. Indeed, the chief executive of Sacro said on the radio this morning that she felt that the procedures for allowing somebody out on HDC were as rigorous as they could be. I have no doubt that that rigorous process will apply to anybody who is considered for the scheme. I had no doubt about the process when we introduced the Management of Offenders etc (Scotland) Act 2005 during our Administration, and I do not doubt it now.

Bill Aitken: If the system is so rigorous, how is it that 21 per cent of those granted release under the system breach their licence?

Mike Pringle: I accept that figure—I was coming to that point. The fact is that 21 per cent of those who are out on HDC breach their licence and are recalled, but of those 21 per cent, 60 per cent appeal and are allowed to stay out on HDC.

I do not belittle the issue. When HDC was first debated in 2005, the then Minister for Justice, Cathy Jamieson, was right to describe them as the most important aspect of the legislation. The severity of the overcrowding problem is such that we may, if we are not extremely careful, end up in a situation in which risk assessment is balanced against overcrowding rather than public safety; indeed, I believe that we may already be in that position.

As I said, only 21 per cent of those on HDC are recalled, and I think that I have answered Bill Aitken's question on that issue.

An HDC licence costs £6,000 a year, which is £34,000 less than a prison place. Is that not a good use of resources?

Some Labour Party members have been strong advocates of a sunset clause. I think that I have answered Bill Butler's question—I am not sure that such a clause is competent.

I know that Bill Butler and his Labour colleagues recognise that there is significant strain on the prison service. Therefore, surely the most pragmatic course of action is to approve the measures and hold the cabinet secretary and the minister to their assurances to review the HDC scheme once Addiewell is up and running, rather than cause unnecessary delay. I fully support the Executive's motion.

16:22

John Wilson (Central Scotland) (SNP): I have some pleasure in speaking in favour of the motion, as addressed by the Cabinet Secretary for Justice.

The debate on home detention curfew in Scotland took an overtly political tone at last week's Justice Committee meeting. I will offer a backdrop to the current debate on home detention curfew. HDC came into the legislative framework under the Management of Offenders etc (Scotland) Act 2005, and its primary aim was to ease prisoners back into the community while restricting their movement.

Our prison population in Scotland is now more than 8,000. Week on week, new record figures are announced. The prison system is operating at around 1,000 above capacity. Based on its operating structures, Barlinnie is 50 per cent over capacity.

Margo MacDonald: On the overcrowding at Barlinnie—I assume that there is also

overcrowding, to a greater or lesser degree, in other prisons—when will the Scottish Executive be subject to challenge under the European convention on human rights because prisoners are in such overcrowded conditions?

John Wilson: I cannot answer that question. I suggest that the member refers it to the Cabinet Secretary for Justice.

Crime rates are not increasing. In the current climate, the Cabinet Secretary for Justice has already advocated that only prisoners who are serving two or more years in custody will be affected. In addition, the HDC statistics show that approximately 3,000 people have been released under HDC licence and fewer than 1 per cent have offended while on the scheme. Bill Aitken's point about the fact that 21 per cent of people who are subject to home detention curfew are recalled was answered by Mike Pringle. The matter was also raised at the Justice Committee last week. In total, 91 per cent of HDCs are successful, because of those who are recalled, 60 per cent successfully appeal. The situation must be addressed.

One of the new Scottish Government's key principles and priorities was to create safer and stronger communities. I do not believe that the Government or the cabinet secretary would risk not fulfilling such a key pledge. It is up to prison governors to recommend those who might be suitable for HDC, and they are rightly strict in that respect. Indeed, as members have already pointed out, 40 per cent of those who apply are refused.

Cathie Craigie: Does the member agree that we should argue for the extension of home detention schemes because they have been a huge success in helping to protect our communities, not because they represent a means of reducing the prison population?

John Wilson: We should argue for their extension on both grounds.

On 4 March, I lodged a motion on the Pew Center on the States report, which puts the United States position on these matters into perspective. The fact is that, as the authorities in Texas and Kansas have discovered, locking people up is not always the answer and does not impact on the overall crime rate. They are beginning to understand that jail should be for those who represent a clear threat to the community.

I hope that this debate will shine a light on the justice agenda and I urge all members to support the motion.

16:26

Bill Butler (Glasgow Anniesland) (Lab): My party has no objection in principle to the modification of home detention curfew. Indeed, given that the previous Labour-led Executive proposed it as a central provision of the Management of Offenders etc (Scotland) Act 2005, such a stance should not be unexpected.

The HDC provision in the 2005 act was conceived as part of a package of wider measures to deal with the not insubstantial task of tackling the problem of reoffending rates. The system of releasing and licensing certain categories of low-risk prisoners, who would be remotely monitored for no more than 135 days, was agreed on the basis of the evidence received by the Justice 2 Committee in the previous session of Parliament and was thought by the majority of members to be a reasonable and proportionate approach. That was the correct position, and I do not resile from it. However, last week, the Justice Committee was asked to agree a significant modification to the specified length of HDC—a modification that, I might add, would also extend the provision to long-term prisoners—and the Parliament is being asked to do the same this afternoon.

Let me repeat what I said last week to Mr MacAskill: Labour acknowledges that there is real pressure on prisons. No one disputes that prisoner numbers are at an all-time high, and I accept that there seems to be a lack of capacity in the prison estate. Last week, the cabinet secretary said that the situation was a short-term problem that had to be dealt with. No member would dispute those salient points. However, it seemed to me and to many members of the Justice Committee that the proper method of dealing with such a pressing and serious situation would be a sunset or review clause that would allow a modified order to be passed and ensure that Parliament would be able to return to this matter in, say, 18 months' time, when Addiewell prison will be on-stream.

I still feel that such an approach offers advantages. First, it would allow the temporary, highly pressured situation to be addressed, which would be a good thing. Secondly, it would allow Parliament to judge further evidence on the operation of HDC with regard not only to the 21 per cent who breach their licences but to the more difficult question whether HDC is working in re-integrating prisoners into the community and cutting the seriously high reoffending rates. Finally, if the matter were to be reviewed by Parliament in plenary session, members would be able to judge the success or otherwise of such a time extension in a considered fashion. What is wrong with that?

I ask the cabinet secretary to reconsider even at this stage his objection to the inclusion of a sunset clause. After all, as far as I have been able to ascertain, most legal opinion agrees that it is possible to identify areas for regulation where a

presumption in favour of sunset or review clauses is appropriate. Enabling reconsideration would be a welcome sign of mature reflection by the Government.

