

# **MEETING OF THE PARLIAMENT**

Thursday 27 March 2008

Session 3

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## Scottish Parliament

Thursday 27 March 2008

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

### Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008 (SSI 2008/125)

**The Presiding Officer (Alex Fergusson):** Good morning. The first item of business is a debate on motion S3M-1599, in the name of Bill Aitken, on the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008.

09:15

**Bill Aitken (Glasgow) (Con):** As one of my former council colleagues famously said:

"It's like déjà vu all over again."

I must confess to being somewhat irritated at having to debate the order for the third time. Two weeks ago, by a clear majority, it was decided that we would not proceed down the route of the order. I must say that I was genuinely surprised by the vote, but I convinced myself that our Liberal Democrat colleagues had been persuaded by the eloquent arguments of John Lamont, by the pithy common sense of Paul Martin, by the personality of Pauline McNeill and by the fact that what I said was so obviously common sense that even the Liberal Democrats could understand the position. It seemed that, rather than the principled stand that I had anticipated, at the last moment they had seen the rightness of our case. However, it turns out that it was ineptitude. So, we are back again.

The arguments remain, and those that are being advanced for the third time by the Cabinet Secretary for Justice are simply unacceptable. Yesterday Kenny MacAskill had a chance to stand up for the victims in Scotland's communities, and he failed. Today he has a similar chance, but I anticipate that he will, sadly, fail again.

The cabinet secretary stands four-square with the Scottish Prison Service. He has backed it time and again, but in his darker moments he must surely ask himself how on earth we got into this position. How on earth did we dispose of one facility before another was ready, creating—to use his words—a “crisis in our prisons”? The fact is that the system was not properly thought through. Having first failed to address the problem, the

cabinet secretary has repeatedly come up with a solution that is not the answer.

I was asked in the previous debate what my solution would be—I have suggested some possible solutions on a private basis. What I cannot understand is why there was no contingency planning. In this life, stuff happens—fire or storm damage, for example, could mean that a facility or part of a facility is taken out of use. What emergency provisions or contingencies are in force to cover for such an eventuality? I asked parliamentary questions on the subject a couple of weeks ago. I have generally found Mr MacAskill's department to be extremely efficient in replying to such questions, but the silence from it on that matter has been deafening. I cannot be persuaded that either he or his predecessor had the appropriate contingency plans on the shelf, ready to dust down if such a situation arose.

I come now to the nub and the principles of the argument. Is it appropriate that we should follow the course that has been proposed in the order that I seek to annul? It is not. As I have said before, prison has a number of functions: punishment, protection of the community and deterrence. Under two of those headings, the plans manifestly fail.

As Mr MacAskill will know from when he had a real job, the criminal classes speak to one another. The word will get round soon enough that people can get out after a quarter of their sentence, albeit with a tag and restrictions placed on them. Let us consider those restrictions. Can any of us be confident, after the results of the Foye inquiry, that the restrictions will be adequate? At least if we go down the route that I am suggesting, the restrictions on those who are released would be placed by the Parole Board for Scotland rather than by the Scottish Prison Service, which would be a more effective way of working than what Mr MacAskill has in mind. *[Interruption.]* The trumpets may sound from the telephones on the Government front bench, but the fact remains that the cabinet secretary is failing in his duty to apply the necessary deterrence.

There is also the question of public protection. I accept that the Foye case is probably an extreme example, but nevertheless 21 per cent of those who are released fail to comply with the terms of their release. We cannot be comfortable with that. To suggest that people who are further down the road of criminality than those who are involved in the scheme at present are unlikely to reoffend when released demonstrates a disturbing naivety.

Eventually, something terrible will happen, and at that point Mr MacAskill will have to take personal responsibility. He made an apology in respect of the Foye case, although he had no

reason to apologise personally—I do not accept that he was personally responsible for what happened. However, if he puts through the legislation today and something happens, he will have to answer to Parliament. I warn him here and now that he will be held to account for that.

We must consider how the prison system is operating. We have continuing concerns about the open estate, which I had hoped might have been addressed in yesterday's related statement and questions. We must accept that the only solution for many people is that they should be kept locked up for the full duration of their sentence. We have always conceded that early release in certain circumstances—when it is deserved—is appropriate, but not to the extent that Mr MacAskill and the former Administration have sought over the years.

The order is a disastrous move. It is likely to cause great difficulty and may well end in tragedy. On that basis, I have no hesitation in moving the motion in my name.

I move,

That the Parliament recommends that nothing further be done under the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No. 2) Order 2008 (SSI 2008/125).

09:22

**The Cabinet Secretary for Justice (Kenny MacAskill):** Clearly, I disagree with Mr Aitken, and I ask Parliament not to support the motion to annul the order.

Mr Aitken asked

“how on earth we got into this position”.

Part of the answer is that, during 18 long years of Tory rule in this country, not one new prison was built by the Conservatives. Their cant and hypocrisy about the importance of prisons is undermined by their abject failure to take action. They are culpable in part for the crumbling estate that we face.

**Bill Aitken:** Will the cabinet secretary give way?

**Kenny MacAskill:** Not at the moment.

The order forms part of a package of measures that we hope to put in place to ease the on-going inherited problem of overcrowding in our prisons. We are using the flexibility to extend the home detention curfew scheme that was built into the Management of Offenders etc (Scotland) Act 2005 by the previous Administration.

We need prisons to lock up dangerous criminals, and we have to allow the SPS to work with those criminals to rehabilitate them for a return to society. However, the SPS is dealing with record

numbers. Yesterday, the prison population was 8,001, with 379 of those on HDC. That makes it harder for the SPS to do the job that it needs to do with serious offenders.

We are tackling the problem. Unlike the Tories, we have announced three new prisons since we took office—in less than a year, when they had 18 years in government. We have also announced a major penal policy review, led by Henry McLeish, to come up with new and effective ideas for reducing reoffending through better managing the transition and reintegration of prisoners back into the community. That is vital to breaking the cycle of reoffending that causes many of the problems that we face in Scotland.

The order commencing section 3AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 came into force on 21 March 2008. As of that date, the Scottish ministers have had the power to release long-term prisoners on home detention curfew licences. The Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008 sets out the standard conditions that are to be imposed on both long-term and short-term prisoners when they are released. It replaces an earlier order that dealt with conditions for short-term prisoners only. Appropriate conditions must be set as a condition of release, but if Parliament annuls the order, no standard conditions will be imposed automatically on all long-term prisoners. That surely cannot be what Mr Aitken intends. Conditions will need to be set in each case, but that will not prevent the release of long-term prisoners on HDC.

Offenders who are considered for HDC must have been recommended for release on parole at the halfway stage of their sentence by the Parole Board. They will be due to be released on licence—they are to get out anyway and are simply awaiting authorisation as the approval works its way through the system. The scheme allows them to be released on HDC pending their being released on licence for which they have been approved. If they breach the HDC, they will jeopardise not just release on HDC but their parole.

My purpose in asking Parliament to approve the order and to reject the motion to annul it is to give transparency to the process by affording Parliament the same opportunity to agree prescribed standard conditions for long-term prisoners as it had in 2006, when it agreed prescribed standard conditions for short-term prisoners.

I assure members that prisoners who are serving long-term sentences cannot be released on home detention curfew unless the Parole Board has already recommended their release at the first parole qualifying date, and they also subsequently

meet the current assessment criteria for HDC. I say to Mr Aitken for the avoidance of doubt that convicted sex offenders will be precluded from applying, so references to Mr Foye are therefore utterly shameful and entirely erroneous.

Because of the way in which the parole process and the notification of the Parole Board's decision operate, the maximum time a prisoner could spend on HDC would be about 10 weeks. In reality, we estimate that the period spent on HDC is likely to be nearer six weeks.

Just as with release on parole, the specified licence conditions require the prisoner to be subject to local authority social work supervision during the period of HDC. Those supervision arrangements will continue during the subsequent parole period. In addition, HDC licence conditions will take into account any conditions that the Parole Board has recommended for the parole period and can include any conditions that ministers consider to be appropriate.

All prisoners released on HDC will be electronically tagged and subject to a curfew condition requiring them to remain at a specified place for about 12 hours per day. The Scottish ministers also have powers to revoke an HDC licence and to recall prisoners to custody if they fail to comply with any licence conditions. Modelling indicates that such measures will free up capacity of about 50 places in the prison system. As I have said before, those 50 places are very much needed as a result of years of neglect.

Management of the problem includes our being flexible and using the tools that are available to us, such as HDCs, rather than hectoring the governor of Barlinnie to take just anybody who is sent to him irrespective of the consequences. We have to protect the public and allow the SPS to do its job. What we propose today gets that balance right.

My offer to review the HDC scheme stands. The review would go further than the sunset clause that is requested by Labour members, which would impact only on the continuing operation of standard conditions. I therefore ask Parliament to reject the motion to annul the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008.

09:28

**Pauline McNeill (Glasgow Kelvin) (Lab):** "Third-time lucky", as BBC headlines said this morning. It would be amusing if it were not so serious. This extraordinary groundhog day debate will contain exactly the same points that we made two weeks ago, but this time the Liberal Democrats will perhaps remember to leave their offices in time to vote. For the avoidance of doubt, I inform Liberal Democrat members that when they

see Bill Aitken's name for the Scottish National Party on the *Business Bulletin*, they should vote no.

The will of Parliament has already been determined, but it seems that procedure allows for reversal of the will of Parliament because of a few mistakes. Labour's position, however, remains the same. We introduced the principle of home detention curfew as part of a package of measures that included the upgrading of the prisons estate and the Management of Offenders etc (Scotland) Act 2005 for short-term prisoners serving sentences of four years or less to be released no earlier than 135 days into their sentence.

The measures that we are being asked to support today extend far beyond those Labour proposals. We are being asked to approve the order immediately for the single purpose of reducing the prison population rather than as part of a package of measures. I am astonished by the cabinet secretary's logic that such prisoners would get out anyway. With that logic, where would we draw the line?

The order is not couched in promises of a commitment to a date for opening Low Moss and there is no mention that 700 new prison places at Addiewell will be available in January. There are no reports from the cabinet secretary that he has insisted that the SPS must get its finger out and build those new prisons. I am sure that the Liberal Democrats will join me in saying that the commitment to build three new prisons was well down the line under our Administration and that it is wrong for the cabinet secretary to claim that as his own work. What the order proposes is a rush job. I now begin to wonder whether it is the Government's principled position that long-term offenders will be included in a scheme that is still in its infancy.

The proposals are significantly different to ours because they will include more serious offenders and will make all offenders eligible for early release for longer—for up to six months. As I said two weeks ago, someone who is serving six years could be out in two and a half years. Does the cabinet secretary really believe that he has the general public's support for extension of the scheme? I think not.

I reiterate that Labour has made a fair and reasonable offer to the Scottish Government to support a short extension to the HDC scheme until the opening of the new prisons, whenever that might be. We are balancing the public interest with the problem of overcrowding, which we accept is a real problem. We know about the cabinet secretary's health and safety concerns, but as a responsible Opposition, we believe that we offer an option around which all parties can unite. We will not, however, provide a blank cheque to the

Government, as we are being asked to do, for a scheme that is in its infancy and is yet to be evaluated. We demanded a sunset clause in the legislation on the opening of the new prison at Addiewell and that is what we will vote for at decision time this evening. That offer remains on the table.

Your refusal, cabinet secretary, to work with committee members who adamantly oppose your proposals for good reason, is disappointing. Indeed, your refusal to accept a compromise with Labour and the Tories is not in tune with the promises that you made as a minority Administration.

Win or lose tonight, cabinet secretary—we will see what happens—we will demand that you stick to your promise and that you repeal the order when the 700 prison places become available. Whether you win or lose this evening, I want you to commit to that repeal in your summing-up speech.

**The Presiding Officer:** I remind members not to use the word “you” unless they are referring to me.

09:33

**Margaret Smith (Edinburgh West) (LD):** I was happy to support the introduction of home detention curfews as part of the Management of Offenders etc (Scotland) Act 2005 when it was introduced by the Labour-Liberal Democrat Government and I am content to support its development through the order today. I am very much looking forward to voting against Bill Aitken’s motion to annul the order—it is very helpful to have his name on the *Business Bulletin* today. I have been on an intensive training course on how to vote for two weeks and I think that I am now up to the task.

Public safety lies at the heart of any decision that will be taken by the prison service or Parole Board to release a prisoner on licence. We know that large numbers—40 per cent—of those who apply for HDC are not granted it. We also know that 69 per cent of people successfully abide by the terms of the curfew and that of the 21 per cent who breach orders, the vast majority commit only minor breaches. Of the 3,000 people who have been released on HDC, fewer than 1 per cent have offended while on the scheme. That seems to suggest that although the risk assessments that are undertaken by the SPS with community assessments from the local authority social work departments will never be perfect, they are working reasonably well. Bill Butler accepted that point in committee.

As we have heard, the criteria for the scheme already exclude sex offenders and other serious offenders.

Some 340 people are currently on home detention curfew, which has a positive impact on overcrowding in the prison estate, but it should also be looked at as a positive option for prisoners who are assessed as being low risk so that they can reintegrate into their communities, managed by the SPS, with community assessments.

The order will allow the release of prisoners who have been recommended for release at the first parole qualifying date by the Parole Board, having served half their sentence, if those prisoners fulfil the criteria for release on HDC. I note that the cabinet secretary has suggested that that will mean that the average time that they spend on curfew will be six weeks.

The order enables standard conditions to be prescribed automatically for any long-term prisoner who is released on HDC licence. The standard conditions for long-term prisoners who are released on HDC are the same standard conditions that are used when the Parole Board for Scotland recommends release on parole, and they take account of public safety and reintegration into the community.

The public need to be reassured that when long-term prisoners are released proper safeguards are in place and risk assessments have been carried out as effectively as possible. Long-term prisoners are more likely to have committed more serious offences, so a decision to release a long-term offender must be considered seriously. However, it could be argued that a long-term prisoner who breaches an HDC and is taken back to prison has much more to lose when the breach is taken into account in decisions about parole.

The cabinet secretary has committed himself to a review of HDC early next year, in the wake of the opening of the new prison at Addiewell. I agree with what Pauline McNeill said about the previous Government’s work on new prisons. We seek assurances from the cabinet secretary that HDC for long-term prisoners will be reviewed at that stage. A reasonable amount of time will have elapsed, so our request is reasonable.

Systems of early release and parole are currently in operation for long-term prisoners and nobody is suggesting that we do away with either system. We all want properly managed, effective and safe systems that allow offenders to return to their families and communities in a way that is safe for communities. If there are questions about safety, HDC should not be agreed to.

The use of the same standard conditions for long-term prisoners who are to be released on HDC as are used for prisoners who are released on parole means that social work supervision conditions and other conditions that the Parole Board for Scotland recommends can be applied



from the start of the HDC period, which seems perfectly reasonable. Further conditions will be needed, as the cabinet secretary said.

Cathy Jamieson, the former Minister for Justice said:

"home detention curfew ... will help to manage the return of selected low-risk prisoners from custody back to the community."—[*Official Report*, 16 June 2005; c 18004.]

She also said that

"The important point is that a proper risk and needs assessment has to be done in each case, before anyone is released to home detention curfew."—[*Official Report*, 3 November 2005; c 20390.]

That was the case in 2005 and it remains the case.

The overwhelming rationale for releasing a prisoner should not be the impact on prison numbers, however important that is; it should be what is best in the context of the offender's reintegration into the community. It could be argued that long-term prisoners have a greater need for reintegration to take place gradually and effectively than do short-term prisoners. The crucial point is that the impact on the offender's family, victims and community must be considered.

09:37

**Stuart McMillan (West of Scotland) (SNP):** I am grateful for the opportunity to speak again on a matter, which will perhaps this evening—if all members arrive in time for decision time, as I assume that they will—be put to bed for the foreseeable future.

I am happy to reiterate my position. During the parliamentary debate on HDC a couple of weeks ago, I said that there was no logic to not extending the scheme and that proposing a sunset clause was tantamount to faffing around. I accept that on occasions sunset clauses have a legitimate place, but given that the cabinet secretary has offered a widespread review—not a repeal—of HDC when Addiewell prison opens, a sunset clause is not relevant in this instance. I could have considered a sunset clause if there had been no other offer on the table.

The cabinet secretary has outlined the strict guidelines around the extension of HDC and has given details of measures to allow prisoners to make a safe transition back to society, which include statutory exclusions, preventing certain categories of offenders, such as sex offenders, from being released on HDC, and a robust risk assessment process, which is undertaken by the SPS and takes into account a prisoner's previous history of violence, for example.

The primary aim of HDC was to ease the reintegration of prisoners into the community, while restricting their movements, which creates a better environment for all concerned.

As the cabinet secretary pointed out during the previous debate on HDC, prisoner numbers in Scotland have reached record levels. Prisons are operating over capacity by about 1,000 places. What kind of environment is that for prisoners and prison staff? It has been established that the situation is due in no small part to years of neglect by the Tories and a lack of investment by the previous Administration.

The Labour Party is on record as saying in the Justice Committee that it is not against HDC per se. I would not expect Labour to oppose HDC, given that it was part of the previous Administration, which introduced the scheme. I am sure that Labour and Lib Dem members of the previous Executive viewed HDC as an important part of justice policy.

I am also sure that Labour members are aware that when HDC was introduced by the United Kingdom Parliament in 1999 the system was intended for prisoners who were serving sentences of between three months and four years. HDC was then brought in for up to two months at the end of a sentence. Since then, HDC has been extended twice: first in 2002, when presumptive HDC was introduced for prisoners who were serving sentences of between three and 12 months; and secondly in July 2003, when the maximum curfew was increased to 135 days. I would not suggest that Labour members are opposing the SNP Government's plans for the sake of it, but they know that Labour ministers in London have extended HDC—and that that has happened without mention of sunset clauses.

In a recent interview with Jack Straw it was said that the prisons estate in England and Wales is only 70 places short of capacity and emergency measures might have to be taken. Who knows what the future will bring on HDC in England and Wales? In Scotland we have an opportunity to help prison officers and to help prisoners to reintegrate into the community. It is in everyone's interests that prisoners not only do their time but have a chance to be rehabilitated. I am sure that all members—even the Tories—agree on that.

There is no doubt that HDC should be extended. I hope that members have the sense to press the right voting button tonight and reject the motion.

09:41

**Bill Butler (Glasgow Anniesland) (Lab):** A little more than two weeks ago Parliament voted narrowly to agree to the draft Home Detention Curfew Licence (Amendment of Specified Days)

(Scotland) Order 2008. I regret that that happened, but I am a democrat and I accept the will of Parliament. I sincerely hope that no ill comes of the decision.

Members will recall that during the debate two weeks ago the members who expressed concern about the draft order, which contained a proposal to modify significantly the specified length of HDC, were the subject of colourful charges that were levelled by the cabinet secretary. We were accused of indulging in “cant and hypocrisy”; of

“seeking to play politics with our prisons”;

and of

“jeopardising the good order in our prisons and undermining the excellent work that our staff do.”—[*Official Report*, 12 March 2008; c 6864.]

Mr MacAskill refused to take a single intervention during his closing speech in that debate, which was redolent of mere captation, so I offer him some advice gratis: he should not automatically assume that people who oppose his arguments and question his judgment on matters as serious as public safety are insincere or unprincipled. Such an approach debases proper debate, which is never a good idea. I had hoped that the cabinet secretary’s comments today would be more considered and rational than they were a fortnight ago. I have been disappointed, although I still live in hope.

I say again that I still support the HDC provisions in the Management of Offenders etc (Scotland) Act 2005, which were reasonable and proportionate. HDC was conceived as part of a wider package of measures to deal with the serious problem of reoffending rates. The correct position was taken in the 2005 act and I do not resile from it.

I remain baffled by the Government’s refusal to countenance a sunset or review clause, which would have allowed Parliament to agree to a modified order and return to the matter in due course. I still feel that the approach has much to commend it. Given the nature of the decision with which Parliament is faced, I am even more convinced that the approach is wise.

A fortnight ago, Parliament passed an order that significantly modified the specified length of HDC licences. It could be argued that that change was merely quantitative. Today we are being asked to agree with a qualitative change to primary legislation. If we do not support Mr Aitken’s motion to annul the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008, we will have changed the type of prisoner who can be released on HDC. There was no intention in the primary legislation to include long-term prisoners in the scope of the scheme. In effect, Parliament is being invited to allow more

serious criminals who are serving long-term sentences to be released up to six months early. That is a serious matter and it is right and proper that we should proceed with caution, given that the safety of our communities is our paramount consideration.

That is why I urge the SNP ministerial team to reconsider its position—even at this late stage—on the insertion of a sunset or review clause in an order that makes a qualitative modification to primary legislation. Sunset or review clauses are appropriate when regulation is introduced at short notice in response to a crisis. It would be a precautionary measure; it would do no harm, and it may very well do good. What on earth is wrong with that?

I genuinely hope that the SNP Government will reconsider its position. If it does, my party stands ready to support the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) (No 2) Order 2008, once it has been suitably amended to ensure the safety of communities across Scotland. I hope that the SNP will listen to reason and dispense with mere assertion and bluster.

09:45

**John Wilson (Central Scotland) (SNP):** I have pleasure in speaking in the debate. I am opposed to the motion in the name of Bill Aitken. I support the order that the cabinet secretary laid.

Home detention curfew was debated in the chamber on 12 March 2008. As members have said, today’s debate has a feeling of déjà vu or groundhog day about it. The primary aim of HDC is to ease prisoners into the community while restricting their movement. As has been said, Scotland’s prison population is just over 8,000. The Scottish Prison Service is operating at 1,000 places above capacity, yet the crime rate is not increasing.

In his speech, the cabinet secretary reinforced the point that the order affects only prisoners who serve certain periods of time. Basically, it will bring them into the ambit of HDC and allow the Scottish Prison Service to operate a system to place other prisoners on early release.

The statistics on HDC are clear: some 3,000 people have been released under HDC, yet less than 1 per cent of them have reoffended while on the scheme. The SPS is by no means perfect, but prison governors are rightly strict in deciding on HDC applications. As Margaret Smith highlighted, that is evidenced by the fact that 40 per cent of those who apply for HDC are refused. That indicates the strict criteria that the SPS applies.

Bill Aitken quoted a 21 per cent failure rate for those who are on HDC, but if we analyse the figures—which I have done—we find that the figure is less than 9 per cent, once we account for prisoners who are taken off HDC only to appeal successfully.

**David McLetchie (Edinburgh Pentlands) (Con):** Appeal successfully?

**John Wilson:** In many ways, we are at a crossroads in the justice agenda. Community sentencing is the clear answer to resolving prison overcrowding. That said, we are all aware of the horror of prisoners committing criminal acts while on probation orders or electronically tagged.

Unfortunately, some political figures on the Conservative benches pander to the short, sharp shock policies of a bygone age, when playing to the press gallery was paramount. However, such strange posturing on HDC is evident in its fullest sense when we turn to the sunset clause that the Labour Party has attempted to introduce. At no point in the debates on the Management of Offenders etc (Scotland) Bill did Labour make the case for such a clause. Its mixed messages and misinformation on HDC are highlighted in what Bill Butler said at stage 1 of the bill:

“Most of the evidence that we heard suggested that there was merit in home detention curfew for certain low-risk prisoners.”—[*Official Report*, 16 June 2005; c 18019.]

Clearly, locking up people is not the answer and it does not impact on the overall crime rate. Only now are we beginning to understand that jail should be for people who are a clear threat to the community.

The real and lasting benefit of today's debate will be if the justice agenda is debated in a more mature fashion. We have a prison system that suffers from chronic overcrowding on a daily basis. Bill McKinlay, the governor of Barlinnie prison, has stated in stark terms that he will not be able to house any more prisoners within months.

I trust that sense will prevail at decision time and that members will reject the motion in the name of Bill Aitken and support the order.

09:49

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** The debate on home detention curfew has taken up a great deal of committee and parliamentary time over the past few weeks. I am sure that members will not complain about that; as a responsible Opposition, it is right that we hold the minority Scottish Government to account. It is also right that the ministers who are responsible for ensuring that our communities are safe are called on to defend their proposals.

I make it clear that my party supports HDC for appropriate people as a way of reintegrating short-term offenders into the community. As an individual MSP, I want tagging to be used more widely as a disposal for non-violent offenders. Prison is a place for people who are a danger to society. It is in everyone's interest that we work with minor offenders, in particular. We should offer them the opportunity to make amends for their criminal behaviour, maintain a job and take responsibility for supporting themselves in a community setting. Greater use of tagging, with support, is a way of addressing and reversing criminal behaviour.

As other members have said, the Cabinet Secretary for Justice is asking the Parliament to support extending HDC to longer-term prisoners. I am unwilling to support that because of lack of information. He has made available no information either to the Justice Committee or to Parliament on the effectiveness of HDC since its introduction in 2006. Figures have been bandied about this morning, but no serious research has been conducted on the effect of HDC on communities or whether it stops reoffending.

I remind ministers that the purpose of introducing HDC was to reduce reoffending, and it was introduced not in isolation but as part of a package of measures to make Scotland a safer place. Ministers have neither listened to calls for evidence to support the extension nor accepted the Labour Party's offer. HDC has been in operation for almost two years, yet the SNP has nothing to say on whether it is a success in terms of offenders or the communities to which they return. Has HDC addressed the revolving door syndrome? I do not know. If the cabinet secretary knows, he has failed to tell the Justice Committee or Parliament.

In the last parliamentary debate on the topic—I use the term “debate” loosely, given that the cabinet secretary refused to engage in it—SNP members got to their feet to defend their minister. The cabinet secretary accused the Opposition of playing narrow, sectarian party politics and SNP back benchers accused us of taking an overtly political tone. I will speak directly to SNP back benchers. I ask them not to follow, like sheep, their ministers' orders, but to demand from them what we are demanding: fact-based evidence. Before an extension is agreed, the HDC scheme must be properly assessed, but we need evidence before we can do that. Any extension of HDC should be driven not by the goal of reducing the prison population but by the fact that it is working. Thus far, we do not know that it is. I will not vote to put my community at risk. I ask SNP members to vote to support communities, not to save the face of their cabinet secretary.

The Labour Party is not playing politics but taking a responsible political position. I urge the cabinet secretary to take up Bill Butler's reasonable offer. If he does not, I ask SNP members, and Liberal Democrat members, to vote with their heads and not their party whips at decision time.

**The Presiding Officer:** We come to the wind-up speeches.

09:53

**Mike Pringle (Edinburgh South) (LD):** I accept Bill Aitken's criticism of what happened a fortnight ago. However, I have been consistent. I supported home detention curfew: I voted for it at committee when I substituted for my colleague Margaret Smith, and I voted the right way on the day. I assure Bill Aitken that, at 5 o'clock, I will try my very best to herd sheep into the chamber at the right time.

**Bill Aitken:** But will he turn up?

**Mike Pringle:** As I said, I will do my best to herd sheep at 5 o'clock and to ensure that they go in the right direction.

As my colleague Margaret Smith and John Wilson outlined in their speeches, there can be no doubt of the success of HDC. As the cabinet secretary alluded to, the figures on HDC demonstrate that. The Scottish Prison Service ensures that any prisoner who is released on HDC licence, or who wants to do so, fulfils rigorous conditions.

The order revokes the standard conditions in the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006, which apply only to short-term prisoners, and prescribes new standard conditions for those prisoners. The result is that standard conditions for short and long-term prisoners will appear in one order, which is a sensible, commonsense approach. However, there will be a need for further conditions to be added on an individual basis, as recommended by the Parole Board for Scotland or the Scottish Prison Service.

A major rationale behind the introduction of HDC was that it would assist offenders' reintegration into their family and community, which is essential. HDC allows offenders to work and to access all the services that are available in communities—many of which are lacking in prisons. As my colleague Margaret Smith said, the SPS is required to examine each individual case and to assess the person prior to granting an HDC licence, with the option of adding conditions when necessary, which is essential. For example, the condition could be that the individual must attend

particular addiction treatment or that they must not visit a certain place.

As other members have said, we cannot get away from the fact that there is a record number of prisoners in our prisons. All of us in the Parliament have an obligation to try to reverse that trend. The fact that we in Scotland have more people in prison per head of population than almost any other country in Europe is a disgrace. There is an obligation on all of us to do what we can to sort out the problem.

We cannot ignore the words of the governor of Barlinnie prison or the chief inspector of prisons when they warn of the impact of overcrowding on the SPS's ability to perform its duties effectively and to engage with prisoners in a way that addresses their needs and helps them to avoid reoffending. Burying our heads in the sand and ignoring the practical reality that the Government is grappling with is not an acceptable course of action.

The minister has given a commitment that he will review the system in light of the impact of Addiewell prison being opened in January, and we will hold him to that. We want a commitment that includes an extension of the scheme to long-term prisoners. We will not ignore the overcrowding in our prisons and its detrimental impact on rehabilitation and reoffending levels. We will not ignore the fact that we introduced HDC when we were in government and that, if it is managed properly, it can assist in effectively reintegrating offenders into the communities in which they want to live.

09:57

**Paul Martin (Glasgow Springburn) (Lab):** Once again—for the third time—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. This has been a shameful journey for the Scottish Executive. There has been a lack of respect on the part of the Government towards the committee process and contempt has been shown towards decisions taken by the Parliament.

It is important to recognise that the situation is unprecedented: never before has a minister presented secondary legislation to our committees for it to be defeated there. It is also unprecedented for a Scottish statutory instrument to be brought to the chamber, defeated and then brought before us again. I remember a number of the things that members who formerly were in opposition said over the years about the respect that should be shown to the committee process. Perhaps Mr Ewing, when he sums up, can clarify the fact that

he made such remarks about the process on many occasions.

I have read with interest the unprecedented number of briefings in recent weeks regarding the prison overcrowding challenges that face the Government. John Wilson, Mike Pringle and other members are concerned about overcrowding, and they quite rightly made a case in that respect. I also heard some quotes from the governor of Barlinnie prison on the overcrowding challenges that he faces. I respect Bill McKinlay, who represents the prison that is located in my constituency, and I recognise the challenges in his role of managing Barlinnie prison. However, no one in the chamber should allow Mr McKinlay to believe that adding 50 prisoners to the HDC scheme will give him any respite from overcrowding. That is the serious point that needs to be made in the debate. The order will make no difference to the overcrowding challenges that we face.

If the order is passed today, perhaps the cabinet secretary will ensure that members will be kept informed, through the convener of the Justice Committee, of the success of the order, and of whether it has any positive impact in dealing with overcrowding. The overcrowding argument has been the pivotal one that the cabinet secretary has made in respect of the order. He must, on a regular basis, be able to prove that the legislation is making a difference.

In the interests of good, open and accountable government, and assuming that the Government presses ahead with its plans today, I ask the minister to clarify in his summing-up speech when the extension of the HDC scheme will actually be operational—not when the legislation will be passed. That is the most important point in the debate. It is about not what we do in respect of overcrowding, but what difference the home detention scheme will make.

As I said, the Government has once again failed to convince the Parliament. It might win the vote today, but it will not have won the argument. I call on the Parliament to support the motion in the name of Bill Aitken.

10:01

**Kenny MacAskill:** As is often the case with debates in the chamber, more heat than light has been generated this morning. As Mr Aitken said in his opening speech, there is a sense of *déjà vu*, therefore I make no apology for reiterating that there has been a great deal of cant and hypocrisy in the debate, particularly from the Labour-Tory alliance that has congealed around the issue.

However, cogent points have been made. In particular, Margaret Smith made it clear—and it

was echoed by John Wilson and others—that 40 per cent of HDC applications are rejected, which shows that clear criteria must be considered. In addition, breaches occur in less than 1 per cent of cases. Mr Wilson was correct—irrespective of the sedentary criticism from Mr McLetchie—about the opportunity to appeal to the Parole Board in cases where there is a breach. Indeed, I think that the majority of appeals are successful.

Returning to the hypocrisy of the Tories, we had 18 years of Tory rule with not one new prison. The Tories caused some of the consequences that the Government is now having to address. There has also been cant and hypocrisy from Labour. Ms McNeill seemed to object to extending the scheme to long-term prisoners. Bill Butler fulminated about it. Cathie Craigie oozed false sincerity about it. Mr Martin appeared bullish about it. Let us consider the facts. We are dealing with subordinate legislation today because the previous Administration—a majority Labour Administration—included within the parent act provisions for HDC—

**Pauline McNeill:** For short-term prisoners.

**Kenny MacAskill:** The parent act expressly included provision for HDC to be extended to long-term prisoners. It might be that there was simply an oversight, and Mr Butler did not have the opportunity to—

**Cathie Craigie:** Will the cabinet secretary take an intervention?

**Kenny MacAskill:** I will not take an intervention at the moment; I am in the middle of making a point.

Perhaps Mr Butler was unable to persuade the then Minister for Justice of the benefit of a sunset clause—if he had been able to do so, we would not be in this situation now. Perhaps the initial error was that a sunset clause was forsaken. The position is that the previous Administration allowed the scheme to be extended to long-term prisoners by subordinate legislation.

If we take Ms McNeill's point of view, perhaps it was entirely a mistake. Perhaps the draftsmen somehow created an eligibility for long-term prisoners that could be triggered by subordinate legislation—but that was clearly not what Labour meant. I view the assertions that have been made as cant and hypocrisy. The previous Administration, under Labour, knew that there might be a requirement or a desire to extend the HDC scheme to long-term prisoners, so it provided for that in the Management of Offenders etc (Scotland) Act 2005. Ministers did not introduce a sunset clause—they did not forsake the provision, because they knew that they might want to use it. Labour's position is utter cant and hypocrisy.

The mention of delay with Bishopbriggs prison is equally so. Thankfully, it appears that the current—although who knows for how long?—Labour leader in the Parliament welcomes the Government's commitment to Bishopbriggs prison being built in the public sector. Why has there been a delay? Because the previous Administration, under the so-called Labour Party—the party of syndicalism and trade unions—went head to head in a two-year competition to decide whether or not the SPS could build the prison. That delayed matters for two years, at a cost of £2 million—with which we could have built a wall and started construction. Fortunately, this new Administration has repudiated the further privatisation of our prison services—privatisation that was instigated by the Labour Government. We have ensured that the prison service will indeed be a prison service and not a service that is operated for private profit.

As I have said, our prison service faces difficulties. Fortunately, members from all parties acknowledge the excellent job that is being done by the SPS, our prison governors and our prison staff. They have to be able to deal with serious and violent criminals, and they have to be able to deal with not only drugs but mobile phones coming into prisons. If they have to take the flotsam and jetsam, they will be unable to concentrate on the people they need to concentrate on. They cannot do both, and those who would force them to do so would undermine and jeopardise the job that they do. That is why we need flexibility.

Mr Martin thinks that 50 people on HDC is an irrelevant amount. When dealing with the numbers that Mr McKinlay has to deal with in HM Prison Barlinnie in Mr Martin's constituency, 50 is a substantial number. That is why we will vote against the motion.

There has been cant and hypocrisy from the Labour-Tory coalition that got us into this mess in the first place. However, in its wisdom, the Labour Party fortunately gave us the opportunity to deliver measures by way of subordinate legislation. It clearly had the foresight to see that a future Government, Executive or Scottish National Party Administration might wish to implement the measures. I thank the Labour Party for its foresight and wisdom in ensuring that measures for long-term prisoners can be dealt with by means of subordinate legislation.

10:06

**John Lamont (Roxburgh and Berwickshire) (Con):** Here we are again—episode 3 of “The Great Prison Escape”, hosted by none other than the Cabinet Secretary for Justice, Mr Kenny MacAskill, ably assisted—perhaps—by his Liberal

Democrat friends, who are also waving the get out of jail free card.

Thank goodness that Margaret Smith is back in the driving seat of the Lib Dem justice brief, after the chaos of two weeks ago when, on Mike Pringle's watch, there was a rebellion on a scale never before seen in the Scottish Liberal Democrats. Thanks to a combination of no-shows and voting blunders, six of the 16 Lib Dem members—including, remarkably, the party leader—failed to support the party line. I am sure that this time, Margaret Smith will have inspired her colleagues at least to turn up, if not to vote.

At the previous vote, I could barely hide my surprise. I thought, “Are the Liberal Democrats actually listening to the electorate? Are they listening to the victims of crime? Are they willing to stand alongside the Conservatives and oppose a ridiculous measure that will undermine the public's confidence in the criminal justice system?” Oh no, Presiding Officer, I should have known better. After all, why would they be supporting proposals to keep criminals in prison, when I know that some Liberal Democrats think that prison should be abolished altogether? It is, of course, the prerogative of the Liberal Democrats to advance barmy policy ideas every so often, and it is important that they continue to do so.

**Margaret Smith:** We are looking at a system for which there are set criteria. Of the people who apply for home detention curfew, 40 per cent are not accepted. A total of 3,000 people have been released on HDC, and less than 1 per cent of them have offended. Is Mr Lamont suggesting that we should no longer have any form of early release or any form of parole, and that we should keep everybody locked up in prison for the full term of their sentence? How would you deal with that when you did not build a single prison when you were in office?

**The Deputy Presiding Officer (Alasdair Morgan):** I certainly did not build any prisons, Ms Smith.

**John Lamont:** We are confident enough in our court system to know that people who are sent to prison should spend their time in prison. That is what victims of crime and the wider public tell me. We do not cut crime by cutting the prison population; we cut the prison population by cutting crime. The immediate goal should be to reduce the reconviction rate, not the prison population.

I do not understand why the Government will not examine more closely the experience in England and Wales, where the chief inspector of prisons has warned consistently of the danger of allowing unsuitable prisoners to be transferred out of closed prisons early. Stuart McMillan spoke about the English experience, and I draw his attention to

the fact that, under the English version of the HDC scheme, which was introduced in 1999, more than 4,000 prisoners who were released early have reoffended, committing more than 7,000 crimes. More than 1,000 of those crimes were violent crimes, including one murder, 56 woundings and more than 700 assaults. Those crimes would not have been committed if the criminals who committed them had remained in prison serving out their sentence.

**Mike Pringle:** That was in England.

**John Lamont:** The member says "England", but surely we should learn from our neighbours across the border, rather than put our heads in the sand and make the same mistakes that they have made. Following what happened in the case of Mr Foye, I would have thought that the Cabinet Secretary for Justice would learn the lesson and not propose to release more prisoners even earlier.

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 is handed down by the court. Rather than let criminals out early, the Government needs to rethink its justice policy so that the problems of overcrowded prisons are tackled not by letting prisoners go home early but by cutting the crime figures.

We need to make criminals scared of getting caught and scared of punishment, so that they will choose not to commit crime. Letting offenders home early will not achieve that. We need to make criminals pay a heavy price for their actions, so that others are scared of following their example. Letting offenders home early will not achieve that. We need to put victims first and ensure that they see justice being done. Letting offenders home early will not achieve that. We need to give the police the backing that they deserve. Letting offenders home early will not achieve that.

I wonder what the Lib Dem rebels will be doing today. Will they vote with us to ensure that criminals do their time? Will they vote with us to ensure that the criminal justice system is on the side of the victims of crime rather than on the side of the offenders? Will they vote with us to ensure that dangerous criminals are kept in prison for the length of time that the courts have determined they should be locked up? Will they vote with us as we start the war against crime, so that the law-abiding majority can take back their streets, their town centres, their homes, their communities and their shops? Or will they vote with the SNP Government to set even more prisoners free even earlier? Will they vote with the Government to undermine confidence in our criminal justice system? Will they vote with the Government for a soft-touch Scotland, where four years means 18

months and the decent law-abiding citizens of Scotland have to pay the price? The choice is for the Liberal Democrats. I hope that they will not let us down.

I urge Parliament to back the motion in Bill Aitken's name.

## Local Government Finance (Scotland) Amendment Order 2008

**The Deputy Presiding Officer (Alasdair Morgan):** The next item of business is a debate on motion S3M-1631, in the name of John Swinney, on the Local Government Finance (Scotland) Amendment Order 2008.

10:12

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** On 7 February, Parliament approved the Local Government Finance (Scotland) Order 2008. The order agreed the core revenue funding to councils for the coming financial year, 2008-09. In February, we said that we would allocate a further £70 million to support councils that froze their council tax rates for 2008-09. I am pleased to advise Parliament that all 32 councils have now done so. Indeed, one council—Stirling Council—has cut its council tax rate. If a council is able to cut its council tax rate, that is surely positive proof that this Government has put in place adequate resources to support local services in our communities.

**Gavin Brown (Lothians) (Con):** Will the cabinet secretary please tell us how many single outcome agreements are in order and in place?

**John Swinney:** Mr Brown will know that the Government has stated clearly that single outcome agreements are being developed with local authorities. We expect the drafts to be with the Government in the next few days. The discussion between the Government and local authorities will continue over the next few weeks—as I have confirmed in previous comments to Parliament—to ensure that the single outcome agreements are formally agreed by the summer recess.

The single outcome agreements represent a change in the whole way in which we manage our relationship with local authorities. The outcomes are a welcome development in how the Government's relationship with local authorities is structured, which will be to the benefit of our citizens.

The motion before Parliament today seeks agreement to an amendment to the earlier order, to allocate the extra £70 million to local authorities for 2008-09 in recognition of the decision of the 32 local authorities on council tax. It is a formidable achievement that, no matter their political colour, councils across Scotland have unanimously embraced the support offered by the Scottish

Government to make life a great deal easier for their constituents.

**Peter Peacock (Highlands and Islands) (Lab):** The minister refers to making life easier. What advice would he give to those members of staff of Highland Council who are losing their jobs as a consequence of the council tax freeze?

**John Swinney:** At various stages over the years of the Administration of which Mr Peacock was a part, there were changes to employment in local authorities as a result of decisions that local authorities took. This Administration has put in place the resources that guarantee that local authorities can freeze the council tax and invest in local services. There are countless examples around the country of local authorities investing in public services to ensure that they deliver for their communities.

**Lewis Macdonald (Aberdeen Central) (Lab):** Mr Peacock asked what advice the minister would give to the staff at Highland Council. In the same vein, what advice would the minister give to the staff of the voluntary sector agencies in Aberdeen City Council area who are losing their jobs as a consequence of changes made by the council in the light of the settlement?

**John Swinney:** I reiterate the point that I made to Mr Peacock. Local authorities make their own decisions about how they allocate their resources, which is perhaps one of the reasons why Aberdeen City Council is facing the difficulties that Mr Macdonald raises. There is evidence of that in a recent report from the Accounts Commission, which makes serious reading for us all. It says that the council's financial position is precarious. Over the past four years, the council has been using reserves to the tune of £7 million, £8.8 million, £10.9 million and £12.2 million. That is a difficult financial situation for the council to manage, and it must address the issues that the Accounts Commission has raised, which is what it is now doing.

The order will distribute an extra £70 million in revenue funding, on top of the £9.2 billion in general revenue grant already approved by Parliament. Under the previous Administration, the share of funding that went to local government as a proportion of the Scottish budget steadily declined. This Government is investing record levels of funding in local government, and we have halted that decline in the share of spending that is allocated to local government. Thankfully, the Scottish National Party Government has started to reverse the vicious trend of reducing local government's share of the budget—a trend presided over by the previous Administration. We have increased funding to local government by 5 per cent for 2008-09. In the next three years, there will be an overall increase of 13.1 per cent. The



£70 million for which we seek approval today equates to a 3.2 per cent increase in council tax income in every single council area—a level of financial support that is more than is required to fund a freeze in the council tax. We have delivered a fair and realistic settlement to the communities of Scotland.

Local authorities have been able to take their own decisions on their priorities in the budget as a result of an unprecedented level of freedom and flexibility provided by this Government. We have put power back into the hands of local authorities and we have provided more than adequate financial support to enable councils to deliver their priorities. We have given councils that increased flexibility by removing large elements of bureaucratic ring fencing of funds, and we have agreed with them on a move away from a focus on inputs and process to a focus on outcomes and what is actually achieved. By allowing local authorities for the first time to retain efficiency savings, we are incentivising local authorities to seek meaningful efficiencies in order to release as many resources as possible to boost front-line services.

Many members said that a council tax freeze could not be delivered. They have been proved wrong. The assistance that we have put in place will come at a very welcome time for householders in Scotland. As a result of this Government's action—working closely with our local authorities—householders who are wrestling with increased fuel and food bills are spared an increase in the council tax. That is the type of positive, beneficial impact on the finances of households in Scotland that the Government seeks in the decisions that it takes and will continue to take, putting the needs of the people at the centre of our priorities. The council tax freeze will provide relief to households throughout Scotland—more than three quarters of households in Scotland will see their income increase over the next year as a result of the freeze. The average household in the bottom 10 per cent of income distribution will, in relative terms, gain most of all.

Earlier this month, we launched a consultation on our proposals to abolish the council tax and replace it with a fairer local income tax based on the ability to pay. We will listen carefully to the results of that consultation.

We recognise that the distribution formula we inherited is overly complex. The current system has developed in a fashion like Topsy. Along with local authorities, the Government is considering simplification of the formula to ensure that we have a reliable and robust basis upon which to distribute resources.

I invite Parliament to support the motion in my name, to put in place the resources to guarantee

that our local authorities are able to deliver the freeze in council tax that the Government promised and that we are pleased to deliver.

I move,

That the Parliament agrees that the Local Government Finance (Scotland) Amendment Order 2008 be approved.

10:20

**Tavish Scott (Shetland) (LD):** The Liberal Democrat amendment asks that Parliament should not just pass the Local Government Finance (Scotland) Amendment Order 2008 but reflect on its consequences. I want to make three points: on the state of the public finances; on the impact of the settlement on local government throughout Scotland; and on the nature of local democracy.

The state of the public finances must be of concern to any finance minister. A prudent approach to the public finances would be to accept how interdependent the Scottish economy is on the economies of England and Europe and wider world influences. Tax returns, the credit squeeze and business failure can and will affect the United Kingdom economy. The windfall from higher oil tax revenues will not offset those financial challenges, so Scotland's financial cake has the potential to be slimmer, in real terms, over this session of Parliament.

The politics of ginn do not wash. Alistair Darling's much-criticised growth targets in the recent budget look at best ambitious, and perhaps foolish. If public spending is predicated on growth targets, and taxation income projections are not realised, the repercussions for Scottish public expenditure could be severe.

It is surely against that background that Parliament is debating—and will pass—the order. However, it is that background that suggests that financial decisions, and populist measures with a view to short-term political gain and not the long-term future of the country, must be assessed.

Inflation is back in the political lexicon. Price increases are real: in food, energy costs and household living. The governor of the Bank of England said last month that it was “more likely than not” that he would be writing a second letter to the Chancellor of the Exchequer to tell him that he had missed the inflation target. Before its members start jumping up and down, the SNP would keep an independent Bank of England prior to joining the euro, so there is no monetary policy difference between Mr Salmond and Mr Brown. So much for the myth of economic independence.

Yes, the Scottish economy looks resilient against the international financial pressures that apply now, but experience suggests a lag before the global impact bites here. A prudent approach

to the public finances is imperative. The budget decisions taken by this Government have not been about the long term. As we have heard before, this Government is a disciple of the Clinton and Blair playbook—every decision is about 2011. The order is part of that.

However, the impact of the order on local services is profound. The council tax freeze was a policy no local council could turn down, but the consequence is that many local people—who depend on local services—are being turned down. The Liberal Democrats asked the Government to guarantee that local services would not be cut as a result of the SNP's budget decisions. We asked that question consistently throughout the budget process and never received an answer. We now know why.

There is a scale of cuts—even in Glasgow. I noticed in the papers this week that Glasgow is cutting 425 posts, 124 of which are teaching posts. However, I agree with the cabinet secretary that the political colour of the Administration does not matter. Throughout the country, under every party represented in the Parliament, jobs and services are being cut. That is not my construction but that of council chiefs throughout the country.

The “historic”—as everything is these days—settlement cannot be all that the Government cracks it up to be. If it were so good—so historically good—why are so many jobs being shed, and why are so many councils having to consider cutting services? It might be a more worthy target of the slightly intemperate word that Mr Swinney used earlier. The impact is severe, and it will be more so in the next two financial years. The Convention of Scottish Local Authorities, local authority finance chiefs and independent commentators all state that the settlement to come is eye-wateringly tight. Given the background of the public finances and the need for the Government to find resources to meet a council tax freeze for the rest of this session, what is happening now across Scotland will become more pronounced in the years to come.

My final point is on local accountability. We should be clear that no council now has any control over the income side of its balance sheet. The argument that applies to the Parliament—which some of us strongly wish to change—now applies equally to the 32 Scottish local authorities, and no change is in sight. The Labour Party and the Conservatives oppose getting rid of the council tax and the SNP Government wants a national income tax. Unfortunately, the parliamentary arithmetic means paralysis and no change.

For those reasons, the Parliament should not only agree to the order but reflect on its consequences and consider the future that lies rather further ahead than 2011.

I move amendment S3M-1631.1, to insert at end:

“but, in so doing, regrets the extent of public service cuts and closures in communities across Scotland as a direct consequence of the financial settlement received by local government from central government.”

10:25

**Andy Kerr (East Kilbride) (Lab):** It will seem ironic to many communities throughout Scotland that the Cabinet Secretary for Finance and Sustainable Growth is parading the glory of the council tax freeze as they experience many cuts in public services. People with disabilities are paying more for care, while council rent increases are higher than inflation. Union leaders are demanding meetings to fight compulsory redundancy. Pensioners are being told that their concessions for adult education classes are over. Pools and sports centres face the axe and parking charges are rising. Schools are strapped for cash, teaching posts are being cut and school cleaning budgets are being slashed. There are increases in school dinner charges, music tuition fees, ferry fares, commercial refuse collection fees and even burial charges. That is all because of Mr Swinney's budget.

Throughout Scotland, councils are cutting their baselines to balance their budgets. East Lothian Council is cutting its baseline by nearly £4.5 million, Fife Council has cut the baseline by £12.5 million and Highland Council has cut its baseline by nearly £13 million. All those cuts have been made to balance the budgets and it is all because of Mr Swinney's budget. The headlines are reminiscent of the Thatcher days, when councils cut services, did not fill vacancies and laid off staff to charge the poor more. What an achievement that is for Mr Swinney, who figures in many of the headlines.

In Aberdeen, the cuts are particularly bad. They mean that the homeless will be colder in the streets, schools will be closed and swimming pools and leisure centres will be axed. In Edinburgh, there have been cuts in the sure start scheme, school budgets and nursery places, while five new school buildings have been put on hold. As Wendy Alexander has said, Alex Salmond is fast becoming Scotland's Mr Takeaway.

**Brian Adam (Aberdeen North) (SNP):** Will Andy Kerr tell us whether he supports the council tax freeze—yes or no?

**Andy Kerr:** I have said in the Parliament on many occasions that I support it if it is properly funded, but not if it is funded by robbing the money from council budgets and starving communities throughout Scotland—including Mr Adam's own—of much-needed services. Those communities are

now paying the cost of the council tax freeze. That is the difference between Mr Adam and me: I see the issue as being not about new money going into the system to add to services, but about money being taken out to balance budgets. That is the real effect of the SNP's budget.

Let us look at the facts. Councils throughout Scotland have received the tightest settlement since devolution. It is a 1.5 per cent increase in the money that is available to be invested in public services. The SNP has funded inflation and the council tax freeze but, when it comes to funding services, its budget settlement has failed the people of Scotland miserably.

Much has been said about the funding that was available for local government services when the Labour Party was in power. Under Labour, the average annual increase was 5 per cent in real terms, not 1.5 per cent as it is under the SNP.

**John Swinney** *rose—*

**Andy Kerr:** Mr Swinney wanted that point made; I will give way in a minute.

Over the period that Labour was in power, council tax increases were held at less than 2 per cent, and the Scottish band D level fell below that in England.

**John Swinney:** What was the scale of the increase in the Scottish Government's budget when Mr Kerr was the Minister for Finance and Public Services? It was formidably greater than any increase with which I have had to deal.

**Andy Kerr:** Therein lies the myth of the concordat con. The share of the Scottish budget that went to local government under Labour was 35.5 per cent on average; under the SNP, it is 33.59 per cent. The share of the Scottish budget spent on local government was much larger under Labour than it is under the SNP, but the minister fails to recognise that. Perhaps we will come back to some of those points in the closing speeches.

At the heart of Scottish local government, the SNP has left a black hole for public services, the disabled community and the elderly in Scotland. It has left those who rely on public services in dire need of more resources and it has failed to deliver.

10:29

**Derek Brownlee (South of Scotland) (Con):** The Conservatives will support the motion because we welcome the council tax freeze and the relief that it brings to hard-pressed taxpayers. Indeed, as the cabinet secretary said, Stirling Council even cut council tax—Michael Forsyth would be proud.

I will focus on the Liberal Democrat amendment. Tavish Scott gave a reasoned and thoughtful

speech—it was most unlike him—but I will come to the detail of it. The amendment calls for a higher allocation of funds to local government. It is a perfectly reasonable thing to argue for and is unsurprising, because spending more of other people's money is the Liberal Democrats' favourite solution to whatever problem confronts them. If the local government settlement is so meagre, is it not a pity that they did not try to secure extra money for it in the budget process?

**Tavish Scott:** I am surprised at Derek Brownlee's line of questioning because, only on Monday, his leader was describing Mr Swinney's colleagues as socialists. If they are so socialist, why did the Conservatives vote for their budget?

**Derek Brownlee:** That was not an answer to my question about where the Liberal Democrats' attempts to amend the budget were. If Mr Scott looks at annex A to the Finance Committee report on the budget, which helpfully lists all the alternative spending proposals, he will not find a single one from the Liberal Democrats. Today, they cast themselves as the friends and saviours of Scottish local government, which might strike residents of Edinburgh and Aberdeen as ironic. What did those friends of local government do when they were confronted with a series of amendments to the budget in January, all of which aimed to reduce the local government settlement? They looked long and hard at them and then, given how poorly dealt with they considered local government to be, summoned up all their principles and—as only the Liberal Democrats can—abstained on 10 separate occasions. Nick Huhne would be proud of them.

Having failed to even try to get additional funding for local government in the budget, the Liberal Democrats are at it today. And why not? Why should local government be denied the additional spending that the Lib Dems demand for everything else? They are as happy as pigs in mud when demanding that taxpayers' money be spent on their issue of the day—which is apt because, on three occasions since the budget, they have demanded extra money for pigs.

Mr Scott gave an eloquent description of the state of the public finances.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Is Derek Brownlee ridiculing the fact that the pig industry is in a dreadful state? The Conservatives should support that industry, not denigrate it.

**Derek Brownlee:** I am ridiculing a speech from Mr Scott about the state of the public finances and a series of spending commitments from the Liberal Democrats. Ross Finnie demanded more money for the national health service on 8 February. Alison McInnes wanted it for regional transport

partnerships and Iain Smith wanted it for bus fares also on 8 February, while on 14 February Alison McInnes wanted more money for bus operators. On 14 February, local government was to get more money according to Nicol Stephen. On 20 February, Alison McInnes wanted it for a hovercraft and Hugh O'Donnell wanted it for a phone line. On 21 February, Mr O'Donnell also wanted money for international aid.

**Tavish Scott:** On a point of order, Presiding Officer. I spoke to the Government's proposals, but Derek Brownlee is making a speech on behalf of the Government. Would you draw him back to the debate that we are having?

**The Deputy Presiding Officer:** If he had been out of order, I would have stopped him.

**Derek Brownlee:** I had only got to 21 February. On 22 February, Mr McArthur wanted money for fuel poverty. On 27 February, Mr Scott wanted it for ferries and Mr Tolson wanted it for sports facilities, while, on 28 February, it was being asked for enterprise training for teachers. On 6 March, Jeremy Purvis wanted it for education and, on the same day, the borders railway. Mr Rumbles asked for it for rural development on 7 March. A national migrant study was the target for Mr McArthur on 8 March and for Alison McInnes it was the A82 on 11 March. Ross Finnie wanted money for community health care on the same day but, the day after, John Farquhar Munro wanted it for post offices. It was coastguards' pay on 13 March. Mr Rumbles wanted money for pigs on 18 March. On 20 March, Jim Hume wanted it for biomass and Mr O'Donnell wanted it for school estates. I worried that a week was about to pass without another Lib Dem spending commitment but, yesterday, Mr Scott saved the day with his demand for more funding for local government.

The Liberal Democrats' reasoned amendment is an attempt to blame central Government for all the problems in local government. It will not wash. Let us dismiss it as the smokescreen that it is and welcome the freeze in council tax and the ending of ring fencing for local government.

We will support the motion in John Swinney's name and take particular pleasure in voting down the amendment in the name of Tavish Scott.

10:34

**Brian Adam (Aberdeen North) (SNP):** It is a great pleasure to speak in support of Mr Swinney and the additional £70 million that we are debating. I am delighted that Aberdeen City Council is to receive £3.3 million of the £70 million, which will go across the board in Scotland, because all the councils have frozen council tax, with the exception of Stirling Council, which has cut it.

As Mr Swinney rightly pointed out, there are issues with local government funding, and I am delighted to hear him repeat today that he will examine the rather overcomplicated current formula, which does not bear detailed scrutiny and is difficult to justify.

**Mike Rumbles:** Will the member give way?

**Brian Adam:** Let me develop the point.

I look forward to those plans coming to fruition.

The reason why we currently have so many difficulties in Aberdeen is the continued overspending of the previous two Administrations. The first figure that Mr Swinney gave—the £7 million—was money that Labour spent over the budget, which created a long-term commitment for the council. The other figures were—

**Lewis Macdonald:** Will the member give way?

**Mike Rumbles:** Will the member give way?

**Brian Adam:** I will not take interventions—let me develop the point.

We cannot take a view on the independent Accounts Commission having rightly identified the financial position in Aberdeen as being precarious without closely examining the spending patterns over the past few years.

**Richard Baker (North East Scotland) (Lab):** Will the member give way?

**Brian Adam:** If the member had any idea how finance worked, I might think about taking his intervention, but since neither he nor his colleagues, nor any of the Labour councillors in Aberdeen, have offered any alternative budget, there is little point in hearing what he has to say.

The spending over the past four or five years by Aberdeen City Council of almost £40 million of reserves as revenue funding—money that was not there—is precisely why the Accounts Commission has reported that the council is in a precarious financial position.

Under the auspices of Labour-Liberal Democrat Governments, Aberdeen had a 90 per cent council tax rise, when the Scottish average was 62 per cent, which was bad enough. That is why—

**Andy Kerr:** Will the member take an intervention?

**Brian Adam:** I am terribly—[*Interruption.*]

**The Deputy Presiding Officer:** Order.

**Brian Adam:** I am terribly disappointed that Labour members are not prepared to accept the facts.

**Andy Kerr:** Will the member agree—[*Interruption.*]

**The Deputy Presiding Officer:** Order.

**Andy Kerr:** Does the member agree, as Mr Swinney has failed to do, that council tax levels in the first year of the Scottish Parliament were set by the previous Tory Government and so were not Labour's responsibility? Therefore, the member's figures are plain wrong.

**Brian Adam:** Even if we discount that, the rise in council tax was considerably higher than the rate of inflation, and it was disproportionately higher in Aberdeen as a result of the funding formula, which the Labour Administration was repeatedly asked to change and did not. It is to Mr Swinney's great credit that, having taken office during a very difficult financial period, he is prepared to address such situations in conjunction with the Convention of Scottish Local Authorities.