Of course, no one would argue for or agree to a blanket use of sunset clauses. However, as the Subordinate Legislation Committee's report on its inquiry into the regulatory framework, which was published in 2007, makes clear, it has been recognised that a presumption in favour of a sunset or review clause might be appropriate where regulation is introduced at short notice in response to a crisis. Such regulation might be created as a precautionary measure and might not benefit from the amount of detailed prior analysis that would normally be carried out. Given that Parliament is being asked to introduce regulation at short notice in response to a crisis, the use of a sunset clause is entirely apposite. I ask the cabinet secretary to reconsider.

The matter is too serious for soundbites and petty party politicking. Extravagant talk of meltdown does not help. When it comes to the safety of our communities, all members—including those recently elevated to ministerial rank—should employ reason and seek to build consensus, and should not sit smiling on the front bench when serious points are being made.

Given that the proposed modification of the primary legislation is of such significance, last week's decision by the Justice Committee was reasonable and responsible. The cabinet secretary's refusal to countenance the inclusion of a sunset clause was mistaken. I hope that the Government will reconsider its position. If it does, Labour stands willing to support the measures in the Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008, once it has been suitably amended to ensure the safety of all our communities. That is the paramount consideration.

16:31

Stuart McMillan (West of Scotland) (SNP): As a member of the Parliament's Justice Committee and a representative of the West of Scotland region, where Greenock prison lies, I welcome the debate.

I was disappointed that last week the Justice Committee decided not to back the proposed extension of home detention curfew. There was no logic in that decision. At least Bill Aitken was consistent, as the Tories were against HDC in the first place.

For some time, warnings have been issued by people involved in the justice system, including the governor of Barlinnie prison, that Scottish prisons are badly overcrowded. That situation stems from the previous Administration's years of neglect of the Scottish Prison Service. The fact that the prison population has broken through the 8,000 barrier has set alarm bells ringing, and it is imperative that something is done.

We cannot expect the SPS to do an adequate job under such circumstances, never mind expect prisoners to respond to the support that is offered to them if it is not adequate. The SPS has expressed the fear that if the present circumstances continue, in a few short months Scotland's prisons will be unable to cope. What then? What will happen when there is an increase in violence following a major football match or matches? Where will we put offenders? Will Labour members offer to detain them in their homes overnight? A night in the company of Labour MSPs sharpening their knives might deter many people from reoffending.

Bill Butler *rose—*

Stuart McMillan: The proposal to extend the period for which an offender can be tagged from four and a half months to six months is not to be feared. If those extra six weeks—we are not talking about six months or six years—help prisoners to reintegrate into society so that they do not reoffend, surely providing for such an extension is worth while.

Bill Butler *rose—*

Stuart McMillan: The Government is taking longer-term action on prison overcrowding. Over the next three years, £360 million of capital investment will be ploughed into improving and modernising the prison system, with new prisons being provided in Addiewell, Bishopbriggs and the north-east. However, a short-term solution must also be found. Action needs to be taken now, before the situation gets even worse.

It is hard to understand the difficulties that prisoners must face when they try to reintegrate into their communities, but it is a damn sight harder for prison staff, who are working in conditions to which they should not be subjected, and for our communities, which are harmed when former prisoners reoffend. By allowing prisoners to spend an extended period on HDC, we will help to ease them back into society, which will in turn help society in the longer term. Not only will that ease the pressure on the prison system, it will potentially benefit prisoners by allowing them to readjust and reintegrate.

As I have said, action needs to be taken now. If we faff around inserting a sunset clause, as the Labour Party wants to do, we will further delay decisions, which will only cause more problems. The Government has already stated its intention to review the entire HDC policy in early 2009, when Addiewell prison opens.

Last week, Labour again sidled up to its Tory bedfellows to form a right-wing alliance. Arguing against the extension of HDC will not endear Labour to the public. Last week was the first time that the use of a sunset clause had been mentioned. I would have thought that Labour would be a touch more understanding of the problems that it left the SNP Government with.

The cabinet secretary's motion needs to be passed so that we can provide some breathing space for our prison service. The men and women who work hard to maintain standards in our prisons should not have to cope with the added strain of overcrowding. The current situation is not acceptable by any standards, and the extension of HDC is a logical way of starting to rectify the situation.

16:34

Johann Lamont (Glasgow Pollok) (Lab): We are debating a serious issue, so I was disappointed by the previous speaker's tone and by the intemperate approach of the Cabinet Secretary for Justice, who seems not to want to engage with hard issues and who was reluctant to accept the compromise that was proposed in the Justice Committee. It does not help to suggest that there is a division between people who are for prison and people who are against prison, because that is false. The issues are difficult.

The cabinet secretary's failure to understand the importance of building confidence is fundamental. He claims that he wants to move to greater use of appropriate community sentences. If he wants communities to sign up to that approach, it is ill advised for him to refuse to agree to a moderate proposal to keep a watch on the issue that we are debating.

It is argued that individual cases make bad law. However, people's experiences can illuminate a situation and reveal flaws in a policy approach that seems logical in theory. In that context, I mention my constituent Mr Armstrong, whose case illustrates why people do not have confidence in the system and why ministers should be willing to compromise on HDC. In brief, Mr Armstrong was convicted of a serious assault and was sentenced to just less than four years in prison. His family, friends and neighbours have campaigned for proper consideration of the circumstances of the assault for which he was convicted. Mr Armstrong alleges that the person whom he was convicted of assaulting was threatening him with a 14in knife and smashing the windows of his vehicle, and that there was a history of reported disorder in the community. The family asserts that Mr Armstrong was a repeat victim who acted in self-defence and who did not have confidence in the police's ability to respond to the circumstances. Perhaps that is a mark of the failure of earlier intervention to deal with disorder. The deepest irony is that Mr Armstrong's alleged assailant was tagged for other offences but was free to appear in the vicinity of Mr Armstrong's home and cause alarm while Mr Armstrong was in prison.

Mr MacAskill is fond of talking about keeping "flotsam and jetsam" out of prison. In the case that I described, who is flotsam and jetsam and who deserves to be in prison? The crude division that Mr MacAskill likes to present does not apply; the reality is that neither party is flotsam and jetsam. We must address people's actions and deal with them seriously, but in so doing we must be careful to understand the context of offending, which might involve a person's being a repeat victim. Such matters must be properly taken into account. I am delighted that Mr MacAskill has agreed to meet me to pursue the issues, and I hope that he will confirm his willingness to accept from the family the massive petition in support of Mr Armstrong.

The issue matters because community safety is paramount. We need to know that home detention curfew works. They cannot be used as a crude attempt artificially to keep prisoner numbers low. We do not want huge prisoner numbers, but we need to know that risk assessments are done on the basis not of keeping numbers down but of ensuring that a person is safe to return to the community. People do not have that confidence, because the cabinet secretary will not agree to a sunset clause so that there can be proper consideration of the issue when more prison spaces are available.

The cabinet secretary's reluctance to compromise stems from his predetermined view on prisoner numbers. He cannot confront the challenges to do with funding new prisons, but that is what Governments must do. He wants to relieve pressure on prisons, but he must not do so at the expense of putting greater pressure on our communities. I am troubled by his reluctance to compromise and by his willingness to engage in a crude debate rather than accept that he can reduce prisoner numbers only if our communities feel safe and have confidence that the policy is about not reducing numbers but addressing what puts people in prison and keeps them there. I urge the cabinet secretary to rethink his approach.

16:39

Mike Pringle: There are too many people serving short sentences in prison, and the opportunity to release them on HDC is the way forward.

Paul Martin (Glasgow Springburn) (Lab): The member says that the measure that we are

considering will reduce prisoner numbers. If members agree to the measure, does he know on what date it will be implemented, to allow that to happen?

Mike Pringle: The cabinet secretary could probably tell the member that. I am not aware of exactly when the measure will be implemented, but it will be as soon as possible. As with any other proposed legislation that comes before the Parliament, the order must go through the natural process.

As I have said, it has been statistically proven that the short-term and low-risk prisoners who stand to benefit from the extension of HDC often simply do not belong in prison. In fact, the public and the prison population alike are best served by those people serving part of their sentence in the community. As I have said, the chief executive of Sacro is right behind that, and we should take account of the comments of somebody who is, in effect, in the profession.

Labour Party members are strong advocates of a sunset clause that would result in the extended eligibility being revoked on the opening of the new Addiewell facility. I accept that the concept is principled, but it fails to take account of the current situation in Scotland's prisons. As I have described, the situation is worsening day by day. I am concerned that a delay to allow us to debate a possible sunset clause would serve only to add to the problems. As I have said, I support the Executive's motion.

16:41

John Lamont (Roxburgh and Berwickshire) (Con): I am sure that many members have heard stories from constituents about the effect of crime on the communities we represent—I certainly have in the few months that I have been a member. I often hear stories from residents about a lone young teenage thug who has made the lives of local families a misery with his thefts, violent behaviour and vandalism. The residents have lost count of how many times he has been in and out of court, but his one-man reign of terror continues and the police can do little about it. Those law-abiding families feel that the Government is not listening to them—they feel abandoned. It is little surprise that so many people feel like that when we have proposals such as those that are before us today, which would release on to our streets even more criminals even earlier. On that issue, the Scottish National Party is completely out of touch with public opinion. Nothing dismays victims more or brings the entire criminal justice system into greater disrepute than the fact that criminals almost never serve the sentence that the court hands down.

What has been the experience of home detention curfews in Scotland? From their introduction in July 2006 until March 2007, almost 1,300 criminals were released on HDC licences, but more than 200—almost 20 per cent—needed to be recalled to custody because they had breached the terms of their licence. Let us consider the longer experience in England, where HDC has been in existence since 1998. Under that scheme, tens of thousands of criminals have been released early from prison, including dozens of sex offenders and criminals who have been convicted of cruelty to children and thousands of drug dealers. According to Home Office figures, those criminals went on to commit more than 1,000 offences, including drug offences, assaults, including on police officers, and rapes. There is no doubt in my mind that those crimes would not have happened if the criminals who committed them had remained in prison and served the entirety of their sentences.

The current system is failing and clearly does not work to cut crime—we need only consider the crime figures to realise that. In the past 10 years, minor assaults have risen by 28,000, acts of fire raising and vandalism have gone up by 45,000 and breaches of the peace have gone up by 20,000. We should not let criminals out of prison early. Scotland needs an alternative approach to tackling crime—we need to make criminals scared of getting caught and scared of punishments, so that they choose not to commit crime.

Fergus Ewing: Will the member give way?

John Lamont: The minister will have his chance in a few moments.

Fergus Ewing: No, I will not, actually.

John Lamont: The minister's chance will come.

We must make criminals pay a heavy price for their actions so that others are scared of following their example. We need to put victims first and ensure that they see justice being done. We need to give our police force the backing and resources it deserves. Above all, we need to wage war against crime so that the law-abiding majority can take back their streets, town centres, homes, communities and shops.

Fergus Ewing: At least Bill Aitken had a solution, which was that the governor of Barlinnie should do his job, although as it is judges and not governors who send people to prison, that is completely irrelevant. Aside from the rhetoric and the point scoring, what on earth would the Conservatives do about the crisis that is facing us right now?

John Lamont: That is a matter for the Scottish Prison Service. We must have confidence in our judges to send to prison those people who need to

be locked up. It is then for the Scottish Prison Service to ensure that they remain behind bars for the time that the judges require.

The war on crime that I have just outlined will not happen in the SNP's soft-touch Scotland, where a four-year sentence will mean 18 months in prison. Decent, law-abiding citizens will pay the price. If the nightmare proposal becomes a reality, I hope that that the justice secretary will apologise to the communities in my constituency and throughout Scotland that will continue to be blighted by crime as a result of his ridiculous scheme. I urge Parliament to reject the proposals.

16:45

Paul Martin (Glasgow Springburn) (Lab): Once again, the Cabinet Secretary for Justice has failed to convince members of the merits of extending the home detention curfew scheme from four and a half months to six months. Let us be clear: he wants to implement the measure to deal with the pressures on the prison estate. That concern has been well briefed, compliments of Barlinnie prison and many well-orchestrated press releases from the Scottish Prison Service.

We accept the prisoner numbers that the cabinet secretary presents, but we are not convinced that the extended HDC period will make a significant contribution to reducing them. Mike Pringle is ill informed to support a proposal if he does not know when it will be implemented. If he believes so strongly that the extension will make a difference, he needs to understand how, when and where it will do that. It should also be noted that the average prison population over the year is, in fact, 6,500, which is well below the design capacity figure.

Once again, the Kenny MacAskill spin machine has sought to present its unprecedented defeat at the Justice Committee as members playing party politics. Let me be clear what the Labour members' politics are: we will, at every possible opportunity, interrogate legislative remedies that are placed before us. It is our job as parliamentarians to do that, and the cabinet secretary must convince us of the merits of the proposals he puts before us. His inability to provide the facts to back up his proposal is why it failed; it has nothing at all to do with the politics injected into the Justice Committee.