The overall generous settlement that we now have highlights the fact that the proportion of the Scottish budget that was going to local government had been in steady decline. When Labour left office, it was as low as 28.9 per cent, which emphasises Mr Swinney's point about the 35 per cent average that was claimed by a Labour spokesperson. At the end of this spending review period, it will be up at 33.6 per cent.

We have a sensible proposal to distribute the money that people want to go to local government that will help to maintain council tax freezes in the coming year. I look forward to two more years of that, by agreement with the local authorities.

10:39

**Richard Baker (North East Scotland) (Lab):** We keep being told that the local government funding settlement is historic. It is certainly historic in Aberdeen—it has resulted in swingeing cuts to key services and facilities, the likes of which have never been seen in the city before. Mr Adam fails to recognise that when Labour left office there was a surplus of some £23 million—now we have £27 million of cuts, which will hit older and vulnerable groups in particular, as well as services for people with disabilities. At a time when we are trying to encourage people to lead healthier lives, sports centres are being closed—a move that has caused particular dismay among the city's young people.

**John Swinney:** In light of the information that I gave Mr Macdonald about the use of reserves by Aberdeen City Council over the past four financial years, and bearing in mind the Accounts Commission's report that says that the financial position of the council is precarious, what steps would Mr Baker recommend the council takes to rectify its financial position?

**Richard Baker:** None of those decisions was made under a Labour Administration. Indeed, several suggestions for alternative funding decisions have been put forward locally, which certainly do not include spending around £80 million on new office accommodation for the council administration.

This budget is the most right wing that the Parliament has ever seen. The cuts in Aberdeen, which will affect children, young people and people with disabilities, are—I tell Mr Adam and his colleagues—no laughing matter.

Those of us in the Parliament who said that the settlement would hit the vulnerable were told that we were scaremongering and asked how we dared to suggest that councillors from other parties would make budgetary decisions that would remove lifeline services for people with disabilities. Well, in Aberdeen, the SNP colleagues of ministers are, as members of the council administration, making exactly those decisions.

Last Friday, my parliamentary colleagues and I, along with affected groups, held a meeting that was attended by more than 400 people to highlight the concerns about the impact of the cuts. The leaders of Aberdeen City Council were invited, but they did not attend to hear those concerns. It was heart-rending to hear the fears of some of the people at the meeting about how devastating the cuts would be for them. The sporting hopes of young swimmers and skaters who do not know where they will be able to train have been dashed and we heard about the plight of disabled people who will lose jobs at Glencraft and the facilities at the Choices centre, which has given real meaning and direction to the lives of many people with disabilities, some of whom cannot imagine life without it.

**Gavin Brown:** Will the member give way?

**Richard Baker:** I am sorry, Mr Brown—I do not have time.

I cannot believe that if the SNP councillors had been there, they would not, at the very least, have thought again about the impact of their budget. Of course, local decisions are crucial, and the cuts do follow mismanagement of council finances by those with responsibility for such matters, both in the current and the previous administration, since 2003—failings that the Accounts Commission has highlighted, as the cabinet secretary said. However, those failings have undoubtedly been compounded by the national funding settlement. Not only is Aberdeen at the bottom of the national funding table but, as Mr Brown said, we still do not know what services we can expect to be delivered locally through a single outcome agreement.

**Mike Rumbles:** What does the member make—and what will the voters of Aberdeen make—of

Brian Adam's comment that the Government's financial settlement to the city of Aberdeen this year was generous?

**Richard Baker:** I think that the voters will judge that the settlement was poor indeed, Mr Rumbles. We need to know what kind of provision will be made under a local single outcome agreement and whether services such as those for people with disabilities will be protected in future. Before the election, the SNP promised good times for the north-east, but Aberdeenshire—not only Aberdeen—has received a poor funding settlement. Any benefit to poorer families and older people from the council tax freeze has in our part of Scotland been more than offset by increased charges.

Those charges are compounding the impact of the swingeing cuts in the city of Aberdeen. Even under the Conservative Government and Michael Forsyth, Aberdeen never experienced cuts such as it is suffering now. Everything must be done to ensure that the cuts do not go ahead. I realise that opposing the order today will not change the position, but I urge ministers to do all that they can to mitigate the cuts, which are due for April 1—a poor joke on the vulnerable in our city. If the cuts proceed, there is no doubt that Aberdeen will have been shamed by its own council administration, and that the north-east will have been badly let down by the SNP.

10:44

**Keith Brown (Ochil) (SNP):** As a former councillor, I am delighted to take part in the debate on the local government finance order—which we awaited each year with some dread under the previous Administration. When I was a councillor and council leader, I always wanted to say three things, as did council leaders across the political spectrum. First, to the dismay of local government, the share of the cake was reduced over many years; that point has been made today. Along with other Convention of Scottish Local Authorities leaders, I made these points to the then finance minister back in 2002, and our concerns were dismissed as irrelevant.

**Andy Kerr:** Will the member give way?

**Keith Brown:** No. I have just started.

Secondly, I wanted to say that we should end or at least reduce ring fencing. It is evident that people throughout local government are happy that ring fencing has been hugely reduced this year. The third thing was that the Labour Government—and previously the Conservative Government—should stop using the council tax as their form of taxation. They taxed people without taking the odium for doing so by reducing the share of the cake that local government received

and forcing huge increases because of the gearing effect.

**Andy Kerr:** On that point, will the member give way?

**Keith Brown:** Certainly.

**Andy Kerr:** The table that has been made available to us by the Scottish Parliament information centre shows that, in the year that the member mentions, 2002-03, local government's share of the Scottish budget was 36.66 per cent, and that in 2008-09 it will be 33.57 per cent. That is a drop of more than 3 per cent. Can the member explain that?

**Keith Brown:** I do not recognise those figures, and the council leaders at the time—Labour or otherwise—do not recognise them either. The simple fact, which the member refuses to acknowledge, is that Labour reduced local government's share, year on year, in every year for which it was in office.

We are here to debate whether to pass extra money to councils to enable them to freeze their council tax. I did not expect Labour or Liberal Democrat members to oppose the freezing of the council tax and they have not disappointed me. Instead, however, we have heard talk of cuts, cuts and more cuts. In politics, there are debating tricks, and everyone has the right to present their case in the best possible light, but there are times when that verges on—or even crosses into—being downright deceitful with the public.

What we have heard is deceitful because the funding that councils have received from the Scottish Government is generous, and more than the previous Administration gave them last year. That is a simple statement of fact. For example, in the next three years, funding for Clackmannanshire Council and Stirling Council, in my constituency, will increase by 15.4 per cent and 14.4 per cent respectively. Both are Labour administrations—or at least they were until two weeks ago, when Labour was thrown out of office in Stirling and the SNP took control of the council.

The Labour administration in Clackmannanshire has done its party duty and complained at every opportunity about what it calls the cost of the council tax freeze, but we should remember that it goes through bad Audit Scotland reports faster than Wendy Alexander goes through press officers. The administration has presided over financial mismanagement on such a scale that its cash reserves fell to just £6,000 a few months ago. Now, somehow, despite the council tax freeze, it projects the reserves going back up to £3 million.

Strangely, though, despite all the extra money that it is getting from the Scottish Government, the

Labour administration in Clackmannanshire proposes spending cuts and efficiency savings that are twice what the SNP opposition proposed. So much for Wendy Alexander and her famous declaration on January 13:

"I have no doubt that Labour councillors, indeed Labour councils, have spent their life looking after the homeless, women's aid, all of these poor, weak, vulnerable groups that we came into politics for."

In Clackmannanshire, the Labour group is cutting school crossing patrols and classroom assistants. Those cuts could have been easily avoided if it had accepted the SNP's alternative. The simple fact is that the council is seeking to increase its reserves to £3 million at the same time as making cuts. It had alternatives to that.

If a Labour council can do no wrong, how come a council—let us say, for example, Stirling Council—has managed to reduce its council tax? How can the council tax freeze possibly be hurting services to those poor, weak, vulnerable groups? Like a grumbling Labour back bencher, it does not follow. Either the forcibly retired Labour administration in Stirling was a bunch of chancers, or the £70 million that is attached to the council tax freeze means that there is no damage to those services, in which case the members of the Labour group in the Scottish Parliament are the ones who are being less than truthful about these things. When I consider those two possibilities, I wonder whether both the Labour administration in Stirling and the Labour Opposition in the Parliament are merely scaremongering, as they have been doing for a number of months now.

The word on the ground is that Stirling Council's dear, departed Labour administration knew that the funding settlement was a gift given by a Scottish Government that could not really afford to be generous. According to a Scottish Executive survey three years ago, a third of the population has no meaningful understanding of what a percentage is. I clarify that that was a survey by the Scottish Executive and not a survey of the Scottish Executive. One does not have to be John Swinney to know that, when the Scottish Government's budget increases by 0.5 per cent but its funding to councils increases by 2 per cent, councils are getting an extremely good deal. For that reason, I am happy to support the motion and the council tax freeze.

10:49

**Lewis Macdonald (Aberdeen Central) (Lab):** As Richard Baker said a few moments ago, a new era for local services has begun in the city of Aberdeen. The danger is that what is true of Aberdeen today will be true of the rest of Scotland tomorrow.

Today, in Aberdeen, supporters of the homelessness charity the Cyrenians are beginning a week-long action of sleeping out in the shadow of Marischal college. Usually, its supporters take part in sleep-outs to raise the public's awareness of the problem of homelessness in Aberdeen. This time, they are braving the elements to protest against local government cuts. The Cyrenians alone face a cut of £900,000 from the annual funding that they receive from Aberdeen City Council. They expect that four valuable projects that work with homeless people will close, and that 30 voluntary sector jobs will be lost.

**Joe FitzPatrick (Dundee West) (SNP):** Does the member support the council tax freeze in Aberdeen or does he believe that the £27 million shortfall should be made up by a £356 rise in the council tax?

**Lewis Macdonald:** Is that not a peculiar question from a member from Dundee? Let us see whether we can engage in some dialogue with SNP members from Aberdeen. It would help if members, in making speeches and outrageous claims about the city of Aberdeen, engaged in debate rather than refusing interventions.

In practice, the new-found freedom of local government has meant £27 million of cuts across the board in the city of Aberdeen and the seeking of a further £2 million of savings from proposed school closures. SNP ministers say that councils can now set their own priorities, decide where money should be spent, make local decisions to meet local needs, and be accountable to local people. It is a shame, then, that SNP councillors in Aberdeen have not explained their priorities to local people, have made decisions that remove services from those who need them the most, and have declined to take the opportunities that have been offered to them to be accountable to the people who are affected by those cuts.

Likewise, SNP ministers say that they want smaller class sizes and that they support parental choice, yet the policy that SNP councillors in Aberdeen are pursuing is to merge and close primary and nursery schools whose class sizes are deemed to be too small, and to deny parents choice in the placing of their children.

All that comes back to local government finance—to the funding that ministers provide and the choices that councils make about what to do with that money. As John Swinney said, the Accounts Commission announced last week that it will hold a public hearing to examine more closely how Aberdeen City Council has implemented best value and community planning in the past four years. That will be followed very closely by the many people in Aberdeen who face the loss of services as a result of council cuts, and I hope that

it will be so arranged as to allow many of those people to attend the public hearing.

Like the Cyrenians' supporters who are sleeping out in the shadow of Marischal college, those people will want to know why it is okay to spend £80 million on turning a Victorian granite building into council offices while schools have to close because they cost too much to maintain. They will want to know how council reserves of £23.5 million in 2003 disappeared during the following four years, and why the council administration voted through £27 million of cuts last month just as the Accounts Commission was coming to a view on what to do next. If those drastic, panic-stricken cuts were designed to persuade the Accounts Commission that the council had no case to answer, they have clearly failed.

The administration of Aberdeen City Council should set aside its cuts and closures programme until the public hearing has been held. It should engage in genuine dialogue with all parties and with the public—the council tax payers of Aberdeen—on what the city's priorities should be and how they should be met. In that way, the council can hope to reconnect with its proud tradition of providing excellent public services, which it did for many years, and the citizens of Aberdeen can have some hope for the future of those services. If the administration fails to protect services and fails to reverse the decisions to cut and close vital services, it will not readily be forgiven in Aberdeen.

10:53

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** No one wants to pay more tax. On that basis, everyone throughout Scotland will welcome the fact that the council tax is not increasing this year.

**John Swinney:** Not everyone.

**Mike Rumbles:** Well, everyone should.

The Scottish Government offered more taxpayers' money to each and every council if they agreed to freeze their council tax. It would be a strange councillor indeed who advocated increasing the council tax while being offered money from Mr Swinney not to do so, so it is no surprise that every local authority accepted an offer that they could not refuse.

I hesitate to make an analogy between John Swinney and the Godfather. After all, our Cabinet Secretary for Finance and Sustainable Growth is more used to being likened to an affable bank manager than to Don Vito Corleone, who is a fictional member of the Cosa Nostra. However, Mr Swinney did indeed make our councils an offer that they could not refuse, because refusal would

have been economic nonsense. The fact that councils could not refuse the offer does not mean that making it was the right thing to do. In the case of my council—Aberdeenshire—we cannot pretend that the move was anything other than a financial cut, which is leading to cuts across the piece in much-needed services. Aberdeenshire Council has had to make £10 million of cuts from a budget of nearly £500 million.

At a stroke, the local government settlement will set the council's eight-year fair-share campaign back to where it started. In 2000, the council received just 88 per cent of what it would have received if financial allocations were made on a simple population basis. Slowly but surely, the previous Executive was addressing that unfairness. By last year, the discrepancy had been reduced from a gap of 12 per cent to 8 per cent. However, at a stroke, the current Government's financial settlement will take Aberdeenshire's share of the funding cake back to square 1—back to just 88 per cent of funding if the calculation were to be made on a population basis. That is the situation that Aberdeenshire's director of finance has described.

Eight years of work have been rubbished because the Cabinet Secretary for Finance and Sustainable Growth has not bothered to address the most important issue: the funding formula. When he was pressed on that recently in an interview for a north-east newspaper, he did not accept what he had done to Aberdeenshire. He did not know. He did not think that it was possible to do that in one year. I have news for the cabinet secretary: he did that. He needs to get more of a grip of his portfolio, because he needs to understand all the unexpected consequences of his actions. I am sure that he did not intend to create the situation that I described.

On Aberdeenshire's fair-share campaign, the cabinet secretary is obviously not quite with it. That surprises me, because two ministers represent Aberdeenshire as constituency MSPs. What exactly are Stewart Stevenson and—more important—Alex Salmond doing about the situation? It is obvious that they are doing nothing. Are they even aware of their council's fair-share campaign? The conclusion must be that they are uninterested or that they do not care.

**Brian Adam:** Will the member give way?

**Mike Rumbles:** Brian Adam would not give way to me, so he should sit down.

One thing is sure: if Alex Salmond were interested in Aberdeenshire Council's fair-share campaign, he would do something about it and the current state of affairs would not be allowed to continue. This is a poor state of affairs from the SNP Administration. It is unfortunate that the



Government is unwilling to address the inherent unfairness in the financial allocation to Aberdeenshire. Since I was elected, I have pressed every Administration on that. We were doing something about the situation, but the SNP has put the position back to square 1. I for one intend to ensure that the people of Aberdeenshire know full well on whose shoulders the irresponsibility and unfairness rest—they rest with the SNP Administration.

10:58

**Bob Doris (Glasgow) (SNP):** Many will be aware of a health care issue that has strong local government links. Symptoms include increased temperatures, denial, angry verbal outbursts and serious bouts of nausea. Those who are immune to the condition must avoid feeling smug or gloating. The condition can be cured simply by ensuring that the words “historic” and “concordat” are not used in proximity to each other and that the words “council”, “tax” and “freeze” are never used in the same sentence. An alternative cure might be for some Opposition MSPs to grow up and own up that the council tax freeze is a good thing for the people of Scotland.

The Scottish Government’s pledge to work for a council tax freeze has been delivered, not by the Government or local authorities working in isolation, but by both working together as equal partners. All parties in the Parliament should warmly welcome that.

It is crucial that the Parliament respects the concordat and local authorities’ decisions to freeze council tax, in the knowledge that by doing so they will gain extra revenue, which Pat Watters of COSLA estimated to be the equivalent of a 3.4 per cent uplift in revenue that will not cost council tax payers a penny. With that, hard-pressed council tax payers will experience a real-terms cut in their council tax, rather than the average 62 per cent increase since 1997. I know that many of our pensioners will celebrate the council tax freeze. That is why I urge every member to vote for the order, which will allow funds to be transferred to local authorities. I hope that we can build on that and soon deliver a fair local income tax.

We often have political knockabouts in the chamber, and I admit that I am no innocent in the matter. When a Glasgow Labour councillor said “God bless” the SNP for the additional financial support that Glasgow City Council would receive as a result of the council tax freeze, a wee motion from me appeared in the *Business Bulletin* to welcome those comments. I thank all those who supported that motion. No Labour MSP has seen fit to sign it, but I live in hope.

That councillor, whose comments appeared in the *Evening Times*, also said that the Scottish Government was giving Glasgow City Council

“money to do what we were planning to do anyway.”

That point is crucial. At a stroke, those comments put paid to the lies and scaremongering—spread throughout Scotland and fuelled by Opposition politicians—that a council tax freeze would lead to cuts. We know that that is untrue and we must remind ourselves again of the moneys that will be given to local government: £34.8 billion in the next three years, which represents a 12.9 per cent increase.

**Lewis Macdonald:** Does the member accept Joe FitzPatrick’s figure of £27 million of cuts in Aberdeen this year?

**Bob Doris:** According to Lewis Macdonald, only Aberdeen MSPs are allowed to talk about Aberdeen, so I could not possibly comment—I apologise.

For the first time, local government will receive an increased share of the spending cake rather than a smaller slice, as it did under the previous Executive. That spending cake will not be top sliced as it was by the previous Executive, which demanded efficiency savings of local authorities that had the disincentive of knowing that they would not receive a single penny back—they were robbed of those savings.

The Scottish Parliament information centre estimates that the Government’s end to top slicing and allowing local authorities to keep their efficiency savings will raise an additional £658 million for councils over the next three years.

**Johann Lamont (Glasgow Pollok) (Lab):** Will the member give way?

**Bob Doris:** On that point?

**Johann Lamont:** On a point of my choosing.

**Bob Doris:** No, thank you.

The previous Executive would have denied local authorities that money, but we will ensure that local authorities keep it.

Let us have an end to scare stories. They cheapen the Opposition and the Parliament itself. We should support councils and hard-pressed council tax payers by approving the order.

11:02

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I will focus on the gap between the rhetoric that we have heard from the Scottish Government about the level of finance for local government and the public services that it will support and the reality of what is happening. I will

give concrete examples from issues in which I have been involved in the past few weeks in Edinburgh and Leith and I will not become engaged in a war of statistics, except to point out that many official figures are underestimates—for example, the £780,000 cut in grants to the voluntary sector in Edinburgh is actually £2.6 million if we take account of efficiencies and a lack of inflation provision.

Schools highlight sharply the gap between the rhetoric and the reality. At a school in my constituency last week, I talked to distressed staff who face the reality of a cut in staffing numbers next year. That is happening when the Government is talking about smaller class sizes, which I presume should mean more teachers. That cut is part of the £3.8 million cut in funding to schools in Edinburgh, which is more than 1.5 per cent of the overall budget. On top of that, £966,000 will come out of sure start and 320 full-time nursery places will be lost. Both those developments fly in the face of the rhetoric that we heard a couple of weeks ago when the Scottish Government launched its early years strategy.

Another prominent cut that has provoked widespread concern in Edinburgh and Leith in the past few weeks is the £300,000 cut in funding for leisure centre crèches. I was pleased to support the campaign for those crèches, which continues. That cut is contrary not only to what the Government says in its early years strategy, but to all its good intentions on health improvement. In the past few weeks, I have met many parents—mainly women with young children—who, as a result of that cut, will no longer be able to use superb leisure centres in Edinburgh such as the Leith Victoria swim centre in my constituency.

It is not just the young who are affected. There is an on-going review of home care services in Edinburgh, and now only those who are in the critical care category are eligible for home care. Again, that is completely contrary to the Government's rhetoric about care at home in local communities. Those who are still to receive home care will attract a 17.5 per cent increase in the charge. If that is not bad enough, £8.2 million of cuts are still to be identified in the health and social care budget over the next three years.

**Keith Brown:** Will the member confirm that the cuts in the City of Edinburgh Council's education budget, such as they are this year, are less than the cuts under the previous Administration? Many of the cuts are to managerial jobs, and teachers have been crying out for that for some time.

**Malcolm Chisholm:** That does not reflect the experience that I had in the school in my constituency last week, and it is not true more generally. In fact, there was £52 million in the

reserves when the previous Administration left office.

Having taken that intervention, I do not have time to go into detail on the £833,000 cut in the community learning and development budget and the 85 per cent cut in funding for the Edinburgh Community Newspaper Trust, which is threatening the excellent *North Edinburgh News* in my constituency.

I will conclude on an issue that concerns my portfolio of culture. We have heard a great deal of fine rhetoric about support for the arts from the new Scottish Government, but the reality of the administration in Edinburgh—in which the SNP is prominent—is that there has been a cut of £83,000 in support for the outreach services of Scottish Opera and Scottish Ballet. We believe not only in supporting excellence in the arts, but in ensuring that that excellence is available to the widest possible range of people. The programmes of Scottish Opera and Scottish Ballet in schools and in the community more generally will be decimated by that cut.

When it comes to culture policy, education policy and care of the elderly, we hear fine words from the Scottish Government but the reality on the ground, time and again, contradicts those policies. It is very important, in this debate and more generally, that people listen to what is happening in the real world and test the Government's fine words against the reality.

11:07

**Joe FitzPatrick (Dundee West) (SNP):** Today's debate is another clear sign that the SNP Government is delivering for the people of Scotland. In under a year, the Government has established a new relationship with Scotland's 32 local authorities and given them more powers to make decisions at local level through the historic concordat. We have put an end to the years of council tax increases that took place under the previous Administration by freezing the tax. In doing so, we have set Scotland on the road to a fairer system of taxation that is based on the ability to pay.

As usual, the financial experts on the Labour benches have been vocal in the debate. However, we will take no lessons on local government finance from the Labour Party—a party that proposed a ludicrous council tax rebanding policy during the election that even its own candidates did not believe added up; a party that bizarrely voted against the Scottish Government's budget after its own amendment had been accepted; and a party that presided over a disgraceful 62 per cent rise in council tax.

Let us not forget the secret implication of Labour's plans to tinker with the council tax. It is the implication that dare not speak its name, which will terrify council tax payers throughout Scotland—revaluation. I am happy to take an intervention from any Labour member who wants to explain their policy on revaluation—but there is silence, as expected. The fact is that if there are any changes to the bands, there must be a revaluation, and revaluation in Wales resulted in a third of homes going up at least one band and only 8 per cent going down. In my constituency, moving up one band from band D to band E would cost people £350. That would be the cost of Labour's proposed revaluation; no wonder the Labour Party will not talk about the implications of its policy of tinkering with the council tax.

As the cabinet secretary stated, we have entered a new era of co-operation with local authorities, which benefits the people of Scotland by offering increased funding and increased control over how that money will be spent locally, but without any increase in council tax.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Will the member take an intervention?

**Joe FitzPatrick:** I would be pleased to take an intervention if the member will talk about Labour's revaluation policy.

**Mr McAveety:** I would like to talk about—

**Joe FitzPatrick:** No, no, no.

**Mr McAveety:** The member mentioned budgets—

**Joe FitzPatrick:** I am not going to—

**The Deputy Presiding Officer (Trish Godman):** Just one moment. I think that I am in charge here—the last time I looked, I was.

**Joe FitzPatrick:** Sorry.

**The Deputy Presiding Officer:** Are you taking Mr McAveety's intervention?

**Joe FitzPatrick:** Not if he is not prepared to talk about—

**The Deputy Presiding Officer:** You either take it or you do not.

**Joe FitzPatrick:** No. I have made it clear that I will take an intervention from any Labour member who is prepared to stand up and talk about the implications of Labour's council tax policy, but not one of them has the guts to do that.

**Mr McAveety:** Will the member take an intervention on that point?

**Joe FitzPatrick:** On revaluation.

**Mr McAveety:** The SNP has a minister with responsibility for local government finance. Will the member ask the minister to consider revaluation?

**Joe FitzPatrick:** Mr McAveety did not answer the question. Our Government is getting rid of the council tax altogether, which means that there is no need for revaluation. Only if we kept the council tax would we need a revaluation, which would put a third of houses up by at least one band. That would cost £350 in Dundee, probably more in Aberdeen and about the same throughout the rest of Scotland.

We have heard Labour claim that the council tax is fine, but clearly it is not. Council tax benefit fails to address the major flaws in that form of taxation. Figures that were published by the UK Government show that 150,000 pensioners in Scotland who are eligible for council tax benefit—almost 40 per cent—do not claim. That is clear proof that we need a new approach. Those pensioners will benefit disproportionately from the introduction of a fair local income tax that is based on the ability to pay, and they will benefit most from the council tax freeze in terms of the proportion of their income that the tax constitutes.

The Labour Party is not interested in such figures. It is blinded by its opposition to all progressive policy from the SNP Government and would rather snipe from the sidelines without offering any credible alternative.

**Johann Lamont:** Will the member give way?

**Joe FitzPatrick:** I am in my last 30 seconds.

The arguments that we have heard today from the old Lib-Lab alliance are lacklustre and offer nothing for the average Scot. For the Scottish public, the situation could not be clearer. Under Labour, there has been a rise of 62 per cent in the council tax; under the SNP Government, they will pay not a penny more in council tax and they have a commitment to a cut in the tax burden for those who need it most, based on the ability to pay.

11:12

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Last week, in the chamber, members heard Tony Benn talk about faith in politics. What we have heard today from the SNP members—the true believers—is that all that matters in the local government debate and in local government funding is a council tax freeze. There has been a paucity of attempts to defend budget decisions at the local level, despite the information that was given by Malcolm Chisholm from his constituents—and even from Brian Adam's constituents. Brian Adam did not defend his constituents; he praised his minister. Like the other Bryan Adams, he said, "Everything I do,

John, I do it for you." That is the reality of the SNP Administration.

Three weeks ago, Mr Swinney appeared on "Newsnight Scotland". I read with interest this month's *Holyrood* magazine—I am using media comments because that is what the First Minister does at question time—in which Mr Swinney says:

"I enjoy media jousts, I'm all for discussion with the media ... but it's impossible in terms of getting your message across when you cannot say 18 words on a first answer in an interview without being interrupted and repeatedly interrupted until you cannot complete a sentence."

**Members:** Aw.

**Mr McAveety:** I, too, felt sorry when I read that. He continues:

"I find that the most pointless style of television discussion."

Fine. Mr Swinney is now in the chamber, and today's debate is about how he justifies his decisions on the council tax freeze while ignoring the consequences and the reality in our communities.

A second issue of concern is local government's share of the budget. As Andy Kerr identified, the average local government share of Government spend was larger under Labour than it is under the SNP Administration. According to SPICe figures, the average share under Labour was 35.5 per cent, whereas the average share under the SNP is 33.6 per cent.

**Bob Doris:** Will the member give way?

**Mr McAveety:** No, I want to make progress on this. Bob Doris is one of the true believers.

Mr Swinney has been going around Scotland's local authorities claiming, "I am doing this for your benefit." It is, however, a Venus flytrap. He has identified a budget figure to get the council tax freeze and is now sucking the life-blood out of local government on three grounds, which Tavish Scott has identified. The first of those is the local income tax, which is neither local nor something for which local elected members are accountable. In the long run, it will destabilise local government.

The second ground is the impact on services that has been identified by three or four members and which has been exemplified by the Aberdeen members' concern about the impact of the budget in Aberdeen.

The third ground leads me to touch on something that Keith Brown said. I was a local government leader for a couple of years, and I was a councillor during reorganisation, with responsibility for a major committee. The golden rule of the reorganisation debate was that, whatever else, the baseline had to be protected

from the new authorities that were merging into the unitary authorities. The baseline figure that Mr Swinney has produced has resulted in a number of fundamental mistakes.

**Bob Doris:** Will the member take an intervention?

**Mr McAveety:** I am happy to take an intervention if the member can tell me what he was doing when tough budget decisions were being made during local government reorganisation.

**Bob Doris:** During local government reorganisation, I was fighting against Labour-led Glasgow City Council, which had council tax increases during its first three years of 20 per cent, 22 per cent and 12 per cent. Will Mr McAveety welcome for the third year running a council tax freeze in Glasgow, with the one difference this time being that there is a 3.4 per cent increase in funding from the SNP Government?

**Mr McAveety:** The majority of the increases that the member mentioned were because of the settlements that were given to Glasgow City Council by a Conservative Administration. The council tax increase trend in Glasgow has been lower than the rate of inflation and, in recent years, Glasgow has pioneered a council tax freeze, when appropriate, at a local level—I use those words carefully to show that I am not talking about the council taking the uniform position that the Government has taken.

On the wider issues, Mr Swinney claimed that he was not able to put his point across on "Newsnight". In fact, he was interrupted a number of times, but he did not answer the central question. Who did that remind me of? Yes, Michael Howard being asked that question repeatedly by Jeremy Paxman. However, Mr Swinney's performance makes me think more of Frankie Howerd, because he is saying:

"Infamy, infamy. They've all got it in for me."

We ain't got it in for Mr Swinney; we have identified the fact that his budget in real terms and in the experience of real people is diminishing the quality of council services across Scotland. How does he justify that?