It is important that the Parliament not only passes legislation that looks good but ensures that the extension will fulfil the key aims that the order is meant to achieve. I reiterate the point that the minister said that it would significantly reduce prisoner numbers. Our politics are to seek answers and the cabinet secretary's politics are not to provide them.

A considerate Bill Butler put forward a genuine compromise during committee proceedings on 4 March. The First Minister would be proud of it, because it follows the spirit that he set out in his acceptance speech, when he said that he wanted

"to reach across the parties and try to build a majority, issue by issue, on the things that matter to the people of Scotland."—[*Official Report*, 16 May 2007; c 25.]

Bill Butler proposed an opportunity for the cabinet secretary to respect the committee's concerns on home detention curfew and revisit the committee with a redrafted order that included a sunset clause.

Fergus Ewing: Will Paul Martin give way on that point?

Paul Martin: I will not give way. Fergus Ewing has had his opportunity.

Fergus Ewing: No I have not.

Paul Martin: Once again, SNP members have proven that they do not want to be constructive and do not want to answer the question.

Fergus Ewing: I will answer it for Paul Martin now, if he wants.

The Deputy Presiding Officer: Order.

Paul Martin: A sunset clause would ensure that the six-week extension would expire after a given period. The reason the cabinet secretary gave for not redrafting the order was:

"We are guessing, but we estimate that it would probably take a couple of months."—[*Official Report*, *Justice Committee*, 4 March 2008; c 555.]

He needs to up his game and deliver legislation at the pace of former Minister for Justice, Jim Wallace. In response to the circumstances surrounding the Noel Ruddle case, Jim Wallace brought forward a timetable that allowed changes to the Mental Health (Scotland) Act 1984 to be passed 10 days after introduction.

Cathy Jamieson and Jim Wallace respected the Parliament and its committees. Mr MacAskill would do well to follow that challenge.

16:50

Kenny MacAskill: I remind the chamber what I said at the outset and of the condition of our prison system—a system that we inherited and that is in a mess not simply as a result of the previous Administration, but as a result of what that Administration took over when the Tories went out on their ear back in 1997. We inherited a mess of rising prison numbers such that we now have record following upon record and a crumbling prison estate—because action was not taken to ensure that the appropriate required places were available.

Cathie Craigie: Will the minister take an intervention?

Kenny MacAskill: In a minute.

Thankfully, this Government decided to commit to three new prisons, the first of which will come on track in January. Until then, we have a significant difficulty. It is simply not good enough to suggest that the governor of Barlinnie should seek to find additional space under a cupboard or in a locker. That is not how we run our prisons. It was negligence such as that that got us into the situation in which the taxpayer in Scotland is paying millions of pounds to people who were convicted of crimes and sentenced to prison—because the Tories and Labour failed to address the problems of the European convention on human rights that they were warned about. As a consequence, this Government is having to shell out to pay damages, as well as to ensure that we have a proper prison estate.

Pauline McNeill *rose—*

Bill Aitken *rose—*

Bill Butler *rose—*

The Deputy Presiding Officer: Order.

Kenny MacAskill: There has been a great deal of cant and hypocrisy from the Labour-Tory coalition. They united at the Justice Committee and they are uniting again now. Before I come to the falsehoods, I will run through some of that cant and hypocrisy. First, I will deal with the cant and hypocrisy from Labour.

Bill Butler: On that point—

Kenny MacAskill: I am dealing with Mr Butler's point. Let us deal with the sunset clause. As my colleague whispered in my ear, despite the fact that it was in government for eight years, a sunset clause never arose under the Labour Administration; never once did that Administration introduce such a clause. Then—though they forget it—there is the arithmetic. There were 29 days in February this year because it is a leap year. On 22 of those days we had record prison numbers. The only reason it was 22 out of 29 is that there are no admissions to prisons during the weekend.

I ask members to look at the figures and realise that time is of the essence. Mr Martin seems to think that there is no problem. It was made quite clear that it would take two months to get a sunset clause into an SSI and introduce it—two months, when there were 22 rises in February alone. There is gross hypocrisy. If Mr Martin wants to know the date when the home detention order will come into force, it is 21 March. We have neither latitude nor time. Labour was prepared to allow the Scottish Prison Service to shell out millions to criminals. We are taking action to ensure that our prison staff are protected and, most important, that we do not run into further difficulties that compound the agony for us as a Government and, in particular, for the taxpayer in having to pay out.

Johann Lamont *rose—*

Pauline McNeill *rose—*

Bill Butler *rose—*

Kenny MacAskill: I will now deal with the cant and hypocrisy from the Tories.

The Tories go on about building prisons. They were in charge from 1979 to 1997. Who in Scotland can forget the years under the iron heel of Margaret Thatcher? Lo and behold—

Bill Butler: On a point of order, Presiding Officer. I seek your guidance. Is it in order for the cabinet secretary—inadvertently I am sure—to mislead Parliament by saying, as I think I heard above the rant, that the Labour-led Executive never introduced a sunset clause? I point him to the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2008, the Convention Rights (Compliance) (Scotland) Act 2001, and others. Will he withdraw that comment?

Kenny MacAskill: I am happy to acknowledge Mr Butler's superior knowledge on the matter.

Bill Aitken: On a related point of order, Presiding Officer.

The Deputy Presiding Officer: It had better be related, Mr Aitken.

Bill Aitken: I seek your advice on whether it is appropriate for the cabinet secretary—inadvertently I am sure—to mislead the chamber by stating that the Conservatives did not take any action to avoid breaching human rights, when the Conservative Government did not sign up to the European convention on human rights.

The Deputy Presiding Officer: On that point, Mr Aitken, my advice would be to sit down.

Kenny MacAskill: Yes, well, what they did do—

Cathie Craigie: On a point of order, Presiding Officer.

Margo MacDonald: On a point of order, Presiding Officer.

The Deputy Presiding Officer: Order. I am not going to take points of order if they are not genuine. I call Cathie Craigie.

Cathie Craigie: This, I feel, is a genuine point of order. I would not wish the cabinet secretary inadvertently to mislead Parliament. He has quoted some figures today about the prison popul—

The Deputy Presiding Officer: No. Will the member please sit down.

Cathie Craigie: Well, I—

The Deputy Presiding Officer: Would the member sit down. Sit down. I am not going to take debating points dressed up as points of order. I call Margo MacDonald.