Two weeks ago, when Mr Salmond was asked in Edinburgh who has the responsibility for the cuts in Edinburgh, he said, "I blame the Liberal Democrat leader of Edinburgh council." When asked in Aberdeen recently about who is responsible for Aberdeen's budget cuts, he said, "I blame the Liberal Democrat leader." I have news for Mr Salmond: the SNP is in both those administrations. Mr Swinney must take responsibility for those actions instead of hiding

behind kidology about local accountability for those decisions.

11:17

**Tavish Scott:** The debate has fallen between those who think that the local government settlement is bad and those who think that it is good. I will run briefly through the contributions of those who think that it is good.

Mr Bob Doris made what I presume is an historic speech of loyalty to his cabinet secretary. He particularly mentioned the local authority council tax freeze. Of course the decision to accept such a freeze can be made by local government leaders, but it sure is an easy decision for them to make when a gun is pointed at their heads. That is the reality of the situation. I notice that Bob Doris welcomes it in his own area, although I am sure that he does not welcome the fact that Glasgow City Council's figures show that 425 posts are likely to go because of the efficiency savings.

**Bob Doris:** Does the member accept that those 425 posts are being lost because of a restructuring of services in Glasgow and that it has nothing at all to do with the council tax freeze?

**Tavish Scott:** I am sure that it will bring a sense of relief to the people who lose their jobs when Bob Doris points out that that is happening because of restructuring, which is caused by the fact that, as Mr McAveety pointed out, all that appears to matter today in local government finance is the council tax. All parties should have more feeling for the range of local government finance issues that the Parliament must confront rather than concentrating on one aspect of it.

Mr FitzPatrick raised the issue of local income tax. I agree with him about that, if his party is proposing just that. At the moment, it is not. If a local income tax is to be a local income tax, there is a clue in the first word of that phrase.

Mr Brian Adam called the local government settlement "generous" which, as other members have pointed out, will be news to many people in the north-east.

I will come back to Mr Brownlee, but he also supported the Government as if he were a member of the Government.

Of those who opposed the local government settlement, the member whose argument I found most difficult was Keith Brown. I respect Keith Brown's knowledge as he is, like Mr McAveety, a former council leader. Members who were council leaders bring expertise to the chamber, and I respect Keith Brown and Frank McAveety's knowledge of leading large and small Administrations. I could not therefore understand why Mr Brown took his argument into the blame

game by blaming local councillors for their decisions. That is the essence of where the debate is. My contention, and that of the Liberal Democrats, is that the decisions that local governments, of whatever political position, now have to take have been foisted on them by the settlement that they have received from central Government. That is always the way; it does not matter which Government is in power. We come into the chamber and spend a morning playing the blame game, as Mr Brown did. That is unfortunate, at best, particularly if, like Mr Brown, one has considerable knowledge and understanding of local government.

Lewis Macdonald raised the issue of the north-east, as did Richard Baker and Mike Rumbles. I found it interesting that Joe FitzPatrick was so well briefed on Aberdeen's position when he made his intervention. He is either extremely knowledgeable about local government finance, or he has taken his whip's instructions particularly well.

One of the more important points that were made this morning was the cabinet secretary's point about the distribution formula. If I heard him right—I wrote down his remarks as he made them—he said that there will be a "simplification" of the distribution formula in coming years. Mr Swinney might deal with this point in his winding-up speech. My understanding is that we have a three-year settlement, so I assume that any simplification of the formula could come about only during the fourth or subsequent years of local government finance. Mr Swinney has made a commitment in respect of the City of Edinburgh Council, but I am not aware that any commitment has been made to any of the other 31 local authorities across Scotland. It is fundamental to the Parliament's scrutiny of any Government that members know what that change to the distribution formula might mean, and the timescale to which it would operate. I ask the minister to deal with that in his closing remarks.

Finally, I will deal with the Conservatives, who are in a ridiculous position. I will quote Miss Goldie for Mr Brownlee's benefit, because he cannot have read these immortal words at the time—and this from a Conservative party that is hooked into and dying a death with the SNP Government on the issue of local government finance. Miss Goldie said that the nationalists are following a "left-wing agenda" and she accused ministers of "living in the past" when it came to public services. Why the devil did the Conservatives vote for the budget and support every aspect of it? Why are they now apparently so out of touch with it? Their position is extraordinary.

If Mr Brownlee and his colleagues—they all look very cheerful at the moment—are saying that they are not going to support a simple amendment that “regrets the extent of public service cuts”,

I can only assume that they support public service cuts. I assure Mr Brownlee that every leaflet that is sent out in his constituency will point that out.

The debate is about accountability, the impact on local services and public finances. We should debate the subjects in that sphere.

11:23

**Gavin Brown (Lothians) (Con):** We can all play the quotation game, if we like to. Let us look at what Mr Scott said during the previous local government finance debate:

“The order will achieve a number of outcomes that Liberal Democrats support ... We also support the allocation of additional resources to local councils”.—[*Official Report*, 7 February 2008; c 6020.]

It seems that Mr Scott has changed his position slightly from the one that he took during the previous debate. I note in passing that not a single Liberal Democrat voted against the Local Government Finance (Scotland) Order 2008 two months ago. It was therefore slightly hypocritical of Mr Scott to make the comments that he did about the Conservatives today.

I move away from what Mr Scott said to put forward the Scottish Conservatives’ position. We welcome the council tax freeze, as my colleague Mr Brownlee said, and we welcome the reduction in ring fencing. We will therefore support the order at decision time this evening.

I wish to focus on the subject of my first contribution to the debate, which was on single outcome agreements. I asked the cabinet secretary how many single outcome agreements are in order and in place. On the face of it, the answer at this stage appears to be none. Some are in draft, and we might get some before the summer recess.

I chose the words “in order and in place” carefully, because they were the exact words that the cabinet secretary used in the debate on the Local Government Finance (Scotland) Order 2008 in February. He stated:

“We are well on the way to putting in place single outcome agreements with each council. I expect them to be in order and in place by 1 April 2008.”—[*Official Report*, 7 February 2008; c 6011.]

In the run-up to today’s debate, we tried hard to find out exactly what progress had been made on single outcome agreements. We wanted to know what the structure of a single outcome agreement will look like, what issues will be captured, what level of detail will be involved, what monitoring will

take place and what measures will be taken to deal with underperformance. On Tuesday, at 3.24 pm, the Government told us:

“they have been put back by 3 months—drafts by 31 March, finals published 30 June”.

**Iain Gray (East Lothian) (Lab):** I share Mr Brown’s concern about the failure of single outcome agreements to appear. The difference between us is that he was willing to sign off £11 billion of public expenditure without knowing what the single outcome agreements were, whereas we were not. Does he now regret that?

**Gavin Brown:** I have with me the voting record for the debate of 7 February. I gently point out to Iain Gray that all the Labour members who turned up to vote on that day voted in favour of the Local Government Finance (Scotland) Order 2008. Mr Gray’s comments are a bit rich.

When we tried to find out what progress had been made on single outcome agreements, we were told on Wednesday morning at 9.39 am that “a few” had been completed but that we will have to wait until June, when they will be published. However, by Wednesday afternoon the Government was saying:

“we expect most to be in by 31<sup>st</sup> March but one Council has asked for an extension into April due to council meeting timetables”.

Conservative members do not think that enough progress has been made on single outcome agreements. We need to know how much councils will spend on statutory functions and agreed outcomes and, ultimately, how much discretion they will have, so that Parliament can scrutinise agreements.

In closing, I note another comment that the cabinet secretary made during the debate on the Local Government Finance (Scotland) Order 2008. He stated:

“That will be translated into single outcome agreements, which are currently under development with local authorities. That work will be taken forward in advance of 1 April. I give that commitment to Parliament today, and I am happy for it to be scrutinised because the Parliament should be able to satisfy itself on how public money is spent.”—[*Official Report*, 7 February 2008; c 6046.]

We need to have sight of single outcome agreements without delay. During the previous debate on local government finance, we were given a firm commitment, but today we need a firmer commitment that must be honoured in full.

11:27

**Andy Kerr:** The settlement looks increasingly tarnished as every day goes by and every council up and down the land makes further cuts. That is its real impact.

This morning, SNP members have argued that the council tax freeze justifies everything, including the settlement's impact on services for the disabled, the elderly, schools, teachers, cleaners and those attending adult education classes. At last, the Tories have been converted on the issue of single outcome agreements but, during the debate on the budget, my colleague Iain Gray made clear that they were signing off resources without evidence of delivery.

**Derek Brownlee:** Will the member give way?

**Andy Kerr:** I will take an intervention in due course.

In recent years, staffing figures for local government have risen, but now they are beginning to fall. Many members have referred to cuts in the voluntary sector. Tavish Scott made some interesting remarks on the general context of the settlement and raised the big issue of local democracy. In an intervention, Mike Rumbles mentioned Don Corleone—the settlement was an offer that could not be refused. The SNP Administration has taken away absolutely local authorities' right to exercise revenue-raising powers at a local level and has imposed a settlement from the centre.

We hear a lot from Derek Brownlee, who is the assistant Government spokesperson on local government finance these days. He should put us all out of our misery and cross the chamber to join the SNP's front-bench team, because he has supported the SNP in every debate in the chamber. He has drawn barely any attention to one Tory policy and has spent most of his time attacking either the Liberal Democrats or Labour. Well done to Derek Brownlee on his Government speech.

The words of Brian Adam, who spoke of a "generous settlement", will be ringing throughout Aberdeen, Aberdeenshire and the rest of Scotland. That was an outrageous statement, given the severe cuts that are being felt up and down the land. When constituents write to me and my colleagues about those cuts, we will simply refer them to Mr Adam's statement.

Mr Keith Brown described the settlement as "a gift". What sort of gift is it to people who are spending the nights outside in Aberdeen, as efforts are made to retain local homelessness services, to people in Scotland who are losing services for their disabled children, to teachers who are receiving redundancy notices, and to school cleaners who are losing their jobs? Well done to Mr Brown on that point.

Richard Baker and Lewis Macdonald highlighted some of the very severe cuts that are being made in Aberdeen and elsewhere as a result of the settlement. Mr Rumbles mentioned the impact of

the council tax freeze. Mr Doris described the settlement as "a good thing". He also had the audacity to accuse Labour members of scaremongering when all the predictions that we made and the scare stories that we told about the impact of the settlement on the voluntary sector and those most in need—Malcolm Chisholm mentioned the situation in Edinburgh—have come true. Bob Doris's comments may be neatly counterposed with Malcolm Chisholm's speech—from the rhetoric to the reality; from comment in the chamber to real feelings out in our communities.

**Gavin Brown:** Every Conservative speaker in every debate on local government finance in the past six months has mentioned single outcome agreements, so the issue is not new to us. Will the member tell us which way he voted in the debate on the Local Government Finance (Scotland) Order 2008?

**Andy Kerr:** I voted in favour of the order and indicated that I would do so during the preceding debate—that should be no surprise to the member. However, when the Conservatives were having their secret, back-door negotiations with the Government in September last year, could they not have raised the issue of single outcome agreements and mentioned that the Parliament was about to send £11 billion of public money out into the community with no accountability? When they are having back-door discussions on the budget next year, perhaps they will take time to raise the issue with ministers.

Frank McAveety compared Mr Swinney to a Venus flytrap, highlighting the fact that, to his credit, Mr Swinney has managed to entice local authorities into this deal. Now they understand that they have been sucked dry by the settlement.

**Mike Rumbles:** Tory members have said that we voted for the settlement. The cabinet secretary is making the same point from a sedentary position. Will Andy Kerr confirm that the time to stop the budget was during the debate on its general principles, against which all Labour and Liberal Democrat members voted?

**Andy Kerr:** Indeed. Iain Gray and other members have made that point.

The SNP does not like to hear the facts. However, the funding tables for local government that SPICe has provided indicate that local government's share of expenditure was 35.5 per cent, on average, under Labour and will drop by 2 percentage points under the SNP. We invested in local authorities to allow them to develop and grow much-needed services, only for the SNP to disassemble them and remove them from communities throughout Scotland. That is the true effect of the budget. The Government is talking left

wing but acting right wing. This is a bad budget for Scotland's poorest communities and households and for those who are most in need and who most deserve the local government services that Mr Swinney has removed.

11:33

**John Swinney:** This has been a fascinating debate. In the same debate, the Government has been accused of delivering both a right wing budget and a socialist budget. The fact that such different accusations can be levelled against ministers just shows the diversity of opinion that exists in this plural Parliament. Ministers are happy to answer for their actions in Parliament, and I will do so today.

I confirm to Mr Scott that the review of the local government distribution formula will take effect in 2011-12. A three-year arrangement is in place to give stability to local authority funding over the next three years. Any consequences of the announcements that I made during the budget process on capital city supplements will be delivered separately to the City of Edinburgh Council.

I have to say that I find Mike Rumbles's comments about the fairness of the distribution formula for Aberdeenshire a bit strange, given that the distribution methodology was agreed with COSLA through the three-year settlement group in which, as I understand it, Aberdeenshire Council participated. Moreover, that council will benefit from above-average increases in 2009-10 and 2010-11.

**Mike Rumbles:** My point was that the cabinet secretary seems to be unaware that what he has done has at one fell swoop set back the fair-share campaign by eight years.

**John Swinney:** All I can say to Mr Rumbles is that in 2009-10 and 2010-11 Aberdeenshire Council will receive from the Scottish Government an above-average increase in its resources. Mr Rumbles should reflect on that pretty clear position.

A great deal has been made of the local authority share of the total Scottish block; indeed, Mr Kerr has been going through contortions over this issue. I cannot deny that in 2002-03 that share was 36.6 per cent. However, much to my regret, this Government was not in office in 2002-03; it did not come into power until 2007, by which time the share that local authorities commanded of the total Scottish budget had fallen to 33.4 per cent. The only parties responsible for that situation are the Labour Party and the Liberal Democrats, so I will not take a lecture from them about the declining share of local authority expenditure. In the budget that I have presided over, that share will, in the

three financial years of the spending settlement, increase from 33.4 per cent to 33.565 per cent, 33.588 per cent and 33.624 per cent.

Let me put the financial position that Mr Kerr outlined in some context. In 2002-03, the Scottish Executive received an 11 per cent above-inflation increase in its departmental expenditure limit budget; this year, we received 0.5 per cent. In his speech, Mr Scott very fairly set out the context of the current financial climate. The general message is that Scottish public expenditure—which, I should point out, is not within my control; regrettably, as Mr Scott made clear, I have to work within the funding arrangement that the UK Government provides to me—will over the next six, not three, years be under greater stress than it was during the bountiful years of the budget that Labour and the Liberal Democrats had at their disposal. However, what did they have to show for it as a consequence?

**Johann Lamont:** If this budget settlement is the tightest ever and if there are all these problems associated with it, why has the cabinet secretary prioritised business tax cuts with no conditions attached and a council tax freeze that he must know comes with a risk to local services? I asked him the same question in the budget debate, but he did not answer it.

**John Swinney:** We have prioritised the cut in business rates to give Scottish businesses a competitive advantage and ensure that they can deal with the economic conditions that Mr Scott highlighted. We have also sought a council tax freeze to ensure that householders wrestling with rising fuel and food bills do not have to pay the same kind of rising council tax bill that they had to pay under the Labour Government that was in power for eight years.

With regard to the quality of the funding settlement, if I had applied the increase in budget that we received from the UK Government to the local authority settlement, the local authority budget would have gone up by 3.2 per cent. However, under this Administration, the budget has gone up by 5 per cent. *[Interruption.]* Once we take into account inflation—which I presume is what Mr Kerr is muttering about—it becomes clear that this Government has put 1.8 per cent more into local authority expenditure than the amount that we received from the UK Government's settlement. That is perhaps why the president of COSLA said that his job was

"to get the best deal possible for our local communities, and I believe that's what we have done".

It has been a pleasure for the Government to ensure that we have a local authority settlement that delivers investment in public services above the level that local authorities could have



expected; a fully funded council tax freeze; and the opportunity for local authorities to operate with flexibility and freedom to deliver for their communities. That is what the Government expects them to do.

## Question Time

### SCOTTISH EXECUTIVE

#### General Questions

11:40

#### Fuel Prices

**1. Tavish Scott (Shetland) (LD):** To ask the Scottish Executive what assessment it has made of the impact of high fuel prices on the Scottish economy. (S3O-2852)

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** We are fully aware that high fuel prices impact on the people of Scotland and can result in fuel poverty and difficulties for our rural communities, our public transport and our businesses, particularly those with heavy transport costs. In the lead-up to the United Kingdom budget, the First Minister and the Cabinet Secretary for Finance and Sustainable Growth made strong representations to the Chancellor of the Exchequer about the impact of steeply rising transport charges. We will continue strenuously to pursue the issue of fuel poverty with the UK Government and the energy companies to ensure that Scots are not left out in the cold.

**Tavish Scott:** I thank the minister for that full response.

I realise that no Government can change world oil prices, but does the minister acknowledge that fuel prices are hitting Scottish businesses and, indeed, are impacting in two ways on island and rural businesses in particular? Will the Government commit to matching the fuel support schemes that the French and Spanish Governments have introduced for their fishermen and which, we are told, are consistent with European law? Will the minister continue to make representations on the crude one-size-fits-all approach taken in the UK budget, which penalises Scottish crofters, farmers and fish farmers for using pick-ups? Those vehicles are not Chelsea and Milngavie tractors, but essential to businesses.

**Stewart Stevenson:** As someone who, like Tavish Scott, represents many of Scotland's fishermen and has substantial rural interests, I know that both communities—and, indeed, all people in rural areas—are genuinely concerned about these matters. I note that Her Majesty's Treasury has had, through a combination of North Sea oil revenues and VAT receipts, a £4 billion windfall over the past 12 months. We will continue to press the UK Government for a fair deal for our

rural areas and for a price-cap through a modification of the tax system.

**Dave Thompson (Highlands and Islands) (SNP):** Given that most of the price of a litre of fuel is tax, does the minister agree that the current high cost of fuel further demonstrates the desperate need for a fuel tax regulator to even out the highs and lows of fuel costs?

**Stewart Stevenson:** We continue to believe that a fuel tax regulator would play a significant role in protecting rural communities from high fuel costs. Given that the taxation burden on diesel fuel in the UK is the highest anywhere in Europe and that the burden on petrol is in the top five highest, it is clear that taxation contributes very significantly to escalating fuel costs and is something that the Treasury benefits from. We do not believe that that is either fair or right.

**Alex Johnstone (North East Scotland) (Con):** To what extent is the Government correlating information to inform it—and subsequent Governments—of the impact of fuel prices on rural businesses?

**Stewart Stevenson:** I know that my colleague Mr Mather is taking a close interest in that matter. After all, in rural areas, the cost of transport and the cost of heating, which is largely driven by oil-based products, is very substantial. We will monitor the situation to ensure that we make the best possible case for the people of Scotland, particularly those in rural areas and in fishing communities, to have equity with other European countries and communities.

#### **NHS Greater Glasgow and Clyde (Meetings)**

**2. Paul Martin (Glasgow Springburn) (Lab):** To ask the Scottish Executive when it last met representatives of NHS Greater Glasgow and Clyde and what issues were discussed. (S30-2822)

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I regularly meet all NHS board chairs to discuss matters of importance to health and to the national health service in Scotland. My most recent such meeting was on 25 February 2008. Health officials are also in regular contact with NHS Greater Glasgow and Clyde on a range of matters.

**Paul Martin:** Does the minister understand the disappointment of the community that lives in the area around Stobhill hospital about the fact that the Scottish Government has not been willing to appoint an independent scrutiny panel, which would have allowed for proper scrutiny of previous decisions by the health board in connection with the delivery of acute services at Stobhill hospital? I do not need any gentle reminders from the

minister about the actions of previous Governments; I want to know what the present Government will do.

**Nicola Sturgeon:** As Paul Martin does not need any gentle reminders of the actions of previous Governments, I will give him a not-so-gentle reminder that it was the decision of the Labour and Liberal Government to approve the health board's plans to change provision at Stobhill hospital. Since I took up the job of Cabinet Secretary for Health and Wellbeing, I have been open, honest and frank in making it clear that I cannot undo all the decisions that the previous Administration took. In the case to which Paul Martin refers, the decision was taken several years ago, and its implementation is now at an advanced stage.

In my time as cabinet secretary, I have also made it clear that the Government is committed to local provision of health services. That is why we set up an independent scrutiny panel that led us to overturn the decisions to close accident and emergency services at Ayr and Monklands hospitals, and why this Government, unlike the previous Government, will continue to act in the best interests of local health services.

#### **Affordable Rented Housing**

**3. Andrew Welsh (Angus) (SNP):** To ask the Scottish Government what action it is taking to increase the supply of affordable rented housing. (S30-2797)

**The Minister for Communities and Sport (Stewart Maxwell):** In "Firm Foundations", we consulted on a range of proposals for increasing the supply of affordable rented housing, including ending the right to buy on new social housing; providing incentives for local authorities to build new council houses; getting better value from public investment in new housing association stock; subsidising the development of housing for mid-market rent; and encouraging the private rented sector to provide more good-quality accommodation for rent.

Crucially, "Firm Foundations" made it clear that our plans for improving the value that we get from our investment in new stock will allow smaller associations, including community-based associations, to continue to acquire new stock.

**Andrew Welsh:** Given the current credit-crunch effects of reducing the availability of mortgages and increasing their cost, will the minister work with Scotland's housing associations and other affordable rented housing providers, as well as with innovative high-quality prefabrication housing projects such as the Highland Housing Alliance, to ensure that we do not return to a situation in which homelessness is on the increase and there is a

lack of affordable and suitable housing alternatives?

**Stewart Maxwell:** Absolutely. I assure the member that that is precisely why we have made housing such a priority for the Government. We launched the housing supply task force last summer and produced the “Firm Foundations” document, the consultation period for which has just ended; we will publish the analysis of the consultation results shortly. I am aware of the Highland Housing Alliance and, last summer, visited some of the projects that it is involved in, including the prefabricated housing projects, the factory in Orkney and the development that will, I hope, go ahead in the Brora area.

We will open up consultation on a range of issues, which are partly to do with the Housing (Scotland) Act 2006 and partly about progressing our work on “Firm Foundations”. We take seriously the need for affordable housing in Scotland and the fact that the homelessness target that we must meet by 2012, to which the whole Parliament is signed up, is extremely challenging.

**Jamie McGrigor (Highlands and Islands) (Con):** The homelessness charity Crisis published a report in February that demonstrates that, by enabling people to rent in the private sector, deposit guarantee schemes can make a major contribution to tackling homelessness. In light of that report, does the minister have any intention to extend the use of such schemes?

**Stewart Maxwell:** We are considering the possibility of doing what the member suggests. Discussions are being held with a number of stakeholders and once they have come to an evidence-based conclusion that would allow us to take the matter forward, I will be happy to discuss the issue with the whole Parliament, including the member.

**Johann Lamont (Glasgow Pollok) (Lab):** I am sure that the minister needs no reminder of the fact that it is the considered view of this Parliament that the Scottish National Party Government does not have a coherent housing policy, and I know that he will respect the Parliament’s view in that regard.

I want to talk about the affordability of rented housing—

**The Presiding Officer (Alex Fergusson):** We are not here to talk; we are here to ask questions.

**Johann Lamont:** My apologies; I will ask a specific question.

The “Firm Foundations” document is predicated on higher rent levels. In addition, housing providers are telling us that rent levels might have to rise if the Scottish housing quality standard is to be delivered. What level of rent rise does the

minister consider would be acceptable to allow the delivery of the Scottish housing quality standard and the efficiencies that he has identified, in comparison with levels in housing associations down south?

**Stewart Maxwell:** Of course “Firm Foundations” is not predicated on higher rent levels—that is a complete and utter fallacy. However, I am not surprised that the member has again made that claim. Frankly, it is scaremongering to upset tenants across the country by putting forward the wild idea that the process of achieving efficiencies in the sector will be driven by the setting of higher rent levels. That process is not predicated on higher rent levels.

Delivery of the Scottish housing quality standard is not predicated on higher rent levels, either. It is predicated on the fact that local authorities will have a focus on meeting the 2015 target, which used to be supported by Johann Lamont’s party. Perhaps Labour is no longer interested in supporting the implementation of a basic standard for public sector housing by 2015. We certainly intend to introduce the Scottish housing quality standard throughout the country for the benefit of current and, in particular, future tenants and those who, under her regime, were unable to get a house.

### Local Income Tax

**4. James Kelly (Glasgow Rutherglen) (Lab):** To ask the Scottish Executive what research was undertaken prior to publication of its local income tax plans. (S3O-2819)

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** In preparing the consultation paper on a fairer local tax for Scotland, we drew on a range of existing research, analysis and information, in addition to work that we undertook internally, which included detailed financial modelling of the proposals. The 2007 Scottish social attitudes survey, for example, found that 83 per cent of the people questioned said that they should be taxed according to how much income they had.

**James Kelly:** The cabinet secretary will be aware that official Scottish Government statistics show that 265,198 people aged between 20 and 34 still stay with their parents and that most of them will have to pay the new local income tax. Does he agree that that will be a double whammy, which will hinder many young people who are trying to get on the housing ladder?

**John Swinney:** People will realise that the local income tax is a fair system that is based on the ability to pay. The Government has published information on a variety of social groupings that demonstrates how people will be better off. For

example, 59 per cent of people who live in households comprising multiple taxpayers—the group to which Mr Kelly referred—will pay less, and there will be no change for at least 11 per cent of them. The evidence on the advantages of having a local income tax is pretty compelling.

The Labour Party's contribution to the debate would have slightly more credibility if in the four years following 2003, when it made a promise to do something to improve the fairness of the council tax, it had lifted a finger. It failed to do anything and, as Labour members all know, the council tax became such an issue in last year's election campaign that it resulted in the Labour Party's defeat.

This Government has made proposals to introduce fairness into the local taxation system and, in due course, I look forward to their receiving enthusiastic support from members such as Mr McNeil, who seems to be particularly cheery about the issue today.

#### **Medical Negligence Claims (National Health Service)**

**5. Willie Coffey (Kilmarnock and Loudoun) (SNP):** To ask the Scottish Government what steps it has taken with the NHS to review the relationship between the £208 million that NHS boards declared in 2006-07 as provisions and contingent liabilities against claims for medical negligence and the payment that year of £23 million in respect of such claims. (S3O-2779)

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** The £208 million is made up of around £80 million for contingent liabilities and gross provisions of £127.7 million. The contingent liabilities are not a charge to the accounts, but they are reported in the contingent liabilities annex to the annual accounts. The gross provisions are included in NHS boards' 2006-07 annual accounts under the clinical negligence and other risks indemnity scheme and are offset by the related income of £104.3 million that is expected to be recovered under that scheme. The net provision is therefore £23.4 million.

**Willie Coffey:** I thank the cabinet secretary for her answer, but does she nevertheless agree that the gap between the amount set aside and the amount paid out appears to be excessive and that at least a portion of the unspent money could be reinvested in front-line care?

**Nicola Sturgeon:** I understand Willie Coffey's concern, but I assure him that, to comply with accounting principles, NHS boards are required to recognise provisions in their accounts in respect of the amount of clinical negligence claims that are expected to be payable. As I said, the provisions

amounted to £127.7 million in 2006-07. Under the terms of the scheme that is operated on behalf of NHS Scotland boards, the boards must also recognise and make provision for the corresponding income that they expect as reimbursement from the scheme. The net provision is what I explained in my answer.

As a Government, we are committed to patient safety. We want to cut the number of adverse incidents in the NHS, improve outcomes for patients and therefore reduce the number of claims and compensation payments. We also made a manifesto commitment to introduce a no-fault compensation system that would help to foster a more open and less adversarial relationship between patients and staff. We will consult on our proposals in due course.

My final word of what I hope is reassurance to Willie Coffey is this: although the figures that he referred to are large, the amount paid out in clinical negligence claims in Scotland is proportionately less than in the rest of the UK. I hope that those comments reassure him, but I am sure that we will continue to have dialogue on the issue.

#### **Cancer Charities (Meetings)**

**6. John Scott (Ayr) (Con):** To ask the Scottish Government what recent discussions ministers have held with representatives of cancer charities. (S3O-2765)

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** In the past six months, I have met representatives of cancer charities on three occasions. I had a joint meeting with members of the Scottish cancer coalition and Breakthrough Breast Cancer; I visited UCAN in Aberdeen; and with the First Minister I opened the Friends of the Beatson centre in Glasgow. The Minister for Public Health attended the launch of the Elizabeth Montgomery centre appeal, which was co-hosted by the Roy Castle Lung Cancer Foundation, and she recently visited the Maggie's centre in Inverness.

**John Scott:** The cabinet secretary will be aware of the screening matters campaign that is co-ordinated by Cancer Research UK and which seeks action on the part of the Scottish Government and individual health boards to improve and expand existing screening for breast cancer. Will she spell out what specific action the Government intends to take to help meet the aims of the screening matters campaign, which include screening 300,000 more people in Scotland in the next five years and reaching out to people who are eligible for screening but who do not currently take part?

**Nicola Sturgeon:** This is an extremely important issue. As a Government, we are advised on screening matters by the national screening committee, and it is right that we act on the basis of expert evidence. However, I thoroughly endorse the campaign's aim, which is to ensure that as many people as possible who are eligible for screening take it up.

We are in the fortunate position in Scotland of seeing rising uptake rates for breast cancer screening, and we must continue to ensure that those who are not taking up screening opportunities do so. Cervical cancer screening rates are going in the opposite direction and have been falling slightly in recent years. That is a matter of concern and is something that we intend to target carefully to ensure that rates increase.

We are also in the process of rolling out the bowel cancer screening programme. That work will be complete throughout Scotland by the end of next year, and it is important, particularly because it is the only major cancer screening programme in Scotland that is available to men, that we work hard to ensure that uptake rates are as high as we expect them to be. I assure the member that we are aware of the issues and committed to ensuring that people take up an important service that, in many cases, saves lives.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** At last night's meeting of the cross-party group on cancer, more than one cancer charity pointed out that it is slightly odd that, in the current consultation document, the chapter on diagnosis and treatment is followed immediately by a chapter on palliative care. Does she agree with those charities that there should be more focus on the welcome reality that more people live with cancer for a considerable time? Will she ensure that that reality is addressed more extensively in the final document?

**Nicola Sturgeon:** I agree with Malcolm Chisholm that, thankfully, more and more people are surviving cancer and living longer with cancer. It is important that the services we provide change and develop to reflect that reality.

"Better Cancer Care—A Discussion" is a consultation document, as Malcolm Chisholm said. We are very open to views and responses on a range of issues that are covered in the document, which will lead to a revised and updated cancer strategy later this year.

**The Presiding Officer:** Before we move to First Minister's questions, I am sure that the chamber wishes to join me in welcoming to the Presiding Officer's gallery this morning His Excellency Mr Yury Viktorovich Fedotov, the Russian ambassador to the United Kingdom. *[Applause.]*

## First Minister's Question Time

12:00

### Engagements

**1. Ms Wendy Alexander (Paisley North) (Lab):** To ask the First Minister what engagements he has planned for the rest of the day. (S3F-647)

**The First Minister (Alex Salmond):** Later today I will have meetings to take forward the Government's programme for Scotland because, to coin a phrase, change is what we do.

**Ms Alexander:** I realise that the First Minister had another bad day yesterday and I do not mean being booed off the park at Hampden last night. While he was trying to gerrymander his way to independence, I received a letter from Kevin McCahery about the closure of all disability day centres in Aberdeen. What does the First Minister have to say to Kevin's comment that

"if you are elderly/blind/physically disabled in Aberdeen you are out of luck"?

**The First Minister:** There is great concern, not just in the north-east of Scotland but elsewhere, about the difficult financial position of Aberdeen Council. There will be great interest in the Accounts Commission's consideration of that position. We hope that the local authority will take every step possible to administer its finances in an appropriate way and discharge its public obligation to the people of Aberdeen.

**Ms Alexander:** I will leave it to Kevin McCahery and the disabled people of Aberdeen to decide whether that is an appropriate answer.

Of course, Aberdeen is not an isolated case. Let us try Renfrewshire. This week, Renfrewshire teachers condemned a £4.5 million cut to the education budget that threatens 55 teaching jobs and gave chapter and verse on what the cuts mean. What does the First Minister have to say to the parents, pupils and teachers of Renfrewshire?

**The First Minister:** Let us talk about the £7 million increase in the Renfrewshire education budget, which has been widely welcomed across that local authority area.

I have been looking through the records of the local MSP in Renfrewshire and I cannot find a single representation about the closure of Remploy last week, the factory that discharges to disabled people valuable jobs in that community.

Perhaps if Wendy Alexander would put aside the politics just for a second, she could explain that people should be concerned about the plight of disabled people not just in Aberdeen and Renfrewshire, but right across Scotland.

**Ms Alexander:** The big boy who did it and ran away. Time and again this winter, the First Minister and his colleagues have accused me—and anyone else in this chamber who raised the prospect of cuts—of scaremongering. He was wrong and we were right because real cuts are affecting real people and they are starting to bite all over the country.

Bonuses for disabled workers in West Lothian are going. Crèches in Edinburgh have closed. Help for the elderly in Fife has been cut. The buck stops with the First Minister. Is he ready yet to admit that such cuts are the direct result of his decision to freeze one tax, cut another and give local government a smaller share of the Scottish budget cake?

**The First Minister:** I do not think that the council tax is Wendy Alexander's strongest suit. The council tax was favoured by the Labour Party and increased by 60 per cent from 1997 to 2007. As the Convention of Scottish Local Authorities pointed out, the freeze in council tax this year has been fully funded by the increase in central Government grant to local authorities.

For the first time in a generation, the percentage of public finance that goes to local authorities is increasing year by year throughout the current financial review. We started at 33.394 per cent this year under the Labour budget, but by 2010-11 the proportion will have increased to 33.624 per cent. Facts are chieftains that winna ding. Will Wendy Alexander accept that for the first time in a generation central Government funding to local authorities throughout Scotland is increasing, as opposed to decreasing as it did every year under the Labour Party?

**Ms Alexander:** Less of the national cake is going to local Government than was the case under Labour. We have heard a series of single transferable excuses.

Next week, when the catalogue of cuts starts to bite, the First Minister will jet off to America, which is convenient. It is clear that he wants to leave his troubles behind him. His manifesto was a con; his concordat is unravelling; his cuts are being condemned; and there have been precious few answers for Kevin McCahery and thousands of people like him. Will there be answers from the First Minister when he comes back from the United States?

**The First Minister:** In addition to the Labour Party's languishing in the Scottish opinion polls, for the first time the Scottish National Party is more trusted than the Labour Party on education, health and public services. If Wendy Alexander ever gets into a position in which SNP councillors are saying, "God bless the Labour Party," I will be extremely surprised.

As far as the comment on the single transferable vote is concerned, will Wendy Alexander perhaps explain some time why she wants to deny the Scottish people the right to decide their future in a national referendum? I have a reasonably long memory on such matters and I have been looking back through the political record. I find that there was outstanding support for the concept of a multi-option referendum from the late Donald Dewar, the late John Smith and the current Prime Minister—[*Interruption.*]

**The Presiding Officer (Alex Fergusson):** Order.

**The First Minister:** According to an account of 4 May 1992 of Mr Brown's speech at a May day rally:

"Mr Brown called on all organisations to support a 'persistent, determined and concerted' campaign to force the Tory Government to accept a multi-option referendum on Scotland's future."

I know that the people were well briefed—[*Interruption.*]

**Members:** Presiding Officer, the subject matter—

**The Presiding Officer:** She mentioned it.

**The First Minister:** I know that the people who wrote the account were well briefed, because the Labour Party researcher in 1992 was Wendy Alexander.

## Prime Minister (Meetings)

**2. Annabel Goldie (West of Scotland) (Con):** To ask the First Minister when he will next meet the Prime Minister. (S3F-648)

**The First Minister (Alex Salmond):** I have no plans at present to meet the Prime Minister, although given what I have found out about his support for a multi-option referendum I might arrange a meeting quickly.

**Annabel Goldie:** Presiding Officer,

"We do not cut crime by cutting the prison population; we cut the prison population by cutting crime."

Those are the words of my colleague John Lamont in debate this morning and I cannot improve on them.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Take a bow, John.

**The Presiding Officer:** Order.

**Annabel Goldie:** At decision time tonight we will be asked to cut the prison population by reversing two decisions of the Parliament: one that was taken by the Justice Committee; and one that was taken two weeks ago by the full Parliament. The will of the Parliament was that home detention

curfew licences were not appropriate for serious criminals. How can the First Minister justify flouting what he once called “the basic tenets” of parliamentary democracy?

**The First Minister:** Later today we will test whether there is parliamentary support for the sensible measures that the Cabinet Secretary for Justice is taking to cope with the prison crisis in Scotland—a crisis that we certainly inherited from the previous Administration.

I will try to put these things into a proper context. We need to manage sensibly an extremely difficult situation. As Annabel Goldie well knows, one of the first decisions that the SNP made in Government was to move ahead quickly with the prison building programme. She also well knows that not one single prison was built during the time that the Conservatives were last in power in Scotland; a period of over 17 years. She further knows, as we discussed last week, that far more people absconded from open prisons in Scotland when the Conservatives were in power than is the case today. Although I agree with her on a number of aspects of the criminal justice system—incidentally, I agree that automatic early release of offenders is an issue that the McLeish commission should properly review—I put it to her that not only was the prison programme deficient under Conservative rule, it was the Conservative party that introduced automatic early release in 1993.

**Annabel Goldie:** That is rank hypocrisy, First Minister. When the previous Scottish Executive reversed a decision of the Parliament on fishing, it was lambasted by Richard Lochhead, condemned by John Swinney, and derided—yes, derided—by Alex Salmond for doing so. The hypocrisy is for others to judge, however.

I return to the core problem of too many prisoners and not enough prison places. In the words of the First Minister this morning, it is “a crisis”. However, there is a safer option than allowing serious criminals out on to our streets earlier than is the case at present. What would happen if any part of the prison estate were to be rendered unusable through storm damage, flood or whatever? Surely the Government has emergency or contingency measures in place. What are those measures? Why does the Scottish Government not use them now to get us through this crisis? If not, perhaps the dangerous truth is that there is no plan B. Perhaps no such emergency plans are in place.

**The First Minister:** Contingency plans are in place. What is important is to ensure that we have adequate prison capacity to deal with the number of prisoners in Scotland. The SNP Administration took an immediate decision on that, on gaining office—a decision that others had put off for many years.

We do not want to take up the proposal that the Tory justice spokesperson has made, which I understand is to send Scottish prisoners to fill unused jail capacity in Northern Ireland. Instead, we will engage in the sensible management of the Scottish prison system and ensure that we have adequate prison capacity. The issue that we must face is that Scotland is the third most-jailed country in the world per head of population. We realise that building the prison capacity that we need will not build our way out of that difficulty. We need the review of the prison system that this Government has commissioned so that—I hope—all members will be able to unite behind a sensible approach to justice and imprisonment.

### Cabinet (Meetings)

**3. Nicol Stephen (Aberdeen South) (LD):** To ask the First Minister what issues will be discussed at the next meeting of the Cabinet. (S3F-649)

**The First Minister (Alex Salmond):** The next meeting of the Cabinet will discuss issues of importance to the people of Scotland.

**Nicol Stephen:** This week, the SNP Government privatised the prison transport service for young people for the first time. It gave a major new contract to Reliance. Does the First Minister think that Reliance is the right organisation to carry out that public service?

**The First Minister:** The Cabinet Secretary for Justice takes decisions that are necessary for the proper working of the prison system in Scotland.

**Nicol Stephen:** I wonder why the First Minister does not listen to his Cabinet members on the issue. Look at what they said when they were in opposition. Nicola Sturgeon said:

“Reliance assurances have been shown not to be worth the paper they are written on”.

She also said that

“Running public services for private profit is a recipe for disaster.”

Kenny MacAskill said that it was wrong to hand prison escorts to Reliance; the SNP said that that was “gambling with public safety”. So why have the First Minister and Kenny MacAskill just given Reliance brand-new services to run? What kind of backtracking, breathtaking, promise-breaking U-turn is that? It is like Margaret Thatcher waking up one morning and saying that Arthur Scargill was the right person to run our coal mines after all. The headline on one SNP press release was “Reliance: Time to dump the Keystone Cops”. Why have Salmond and MacAskill, Scotland’s Laurel and Hardy, just given a new contract for more services to the keystone cops? Why has the First Minister privatised that service?

**The First Minister:** We should remember that it was the Administration that Nicol Stephen served as Deputy First Minister that introduced Reliance into the justice system in the first place. What Nicol Stephen is talking about, but what he apparently did not find time to mention to the Parliament, is the transportation of young offenders in people carriers. Nicol Stephen should not suggest that public safety is going to be jeopardised by the transportation of young offenders in people carriers. I do not think that Nicol Stephen's evidence, in all conscience, justifies his hyperbole.

### Whisky Industry (Alcohol Duty)

**4. Bill Kidd (Glasgow) (SNP):** To ask the First Minister, in light of the tax increase on spirits announced in the budget, what plans the Scottish Government has to safeguard Scotland's prime economic products. (S3F-667)

**The First Minister (Alex Salmond):** The Cabinet Secretary for Finance and Sustainable Growth wrote to the Chancellor of the Exchequer on 7 February, warning against rises in alcohol duty for whisky. The Chancellor's approach to alcohol duty was a crude money-making scheme that failed to recognise the position of the whisky industry and the premium products that it makes. The Scottish Government works very closely with the Scotch whisky industry and we will continue to express our support for a fairer balance in the burden of taxation on different types of drink production. We will also continue to offer as much support as we can to deal with the other challenges and issues that the industry may face over the months and years ahead.

**Bill Kidd:** In the light of Labour's tax hike on whisky, may I ask for the First Minister's response to the remarks made at Westminster by Des Browne, the Secretary of State for Scotland, that he has

"a long-standing interest in ensuring"

that Scotch whisky distilleries and

"bottling plants in my constituency—the world-famous Johnnie Walker plant in Kilmarnock"

and Scotland's biggest distillery, that of the Edrington Group in Drumchapel,

"have a level playing field ... in the United Kingdom and throughout the world"?—[*Official Report, House of Commons*, 28 November 2007; Vol 468, c 271.]

**The First Minister:** The member makes excellent points. When considering fairness and parity for the whisky industry in Scotland, we should remember that the alcohol tax on whisky is 51 per cent higher than the tax on alcohol served as beer, and 31 per cent higher than the tax on alcohol served as wine. That disparity is extremely

difficult to defend. Indeed, it is impossible to defend when one considers the importance of the whisky industry.

Des Browne may have one view, but many Labour back benchers at Westminster were lobbying with another view. Some Labour MSPs, too, were lobbying with that other view. On "Newsnight", Pauline McNeill failed to say whether she supported an increase in tax on whisky.

There is a real issue around the tax on alcohol content. There is discrimination against one of Scotland's finest products, and the real issue of whether the tax on low-strength beers and ciders should be substantially reduced, in contrast to the tax on higher-strength alcohol. Those issues were not considered in the chancellor's budget. As he himself admitted, the basis on which the swingeing tax increase was imposed on whisky was purely one of finance, as opposed to any other factor.

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** The First Minister will surely recognise that companies such as Inver House Distillers, which owns the award-winning Barrogill whisky that recently received royal approval, provide vital jobs in some of the most rural and remote parts of Scotland. Would the First Minister please agree to meet representatives of companies such as Inver House and other smaller distillers in the remoter parts of the Highlands to discuss what is a vital rural employment issue?

**The First Minister:** Yes, I will gladly do that. As the member knows, the number of jobs that are dependent on the whisky industry in Scotland probably reaches about 40,000. It is a vital national industry and a vital national resource. I will be glad to have such a meeting.

**Elaine Murray (Dumfries) (Lab):** Does the First Minister accept that the increase in taxation on spirits that was announced by the chancellor will increase the price of an average bottle of malt whisky by just over 2 per cent but will increase the price of a cheap bottle of vodka by around 10 per cent? Does the First Minister agree with his Cabinet Secretary for Justice that alcohol taxation should be used to combat binge and underage drinking, to which cheap spirits are a significant contributor?

**The First Minister:** It should be possible to devise a system of taxation on alcohol that takes alcohol content into account. That seems to me especially important if we are to address the issue seriously. I do not agree with some in the Labour Party who argue that it is necessary to impose taxation that discriminates against our premium product and our national drink. I know that others in the Labour Party do not share their colleagues' view and were astounded by the swingeing tax increase.



I tend to agree with the argument presented by John McFall MP and Brian Donohoe MP—and by some Labour MSPs—that, in pursuing a vital and valuable campaign to address public health in Scotland, we need not discriminate against whisky, our premium product. I do not think that one follows from the other. If the Labour Party says that we can pursue a health campaign only at the expense of the whisky industry, it should say so openly and be judged on that.

### **Illiteracy (Schoolchildren)**

**5. Rhona Brankin (Midlothian) (Lab):** To ask the First Minister what action the Scottish Government is taking to eliminate illiteracy among schoolchildren. (S3F-661)

**The First Minister (Alex Salmond):** There will be a broad campaign across society, including MSPs. We are introducing the curriculum for excellence, which places literacy at the heart of the curriculum. The curriculum for excellence has all-party support and will, I hope, be taken forward in that spirit of consensus.

**Rhona Brankin:** Is the First Minister aware that the recently published outcomes on literacy for the curriculum for excellence do not concentrate on functional literacy? Is he aware that West Dunbartonshire Council—a local authority with significant pockets of deprivation—has eradicated illiteracy over a 10-year period? Is he also aware that his Government has refused to show the leadership required to roll out that programme across Scotland? Will the First Minister today commit to tackling functional illiteracy? Will he back the independent commission on literacy that we are establishing? It is tasked with developing a plan to eradicate illiteracy right across Scotland.

**The First Minister:** As Rhona Brankin knows, the results of the Scottish survey of achievement show that primary pupils in West Dunbartonshire are below average in literacy. That is not to say that valuable lessons cannot be taken from the West Dunbartonshire initiative. However, substantial work will have to be done to reconcile the various measurements that are used at present.

I hope that Rhona Brankin will accept that functional literacy is at the very heart of the range of initiatives within the curriculum for excellence, as is the guarantee that literacy is very much a priority for this Administration—indeed, I hope that it was for the previous Administration.

**Christine Grahame (South of Scotland) (SNP):** The First Minister will be aware of the increasing number of children in Scotland who are classified as “new to English”. Those children are very welcome. Does the First Minister agree that councils throughout Scotland must, when making

political choices in their budgets, ensure that those children are properly supported?

**The First Minister:** The children of migrant workers are entitled to the same levels of education and support from local authorities as any other children. Under our historic concordat with local government, we will provide £34.9 billion over the next three years. That is an increase of 13 per cent over the period, which will allow local authorities to discharge that important responsibility.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** Has the Scottish Government had discussions with local authorities about providing extra support for teachers who are developing literacy skills in primary school classes where there are substantial language barriers?

**The First Minister:** Discussions on that matter are on-going. The training and development of members of the teaching profession—at a time when we are planning to have 20,000 new teachers in Scottish schools over the next few years—will be fundamental. The issue that Elizabeth Smith raises will be a priority in one of the many initiatives for the training and encouragement of the vast number of new teachers moving into the profession.

### **Financial Services Industry (Meetings)**

**6. Margo MacDonald (Lothians) (Ind):** To ask the First Minister whether he has met any representatives from the Scottish financial services industry, in light of the current uncertainties in global financial markets. (S3F-668)

**The First Minister (Alex Salmond):** We are fortunate in Scotland to have the Financial Services Advisory Board—FiSAB—a pioneering collaboration between the Scottish Government and the wider public sector, the financial services industry, the trade unions and Universities Scotland. I have an opportunity to meet senior executives from our financial services industry on a regular basis to discuss a wide range of issues of importance to the industry.

**Margo MacDonald:** I thank the First Minister for his reply. I am slightly mollified, but I would like an assurance from him that the lack of monitoring and foresight that we now realise was present in the management of Northern Rock is absolutely absent in Scotland. If he cannot give that guarantee—which I agree is a bit of a tall order—what can he say to reassure me that we will not make the same mistakes?

**The First Minister:** I am glad that I have mollified Margo MacDonald—that is something that I do not always manage to do, so I will take that as a substantial advance. Perhaps I could

mollify her further. A FiSAB meeting that I chaired on 3 September asked for a report to be prepared that would consider financial instability throughout the world and the particular impact that it might have on the Scottish financial sector. That report, which was discussed on 26 February at a meeting chaired by the Cabinet Secretary for Finance and Sustainable Growth, found that although Scotland will not be insulated from world financial instability, the foundations of the Scottish financial sector are competitive and strong. That was demonstrated recently when HBOS sustained, resisted and recovered from a speculative attack on its share price.

We believe that the Scottish financial sector does not have the structural deficiencies that some financial sector companies have paid heavy penalties for elsewhere in the United Kingdom, but we cannot be insulated from a global financial crisis. In yesterday's report, the Financial Services Authority admitted to the most astonishing and serious lack of scrutiny in its administration of the financial sector throughout the UK. I welcome the fact that the FSA is admitting and accepting serious deficiencies. There will have to be changes in financial regulation. I hope that when we move to a position in Scotland in which we administer and scrutinise our financial sector, we will do substantially better than the FSA has managed to do over the past few years.

**Alex Neil (Central Scotland) (SNP):** The First Minister mentioned yesterday's report from the FSA. I compare that report and the regulation of financial services in southern Ireland. Does he agree that Scotland could learn many lessons from southern Ireland and that when we get control of the regulation of financial services here we could use southern Ireland as a model for how to promote our industry?

**The First Minister:** The success of the Republic of Ireland in a range of areas provides a good working model for Scotland. Indeed, the success of the Republic's financial sector has been an extremely impressive achievement over recent years.

We should not underrate the consequences for our financial sector of financial instability worldwide, but we should have confidence that the sector in Scotland is strong, robust and extremely competitive. One of the aspects that came out of the FiSAB report was that, even in a difficult situation for the financial sector, there are opportunities as well as challenges. I am sure that the financial sector in Scotland will be capable of rising to those opportunities, regardless of the failures of the regulatory agencies.

**Iain Gray (East Lothian) (Lab):** In his meetings with representatives of the financial services sector, what does the First Minister say about their

very real fears regarding the damage to their industry and its competitiveness that is threatened by his plans to make Scots pay at least 15 per cent—probably more like 25 per cent—more in income tax than the rest of the United Kingdom?

**The First Minister:** I am sure that financial sector workers and companies welcome the freeze in council tax that has been introduced throughout Scotland, just as they were concerned about the runaway increases in that tax under the Labour-Liberal Administration. Financial sector workers, like other people throughout Scotland, welcome the opportunity to have taxation that is based on ability to pay, as opposed to the 60 per cent increase in council tax under the Labour Party.

**Jackie Baillie (Dumbarton) (Lab):** On a point of order, Presiding Officer. Is it in order for ministers—or, indeed, any MSP—to mislead the Parliament? The First Minister knows that a multi-option referendum is not support for a single transferable vote, which of course is what he said was his policy yesterday, to universal astonishment. Do you agree that that signals his retreat from his own policy of independence?

**The Presiding Officer:** Ms Baillie, that is not a point of order; that is a debating matter. I have made my position clear on that before.

12:30

*Meeting suspended until 14:15*

14:15

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Justice and Law Officers

##### Bankruptcy and Diligence etc (Scotland) Act 2007

**1. Hugh O'Donnell (Central Scotland) (LD):** To ask the Scottish Executive when the Bankruptcy and Diligence etc (Scotland) Act 2007 will come into force. (S3O-2848)

**The Minister for Community Safety (Fergus Ewing):** The Scottish Government aims to bring into force different parts of the Bankruptcy and Diligence etc (Scotland) Act 2007 under a rolling programme over the next two years. The majority of the changes that will affect bankruptcy and a number of important changes to diligence will come into force on 1 April 2008.

**Hugh O'Donnell:** The minister will doubtless be aware from correspondence that confusion appears to exist about the impact that the legislation will have on people being discharged from bankruptcy in England. Will he clarify what the exact position on that is?

**Fergus Ewing:** I am aware that Mr O'Donnell has been pursuing on behalf of a constituent a case that is related to the issue that he has raised, and I understand his constituent's point. However, the Government does not believe that there is any confusion about the law.

The provisions of the act will come into force on 1 April. They will not apply to existing sequestrations, but will apply only to new sequestrations. The duration of new sequestrations will be shorter, but debtors will pay contributions for up to three years from the date on which the payment plan is agreed. I would be happy to consider any further detailed points that the member wishes to raise with me. However, the Government is not confused.

**The Presiding Officer (Alex Fergusson):** George Foulkes was to ask question 2, but the silence speaks for itself. Cathy Jamieson will therefore ask question 3.

#### Alcohol-related Crime

**3. Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** To ask the Scottish Executive what action it is taking to tackle crime

and antisocial behaviour caused by individuals who are drunk and incapable. (S3O-2818)

For the record, I believe that Mr Foulkes is ill. I had understood that his question had been withdrawn. I apologise if it was not.

**The Presiding Officer:** Thank you for that.

**The Cabinet Secretary for Justice (Kenny MacAskill):** I thank my predecessor Ms Jamieson for correctly identifying that Scotland faces a booze-and-blade culture. We are seeking to build on what has been done to tackle that problem.

The Government is taking further action to tackle alcohol-related crime and antisocial behaviour through our support for the national violence reduction unit's work on targeted and sustained enforcement, our promotion of the Licensing (Scotland) Act 2005, and our support for the cashback for communities scheme, which will offer positive opportunities for young people in every local authority area in Scotland.

The Association of Chief Police Officers in Scotland has established a sub-group to consider the provision of care in police custody. The work of that sub-group will include work with other agencies to identify the most appropriate and effective alternatives to detaining drunk and incapable persons for their own safety.

The Government is also seeking to introduce a polluter-pays approach to ensure that the licensed trade contributes to the costs of dealing with the consequences of alcohol misuse.

**Cathy Jamieson:** I thank the cabinet secretary for his extensive reply and for his support for many of the initiatives that I introduced as Minister for Justice.

In answer to a question that his Scottish National Party colleague Brian Adam asked on 28 February about the future of Albyn house in Aberdeen, the cabinet secretary said that he had visited Albyn house and was impressed by its services. He also agreed that

"it would be a cause for regret if its services were not available."—[*Official Report*, 28 February 2008; c 6479.]

Given that funding for that project has now been slashed by £140,000 as a result of Aberdeen City Council's budget cuts, does the cabinet secretary still believe that the right way to plug the funding gap is through voluntary contributions from the licensed trade, or will he intervene with Aberdeen City Council to ensure that Alcohol Support Ltd can continue to provide that vital service, which he has acknowledged is a model that others should follow?

**Kenny MacAskill:** That is primarily a matter for local decision makers. We want local partners to make decisions on what is best for their

communities. I stand by the position that I took. I visited Albyn house and was impressed by what it provides, and I am keen to see such provision rolled out, particularly in my home city of Edinburgh.

The alcohol industry should consider making voluntary contributions to tackle the problem. It profits from the bar and it is to some extent responsible for the consequences of drunkenness. However, whether it chooses to do so is a matter for it, at present. I can only reiterate that the Government believes that it is essential that those contributions should not simply be voluntary. Licensing boards should be able to seek to ensure that those who profit from the sale of alcohol over the till or across the bar meet some of the costs of the consequences of its abuse. We believe that that will be available next year. It will be up to Aberdeen City Council to take the appropriate action.

**Alasdair Morgan (South of Scotland) (SNP):** Does the cabinet secretary think that alcohol taxation has a role to play in tackling alcohol abuse? If so, does he think that the Chancellor of the Exchequer missed an opportunity in his latest budget?

**Kenny MacAskill:** Absolutely. As the First Minister mentioned today, we clearly need to ensure that we strike the right balance. There is a problem in Scotland with very cheap alcohol—often very high-strength alcohol, such as strong ciders and strong lagers. We need to ensure that we use the fiscal measures that are available. Other countries, such as Australia, have measures by which brewers are incentivised to try to ensure better consequences for society. In Scotland, we need to ensure that we get things right by tackling the cheap ciders and high-strength lagers that fuel the problem.

Equally, we need to recognise that our fine malt whiskies—and, indeed, many of our beers, which are low percentage alcohol by volume—are protected and assisted. The problem in Scotland is not the drink but how we drink it. I believe that Alasdair Morgan is correct that fiscal measures have a role to play. They work in Australia. I am sure that, if Scotland had fiscal autonomy, we could make them work here.

### Summary Prosecutions

**4. Bill Aitken (Glasgow) (Con):** To ask the Scottish Executive, following the implementation of summary justice reforms, how many summary prosecutions it envisages over the next 12 months and what approximate percentage reduction in prosecutions that will represent. (S3O-2758)

**The Lord Advocate (Elish Angiolini):** The summary justice reforms were commenced in

large part on 10 March 2008. A key aim of the reforms is to ensure that those who offend can be dealt with more effectively and expeditiously, which will give victims closure at a much earlier point in time, through the use of direct measures that were approved by the Parliament. That, in turn, will free the courts to tackle those offenders whose behaviour can have a corrosive effect on communities, and to address longer-term offending behaviour.

Precise forecasts are not possible, but the Scottish Government's latest projections are that the number of summary prosecutions may fall from approximately 188,000 in 2006-07 to 156,000, which represents a change of 17 per cent. The impact of the reforms will be closely monitored.

**Bill Aitken:** I am obliged to the Lord Advocate for that answer, but I have a supplementary question. Does she agree that it should be a matter of prosecution policy that, where any offender has been offered a diversion over the period of the preceding 12 months, no further diversion should be offered and the case should proceed to court in the normal manner?

**The Lord Advocate:** Prosecution policy is a matter that, under the terms of the Scotland Act 1998, I and the procurators fiscal must consider independently of other persons. Clearly, we must take into account local facts and circumstances and the particular facts of individual cases, but generally I think that someone who has been the subject of an alternative to prosecution in such circumstances would not—unless it was a de minimis breach—be considered for a further alternative to prosecution. In those circumstances, the person would inevitably find themselves being prosecuted.

### Strathclyde Police (Meetings)

**5. Hugh Henry (Paisley South) (Lab):** To ask the Scottish Executive when it last met the chief constable of Strathclyde Police and what issues were discussed. (S3O-2817)

**The Cabinet Secretary for Justice (Kenny MacAskill):** The Minister for Communities and Sport and I met the chief constable of Strathclyde Police on 19 March to discuss how his force and partners are addressing the problem of domestic violence.

**Hugh Henry:** I hope that, when the cabinet secretary next meets the chief constable, he will talk about recovered or seized assets as cashback for communities. The cabinet secretary will be aware that the Scottish Crime and Drug Enforcement Agency has for some time argued for funding for a forensic accountant to assist it in its work. Can he confirm that funding for that post has

come not through the normal means but from the assets that have been seized from criminals, which I believe should be distributed to the communities that are most affected by drugs and crime? Will he reflect on that decision to rob disadvantaged communities of that cash? Will he fund the post in the way in which all other posts are funded?