Margo MacDonald: My point refers to the standing orders of the Parliament, but I apologise for not having my copy of them with me. It concerns how long it takes to get an SSI into a bill, which seems to be a central point in this afternoon's debate. Will you guide me, Presiding Officer? Is there a prescribed time in standing orders for the insertion of an SSI into a bill?

The Deputy Presiding Officer: It is not my function to guide the member as to standing orders; the member should go and read them.

Mr MacAskill, you have about three minutes left.

Kenny MacAskill: I am happy to defer to Mr Butler's superior knowledge of sea fish regulations. I have no doubt that he has been concentrating on them, because he has not been keeping his eye on the ball on other matters.

I advise Ms MacDonald that we would have to withdraw at least one regulation, which would mean going back before going forward. That would take approximately two months, and we do not have that time.

I will deal with the cant and hypocrisy of the Tories, who are crying out for prisons to be built. When they were in power between 1979 and 1997, not three prisons did they build, not two prisons did they build, not one prison did they build. They built zero prisons. They cannot get enough of prison building, but when they had the opportunity for 18 years, they built not one.

I read about Miss Goldie fulminating about the outrage that people who are convicted and sentenced to four years of imprisonment could be released after 18 months with the possibility of tagging. I point out to her now, as I pointed out in a previous speech, that Jonathan Aitken esquire was sentenced to 18 months but served only seven months, including many months in an open prison—the kind that is so castigated by members on the Tory benches. He was then, through a heinous soft option, released to home detention with curfew and tagging. If Miss Goldie or Bill Aitken do the mathematics, they will realise that reducing 18 months to seven months is like reducing fours years to 18 months. [*Interruption.*]

The Deputy Presiding Officer: Order. There are too many conversations in the chamber.

Kenny MacAskill: The cant and hypocrisy from the Tories and Labour is substantial, but there have also been factual inexactitudes. Mr Lamont sought not only to provide misinformation about Scotland but to provide misinformation about England and Wales. Far be it from me to defend the Ministry of Justice there, but I remind him that statutory exclusions in the English scheme deal with sex offenders and violent offenders. Indeed, 85 per cent of curfews are successfully completed south of the border.

The SNP recognises the problem it has inherited and it presents the action that it is taking in building prisons, but we need to provide more than simply warm words—and, indeed, more than the hectoring and lecturing that we hear from Bill Aitken. We need to provide solutions. That is why we are moving the motion. A shameful coalition of Labour and the Tories is seeking to play politics with our prisons. They are jeopardising the good order in our prisons and undermining the excellent work that our staff do. That is shameful. I urge members to support my motion at decision time.

Pensions Bill

16:58

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-1513, in the name of Kenny MacAskill, on the legislative consent motion for the Pensions Bill, which is United Kingdom legislation.

Motion moved,

That the Parliament agrees that the relevant provisions of the UK Pensions Bill, introduced in the House of Commons on 5 December 2007, which legislate in devolved areas in respect of pension compensation on divorce or dissolution of a marriage or civil partnership, should be considered by the UK Parliament.—[*Fergus Ewing.*]

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

Business Motion

16:59

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-1540, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees—

(a) the following programme of business—

Wednesday 19 March 2008	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Debate: Curriculum for Excellence
followed by	Legislative Consent Motion: Housing and Regeneration Bill – UK Legislation
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 20 March 2008	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Labour Party Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Health and Wellbeing
2.55 pm	Scottish Government Debate: Scottish Marine Bill Consultation
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 26 March 2008	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 27 March 2008	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time

2.15 pm	Themed Question Time Justice and Law Officers; Rural Affairs and the Environment
2.55 pm	Scottish Government Business
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

(b) that the period for lodging First Minister's Questions for First Minister's Question Time on 27 March 2008 ends at 4.00 pm on Thursday 20 March 2008;

(c) that the period for lodging First Minister's Questions for First Minister's Question Time on 8 May 2008 ends at 4.00 pm on Thursday 1 May 2008;

(d) that the period for lodging First Minister's Questions for First Minister's Question Time on 29 May 2008 ends at 4.00 pm on Thursday 22 May 2008; and

(e) that the period for Members to submit their names for selection for General and Themed Question Time on 17 April 2008 ends at 12 noon on Wednesday 26 March 2008.—[*David McLetchie.*]

Motion agreed to.

Decision Time

17:00

The Presiding Officer (Alex Fergusson): There are three questions to be put as a result of today's business. The first question is, that motion S3M-1486, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36), be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)

Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Ahmad, Bashir (Glasgow) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scott, Tavish (Shetland) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 62, Against 58, Abstentions 1.

Motion agreed to.

That the Parliament agrees that nothing further be done under the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36).

The Presiding Officer: The second question is, that motion S3M-1488, in the name of Kenny MacAskill, on the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Ahmad, Bashir (Glasgow) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
MacDonald, Margo (Lothians) (Ind)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 65, Against 60, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 be approved.

The Presiding Officer: The final question is, that motion S3M-1513, in the name of Kenny MacAskill, on the Pensions Bill, which is UK legislation, be agreed to.

Motion agreed to.

That the Parliament agrees that the relevant provisions of the UK Pensions Bill, introduced in the House of Commons on 5 December 2007, which legislate in devolved areas in respect of pension compensation on divorce or dissolution of a marriage or civil partnership, should be considered by the UK Parliament.

Drink-driving Limit

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S3M-1000, in the name of Dave Thompson, on making Scotland's roads safer by reducing the drink-driving limit. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the British Medical Association's (BMA) Christmas card campaign calling for a reduction in the drink driving limit; notes that there is clear evidence that shows that drivers who exceed 50mg of alcohol per 100ml of blood are significantly impaired; further notes with regret that in the Highlands and Islands there are 27% more accidents caused by drunk drivers than the national average; joins the BMA in considering that more pressure should be exerted on the UK Government to lower the drink driving limit from 80mg per 100ml of blood to 50mg; supports the implementation of random testing, which would undoubtedly act as a further deterrent to drink driving, and notes that these measures will make Scotland's roads safer and could save as many as 65 lives a year on UK roads.

17:04

Dave Thompson (Highlands and Islands) (SNP): I welcome the Cabinet Secretary for Justice's announcement that he has written to the United Kingdom Secretary of State for Transport, Ruth Kelly, asking her to reduce the drink-driving limit for the UK from 80mg to 50mg per 100ml of blood and to introduce random breath-testing. Both of those measures are necessary if we are to cut the death toll on our roads. I just hope that cabinet secretary MacAskill does not have to wait three months only to receive a negative reply from Ruth Kelly, as I had to do last year.