**Kenny MacAskill:** Far from robbing from disadvantaged communities, the purpose of the £400,000 that we have given to the Crown Office's civil recovery unit is to help it to strengthen its operations to ensure that we maximise the recovery of such assets from perpetrators of crime and drug dealers. I would have thought that that would be welcomed. That small amount of money has been invested to ensure that even more than the £11.8 million, or whatever has been recouped to date, is taken in the future. We believe that that investment will add to the amount.

This may or may not be of concern to Mr Henry, but I point out that some of the discussions that I have had with Stephen House have been about submissions by him and other officers saying that they want a level of incentivisation. The Government has not precluded that. If Stephen House and others can persuade us that the idea has merit, we will happily consider it. Mr Henry may think that the suggestion is morally abhorrent or wrong, but we believe that if it results in more money being taken from people whom we need to take down so that we have more money to put into the communities that have been disadvantaged and devastated, that can only be a good thing.

**Jamie Hepburn (Central Scotland) (SNP):** The cabinet secretary will be aware that I have written to the chief constable of Strathclyde Police in respect of the law officers passing on a dossier of evidence on allegations pertaining to extraordinary rendition. Last Friday, I met with Strathclyde Police to discuss those matters. Without prejudicing any forthcoming investigation, will the cabinet secretary undertake to ensure that extraordinary rendition is on the agenda for his next meeting with Stephen House?

**Kenny MacAskill:** I cannot comment on any matter that is under investigation. However, I have written to the Foreign and Commonwealth Office and the Secretary of State for Foreign and Commonwealth Affairs. The clear position is that the United States of America has admitted to wrongdoing at various bases. Scotland has not been included in the investigations that were sought by the United Kingdom Government. It appears to us to be appropriate that David Miliband seek assurances from the United States that Scottish airports were not used for rendition flights and that, if they were, he should extract from the Americans an apology and an assurance

that those airports will not henceforth be used for that. We have written to the British Government about that and we expect to receive answers. If those answers appear, I will make them available to the Scottish public, to Jamie Hepburn and, of course, to the chief constable of Strathclyde Police, if events of such significance have occurred in his patch.

**Elaine Smith (Coatbridge and Chryston) (Lab):** I understand that the cabinet secretary will visit my constituency tomorrow to meet, among others, Strathclyde Police and to support the launch of the *Airdrie & Coatbridge Advertiser's* *nae bother* campaign to tackle antisocial behaviour. Does the cabinet secretary agree that antisocial behaviour must be tackled using a multi-agency approach? Can he assure us that the Government will work in partnership with the police, the media, councils and others to ensure that campaigns such as that one, which challenges unacceptable behaviour and acts of wanton vandalism in our communities, are supported fully?

**Kenny MacAskill:** Absolutely—I give Elaine Smith that assurance. Antisocial behaviour and violence in Scotland are multifaceted problems that we must seek to address in a multitude of ways and through a multitude of agencies. That is why I am more than happy to support Strathclyde Police's actions, particularly through its violence reduction unit, and the campaign by the *Airdrie & Coatbridge Advertiser* that Elaine Smith mentioned.

As part of my visit, I will visit Airdrie United Football Club, which has a project to try to divert from crime young men and children who appear to be spiralling out of control in school. I will also visit a school in which a community officer is embedded. That shows that the Government is prepared to work with newspapers, the local authority—in relation to education provision—and the local police. We have a common cause, which is to address an underlying problem. That problem must be tackled and we will work with whomever and whatever necessary to address it.

#### Alloa Sheriff Court

**6. Keith Brown (Ochil) (SNP):** To ask the Scottish Government what progress has been made in upgrading Alloa sheriff court. (S3O-2777)

**The Cabinet Secretary for Justice (Kenny MacAskill):** Work to refurbish and extend Alloa sheriff court has commenced on site and is due to be completed by August 2008.

**Keith Brown:** I thank the cabinet secretary for his actions in identifying quickly resources to deal with the long-standing problem at Alloa sheriff court. The disorderly and sometimes dangerous situations that are reported to have occurred there

were said by some to have been in danger of bringing the justice system in Alloa into disrepute. I agree that the renovations that are being carried out will properly protect procurator fiscal staff, court staff, witnesses, prisoners and all those who attend court, but will the cabinet secretary ensure that the Scottish Court Service ensures that the interests of all those who are affected by the change will be taken into account and that user groups and other users will be consulted during the works?

**Kenny MacAskill:** Absolutely. It is accepted that the project has been slower to start on site than was originally anticipated. That was due to a number of legal title issues in relation to the procurement of the adjacent district court building. The Scottish Court Service and the Government are delighted that Clackmannanshire Council is assisting us in seeking to ensure that the adjacent building can be brought on board so that the court can be expanded and so that we can address the requirements of the sheriff court, which current and past sheriffs have pronounced to be entirely unacceptable not only to those who sit on the shrieval benches but to court staff, procurators fiscal and the citizens who go there to do their duty as jurors or witnesses.

It is a cause for regret that progress has been delayed. Matters are on-going and some business has to be dealt with at Stirling court because of pressures. The outcome will be a much better court, which is suitable for all. All sheriff and jury trials will be able to be held there if necessary. The fiscal's office will be located next door and the citizens advice bureau will remain as a tenant of the Scottish Court Service at its current address. I am more than happy to give the undertaking that the member seeks, which I am sure the Scottish Court Service would give anyway. It is a case of joining up work with the citizens advice bureau and the procurator fiscal to serve the interests of justice in Alloa and Clackmannanshire better.

### Justice Policy (Young People)

**7. Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** To ask the Scottish Executive how it is involving young people in the development of justice policy. (S3O-2850)

**The Cabinet Secretary for Justice (Kenny MacAskill):** As a Government we are committed to listening to young people and involving them in all policy developments that affect them. For example, young people have been involved in designing the cashback brand for the redistribution of proceeds of crime money and the Scottish Youth Parliament's justice convener sits on our antisocial behaviour review external project board, which will also be seeking young people's views on the way forward.

**Jeremy Purvis:** I thank the cabinet secretary for that work and for the position of the Scottish Government. Does he agree that justice policy has the most credibility when young people are involved in developing solutions to youth crime—given that they are the victims more often than not—rather than simply being stereotyped as the perpetrators of such crime? Will he work with Scottish Borders Council on the exciting possibility of establishing a youth justice forum as part of restorative justice provision in the area? I hope that he will also agree to take forward a proposal for a youth justice advisory board to consider not just antisocial behaviour but other areas of justice policy, which could report directly to ministers and send a strong signal to young people throughout Scotland that they are considered part of the solution, not just the problem.

**Kenny MacAskill:** I am not aware of the particular matter to which Jeremy Purvis refers, but I am more than happy to consider it. He makes good points. Although young men might be guilty of a substantial amount of the crime that is perpetrated in our communities, we have to remember that they also tend to form the majority of victims. I have met members of the Scottish Youth Parliament and its justice convener and I have undertaken to meet them again. Earlier this week, I met the Scottish Young Lawyers Association. Young people have to be listened to and treated with respect if we are to promote good behaviour. I am more than happy to undertake to consider such matters.

It is the responsibility of the Government to work with our young people and allow them to be all that they can be. It is the responsibility of the Parliament to remember that the overwhelming majority of our young people are good kids who are a credit to themselves, their families and their communities. We have a responsibility to promote good behaviour as much as to punish bad behaviour.

### Lothian and Borders Police (Meetings)

**8. Christine Grahame (South of Scotland) (SNP):** To ask the Scottish Government when it last held discussions with Lothian and Borders Police and what issues were discussed. (S3O-2785)

**The Cabinet Secretary for Justice (Kenny MacAskill):** I meet Lothian and Borders Police officers on a regular basis to discuss matters of importance to policing, whether through talking to individual officers serving in this building or having regular meetings with the chief constable.

**Christine Grahame:** It has been brought to my attention that eight football teams in Penicuik, involving 140 boys, are very short of funding to support payments for use of pitches and payments

to referees. Will the cabinet secretary ask in discussions with Lothian and Borders Police whether those clubs can access funding from police funding or from the proceeds of crime? If not, how can they access funding for such pursuits, which keep young people active and out of mischief?

**Kenny MacAskill:** I know from experience in my constituency that Lothian and Borders Police is involved in work in conjunction with the City of Edinburgh Council—rather than Scottish Borders Council or Midlothian Council—on the short-sided and five-a-side games that are rolled out regularly in Craigmillar and Niddrie.

Through the cashback for communities scheme, we have ensured that more than £2 million has been injected into the Scottish Football Association, with more money coming in from HBOS and the Coalfields Regeneration Trust, so there is a pot of some £4 million that the SFA will roll out for football for girls, teams from secondary 1, S2 and S3 and short-sided football. The matter might best be addressed through the SFA. I am happy to pass on the contact to the member.

We have also ensured that some £3 million has gone to YouthLink Scotland, so that money can be accessed by groups in local authority areas. The £3 million will be spent throughout the country, but money is designated for particular local authorities.

I am sure that through YouthLink Scotland, the SFA and Lothian and Borders Police we can ensure the outcome that I think the member seeks, which is the provision of outlets for our youngsters. We are all aware that in Scotland the devil finds work for idle hands and it is clear that when good people work with youngsters there can be a significant reduction in the crime rate.

## Rural Affairs and the Environment

### Waste Reduction and Recycling Targets

#### 1. Sarah Boyack (Edinburgh Central) (Lab):

To ask the Scottish Executive what progress has been made on achieving the waste reduction and recycling targets set out in the Cabinet Secretary for Rural Affairs and the Environment's statement to the Parliament on 24 January 2008. (S3O-2803)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Progress continues. The most recent figures from the Scottish Environment Protection Agency, which were published on 11 February, show that Scotland recycled or composted more than 30 per cent of its waste. Earlier this month, I launched our new community recycling sector grant and support scheme. On Tuesday, I launched this year's home composting campaign for Scotland, and yesterday

I chaired the first meeting of our new zero waste think tank.

**Sarah Boyack:** When will the outcome agreements with local authorities on the targets be published? Does the cabinet secretary accept that his decisions have created great uncertainty and serious concern among local authorities about their ability to meet the European Union's waste targets? In the light of his decision to cancel the solution that was developed by local authorities in the Lothians in line with the previous Government's guidelines, will he reimburse those authorities their wasted investment of £2 million, and will he commit to paying the £1.5 million of monthly fines that the *Evening News* predicted will result from his decision?

**Richard Lochhead:** I recently visited Fife Council, on Tuesday. It has an ambitious programme to achieve zero waste to landfill by 2020, which is even more ambitious than the Scottish Government's proposals. The local authorities that I am speaking to are extremely confident that they will make huge progress as a result of their generous financial settlement. Of course, there will be outcome agreements with each local authority in Scotland, which will be published. It is important that the agreements are open and transparent, so that local electorates can hold their councils to account.

The member has a wealth of experience and is aware that the financial situation is challenging. I recall that when she was a minister she presided over a 35 per cent underspend in the waste budget in Scotland, so I am confident that under this Administration our expenditure on tackling waste and promoting recycling will be greater than that of the previous Administration.

#### Rob Gibson (Highlands and Islands) (SNP):

Will the minister discuss with local authorities the benefits of agreeing three or five-year plans to fund charities that produce best practice on recycling and reuse, such as Golspie Recycling and Environmental Action Network and Ross-shire Waste Action Network?

**Richard Lochhead:** The Scottish Government acknowledges the valuable role of the community sector in tackling waste in Scotland. Indeed, we have allocated £2.5 million per year over the next three years from the centrally held zero waste fund to support community operations the length and breadth of Scotland. I have visited a number of initiatives in my constituency. Last Friday, I visited Lochpark Challenge, which recycles timber, and I have visited the Golspie initiative in the Highlands and Islands to which the member referred.

It would not be right for us to micromanage the relationship between local authorities and community initiatives in Scotland, although we

support the work that is carried out. It is only right that when contracts come to an end, local authorities carry out reviews to ascertain whether the contracts provided value. However, local authorities that I have spoken to value the role of the community sectors that are dealing with waste management and recycling, and I hope that they continue to offer support.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** The cabinet secretary did not answer one part of Sarah Boyack's question, so I will ask it again. Will Scottish Borders Council be reimbursed for the money that it has spent on putting forward the waste management strategy that the Government has now turned down?

**Richard Lochhead:** I have offered to meet the local authorities concerned—East Lothian Council, West Lothian Council and Scottish Borders Council—in connection with their former regional waste proposals.

The Government's recent announcement about the energy from waste policy, which dealt with the scale of energy from waste developments in an attempt to ensure that we are not building big white elephants that have to be fed with hundreds of thousands of tonnes of waste every year for the next 25 years or so, has been warmly welcomed by local authorities, community groups and everyone who is interested in protecting Scotland's environment. I would be surprised if the people of the Borders did not also welcome that approach.

### LEADER Funding

**2. Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** To ask the Scottish Executive what criteria were used in determining the allocation of LEADER funding from the Scottish rural development programme to local action groups. (S3O-2807)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Eighty per cent of the funding allocated to LEADER local action groups is formula based. The other 20 per cent is discretionary, and is allocated on the basis of the LAGs' local development strategies.

For the 80 per cent tranche, the allocation is proportionate to an area's share of population on the one hand and surface area on the other. Population accounts for two thirds of the allocation and surface area for one third, thereby advantaging the more sparsely populated areas of Scotland.

The remaining 20 per cent tranche is based exclusively on an independent assessment of the bids received. The assessment criteria can be grouped under four headings: partnership; alignment with the Scottish rural development

programme and other strategies; leverage; and quality and realism.

**Cathie Craigie:** The minister will be aware that many of the local action groups that were awarded funding under the LEADER programme received considerably less than they applied for. For example, the Kelvin valley local action group in my constituency received only £530,000. Does the minister believe that it is wise to increase the number and extent of bids without the funds to cope? Can he advise Parliament who took the decision to increase the number of bids? Does he believe that the funding that has been allocated to local groups will be enough to take the LEADER programmes forward?

**The Presiding Officer:** John Scott. Sorry, Richard Lochhead.

**Richard Lochhead:** Not yet, Presiding Officer [*laughter*]. Not for a few decades, anyway.

**Sarah Boyack (Edinburgh Central) (Lab):** Is there something we should know?

**Richard Lochhead:** I understand why the Kelvin valley local action group is disappointed, given that it bid for a considerably greater sum than the £530,000 that it was awarded. The formula that was adopted is fair and equitable. We have to balance a number of bids that come in from across Scotland, and ensure that they meet the criteria that have been laid down by the Government, which largely reflect the criteria from previous programmes. I hope that those programmes whose bids were successful—even if they did not receive as much as they would have liked—will make a great contribution to bottom-up rural development, which is the purpose of the LEADER programme.

If there are any specific issues in relation to how Kelvin valley's award was decided and calculated, I would be happy to receive a letter from the member and to reply to it with further details.

**The Presiding Officer:** I will try again. John Scott.

**John Scott (Ayr) (Con):** I declare an interest as a farmer and an appellant.

The minister will be aware that the cumbersome appeals process of the rural development programme is causing many farmers concern. The Government's commitment last September to review the appeals system was welcome. However, there is disappointment in the sector that we have heard nothing since. What action will the minister take in that regard and when will he take it?

**Richard Lochhead:** It is a pity that the member did not notice the press release that was issued a month or two ago, which was widely covered in



the agricultural press and gave an update on the situation.

The review group is up and running and is carrying out good work. In a few months' time, we will know the outcome of its investigation into the appeals procedure in Scotland, which has caused widespread concern in our agriculture community. Many complex and difficult issues, including legal issues, need to be addressed.

I assure the member that, after many years of complaints about the system, there is now a Government that is reviewing it.

**Jamie Hepburn (Central Scotland) (SNP):** I have a straightforward question for the cabinet secretary. In light of the situation at Kelvin valley described by Cathie Craigie, would he be willing to take on board further representations for additional funding for the Kelvin valley area?

**Richard Lochhead:** Yes, I would. Other funding streams may be available to that area that we can consider. If Jamie Hepburn or any other member wishes to contact me to put a case for a greater share of public funding to go to that area from existing funding schemes elsewhere, I would be happy to consider it.

#### **Foot-and-mouth Disease (Compensation)**

**3. Ross Finnie (West of Scotland) (LD):** To ask the Scottish Executive on what date farmers can expect to receive their full compensation for last year's outbreak of foot-and-mouth disease. (S3O-2843)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** In respect of the Scottish ewe scheme, £18.8 million was paid to approximately 11,600 producers on 10 December 2007. In addition, around £1.7 million was paid to producers under the sheep welfare scheme between October and December 2007. Both schemes are now closed.

Although the bulk of the money that we announced on 24 October last year was directed towards the sheep sector, all livestock producers in Scotland will benefit from the £1 million that has been allocated to promote and enhance the resilience of the red meat sector.

It is worth reiterating that we believe that moral responsibility for compensation rests with the United Kingdom Government.

**Ross Finnie:** I do not in any way wish to denigrate the efforts of the cabinet secretary to make interim payments, but I point out that I asked him when farmers will receive full compensation and when he will extract from Her Majesty's Government what is due to them. The issue is not about state aid or giving sectoral support—welcome though that is—but about payment of

damages for losses incurred by Scottish farmers as a result of the foot-and-mouth outbreak.

According to Dr Anderson's recent official inquiry, the outbreak was caused by gross negligence and incompetence at the Institute for Animal Health's Pirbright laboratory, whose core funding is provided by the Biotechnology and Biological Sciences Research Council, which in turn is funded by the Department for Innovation, Universities and Skills—known to the cabinet secretary and me as HM Government. When will the cabinet secretary press for payment to be made, not under the guise of state aid but as a straight loss and damage payment? When can Scottish farmers expect to receive it?

**Richard Lochhead:** The Scottish Government agrees entirely with the member's eloquently expressed sentiments. We continue to press the issue with the UK Government. We will not let the issue lie, and we continue to support in any way we can the efforts of Scotland's agricultural communities to secure the compensation from the UK Government that is rightly theirs. I reiterate—and I hope that all members agree—that the moral and political responsibility for the foot-and-mouth outbreak, which had such a damaging economic impact last year, lies with the UK Government. That Government should do the decent thing and provide the compensation that is due to Scotland.

#### **Deer Farming**

**4. Iain Smith (North East Fife) (LD):** To ask the Scottish Executive how it supports and promotes deer farming in Scotland. (S3O-2853)

**The Minister for Environment (Michael Russell):** Funding for support continues to be available through the Scotland rural development programme, for example as processing and marketing grants, rural development contracts and payments under the less favoured area support scheme.

On promotion, in my recent meetings with deer farmers, the deer management groups and the Deer Commission for Scotland, I have discussed the best way they can jointly promote their common product. I am pleased to say that they have plans to do so, including some that involve this very building.

**Iain Smith:** Dear, dear. I am sure that the minister agrees that Scotland's deer farming industry, including Reediehill deer farm at Auchtermuchty and the Scottish Deer Centre near Cupar in my constituency, produces excellent venison, so he will share my disappointment that the venison on sale in my local Tesco comes from New Zealand.

Deer farmers in Scotland feel understandably aggrieved that they are excluded from support that

is available to other farming sectors under the single farm payment. I have corresponded with the minister asking for that to be rectified under article 42(5) of European Council regulation 1782/2003. In his recent reply, the minister indicated that

“in principle it might be possible to make a case under Article 42(5)”.

Indeed, a consultation last year showed overwhelming support for that among the farming industry. However, the minister has now said:

“it is unlikely that there will be sufficient funding to generate new entitlement to the sector.”

When will the minister introduce proposals to end that discrimination against our deer farming industry and allow it to compete fairly in important markets?

**Michael Russell:** I share Iain Smith’s concern. Indeed, at the meeting that I held on 26 February with a number of Scottish deer farmers—including some from his constituency—we discussed possible routes forward. As we are required to ensure that single farm payments in Scotland do not exceed a national ceiling that is set out in European legislation, it would be difficult to find the additional sums that might be required. However, at the meeting, I asked the deer farmers and my officials to work together to calculate exactly what the cost might be and I agreed to meet the deer farmers for further discussions.

The recent European fruit and vegetable reforms created a specific mechanism to enable the funding of new entitlements for the sector, which was previously unsupported. We and the deer farmers recognise that moving from that to ensuring that the resources are available under the restrictions on European funding is difficult, but there is good will on both sides to continue to support the sector and encourage it to grow.

**David Stewart (Highlands and Islands) (Lab):** Will the minister outline the likely effect of the proposed merger of the Deer Commission and Scottish Natural Heritage on the expertise, advice and trust that have built up in the deer farming industry? Will he identify the evidence base that led to the proposal for the merger?

**Michael Russell:** I hope that there will be no diminution of the trust or capabilities of those who are involved. Indeed, I recently held a constructive meeting with members of the Deer Commission to discuss the way forward.

It is obviously necessary to have institutions and organisations that are suitable for a country of 5 million people. That is widely accepted throughout Scotland. We need to ensure that, in merging the two organisations, the Deer Commission’s many skills and benefits, as well as its customer focus, are transferred into SNH not only intact but in such

a way as to benefit SNH. That is what we are trying to do.

### Wildlife Crime

**5. Jim Tolson (Dunfermline West) (LD):** To ask the Scottish Executive when it will publish the results of its wildlife crime review. (S3O-2856)

**The Minister for Environment (Michael Russell):** The thematic review of wildlife crime is being carried out by Her Majesty’s chief inspector of constabulary and HM chief inspector of prosecution in Scotland. Because of the terms of the question, I stress that those inspectors are independent, but I understand that their intention is to publish their report on 16 April.

**Jim Tolson:** I thank the minister for the update on the wildlife crime review. Unfortunately, the review does not go far enough. With a focus on bird poisoning, it fails to address the polluter-pays principle adequately or to respond to the consultation on the enforcement of environmental law in Scotland that my colleague Ross Finnie issued in November 2006. Will the minister consider the wider aspects of wildlife crime? Will he strongly consider working more closely with the network of specialist wildlife crime prosecutors that was set up four years ago to help to secure convictions of the perpetrators of wildlife crime in Scotland?

**Michael Russell:** I am sure that members will not mind me bristling a little at the point of view that the review does not go far enough. The Parliament supported it unanimously, so I presume that Mr Tolson supported it too. If he has changed his mind over the past few months, I require some evidence of why that is necessary.

It is not a review of environmental law; it is a review of wildlife crime. How can any member know whether its recommendations go far enough when they will not be published until 16 April? I hope that members will find—as I hope that I will find, because I have not yet seen the results of the review—that the hard work of both the chief inspectors has borne fruit and that the review makes strong and radical proposals. If Mr Tolson then wants to make proposals about, for example, a review of environmental law, I will be happy to listen to them.

### Household Waste Recycling Targets

**6. Bill Butler (Glasgow Anniesland) (Lab):** To ask the Scottish Executive when it last met representatives of Glasgow City Council to discuss household waste recycling targets. (S3O-2805)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** One of my officials met Glasgow City Council on 29 February to discuss waste management and

recycling. I plan to visit Glasgow shortly and I will require to meet the council leadership.

**Bill Butler:** In last November's budget, Mr Lochhead's colleague the Cabinet Secretary for Finance and Sustainable Growth announced that funding from the strategic waste fund would be absorbed into the main local government settlement. He also stated that funds would be made available for a new zero waste fund. Will the Cabinet Secretary for Rural Affairs and the Environment tell members what percentage of that £154 million fund will be made available to Glasgow City Council between 2008 and 2011? What specific schemes does his Government have in mind that would attract support from that fund to achieve the admirable but somewhat distant ambition of a zero waste society?

**Richard Lochhead:** I recognise the challenges that face Glasgow City Council, which is why I am keen to meet its leaders soon. The zero waste fund amounts to £154 million over the next three years. We are discussing with the Convention of Scottish Local Authorities the best way to allocate £100 million of that to infrastructure projects, and Glasgow will be able to bid for part of that money once we have agreed a concordat with COSLA.

## Fatal Accident Inquiries

**The Presiding Officer (Alex Fergusson):** The next item of business is a debate on S3M-1638, in the name of Frank Mulholland, on fatal accident inquiries. Members might wish to note that a revised section A of the *Business Bulletin* has been produced—the specific revision is that amendment S3M-1638.1, in the name of Margaret Smith, which had previously been selected for debate, has been replaced by amendment S3M-1638.2, also in the name of Margaret Smith, which has been lodged this afternoon and which I have now selected for debate. On that basis, amendment S3M-1638.1 has been withdrawn.

14:55

**The Solicitor General for Scotland (Frank Mulholland):** I welcome the opportunity to open today's debate. On 7 March, the Cabinet Secretary for Justice announced that he and the Lord Advocate had agreed that there should be a review of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. The intention is that the review will ensure that the legislation is fit for purpose for the next 30 years, and that it will improve the work that is done in this hugely important and sensitive area, with due regard for the concerns of bereaved relatives.

The Government has asked the right hon Lord Cullen of Whitekirk, former Lord President of the Court of Session, to carry out the review on its behalf, with a view to reporting to the Lord Advocate and the Cabinet Secretary for Justice within one year of the start of the review with conclusions and recommendations. We are privileged to have a man of Lord Cullen's calibre conducting the review. He has extensive experience of this kind of work, having conducted inquiries into the Dunblane atrocity and the Piper Alpha and Ladbroke Grove disasters. He will bring his wealth of knowledge and experience to the review, and I am sure that I speak for the Parliament in expressing my gratitude to him for agreeing to undertake this important review.

Following the announcement on 7 March, today's debate is an opportunity for members of the Parliament to raise and discuss issues that they are aware of, which I am sure will be of assistance to Lord Cullen when he begins to think about the issues that are necessary for consideration.

It is clear that the time is right for a review of the system of public inquiries into deaths. Although the current system has, on the whole, served Scotland well and indeed has been the subject of favourable comment by the House of Lords sitting in its judicial capacity, it is acknowledged that the

legal framework, processes and societal attitudes have evolved since the introduction of the legislation. For example, the incorporation of the European convention on human rights into our law has been significant in this area. Article 2 concerning the right to life has been the subject of judicial consideration in the recent cases of Emms and Black and Kennedy, and any system of inquiry into deaths must be compatible with the convention.

The review will provide the opportunity to explore alternative procedural and structural arrangements, consider in depth the concerns and wider issues that have been raised from time to time, and enable the delivery of an effective and practical system of judicial inquiry into deaths that is fit for the 21<sup>st</sup> century. The remit of the review, which I will touch on in more detail shortly, was set out on 7 March. The Government, informed by this debate, will work with Lord Cullen to ensure that the key issues are identified.

Before speaking about some of the specific issues that the Government thinks should be addressed, I will say a little about the context of the review. As the Parliament is aware, some work has been completed and more is under way to ensure that the criminal and civil justice systems are modern, efficient and cost effective. Significant developments include Lord Bonomy's review of the High Court; the review of summary justice; Lord Gill's review of the civil court system; and the introduction of the vulnerable witnesses legislation. Lord Cullen's review will form part of a suite of measures to ensure that the Scottish legal system continues to deliver justice in the 21<sup>st</sup> century.

The current system of fatal accident inquiries has, on the whole, worked well. It has provided a well-structured opportunity for the judicial examination of deaths in the public interest. However, the legislation that provides for fatal accident inquiries dates from 1976 and concern has been raised about the continuing suitability of the arrangements. For example, concerns have been raised about delays in fatal accident inquiries, either between the date of death and the start of the inquiry or between the start of the inquiry and the sheriff's determination.

Concerns have also been raised about legal representation for bereaved families and the injured; the status of the sheriff's recommendations; whether fatal accident inquiries are the best method of investigating deaths in specific circumstances, such as deaths in hospital and other health care situations; whether other persons, in addition to sheriffs, should be able to conduct inquiries; whether determinations should be reconsidered if significant new information comes to light; and whether fatal accident inquiries

should be continuous or whether they may be adjourned to allow people to conduct research or obtain further expert opinion.

I am aware that some of those concerns are shared in the Parliament by members of all parties. Recently, the Justice Committee has considered a number of aspects of fatal accident inquiry procedures that have been drawn to its attention and which have caused the committee concern. It is right and proper that the Justice Committee has been exploring the issues. We need a wholesale re-examination of the legislation that considers the matters that concern the Justice Committee but also asks broader questions, such as whether, in certain cases, alternative models of decision-making procedure might provide a more effective inquiry than the current arrangements, and how the system of fatal accident inquiries interacts with other forms of investigation such as inquiries by the Health and Safety Commission.

I have mentioned some of the wide-ranging issues that we would like the review to address. Others include consideration of the categories of mandatory and discretionary inquiries; the framework of procedural rules; the status and function of the application to have an inquiry; whether there is a role for expert assessors to assist the decision maker when the inquiry encompasses issues of technical complexity; and cross-jurisdiction issues—for example, whether a fatal accident inquiry can consider a death or a cluster of deaths that arose from similar circumstances in another jurisdiction. There is clearly much to be done.

The Crown Office and Procurator Fiscal Service has wide experience of investigating sudden, suspicious, unexpected and unexplained deaths. In 2007, officials investigated more than 13,000 deaths. We have taken a number of steps in recent times to review the efficiency and effectiveness of our investigation of deaths. Our practices and processes in such investigations were the subject of a review by the independent inspector of prosecution in Scotland, who highlighted many examples of good practice in our discharge of that important area of work.

We are acutely aware that the death of a loved one is a particularly difficult time for bereaved relatives, who do not necessarily wish the distressing details of a death to be aired in public. It is not appropriate for a public inquiry to be held into every death that the procurator fiscal investigates. A proportion of investigations of deaths will lead to criminal charges, but in the vast majority of cases, investigation will disclose no grounds for criminal charges or a further inquiry by a judge in the public interest.