Last August, Northern Constabulary ran a campaign to crack down on drink-driving, and in two weeks it caught more than two dozen drink-drivers. As I examined the matter further, I found that throughout Scotland one in six road deaths is caused by drink-driving, and that in the Highlands and Islands we suffer from a drink-driving rate that is 27 per cent higher than the national average. That is what spurred me on to start my campaign. I believe that a reduction to 50mg, coupled with the introduction of random breath-testing, would send a strong message that drink-driving is not acceptable.

There is a huge cost to drink-driving—on average, each road death costs the Scottish taxpayer an estimated £1.4 million, which is money that could be far better spent on other things. Injuries add to that, and the emotional burden takes an even greater toll. If, by reducing the drink-driving limit, we were to save just one person from an untimely death, one family from untold grief, and one community from undue suffering, it would be worth it.

A reduction in the limit from 80mg to 50mg has wide support in Scotland, from prominent people such as Cardinal Keith O'Brien and from organisations such as the Automobile Association; the British Medical Association; the Royal Society for the Prevention of Accidents; the Association of Chief Police Officers in Scotland; the Scottish Police Federation; a number of councils; and the west of Scotland road safety forum, which incorporates all 12 councils in the west of Scotland and a number of other bodies. There is huge support in Scotland for change and for a reduction in our drink-driving limit.

On top of that, and for more than six years, the European Commission has lobbied the United Kingdom Government to reduce the limit. The UK is now one of only four European Union countries with an 80mg limit—the other three are Ireland, Luxembourg and Malta. Despite the evidence of massive support in Scotland for a reduction in the limit, Westminster's response to date on this reserved issue has been to twiddle its thumbs and mumble excuses. The UK Government cites a need for better enforcement before it will consider a change in the law and, despite acknowledging the broad support for a lower limit, it ignores the will of the people and takes a pass on the issue.

Why should drivers who would be prosecuted in 23 other European countries be deemed safe enough for Scotland's streets? According to the Institute of Alcohol Studies, 23 per cent of road deaths in 2004 involved alcohol levels over 50mg, and nearly one in 10 of those deaths occurred when the driver had an alcohol level of between 50mg and 79mg. Above 50mg, drivers face decreased alertness, slower reactions and impaired co-ordination. The UK Government's research paper for the Road Safety Bill in 2006 found that

"at levels between 50mg and 80mg an average driver is around 2 or 2.5 times as likely to be involved in an accident."

The figure is even worse for young or inexperienced drivers, whose risk may be increased fivefold. We all know of the many accidents in recent times that have involved young drivers, especially on country roads.

Having published its own research, the Westminster Government either did not read it or did not like it, because it did not implement a reduced limit. Our duty is never to hide behind a wall of stubbornness, and never to accept looser regulations simply because it has always been that way. The science has spoken, and we have its support. Drink-drivers with a level between 50mg and 79mg are threatening our roads, our

families and our communities. We cannot let that continue.

Des Browne, the Secretary of State for Scotland, said recently:

"For those who want to make the argument about halving the drink-driving limit, there will be an opportunity for them to do that, and if that's the right thing to do, then it should be the right thing across the UK."

He is absolutely right, but the Labour debate has been going on for 10 years. How long does Des Browne want?

The debate in Scotland has come to a conclusion. We want a reduced drink-driving limit, and if Labour will not act for the UK, it should at least act for Scotland, with a pilot scheme to test the success of a reduced limit. If Westminster will not do that, it must give us the power to act. Either way, it needs to step up to the plate. We have endured the delays and listened to its double-speak. How many more deaths must we endure before Westminster acts? At present, it is driving the wrong way down a one-way street. People are being killed. If Westminster does not turn, we must take the wheel.

17:10

Alison McInnes (North East Scotland) (LD): I thank Dave Thompson for lodging the motion for debate. We should be deeply concerned about the levels of drink-driving throughout the country. In 2005, 30 people were killed and there were 990 casualties from drink-driving related accidents in Scotland. Figures for the four-week campaign to tackle drink-driving and drug-driving at Christmas, which was backed by ACPOS, show that 839 drivers were arrested during the period for numerous drink-driving or drug-driving offences throughout the eight police force areas. That figure is unacceptably high and represents only a small reduction from the previous year—by 69 from 908—and it demonstrates that there is no room for complacency.

We know that drink-driving is dangerous and socially unacceptable, but a percentage of men and women continue to ignore the risks that are associated with that dangerous course of action. Although there has been a general downward trend in the number of drink-driving related accidents of all severities, that trend has not been reflected in the number of fatalities, which remains the same as it was 10 years ago.

Liberal Democrats believe that reducing the drink-driving limit will save lives and we support the British Medical Association's campaign to lower the limit to 50mg. There is clear evidence that such a change will reduce the number of deaths and serious injuries that are caused by drink-driving. Drivers' reaction times and motoring skills deteriorate after even a small amount of alcohol. Drinking and driving is a poisonous cocktail. Drinking can give drivers a false sense of confidence, but it impairs their abilities significantly in a number of ways, including slower reaction times, poorer judgment of speed, time and distance, increased thinking and stopping distances, and poorer co-ordination.

Why has the UK persisted in sticking to a limit that was set in 1965? The system needs to be overhauled. There is much that we can learn from our European neighbours on the matter. Many people confess to being confused about the limit and how it relates to the stronger alcohol that is consumed nowadays. Often, people still think that one unit of alcohol equals one glass, but that is no longer the case. With the trend for much stronger wine, and with wine being sold in larger glasses, one glass can push a person over the limit. With a reduced limit, one pub measure of alcohol is all that would be allowed.

As people can be affected differently depending on their body weight and when they have eaten, the safest option will always be not to drink and drive. However, replacing the current limit of 80mg with a 50mg limit is a simple and effective step that will be easy for most people to understand. As Mr Thompson said, the 50mg level is the norm in 23 European countries.

I am concerned by the recent statistics that show that, although women still represent only a small percentage of the overall figures, the number of women who are convicted of drink-driving offences is rising. In the light of that, we need a review of the traditional anti-drink-driving campaigns. Targeted educational campaigns and better labelling on alcohol would also help to reverse that worrying trend.

Changing the permissible alcohol level is only one part of the story. We also need proper consistent enforcement and prosecution, so adequate police resources should be available to enforce any new limit. Without compromising judicial discretion, we should look to our courts for more consistency in sentencing for drink-driving offences.