I hope that the review and today's debate will allow the Parliament an opportunity to consider

how best to serve and pursue the public interest in this vital area of work. The debate is not an appropriate forum for me to comment on the circumstances of specific cases or to explain the decisions that were made in particular investigations. However, I assure the Parliament that the investigation of deaths is treated sensitively and is always subject to thorough examination and the most anxious consideration by Crown counsel.

I endorse and support the review, which is an overdue opportunity to examine carefully the systems that we have in place.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** The Solicitor General for Scotland is opening the debate on the Government's behalf, so will he answer my question on the Government's behalf? What is the Government's timescale for achieving a Scottish legal resolution when service personnel are killed while on active service abroad? When will that be solved under Scots law?

**The Solicitor General for Scotland:** I thank the member for his question, which raises an important point. The matter is reserved, because defence is reserved, so it needs to be considered and worked on with United Kingdom ministers and Government officials. I understand that work is being done to identify a solution for that important and sensitive matter.

I look forward to hearing members' views, which will contribute to the debate and inform the vision of an effective and practical system of public inquiry into deaths in Scotland that is fit for the 21<sup>st</sup> century. I wish Lord Cullen well in his endeavours.

I move,

That the Parliament welcomes the review of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, to be led by Lord Cullen of Whitekirk, which will ensure that Scotland has an effective and practical system of public inquiry into deaths which is fit for the 21st century.

15:06

**Margaret Smith (Edinburgh West) (LD):** I welcome the debate and Lord Cullen's forthcoming review, which will be the first proper review of the legislation on fatal accident inquiries in more than 30 years. I agree that it is vital to ensure that Scotland has a robust and effective system for public inquiry into sudden, unexplained or suspicious deaths and that that system can keep pace with other changes to the country's justice system and with the ECHR. We echo the Solicitor General's thanks to Lord Cullen for undertaking that important work.

Fatal accident inquiries can play a vital role in providing bereaved families with answers at a time of great distress and, in theory, they can provide

for changes to prevent further loss of life, protect against future tragedies and reassure the public after serious incidents. However, as with most systems, a number of concerns are felt about how the FAI system works in practice, so the Liberal Democrats welcome the review under Lord Cullen. Close scrutiny is important not only to improve the system, but to increase public confidence in it.

I will cover some of the grounds for concern, but I begin by focusing on the amendment in my name, which I sincerely hope that MSPs across the parties will feel able to support. I thank the Presiding Officer for allowing me to withdraw my earlier amendment and to lodge an alternative amendment.

Every bereaved family is worthy of our support, assistance and respect, but surely the families of those who have given their lives in the service of our country deserve the right to have the circumstances of their deaths dealt with here in Scotland timeously and reasonably. The 1976 act does not cover deaths that occur overseas. In the past few months, I have highlighted the unacceptable situation whereby grieving families must cope with significant delays as well as long journeys to attend coroners' inquests in the south of England, where the bodies of their loved ones have been repatriated.

I know that the Scottish Government and the UK Government have discussed options. One option might be to amend the 1976 act to allow sheriffs to hold inquiries into the deaths of military personnel who are normally domiciled in Scotland and who die on active service overseas.

My concerns are shared by many in this Parliament and at Westminster and by several Scottish National Party members. In January 2007, Alex Salmond condemned the delay in forces inquests and said that the Government needed

"to take immediate action to rectify this situation now. Many service families are suffering unnecessary delays due to this problem. It is disgraceful that the Government is still not prepared to fulfil their inescapable duty to the families, to those who have made the extreme sacrifice, by ensuring that inquests are completed swiftly".

I agree with the First Minister and I urge the Government that he leads to fulfil its duty to those service personnel and their grieving families in whatever manner it can.

We have heard that the review will take a year, which is understandable, given the subject's complexity and sensitivity. However, we need to address military deaths urgently. As of November 2007, 20 Scottish soldiers had lost their lives in Iraq alone. Since 2001, a total of 253 British servicemen and women have been killed in Afghanistan and Iraq. Under the current

legislation, all their deaths must be investigated by coroners' inquests in England, where their bodies are repatriated. The scale of the loss has meant huge delays in the system, because there are simply not enough staff or resources to complete the large number of inquests. The UK Government has taken steps to address those difficulties.

Only two of the inquests into the deaths of the 20 Scottish soldiers who gave their lives in Iraq were completed within a year. One family had to wait more than four and a half years for answers, and the delays continue to increase as the problem worsens.

**Keith Brown (Ochil) (SNP):** I seek clarification. Margaret Smith has mentioned Scottish soldiers a couple of times, and her amendment mentions both

"personnel, normally domiciled in Scotland"

and "Scottish military personnel". Does she mean that the inquests into the deaths of all personnel who were staying in Scotland while they were serving should be held in Scotland?

**Margaret Smith:** Yes. I included the phrase "normally domiciled in Scotland" to clarify that.

Families who have lost loved ones through service for our country deserve our support and they deserve to know the truth. They should not be compelled to travel many miles from their homes and to wait years for answers; they should be able to see their case investigated by the Scottish legal system. The cabinet secretary and others are aware of my feelings, and I have been working with the non-Executive bills unit to produce a member's bill on this important issue. However, I would be delighted if the Scottish Government—and, if necessary, the UK Government—were to bring forward any required legislation as quickly as possible, which would mean that a member's bill would be unnecessary.

In response to a parliamentary question from me, the cabinet secretary said that he was having on-going discussions

"with the Ministry of Justice, the Ministry of Defence and the Scotland Office on how the investigations into the deaths of Scottish-based service personnel can be dealt with closer to home".

He said that there were

"difficult legal issues which have to be addressed before a solution can be found."—[*Official Report, Written Answers*, 18 February 2008; S3W-9013.]

I accept that the issue is complex and that it may involve changes to the Scotland Act 1998 or other legislation. However, any difficulties that it presents to politicians or bureaucrats are as nothing in comparison with the difficulties that the families face.

The UK Government is supportive of the move to allow FAIs for Scotland-domiciled soldiers, and I have heard positive comments from both Des Browne, the Secretary of State for Defence, and Adam Ingram, the former Minister of State for the Armed Forces, who said that he hoped that the law could be changed to allow FAIs to be held into the deaths of Scottish service personnel who are killed abroad. All MSPs have received today a copy of a letter from Des Browne to Kenny MacAskill, in which he says:

"Addressing these issues"—

first, the fact that FAIs cannot be held for deaths that occur outside Scotland and, secondly, the need for mandatory investigation—

"is of course a matter for Scottish Ministers. The answer is for you to make a commitment to amend Scots Law in a way that can guarantee that Scottish based service families can be assured of mandatory inquiries into overseas operational deaths."

That may be only part of the picture, and I am willing to understand that it is, but at least it shows willingness on the UK Government's part to see action taken by the Scottish Government and the Scottish Parliament. This is, surely, one issue on which the SNP would have the support of the whole chamber in seizing that competence.

As the review is expected to take a year, what is the timetable for action on the issue? How long will it be before Scottish service families can be guaranteed a full and swift investigation, closer to home, into the death of their loved ones? People have raised concerns that that development would in some way open the floodgates for further extensions, or have said that I am calling for FAIs for every Scot who dies abroad. However, that would not necessarily follow if military deaths were to be a separate mandatory category. Coroners' inquests are not held into all overseas deaths, but they cover military deaths. Exemptions to the FAI legislation have already been made for oil rig workers, and I believe that we have a duty to our service personnel to make a further exception for them, even if the system is not opened up to other overseas deaths.

I move to the wider issue of fatal accident inquiries. The Crown Office has issued new guidance and has taken steps to improve training for staff in dealing with bereaved families. That is to be welcomed, but as I said at the beginning of my speech, a number of concerns remain. Many concerns have been raised with the Public Petitions Committee and the justice committees through a petition from Norman Dunning on behalf of Enable. Enable was concerned, rightly, when it found that recommendations that were made as a result of an FAI, about the care of disabled people in hospital, were not being acted on. The fact that the recommendations of FAIs are not binding

means that they are not always implemented. I can imagine nothing worse than seeing one's own painful experience recreated for another family because lessons have not been learned properly from a fatal accident inquiry. The cabinet secretary has questioned whether the Government is best placed to monitor that. My answer is that the Government must do all that it can to learn lessons that could save the lives of others.

It seems reasonable to make use of outside experts to deal with technical issues and of regulatory bodies, when they are available, to enforce recommendations. Setting up a statutory duty to report the matter to the relevant person, who might have the power to take the required action—if such a person can be identified—with statutory duties to follow up that report within a prescribed period of time appears to be a reasonable way forward. That is surely one of the key issues for Lord Cullen's review if the public are to have confidence in the inquiry system.

Clarity is vital at times of distress, and families must be properly informed of how the FAI process works so that they do not feel misled or let down by the system. The fiscal's role as a representative of the public interest has to be made clear, so that families can decide whether they require their own representation; if they do, access to that representation and to legal aid needs to be considered.

Some families may never be consoled by a system that does not apportion blame or guilt in a civil or criminal sense, but which seeks only to find out the facts surrounding a death. Others are often disappointed at the discretionary decisions that are taken regarding whether an FAI should be held in the first place. Given that there are approximately 14,000 sudden deaths each year and only 50 or so FAIs, that is hardly surprising. It is incumbent on the Crown Office to explain its decisions to families, and I believe that it tries its best to do that. However, I know of one constituency case in which a family was keen for an FAI to go ahead, despite the fact that a court case had already taken place and facts had been established.

Sometimes such disappointments hit the headlines, as they did with the decisions that were taken about individuals who had contracted hepatitis C from blood products, or when someone is killed in a road accident. More often than not, however, the families remain anonymous in their grief. I therefore welcome the fact that the review will consider the categories of mandatory and discretionary inquiries.

There are concerns about delays in the current FAI system, and many people are being caused further anxiety by having long waits for answers from FAIs. By November 2007, 30 FAI reports had

been made, 13 of which related to people who had died in 2006, 10 to people who had died in 2005, and seven to people who had died before 2005, including two cases in which the person had died six years earlier, in 2001. I hope that the review will consider whether there should be a set period during which an inquiry can be held.

All that points to the need for the FAI system to be properly resourced. Last year, sheriffs in Glasgow and Dundee called on the Crown Office to devote more resources to the preparation and conduct of FAIs. I hope that Lord Cullen will consider the financial implications of his recommendations.

We owe it to all families who lose a loved one in sudden, unexplained or suspicious circumstances to provide the best fatal accident inquiry system that Scotland can deliver. I hope that Lord Cullen's review will deliver that. We must act now to end the uncertainty, anxiety and delay that the current system is causing to service families in Scotland, and I call upon MSPs from all parties to support them by supporting the amendment in my name.

I move amendment S3M-1638.2, to insert at end:

"considers that there is a pressing need for the Scottish Government to enable inquiries to be held in Scotland into the deaths of military personnel, normally domiciled in Scotland, who are killed in active service overseas, and believes that the Scottish Government should give consideration to all available options, including the holding of fatal accident inquiries on a mandatory basis, so that the families of Scottish military personnel no longer have to suffer from the additional burden of attending coroners' inquests in England."

15:18

**Pauline McNeill (Glasgow Kelvin) (Lab):** I begin by welcoming the review of the legislation governing fatal accident inquiries in Scotland. I particularly welcome the choice of Lord Cullen of Whitekirk to conduct the review. As the Solicitor General said, Lord Cullen's reputation goes before him: he has presided over previous inquiries of major importance to Scotland. I pay tribute to him on behalf of the Labour Party.

The 1976 act that we are reviewing is relatively young for a piece of Scottish legislation, but it is still in need of reform. We have had a limited amount of discussion in the Parliament about the purpose and efficiency of fatal accident inquiries, although a few petitions on specific cases have gone before the justice committees, which other members will address. Clearly we can learn lessons from such cases, but I will deal with the general principles and the areas that need reform, and leave others to talk about specific cases.

First, I will deal with Margaret Smith's amendment, which we will support tonight. She is

right to say that some of the detail needs to be resolved, but Labour in Scotland supports the concept of helping service families by holding hearings in Scotland as long as the same conditions that apply in the English coroners' jurisdiction apply in cases heard in Scotland. Labour fully supports what Margaret Smith is trying to achieve and we acknowledge her work in the area.

In a helpful and sensitive letter that was copied to all MSPs, Des Browne, the Secretary of State for Defence, states that although the current system ensures that, following the death of a Scottish soldier ordinary domiciled in Scotland, their family is entitled to an investigation into the death, it does not deliver the convenience of investigations close to home. That applies to many United Kingdom families.

For cases to be heard in Scotland, two things would need to change. First, the Scottish system does not allow the investigation of deaths abroad, so we do not have the jurisdiction to conduct FAIs into deaths that take place outside Scotland. Secondly, not all fatal accident inquiries are mandatory; unless we changed that, families would not have the guarantee that they have at the moment. Both matters would have to be addressed.

There will be some debate about what legislation needs to be changed. For the record, I will read from Des Browne's letter. He says:

"Addressing these issues is of course a matter for Scottish Ministers. The answer is for you to make a commitment to amend Scots law in a way that can guarantee that Scottish based service families can be assured of mandatory inquiries into overseas operational deaths. If that were to happen then it would be entirely appropriate to repatriate deceased service personnel to Scottish bases once the law has been changed. You will understand, however, that I cannot contemplate changes without your commitment to mandatory investigations."

The view of the Secretary of State for Defence is that we need to change Scots law. Labour members believe that we should make the changes that are necessary to enable such FAIs to proceed in Scotland. It may not be necessary to amend the Scotland Act 1998—we can debate whether that is required. However, coroners' inquiries are part of English law and are a matter for Westminster, whereas FAIs are a matter for us. It is Scots law that bars us from investigating deaths abroad at the moment. I am sure that we will debate the issue further, although it is clear that matters relating to defence are reserved.

The review should be wide ranging and should include consideration of the position of Scots who die in war zones assisting others, including aid workers with Oxfam, Medical Aid for Palestinians or Save the Children, and even construction

workers in combat zones. However, we should amend Scots law first.

We know that the main purpose of fatal accident inquiries is to investigate sudden, unexplained or suspicious deaths. Until something happens, many people are unaware of the investigation role of the procurator fiscal. I hope that at the end of the review that role will remain with the Crown Office. However, many families that have been involved in a fatal accident inquiry think that they should have representation, at least to help them understand the proceedings. It is right that the Cullen review will consider that issue, in which Labour will take a great deal of interest.

It is important that families get justice and that they know how to get answers, if they want them. We know that some families will not want to know the answers, but many will. There is a parallel situation in Scottish courts, because often when watching proceedings families do not understand what is happening. That has led to a demand for legal representation. I do not have a settled view on whether that is the right way forward, but some change must happen to ensure that families feel part of the process and get the answers that they need.

FAIs should continue to take place at the discretion of the Crown, but perhaps families should be able to challenge a decision not to hold an FAI, if there are grounds for doing so. Clear lines must be drawn on the issue of which deaths will be investigated and which will not, because we do not want to open the floodgates. At the moment, between 50 and 70 FAIs are under way in Scotland. It is important for the Cullen review to address the issue of how any expansion in the number of FAIs would be resourced. I presume that that is why the review will consider whether sheriffs should continue to make decisions on FAIs.

The review will also consider whether recommendations by sheriffs should be binding. At this early stage, we are listening to the arguments for and against that proposal—we do not have a clear view on it. However, any FAI should have a clear purpose, and the public interest must always be a consideration.

FAIs should continue not to attribute blame or guilt, except in cases in which such a move would result in criminal proceedings. Moreover, we ought to consider how an FAI's findings should be treated, and acknowledge that a sheriff's findings must be given their place in the system. Although I am not wholly convinced that FAI decisions should be binding, we must ensure that any findings are taken seriously and are given a certain amount of status.



As the Solicitor General has rightly pointed out, a number of reviews on aspects of our legal system are currently under way. As other members will no doubt make clear in relation to FAIs, we in the Labour Party feel that the recurring theme of these reviews and inquiries should be not only that our systems must be made more efficient but that the victims and families are put at the centre. I do not have the impression, for example, that they are central to the review of civil justice—I hope that we will discuss that matter in due course.

It is important that families get justice, that they understand and feel part of the system and that they know when they can and cannot challenge it. I wholly welcome the review and this debate.

15:26

**Bill Aitken (Glasgow) (Con):** This is a useful debate. As members of the Justice Committee will be aware, I was minded to recommend that, as a result of a petition from Norman Dunning on behalf of Enable, we carry out an exercise on fatal accident inquiries. However, after some hesitation, we decided not to proceed. I therefore welcome the Government's decision to have a review under the aegis of Lord Cullen, as it means that we can now move on.

As members have pointed out, the relevant legislation dates from 1976, which is certainly not yesterday. We must recognise that since then there has been movement in a number of directions. The Solicitor General was quite correct to highlight the incorporation of the European convention on human rights, and a plethora of legislation has also been introduced—quite properly, I should add—under the Health and Safety at Work etc Act 1974. In that respect, it would be good if the review considered the need for interaction between the bodies that inquire into accidents.

Although I accept the general point that legislation of some antiquity should be reviewed, I should say in passing that I wish that the Scottish Government would show the same enthusiasm for reviewing certain slightly older legislation, such as the Social Work (Scotland) Act 1968. However, that is a debate for another day.

Members have already set out the debate's central issues, one of the most important of which must be the status of bereaved families at FAIs. Pauline McNeill was quite correct to say that we must consider the question of legal representation. Although those people might not be the victims of crime, they are still the victims of a tragic accident, and many of them go into the courtroom without knowing what will happen or who is who. It might

be useful for them to receive some assistance, if they are unable to find it for themselves.

Another important question is what happens to the findings of an FAI. I am sure that Governments of whatever perspective would want to look at a sheriff's findings to find out whether any lessons can be learned that might obviate the likelihood of similar situations happening. However, although it is sensible to look at the findings, doing so is not compulsory. Perhaps Governments should be required to consider the contents of a sheriff's report, and then it would be up to them whether they acted accordingly.

I turn to Margaret Smith's amendment and the subject of deaths overseas. It is fair to say that there was some discussion of the issue this morning because of a genuine wish to achieve a compromise. I freely acknowledge the work that Margaret Smith has done on the matter over quite some time. We are all concerned about relatives of deceased servicemen having to go down to the south of England to attend an inquest into the death of their loved one, with all the hassle, expense and unnecessary trouble that that might entail, so it is an issue that we require to examine.

I must flag up the fact that, as Margaret Smith acknowledged, her proposal might involve legal difficulties. To some extent, it contradicts the Scotland Act 1998, although I am sure that once Lord Cullen has produced his report, the law officers, in conjunction with Lord Cullen, will be able to find a way round that. At the moment, there might well be an impediment to the adoption of Margaret Smith's suggestion, but we might be able to circumvent it further down the road. That would be no bad thing.

We must also recognise the circumstances in which fatal accident inquiries are utilised in Scotland. Given his previous experience, the Cabinet Secretary for Justice is probably better able than most to advise us that, in many cases, such inquiries do not last long because the evidence is self-evident. Often, we are talking about a tragic incident at work, or the death of a person in custody or under medical care. In the public interest, it is necessary to hold FAIs in such cases, but it is most unusual for them to come up with anything sinister or anything from which significant lessons can be learned.

However, other inquiries are much more complex. The Lord Advocate recognised the difficulties with the present system when an inquiry into the Stockline explosion in the Maryhill area of Glasgow was set up. Although it would have been possible to hold a fatal accident inquiry into that incident, the requirements under the existing legislation would not have been met and entirely appropriate special arrangements had to be made. That issue might need to be examined and I am

sure that it will be in the course of Lord Cullen's inquiry.

The principal issue relates to inquiries into the deaths of servicemen. The location of the coroners' inquests means that a time delay is inevitable. My briefing says that 122 inquests are outstanding. Although not many of those will relate to the deaths of Scottish servicemen, there will be some Scottish cases in the queue. I am sure that most of us would agree that it is quite unreasonable that the relatives of deceased servicemen should have to wait so long for closure. As Margaret Smith properly said, we owe a great debt to the people who lose their lives in the service of their country and to their relatives.

I will be happy for the motion, duly amended by Margaret Smith's amendment, to go through. We will all await the results of Lord Cullen's review with considerable interest. I certainly endorse the view that the review could not be in safer hands. Once it has been completed, I look forward to the matter coming back to the Parliament and the Justice Committee, so that we can determine in which direction we need to go. The fatal accident inquiry system in Scotland has worked well, but that is no reason not to re-examine it, with a view to improving it.

15:34

**Keith Brown (Ochil) (SNP):** The motion welcomes an independent review by a figure of the highest reputation and legal standing to resolve a set of problems that I hope we all agree exists. I will concentrate solely on the holding of FAIs into the overseas deaths of military service personnel, which I raised with the Cabinet Secretary for Justice a few weeks after my election to the Parliament last May.

A number of members have mentioned the difficulties that are encountered by the families of service personnel who were based in Scotland and were killed overseas, but it is worth repeating that we in the Parliament are united in our support of, and our profound sympathy for, soldiers and their families, regardless of the differences that we may have about decisions that their political leaders have taken in sending them into the path of danger. Jeremy Purvis recently arranged a meeting involving veterans and representatives of service organisations, which members from all parties attended. We hope that that meeting will result in the establishment of a cross-party group on veterans' affairs, which may consider the issue that we are debating. The feeling at the meeting seemed to be that that should happen.

As we all know, the difficulties that the system poses for families of service personnel were brought into sharp focus by the deaths in

September 2006 of 14 Royal Air Force personnel from Kinloss, but the system has been a problem ever since the current legislation was introduced.

We are discussing fatal accident inquiries because of the unfairness of a system that means that accidental deaths abroad of Scotland-domiciled service personnel trigger a whole set of legal proceedings that must take place in the south-east of England. Families that are already devastated by the loss of a loved one must travel hundreds of miles to a part of the world that is often unfamiliar to them if they want to attend an inquest. There is also the rather intimidating process of the inquest itself. Those families should be assured that their loss is being properly investigated and that answers are being found. How can they begin the difficult task of moving on from what has happened, with due sympathy for and consideration of their feelings, if they must travel down to Oxfordshire or Wiltshire to undergo such an ordeal?

Delays have been mentioned. Sometimes it can take up to five years to hold an inquest. The old saying that justice delayed is justice denied is relevant. Many families see inquests as part of the justice process—the state is taking account of what has happened and investigating it—and, as the Solicitor General said, legal proceedings can result in some circumstances.

Criticism has been made of the accessibility of justice. There is an old saw about law courts, like the Ritz, being open to all. An FAI is open to everybody, but a person from Scotland must travel down to the south-east of England and wait for four or five years for it to happen.

I will say something about my own experience when I served with the marines. In 1982, a number of Special Air Service and Special Boat Service soldiers died when the helicopter in which they were travelling to South Georgia ditched in the sea. In my troop, the mortar group of 45 Commando, there were a number of accidental deaths—such deaths are now referred to as deaths by friendly fire. Many of the people who were involved were from other parts of the United Kingdom but were firmly domiciled at the marine base in Arbroath. What is true for Scottish soldiers is also true for those who have been moved to bases in Scotland, whose entire family live on the base and who have, to all intents and purposes, made their home in Scotland. The same considerations must apply in such circumstances.

I do not know why such inquiries have not been addressed until now. It seems fairly obvious to me that they should have been. I am not trying to belittle the legal problems that lie in the way—the issues seem to be much more of a minefield than I understood them to be before I became involved.

However, as far as I am aware, they have not been raised before now.

I would hate to think that an element of nit-picking is creeping into the tone of some of the correspondence on the subject. For example, I understand that, since last year, Whitehall officials have changed their position on the mandatory element, which Pauline McNeill mentioned and which has now been clearly enunciated by the Secretary of State for Defence. I hope that better-informed people can shed light on why that is such an issue now.

The public, service personnel and their families will understand perfectly well that we are talking about a complex area that involves two different legal systems in two different countries with different jurisdictions, but they will not understand why we cannot now make progress when both Governments appear to want the same end.

I hope that, given the tenor of today's debate, there will be unanimity in the Parliament and that, as a result, the Scottish Government will be encouraged to act with haste to try to convince the Westminster Government to act, and that people in different parties in the Parliament will do their part by talking to their counterparts at Westminster to ensure that we can act as soon as possible.

Someone who has lost their loved one overseas in a military context will be already distressed without having to wait up to five years to get answers to questions to which answers can often be difficult to find—perhaps of necessity, given that they must be found in a service context, in which secrecy is often important.

Consideration should also be given to the fact that the families may be living cheek by jowl with other service families. Often, the circumstances of such deaths can give rise to all sorts of rumour, division and suspicion. That is exactly the kind of atmosphere that one does not want on a military base.

I am hopeful that our unanimity today will lead to early progress on the issue. I look forward to hearing what other members have to say.

15:40

**Michael McMahon (Hamilton North and Bellshill) (Lab):** When I had the privilege of being convener of the Public Petitions Committee, two of the most harrowing petitions that I encountered, from Enable and from the family of a fatal accident victim, sought amendments to the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976. As others have noted, Enable's petition arose from its concern that an FAI is not mandatory when people die in hospital care and that the outcomes of FAIs are not legally binding. The other petition

arose from the family's desire for fatal accident inquiries to be mandatory in the case of road deaths caused by careless driving.

At the moment, a fatal accident inquiry following a road crash is held only at the discretion of the Lord Advocate and is mandatory only if the driver has died while driving in the course of his or her employment. The driver who caused the accident on the A725 Bellshill bypass in my constituency had travelled from Preston to the accident site in two hours and five minutes. For someone complying with the speed limits, a journey over that distance should take more than three hours and 10 minutes.

The outcome of the subsequent court case led the victim's family to question why it is possible for someone to be tried and convicted for driving with such speed and carelessness that their actions led to the ending of a life yet for that death not even to be acknowledged by the judicial system. How can lessons be learned from road accidents if no inquiry follows them? The family had to come to the Public Petitions Committee to put pressure on the Crown Office into granting an FAI to answer the family's questions because the current system had so obviously failed them.

As Margaret Smith pointed out, Enable lodged its petition primarily to address concerns about the implementation of the recommendations of fatal accident inquiries. It seems an almost incredible set of circumstances that an outcome of an FAI should have no legal force and that the sheriff's determinations and recommendations can be ignored. When such recommendations are made, should there not be some means by which they are monitored to ensure that they are acted on? Should they not be dealt with in an arena in which individuals or charities such as Enable are not required to pursue the implementation of the sheriff's recommendations? Those are fundamental questions, which I hope and am confident that Lord Cullen will address.

I believe that FAIs should be inquisitorial rather than adversarial. They should get at the answers rather than provoke conflict between those asking the questions and those responding, who may be defensive because of the type of questions that are asked. I think that the current arrangements lead to defensive responses. That does not help us to get to the truth of the matter, nor does it help to prevent the situation from happening again.

We certainly need a wide review of the purpose of fatal accident inquiries and the circumstances in which they are held, but there should also be a recognition that families and victims should be at the centre of such inquiries. There will be great merit in Lord Cullen's review if he can consider those issues. It would be worth considering having a presumption in favour of holding a fatal accident

inquiry for all road deaths because of the lessons that can be learned. If the Crown Office is concerned that families may not want an FAI, let the matter be judged on the basis of whether the family has asked for there not to be an FAI. The current presumption against holding an FAI forces families to come to the Public Petitions Committee to get the answers that they rightly seek and to which they are entitled. Would it not be preferable to assume that an FAI should be held unless the family would rather that the issues surrounding the loss of their loved one were not brought into the public domain?

When the committee took up the issues, the previous Lord Advocate stated that families' views are sought on whether there should be a fatal accident inquiry. However, I wonder how proactively that is done and, indeed, why such action is taken at all, given that families' views are not the decisive factor in determining whether an inquiry should take place.

The fundamental question that arose when we considered the petitions was who decides what is in the public interest. Should the Crown Office make that determination, or should those who are affected by the death of a loved one have more input and emphasis than those who seek to judge from their, dare I say it, detached position on the events that led to someone's death? If Lord Cullen's review provides an answer only to that fundamental question, it will have been a worthwhile exercise. From my experience of the demand for and the process of FAIs, and from the information that the committee received, the process has left far too many members of the public dissatisfied with a system that was created for the public and which is supposed to operate in the public interest.

We must put the public at the heart of the system. I am sure that no one in the Crown Office wants to be seen not to do that, but the experience of the committee when we considered the issue was that what happens seems to be the converse of what the system is supposed to achieve. Lord Cullen's review must address that. I am confident that, if he addresses that fundamental question, he will get to the root of the dissatisfaction that people feel with the system.

15:46

**Christine Grahame (South of Scotland) (SNP):** I welcome this extremely interesting debate. The Solicitor General and the Cabinet Secretary for Justice are aware that, along with Margaret Smith and, as it turns out, many other members, I considered venturing into this area of law with a proposal for a member's bill. As many members have said, the system is ripe for review after all these years, because time has moved on.

Fatal accident inquiries are a little-known area of the law to members of the public until they become involved or try to become involved in one. I will refer to two cases with which the Solicitor General is familiar and which raise issues about the need for review. The first case is the death of Stuart Foster. The case raised my awareness of and, consequently, my concerns about the process, the representation for third parties—who are usually the deceased's family—and the delays in decisions on whether an FAI should be held. I can talk about the case in public because there has now been a fatal accident inquiry and because Stuart Foster's parents went public when they were not granted one.

Stuart Foster died on 11 June 2004, aged 28. He had been employed in a bar and, that day, after his work, he continued to drink and drank himself to death. The death certificate said that he died choking on his own vomit and from alcohol poisoning. Because, technically, he was no longer working, a fatal accident inquiry was not mandatory. I took up the case in 2005. I have the pester power of a three-year-old at the sweeties near the cash till, but it was only after a lot of pestering—I personally talked to the Lord Advocate to ask why the case had not moved on—that we got a fatal accident inquiry. That took three years although, from what I have heard today, that was pretty quick compared to the five years that it has taken for some other FAIs to be held.