Co-operative working is the key to reducing the drink-driving limit. As the issue is reserved, it is critical that the Administrations at Holyrood and Westminster work together. I urge the Cabinet Secretary for Justice to work closely with his counterparts at Westminster to secure action on the matter.

17:14

Claire Baker (Mid Scotland and Fife) (Lab): I am happy to speak in this afternoon's debate. I acknowledge Dave Thompson's efforts in securing

the debate and the concerns that he has highlighted about the above-average number of accidents caused by drunk drivers in the Highlands and Islands. Drink-driving is completely unacceptable, and we must do all that we can to make Scotland's roads safer.

Our current drink-driving limit has been in force since 1966, and a number of bodies have recently suggested that it is time to review the limit, with persuasive arguments having been presented by the BMA. Many European countries have lower limits—we should consider following their example. I welcome the debate on the issue and the on-going debate across the United Kingdom, but the matter is reserved and—to reflect Des Browne's comments—I feel that if it is right to lower the limit here, it is right to do so throughout the UK. There are real concerns that a difference in the limit in Scotland from the rest of the UK may cause confusion among drivers and not lead to the necessary clarity around the law.

I regret to say that, like the Highlands, Fife has a worrying record of serious road accidents, although the issue is wider than drink-driving. Road safety more generally is a serious issue across the country. Only today, we have heard of an accident in Fife that claimed the lives of two men. My deep condolences go out to their friends and families.

When I was elected last May, I was shocked by the number of deaths of young drivers and passengers in Fife, where nine people died in road accidents last year, many of whom were young people. I must say that alcohol was not involved in the majority of the accidents: irresponsible driving, combined with rural roads and bends on high-speed roads were the main factors.

Much work is being done in Fife by the police to try to educate young drivers and make them aware of the risks and reality of their actions. Fife Constabulary reports that in Fife someone is seriously injured or killed in a road accident every second day. One quarter of convictions for causing death by dangerous driving are for drivers under 20, even though the age group represents just 3 per cent of all drivers.

Safe drive stay alive is a successful project in Fife, sponsored by Diageo, which works with senior pupils and college students to consider a range of issues that face new drivers and emphasises the dangers of drink-driving. Around 1,500 young people take part every year. The project's content reflects the findings of statistical evidence, feedback from emergency service personnel and consultation of education officers and road users. It has adopted an innovative and hard-hitting approach. Contributions from the parents of road-accident victims and victims themselves ensure that it is an experience that the young people who attend do not forget.

The House of Commons Transport Select Committee report on novice drivers published last summer stated that there is a case for reducing the limit to zero for novice drivers. The Department for Transport has given a commitment to consider the option as part of a wider consultation on the alcohol limit. I welcome that response.

I want to touch briefly on the issue of people driving when under the influence of drugs. The problem affects young people as passengers and drivers, when other transport options may not be available, when they feel that the roads are quiet and when there is a feeling that not much risk is being taken. We need to ensure that a strategy that addresses drink-driving also recognises the reality that there are some people who would not dream of drinking and driving but who take a different approach to drug taking. We need to ensure that we address that.

There is an additional challenge in raising awareness of the unacceptable nature of drink-driving. A recent report on Polish migrants in Fife highlighted the clear benefits that they bring to the economy as well as the challenges that they face in accessing services. However, Tayside Police has recently expressed concerns that migrant workers in particular do not stick to the alcohol limit. That may seem contradictory as many of the countries that the workers come from have lower limits than the UK. It appears to be difficult to identify the reasons, but it is possible that the limits are not so well enforced in some European countries. There is an additional challenge in ensuring that we reach everyone through appropriate and relevant campaigns.

Drink-driving and drug-driving are very important. Thousands of accidents each year could be prevented if we work to reduce the number of people who drive when under the influence of alcohol or drugs. The Scottish Government must focus its efforts to tackle drink-driving through on-going publicity and enforcement campaigns that are targeted at all drivers. I hope that the consultation throughout the UK looks at all appropriate ways to tackle drink-driving.

17:19

Bill Aitken (Glasgow) (Con): I congratulate Mr Thompson on bringing the debate to the chamber. I can well understand why he has done so as a member for the Highlands and Islands. As we all know, the Highlands are a particularly beautiful part of the world, with some very attractive communities and some very nice people. The disadvantage is remoteness. It is often impossible to get anywhere by public transport and, as such,

people use their cars to a much greater extent than they would do in Glasgow or Edinburgh. There are inevitably temptations to drink on social occasions in the Highlands, which is unfortunate. There is tangible evidence of that in the casualty departments of Raigmore hospital and other hospitals.

We must consider the issue of drink-driving realistically. It is not the problem that it was 20 years ago, but we must acknowledge that it is still a serious problem, and that there is an arguable case for reconsidering the drink-driving limit. I require to be convinced that the technology is in force to ensure that there would be no difficulties if the limit was set at a low level and that some substances other than alcohol would not show up in people's bloodstreams so that they could be wrongly convicted. Furthermore, the drink-driving limit must be set on a UK-wide basis. We could not have different limits in Gretna and Carlisle, for example. That would make a nonsense of the existing law. I fully acknowledge Mr Thompson's sincerity and the validity of his view, but there has again been a little indication that his proposal is another rod with which to beat the back of the Westminster Government.

Dave Thompson: If there is a good case for reducing the drink-driving limit in Scotland and a real will to act here, how can we get movement at Westminster if people there are just digging in their heels? Would a pilot scheme for the whole UK in Scotland be a good idea?

Bill Aitken: As I said, the case is arguable. If the Westminster Government does not move on the issue, it will become a political matter. I am sure that Mr Thompson, as a member of the Scottish National Party, campaigns enthusiastically for Scottish independence. If that comes, the problem that we are discussing would be removed, although, of course, many other problems would arise.

I want to raise another issue, which Claire Baker briefly highlighted. Impaired driving as a result of drinking alcohol is a real issue in the more remote areas, but we live in an era in which much impaired driving is the result of people taking drugs, as Ms Baker said. In my advanced years, I do not often go clubbing in Glasgow city centre, but on the odd occasion when I do so, there is clear evidence that people are taking recreational drugs. I would be willing to bet that a considerable number of vehicles that leave Glasgow city centre after 2 o'clock on a Friday or Saturday morning contain people who are not fit to drive, although that might be apocryphal. It is easy for them to escape detection because, at the moment, the technology does not exist that would enable the police to carry out accurate and reasonably quick tests on them. I have written to the cabinet secretary about that. The matter is in the hands of the Home Office. The technology and appropriate apparatuses need to become available as soon as possible so that the police can take the appropriate enforcement action.

I recognise that Mr Thompson has an arguable case. However, Scotland should not go it alone in reducing its drink-driving limit. In the times ahead, I am willing to listen to anything else that he says on the subject, which he obviously regards as serious.

17:24

The Cabinet Secretary for Justice (Kenny MacAskill): The debate has been consensual, despite Mr Aitken's comments on the constitution. Like other members, I pay tribute to Dave Thompson for securing the debate, in which we have had the opportunity to participate and make clear our views—which seem to be uniform—on the drink-driving problems that we face. Members have welcomed the proposal to reduce the drink-driving limit. I also pay tribute to Dave Thompson's tireless campaigning on the matter. He has sought to ensure that he brings together an array of issues, and he pointed out, correctly, that the position that he has articulated has also been articulated by organisations such as the British Medical Association, ACPOS and the Scottish Police Federation. Because of that, as I said, we owe him a great deal of gratitude.

As Mr Thompson, Alison McInnes and Claire Baker mentioned, the legislation that deals with drink-driving is significantly out of date. It is many years since I ceased practising, but I recall section 6 cases relating to those who had been caught driving under the influence of alcohol. Since then, things have moved on in a variety of ways—the state of roads, the speed of vehicles and an array of other matters—and the issue must be addressed.

The problem of migrant workers drink-driving, for which there is no clear and simple reason, is something that I have faced in my constituency. We are liaising with the police north and south of the border on the reasons for that. As Claire Baker mentioned, the issue could doubtless be one of enforcement. Anecdotally, however, I have been told that the problem relates to the alcohol limit for drivers—the limit in Poland is lower, and some Poles who come here seem to think that the higher limit here is the green light for go. That is no excuse for them consuming enough alcohol to put them above the 80mg limit. There is anecdotal evidence—in some cases, but not all—that those people think that, because the limit is higher here, they can indulge themselves. That is certainly not the case.

The problem arises not simply among migrant workers, who contribute a great deal to our economy, but among our own people—in particular, those who exceed the limit through ignorance. That is no defence, as the law has always said. There is also a recalcitrant minority who seem to think that the law does not apply to them and who endanger not only themselves but, tragically, others.

In response to Bill Aitken, I say that the Government would prefer matters to be dealt with on a pan-UK basis. That is why we have been in communication from an early juncture with both the Home Secretary and the Secretary of State for Transport. We want them to move. However, if they do not do so and if it is felt that Scotland has to move—which is the position of the British Medical Association, ACPOS and others, as Dave Thompson correctly pointed out—it would be negligent for us not to do so. I have discussed the proposal with chief constables in Scotland. They would prefer matters to be dealt with on a pan-UK basis, but they see no impediment to having different limits north and south of the border if that is the only way of addressing the issue. I hope that that does not come about, but if it does it will at least address road safety in Scotland.

The campaign is part of a wider Government agenda regarding Scotland's relationship with alcohol. The Government has made it clear that we cannot go on as we are. It is not simply about danger on the roads; it is about the effect on our health service, the impact on our criminal justice system and people's inability to maintain their involvement in the labour market—they phone up on Monday with the excuse that they have a stomach bug although everybody, including their employer, knows that they have been on the batter all weekend. The cost of alcohol abuse is damaging us in Scotland and we must tackle it.

As others have said, there is a significant problem in the fact that the 80mg limit was set back in the 1960s, before some members were even born. To put that in perspective, the limit was introduced in the year in which Celtic became the first UK team to win the European cup. That shows just how much time has passed. Scotland and the rest of the UK are very different now from how they were when the limit was set. Our laws have evolved and adapted over the past 40 years to reflect the changes in society on a multitude of matters, and it appears to us that the current drink-driving limit is a conspicuous exception to that. Some new laws have had to be passed as a result of changes in society, to deal with the internet and mobile communications. Equally, some existing laws have had to be reviewed and some are undergoing review. It therefore appears to be an apposite time to reconsider how we should address drink-driving.

Scottish Government research that was published today found that, although there has been a reduction in the level of drink-driving, 5 per cent of people who were surveyed thought that they had driven while over the limit in the past 12 months. The research recommends a reduction in the drink-driving limit to a less ambiguous level, as there is still confusion about how drinks and units of alcohol relate to the legal limits. Some of the confusion is not simply down to individuals. Glasses of wine may now contain substantial volumes, which people often do not expect to be served. Beer that is sold in public houses and elsewhere often has a higher alcohol by volume percentage than it did in the past, and consuming two pints of one brand rather than another can put someone over the limit.

In addition, cars are faster and roads are busier than they were in the past, and those factors make drink-driving significantly more dangerous now. That is why, in 2005, an estimated 30 people in Scotland were killed and 170 were seriously injured in alcohol-related road accidents. Sadly, around one in nine road deaths in Scotland occurs in an alcohol-related incident. Research indicates clearly that the numbers are coming down, but too many people are still dying or being seriously hurt on our roads. Lowering the drink-driving limit would reduce the number of deaths and injuries, and it would reduce confusion and ambiguity about what the limit is.

Lowering the limit would not just bring us up to date chronologically; it would bring us into line with most of the rest of Europe. During the past 10 years, several European countries, including France, Germany, Spain and Denmark, have reduced their drink-driving limit to 50mg. Research has shown that the countries with the most success in tackling drink-driving are those that have reduced the limit to below 80mg.

Figures produced by the Department for Transport estimate that such a measure could prevent 50 deaths and 250 serious injuries. Several members mentioned that. The list of organisations that support the idea is substantial, as Dave Thompson pointed out. That is why I have written to the Secretary of State for Transport, calling on the UK Government to lower the drink-driving limit to 50mg. I have also called for the introduction of police powers to randomly breath-test drivers at the roadside. Research indicates that a hard core is causing the problem in the main, although others are also involved. The risk of being caught is a deterrent and random breath-tests are a significant aspect of that.

A pilot has been suggested, but the Government would prefer the UK to implement the measures throughout the United Kingdom. The issue is rightly within the UK's domain at present. The

weekend's tragedy in Gloucestershire should be a salutary lesson that action must be taken. If the problem cannot be addressed, it is our view that the UK Government should work with us to allow the people of Scotland to make the necessary changes, to make Scotland safer and stronger, to reduce drink-driving and, as a consequence, to save lives.

Meeting closed at 17:32.

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