Issues arose about serving alcohol to someone who was clearly intoxicated. There was a failure to deal with Stuart Foster when he slumped to the floor. Without malice, his colleagues took pictures of him lying there. They must have thought that they were in a wild west movie, because they threw water on him, but the man was unconscious with drink. He was put in the back of a car, from which his girlfriend could not lift him, and he died at some time in the back of that car.

As has been said, the FAI process is a hard journey for parents. However, despite the anguish of sitting through the proceedings, they want to know what happened. I thank the procurator fiscal, who went out on a limb to assist Stuart Foster's parents. She involved them in the processes and told them what was happening, such as that the hearing had been adjourned because they had not been able to get hold of a prime witness. She was with them at the hearing, at which Mr Foster represented himself. I also thank the sheriff, who dealt with them tactfully and sensitively.

Important issues arise, not least of which is the time delay and the deterioration of evidence, particularly eye-witness evidence, which I do not think anyone has mentioned yet. Given that I cannot remember what I did a month ago—that is

nothing to do with increasing senility—I would not be able to remember what happened three years previously in a case in which I had not played a major part but in which I knew something that was crucial evidence, especially if I had been distracted by doing something else.

I turn to the protection of evidence. Closed-circuit television coverage was significant in the case that I mentioned. The police had decided not to prosecute, so we wondered what was going to happen to the CCTV evidence that showed what had happened. It took some time to locate it.

That case told me that many aspects of FAI procedures needed to be reformed. I am glad to hear that access to legal aid is being considered. We understand that financial eligibility tests for access to legal aid pertain in various procedures. We accept the probable cause issue. Reasonableness is the difficult issue. Is it reasonable that, if people pass the tests, the state should give them legal aid?

The second case, which raises different issues of public safety, is the tragic death of Pascal Norris in 2006 from anthrax. Wild speculation followed his death in the Borders. It was put down anecdotally to badgers carrying anthrax; the poisoned stream that ran near his isolated cottage; and his drum making. It brought a whole cloud of fear, panic and suspicion to all the people in the neighbourhood.

I pursued an FAI in that case in the early days to expose the flaws in the processes, because things went wrong. The isolation of premises applied to his house at Black lodge, which was very remote. I went there when it was isolated; it looked like something out of the space age with people in decontamination suits, fencing, police, barricades and goodness knows what. However, his house was not the source of the infection. Pascal Norris had contracted the disease at Smailholm village hall but, to the best of my knowledge, that was not identified as the source for six weeks.

Issues arose about the power of the state to isolate premises. I understand that, under the then public health law, only one premises could be isolated compulsorily. Smailholm village hall was isolated voluntarily. The new Public Health etc (Scotland) Bill, which the Health and Sport Committee has been considering, will deal with that matter.

Mr Norris had gone to drumming lessons and had been playing on drums made from wild goat skins from Africa, which were carrying anthrax spores. Mr Norris had leukaemia, so he was vulnerable. To the best of our knowledge, that is how he died.

The case raises huge issues, such as the importing of products from Africa that may carry

anthrax spores. There are also issues to do with processes. Who was responsible? Did the buck stop with Scottish Borders Council, NHS Borders or the police? The Public Health etc (Scotland) Bill might remedy some of what happened in the case. My colleague Helen Eadie will know that from some of the evidence that the committee has taken.

I welcome the review of FAIs. I welcome the consideration of whether to have an expert assessor to try to accelerate the FAI process or the decision whether to have an FAI in the first place. I do not take Michael McMahon's position that every case in which a road accident fatality is caused by careless driving should involve an FAI. Sometimes, what happened speaks for itself. I dealt with a case where a young man was killed in a road traffic accident and it was obvious that he had run out in front of a car that was not going over the speed limit.

I welcome legal representation for the bereaved and the expansion of legal aid.

I wish to pick up on what Pauline McNeill said about the possibility of appealing against refusals to grant FAIs. It might be difficult to do that, given what the Scotland Act 1998 says, but the idea is worthy of investigation. However, I do not think that that would come under our remit.

15:55

**Helen Eadie (Dunfermline East) (Lab):** Thank you for giving me the opportunity to contribute to this afternoon's debate. Like Pauline McNeill and Michael McMahon, I will support the amendment in the name of Margaret Smith. I congratulate her on the work that she is doing in this important area.

We all feel for bereaved families and care about the distress that is caused to them, no matter the circumstances of the death. We care especially for the bereaved families of servicemen and servicewomen who have to travel to England to attend coroners' inquests. As Pauline McNeill said, Labour will work with the United Kingdom Government in striving to achieve viable alternative arrangements to minimise travel distances at times when families can cope least. I welcome the sensitive and supportive letter from Des Browne, the Secretary of State for Defence, supporting the proposed changes and working with us to achieve the end that everyone in the chamber appears to want.

We will seek to identify how better interaction can be achieved with other forms of investigation, including public inquiries and investigations carried out by bodies such as the Health and Safety Executive. Labour has always been concerned about the number of accidents in the workplace in

Scotland, despite the fact that the UK's health and safety framework is one of the strictest in the world. We need only remember what happened in Patricia Ferguson's constituency.

Labour is committed to investigating further the reasons behind Scotland's accident statistics, and we will challenge any complacency in the workplace. In our manifesto, we made a commitment to secure a more co-operative approach, and we supported the development of the roles of trade union safety representatives in the workplace. I am sure that we shall continue to honour that commitment. Hopefully, we will have the opportunity to ensure that some of that transpires into reality.

We welcome the fact that the law on fatal accident inquiries is to be reviewed for the first time in 30 years. The fact that the review, which will examine ways of making these rarely held inquiries fit for purpose, is to be undertaken by one of the country's most respected legal minds, Lord Cullen, is welcome. The retired Lord Justice General, who is known for, among other things, leading investigations into the Dunblane shooting and the Piper Alpha disaster, is expected to take about a year to conduct it. I hope that the legislation will not take much longer to come into being following the review, as the matter needs to be addressed with some urgency.

I welcome the service improvements that the Solicitor General has outlined and has had completed in the Crown Office.

I note that the review that Lord Cullen will undertake will cover a variety of measures. Of particular concern is the question whether there should be inquiries into all Scots deaths abroad in cases where the body is returned to Scotland and into the deaths of all Scots military personnel, which we support through the amendment. From what I read about the review, I assumed that it would include any death abroad. I would be grateful for any clarification on that this afternoon.

Information on the findings of inquiries over the past eight years is to be found on the Scottish Government website. It makes salutary reading for all of us, and illustrates the range and breadth of issues that sheriffs have had to deal with over the past eight years and more. It is intriguing to see the sheer breadth of issues that they encounter.

As Pauline McNeill and other members have said, resources for the review have not been mentioned, but I presume that they will be given urgent priority. Resources must always match policy. If they do not, the review simply will not happen.

The public perception is that the system neither supports bereaved families nor benefits the public good. Many people feel that the findings of fatal

accident inquiries are often not properly enforced, because of a lack of central monitoring, among other things.

The current system means that inquiries can go on for many years, which is distressing for families. I hope that the review will lead to a system that will allow bereaved families to feel that lessons genuinely get learned and are acted on in a transparent way. At present, all sudden, accidental, unexpected or unexplained deaths are investigated by procurators fiscal, but only a small number—about 60 a year—are scrutinised in detail by a sheriff in a fatal accident inquiry.

We know that campaigners across Scotland have been arguing for some time for changes. Enable, a charity that supports disabled people in the community and which is well known to all MSPs, has long argued that fatal accident inquiries can take too long to organise and that many of the recommendations that they generate are not binding. Norman Dunning of Enable raised concerns over fatal accident inquiries after Enable discovered that recommendations on the care of disabled people in hospital, which were made after the death of one of Enable's clients, were not followed.

As Christine Grahame and Michael McMahon have said, those who have served on the Public Petitions Committee have heard some harrowing cases, which have left a lasting impression on us. Now, many years later, we see that we are able to make a difference, and I hope that the review will make the change that the campaigners have been campaigning for.

We are here to make a difference and we hope that we will make that difference. Hearing some of the cases that have come before the Public Petitions Committee has been an important part of my education in the Scottish Parliament. I think that the case that Michael McMahon spoke about earlier was one of the most distressing cases that we heard about.

A look at the Parliament's website shows that, over the years, many MSPs from all political parties have asked parliamentary questions based on their concerns about fatal accident inquiries.

We must remember that any fatal accident inquiry has a profound impact on those who are involved in it, whether that person is an officer, a law servant, an MSP or a member of the public. For example, as a trade union official, my husband was involved in the inquiry into the Piper Alpha disaster and he cannot now speak of that disaster without a tear coming to his eye, because he is filled with the pain of other people.

The piece of work that will be done is vital. I hope that the review will be thorough and will be completed in a reasonable timescale. I know that

we all care about any untimely deaths, and, above all, those of serving military personnel.

16:02

**Michael Matheson (Falkirk West) (SNP):** I welcome the review and the fact that Lord Cullen has been appointed to undertake it. As many have said, he is an individual with great experience in this field and I wish him well in this undertaking.

Although a review of the 1976 act has been due for some time, when one thinks of the time that it can take to review and reform certain elements of our justice system—when I was on the Justice 1 Committee, we sometimes amended and reformed legislation that was several hundred years old—one can see that the 1976 act is a fairly young piece of legislation. However, I welcome the fact that the growing concern about a number of its provisions that now require to be reformed has been recognised.

The existing statutory grounds for FAIs—death in custody or death in the course of employment—should remain in place, regardless of any other changes or reforms that might take place. There is a possibility that further statutory grounds for an FAI will be created.

I share Keith Brown's concerns about military personnel and I am somewhat surprised that that issue was not addressed earlier. It might be that, as part of the reform of the 1976 act, we should frame any changes so that future changes can be accommodated more rapidly than is the case at the moment; it appears to be a lengthy process. In particular, I hope that an accommodation can be found between the Scottish Government and the Westminster Government in the interests of addressing the concerns of the families of military personnel who have been tragically lost in overseas action.

Families need clarity on the provision of FAIs and who they should turn to when they believe that they have grounds for requesting one. Sadly, in several constituents' cases, I have found some confusion about that. For those of us who have some knowledge of FAIs, it is clear that the matter lies with the Crown Office, but families may be unclear after a trial about what further action they can take to raise concerns and often have little knowledge of how they can pursue a fatal accident inquiry. I hope that Lord Cullen will consider whether to ensure that the Crown proactively informs families when a fatal accident inquiry may be an option, pending its consideration of the case. That would give families greater knowledge and understanding of when they may have the option of pressing for such an inquiry. In my experience, families turn to their elected representatives to lobby on their behalf for a fatal

accident inquiry. That does not indicate a system that is working well.

Other members have suggested changes and I throw on the table an option for reform that is similar to the way in which we deal with issues of parental rights and responsibilities. In such cases, an interested party can petition the sheriff to have a matter considered. Perhaps, when an interested party thinks that they have a legitimate reason for requesting a fatal accident inquiry, they could petition the sheriff. The sheriff could consider their views and those of any other interested parties and whether there are grounds for such an inquiry. Although the Crown might not be so keen on that idea, because there is potential for a sheriff to bind the Crown to undertake an inquiry, it would give families greater clarity, as well as the option of making their case before the sheriff.

I have also experienced concern in my constituency about cases that fall outwith the statutory grounds for an FAI, when the Crown can consider whether it is in the public interest for an FAI to be conducted. I have no doubt that Crown Office staff consider such matters seriously, but the public find it extremely difficult to understand what the Crown takes into account when it balances the public interest in such issues. One of the first cases that I dealt with as an MSP, more than eight years ago, was the tragic death of a young constituent, Kathleen Fitzpatrick, who was killed on Falkirk Road in Bonnybridge after leaving the school bus. She passed round the front of the bus and was, sadly, struck and killed by a heavy goods truck. There were issues, such as whether the local procurator fiscal would undertake a criminal prosecution, which in the end did not happen. The family was left with questions about how such a tragic event could have happened to a child coming home on a school bus that they thought she would be safe using. At no point did the Crown offer the possibility of a fatal accident inquiry. It was only through my representations and those of other elected members that eventually, after about a year and a half, the Crown was persuaded that there was public interest in examining the case of a child who, having come home from school on a local authority school bus, had been knocked down and killed just across from her house. There are lessons that could be learned from that.

**Mike Pringle (Edinburgh South) (LD):** Will Michael Matheson comment on whether we should consider adopting in legislation the system in America, where it is illegal to overtake a school bus at any time?

**The Deputy Presiding Officer (Alasdair Morgan):** That is a bit far away from the subject of fatal accident inquiries.

**Michael Matheson:** It is, but it is an issue that a fatal accident inquiry could consider, and it may be one of its recommendations.

That brings me neatly to the issue of an inquiry's recommendations and the force that they have. The next stage for a family is what happens after the sheriff has conducted an inquiry and made recommendations. I welcome the fact that the standing of the recommendations will be considered.

The provision of FAIs should be extended to allow a fatal accident inquiry when the body of a Scot who has died abroad is returned to Scotland. Such an FAI should not happen automatically, but only if circumstances justify one. For example, if someone dies of a heart attack while they are on holiday in France, I do not think that an FAI is required but, if there are suspicious circumstances, one may be justified. Therefore, I hope that Lord Cullen will recommend that FAI provision should be extended, with the caveat that it should be considered whether an FAI is appropriate when a body is returned to Scotland.

16:10

**Karen Gillon (Clydesdale) (Lab):** I welcome the opportunity to participate in the debate. It is an important one on an issue that affects families and communities the length and breadth of Scotland. There are many occasions when someone dies in unexplained circumstances and the victim's family wants to understand why their loved one died, learn the lessons from that death and ensure that effective steps are taken to reduce the risk of another person dying in similar circumstances.

In my time as an MSP, I have been involved with families who have lost loved ones in various tragic circumstances. In most of those cases, the families wanted prosecutions to be brought or, at least, fatal accident inquiries to be held. The first case is the Transco case, which is particularly well known, especially to the Solicitor General, who prosecuted it successfully, for which I am thankful. The need for a fatal accident inquiry in that case was overtaken by the trial. Over six months, the facts and circumstances of that tragedy were able to be put into the public domain and lessons were, I hope, learned, although that remains to be seen.

The second case is that of William Campbell, a young man who died in a road accident. In that case, the accused pled guilty and the opportunity for the trial to explore the facts was not as full as it could have been. There has been no fatal accident inquiry and the parents still wonder whether the lessons of their son's death have been learned.

I welcome the review, because there are things that need to be improved and changes that need to be made. In any circumstance, we must learn

the lessons of the past and make improvements for the future. A number of key principles should underpin the review. We must place the victim and their family at the heart of the process. Whatever system is developed should not be constrained in its efficacy by a lack of finance. The decision to hold a fatal accident inquiry—or whatever we call it—should not be limited because of insufficient funds, insufficient sheriffs or whatever other constraint could be placed on it. The vested interests of any section of the legal establishment should not be allowed to influence the new system's structure unduly. The timescales that are involved must be reduced so that families' grief and hurt are not unnecessarily extended because of failings in our system to bring about justice for them.

The recommendations that an inquiry makes should not be optional but must be implemented. What is the point of an inquiry making recommendations if their implementation is at the whim of some agency or another? There must also be much greater clarity about the criteria that are used to determine whether an FAI will be held and guarantees that we will not create a two or three-tier system if we have different levels of inquiry.

In my experience, one of the most unsatisfactory areas of the system relates to road deaths. We all understand our own failures, weaknesses and vulnerability on the roads and have all had too close an experience—we all know that there but for the grace of God go we and that it could have been us who caused an accident—so perhaps we err on the side of caution when it comes to prosecutions for, and FAIs into, road deaths. It seems that at the moment one can pick up the paper or switch on the news on an almost weekly basis and there is another life lost. Our cars are getting faster and drivers are getting more daring, and more innocent people are caught up and killed in the turmoil. In far too many cases, prosecution is limited and an FAI is not held, so no lessons can be learned.

I am increasingly convinced that when someone dies on the roads, it should be presumed that a fatal accident inquiry will take place unless it can be clearly and unequivocally demonstrated that that would not be in the public interest. Regarding the case that Michael McMahon outlined, I understand that if the woman who caused the accident had died, a fatal accident inquiry would have been mandatory because she was driving in the course of her work. However, because the victim was an innocent person who was driving home on a journey that she made every night, it was deemed that no fatal accident inquiry should be held.



Too many people are driving too quickly on our roads—too many people are driving on our roads. Too many of our roads have too many holes and too many people are dying. It is only by investigating all these cases in public that we can learn the lessons and take the steps that are needed to ensure that changes are made to roads investment, drivers' attitudes, young people's safety, or—through negotiation with our Westminster colleagues—the law on road safety. As a parent of two boys who travel daily on a school bus, I want to ensure that those children are as safe as possible and that the lessons that are learned from the case that Michael Matheson outlined are taken forward.

I am more than happy to support Margaret Smith's amendment—it is right that change happens. The letter from Des Browne that members all received this morning sets out the position of the UK Government, which has put forward a constructive solution: changing Scots law to allow mandatory inquiries to be held for service personnel who are killed abroad. Perhaps I am just a bit cynical, but I am sure that this time last year, the tricky issue of the Scotland Act 1998 would have been no barrier to the then Scottish National Party justice spokesperson—now our Cabinet Secretary for Justice—calling for legislation to be introduced as a matter of urgency. I am aware, perhaps more than most members, of the constitutional wrangling that surrounds the pursuit of justice where reserved and devolved issues are involved, whether they relate to corporate culpable homicide or, in this case, service personnel who are killed while they are on operational duties overseas.

My position on the issue is as it was on corporate culpable homicide: it is a simple matter of justice that is devolved to this Parliament on which we have a duty to act, and I hope that it can be resolved quickly. I would be grateful if the cabinet secretary could indicate whether he intends to amend Scots law in the manner that is outlined in Des Browne's letter and, if not, his reasons for not taking that forward and the other avenues that he will be able to pursue.

Lord Cullen is, without doubt, a prolific legal person. I am sure that his review will get to the heart of many of these issues, but while he is doing that, people will die in circumstances that are unexplained and tragic. Whatever comes of his review, it must ensure that the families who lose loved ones are satisfied that the process is fair and just. Although such a process cannot bring their loved ones back, they understand that lessons will be learned from their tragedy and that other people might be saved from dying in similar circumstances as a result. I commend the Government for bringing forward the review and we, as Labour members, look forward to working

with it to ensure that the system that comes into place is as effective as possible.

16:19

**Nigel Don (North East Scotland) (SNP):** I will address my remarks—as usual, very late in the debate—to one particular issue that is expected to be considered during the review: the status of recommendations made by a sheriff. I looked at the Government website and was interested to find statistics for 2005 that suggest that there were only 40 fatal accident inquiries in that year—I do not know whether they were all reported on that site—of which only five had recommendations that were reported on the site. If those statistics reflect reality—or, indeed, even if they are indicative—the number of specific recommendations that are made is not huge and, therefore, they could be dealt with through a system without huge expense or great difficulty. We should consider what that system might be.

I am sure that fatal accident inquiries are like every other inquiry that we make in life. We discover that there is a specific issue that relates to the particular event that we are investigating. As sensible human beings, we decide quickly that the event was one of a set of other, wider events and we consider whether a general conclusion can be drawn. It should not be beyond the wit of Government to make it somebody's responsibility to look through the cases—of which there is not a huge number—and decide where there are specific recommendations. They might be recommendations to an industry or even recommendations to a specific business, in the case of a death at work. They might be recommendations to a local roads authority to do something simple such as changing its signage.

It might also be possible for the person to draw a general conclusion, which might be sent to the appropriate industry bodies and circulated to every local authority for consideration by—for example—its roads department. Given the relatively small number of inquiries and recommendations, it should not be terribly difficult to do that. My suggestion does not address the status of recommendations, but it is a simple method of dealing with them in such a way that there is a pretty good chance that they will reach the right people.

As the Solicitor General said, Lord Cullen led the Piper Alpha inquiry, which was held as far back as 1988. I was surprised to discover how long ago it was. The Piper Alpha disaster was a dreadful event in the chemical industry. I guess that I have to declare an interest as I represent the area. One hundred and sixty-seven people died. There were numerous recommendations, one of which was that responsibility for safety should be moved from

the Department of Energy, which was clearly underresourced, to the Health and Safety Executive. I have no doubt that that kind of recommendation is entirely appropriate.

I pay tribute to the industry body Oil and Gas UK, which recently arranged presentations to about 180 young technicians to repeat the lessons that were learned from the Piper Alpha disaster. The body understands the important point that corporate memory fades fast. I remember, in the days when I was a chemical engineer, reading an article by Professor Trevor Kletz, who worked for ICI, as it was in those days, and wrote for our institution's magazine. He pointed out that corporate memory turns over in about 10 years. By and large, the people who are there when something goes bang have moved on 10 years later.

We need to find ways to enshrine the lessons that have been learned from things such as Piper Alpha in such a way that they transcend the failures of corporate memory. I do not have a particular suggestion as to how that might be done, and I acknowledge that it is not easy, but it is one of the big issues. To avoid the major problems that occur in certain areas of industry, we need to ensure that things get into the collective memory, education and conscience. That is important, because otherwise things such as Piper Alpha will be repeated in each generation.

16:24

**Mike Pringle (Edinburgh South) (LD):** Scotland is widely perceived to be a reasonably safe place to live and it is relied on as such. Whatever activity someone takes part in, be it white-water rafting, bungee jumping or simply a day at work, it has been fully risk assessed for any reasonable eventuality. If an accident occurs, we have committed emergency and health care professionals at hand to deal with problems. That comprehensive approach to safety means that when something goes tragically wrong it is often all the more inexplicable, so it is right to have in place a rigorous, reliable and efficient system to assess why the multitude of fallbacks and regulations failed.

Whether the current system meets the standard I have described is at best questionable. Michael McMahon gave us a good example of when families want an FAI and feel that they have been let down because no judicial inquiry has been undertaken. As several members have said, the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act was passed in 1976. Everybody agrees that, 30 years later, it looks old, tired and inefficient. I think that Michael Matheson made the

good point that any future legislation should be flexible.

Angus Robertson MP perhaps summed up the situation best when, on the seventh of this month, he described the system as "beleaguered and backlogged". That statement formed part of his second claim of SNP action on the issue, further to his remarks of June last year, when he said that the new SNP Government had acted to ensure that the Scottish legal system played its part in investigating overseas military deaths.

I am pleased that Frank Mulholland has said that Lord Cullen's new review will report in a year and I agree entirely with Margaret Smith that the issue is extremely complex and that time needs to be taken to get it right, but will the cabinet secretary give us an idea of how soon after the inquiry concludes the Government will take action?

Several pertinent questions need to be asked before we move forward. For example, should the number of mandatory inquiries be greater? Could the system cope with more? Do we supply sufficient information to victims' families? Bill Aitken was right to say that families need more assistance with how to ask for an FAI—with what the system is, where to go and who to ask. Many families seem unaware that if they do not call for an FAI from the outset, they will not have a second chance to do so. For those reasons, I fully support the upcoming review.

I agree with the comments of Frank Mulholland, Margaret Smith and others about Lord Cullen. I am delighted that one of my constituents—a man who is well known in the legal profession, who has significant experience in public inquiries and who is a former Lord Justice General—has agreed to take on the review. I suggest that, for him, retirement has not lasted long. However, it is also important to examine what can be done now to speed up the process, particularly for inquiries into the deaths of service personnel.

Margaret Smith and others have comprehensively covered fatal accident inquiries in the military, so I will not go into the detail, but I offer my support to all those who spoke. Keith Brown made a telling speech that used his personal experience and he brought a personal perspective to the issue.

I regret to introduce slight discord into the debate, but I must ask whether the Scottish Labour Party supports the remarks of Des Browne, the UK Government's Secretary of State for Defence, who has called for strongly worded criticism of the Ministry of Defence to be outlawed from inquests into soldiers' deaths. Surely if an inquiry system is to function in any practical sense, it cannot be censored by any Government, any Government official or any Government minister.

The fact that a senior UK Cabinet minister would suggest anything to the contrary is deeply troubling.

I strongly welcome the inquiry into FAIs and I am delighted that Lord Cullen will lead it. I will support Margaret Smith's amendment at decision time and I suspect that most members will do likewise.

16:29

**John Lamont (Roxburgh and Berwickshire) (Con):** The debate and the review of the law on fatal accident inquiries are welcome. As others have said, Lord Cullen's wealth of experience makes him ideally equipped to conduct the review.

The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act dates back to the year in which I was born—1976. It is appropriate that it should be reviewed now, so that it continues to be fit for purpose in the light of changes to other parts of the justice system. It is also important to note that, despite the fact that about 50 to 70 fatal accident inquiries are held each year, there is still a backlog of cases to be processed. Let us briefly consider the importance of such inquiries.

Fatal accident inquiries are important because they consider the circumstances of deaths that have caused serious public concern. They are held in the public interest. The main function of an FAI is to address public concern and, if appropriate, make recommendations that might prevent such accidents from occurring in the future. However, there are a number of weaknesses in the current system that Christine Grahame, Karen Gillon and others have highlighted.

The first weakness is the status of the recommendations that the sheriff makes at the end of the inquiry. As we have heard, the purpose of a fatal accident inquiry is to establish the time, place and cause of a death when there is public concern about the circumstances of the death. Such inquiries do not attribute blame or guilt in a criminal or a civil sense. The procurator fiscal leads evidence at the inquiry, which is held in the sheriff court. At the conclusion of the inquiry, the sheriff issues a determination that contains findings about the circumstances of the death. The sheriff may make recommendations as to how such deaths may be avoided in the future. Sheriffs make recommendations in about one third of all fatal accident inquiries.

As Margaret Smith, Bill Aitken and others said, a sheriff's recommendations are not legally binding—on the basis, as I understand it, that the circumstances of a particular death may be unique and it may not be appropriate to spread the conclusions across the board. It will be interesting to see what the Cullen review decides on that

point, as I know that many people would like inquiry recommendations to be given a stronger standing in law. I was particularly interested to hear Nigel Don's views on the matter.

The second weakness is the backlog. Making the current system more efficient would, I hope, reduce the backlog. One possibility would be to require inquiries to be completed within a specific time. There can be no doubt that delays are especially difficult for the families of victims. There is also an argument for enabling families to get legal support and representation if it is needed. At the very least, that would give families a better understanding of the process. That point was well made by Pauline McNeill and Michael Matheson. However, I am not sure whether it would make the system any more efficient. Indeed, the process might not be any quicker and I suspect that it would be considerably more expensive.

**Christine Grahame:** Does the member share my concern about the deterioration of evidence when there are delays?

**John Lamont:** Indeed. If things are not dealt with in a timely manner, there is a danger that evidence becomes less good and less reliable. I agree with Christine Grahame's comments on that.

The third weakness, which has attracted considerable comment, relates to Scottish persons who have died overseas, especially soldiers who have died on active service. Margaret Smith and Keith Brown articulated that point well. The current provisions do not allow fatal accident inquiries to be held into the deaths of Scottish soldiers who are killed abroad, even if their bodies are returned directly to Scotland. Scottish soldiers who are killed in action are currently flown back to an airbase in England, which gives rise to a coroner's inquest under the different jurisdictional rules that apply there. Scottish fatalities come within the scope of the coroner's inquest as soon as the bodies arrive on English soil—they are normally repatriated at RAF Brize Norton or RAF Lyneham.

Due to the number of casualties in Afghanistan and Iraq, a backlog of inquests has built up. It is undoubtedly important to consider the grieving families, who do not need the inconvenience and stress of travelling to England to attend a coroner's inquest. It is important that we find a solution that allows inquiries to be held locally to the families of the victims.

The debate has been useful, as it has enabled members to raise a number of important issues. I hope that Lord Cullen will give due consideration to the points that members have raised. We will be happy to support the motion as amended by Margaret Smith.

16:34

**Paul Martin (Glasgow Springburn) (Lab):**

Despite popular belief, we occasionally agree with the Cabinet Secretary for Justice, and the time is right for us to support him in his review of the legislation that governs the fatal accident inquiry process. We also agree with the appointment of Lord Cullen; he is an excellent choice to lead the inquiry and, as many others have said, his reputation speaks volumes. We have no doubt that he will ensure that we continue to deliver justice in the 21<sup>st</sup> century.

Many members have referred to their own experiences of dealing with constituents who have been affected by the procedures that were followed during the FAI process. We have also heard about the public petitions process. Michael McMahon spoke effectively about the case of Mr and Mrs Curran, who made their concerns known through the public petitions process, after the death of their daughter, Gillian. It is important to put on record our appreciation of them for making their case so constructively, and of the Public Petitions Committee for ensuring that their concerns were amplified through the parliamentary process. The proposals to modernise the process that are before us today are a result of their actions.

It is important that Lord Cullen takes evidence from victims' families and considers a number of experiences that have been raised through the public petitions process. Those people's input is vital. He should also acknowledge that families find themselves part of the process through no fault of their own, that they have no specific knowledge and that the evidence they receive can be distressing. It is important to consider how to deal with families. As Pauline McNeill pointed out very clearly, families should get justice and answers through the FAI process.

We have received correspondence from Des Browne about how best to support service families. He sets out a welcome commonsense approach. The Scottish Government should build on that approach by considering how best to legislate to allow for the two main issues that Des Browne raises in his letter.

To paraphrase what Donald Dewar said in 1999, the Parliament is here to provide Scottish solutions for distinct Scottish needs. While we consider the pain that service families endure, the case for legislative change is compelling and right. We call on the Government to take the issue forward, taking into consideration the points that have been raised today.

If there was ever an argument for the UK and Scottish Governments to work together, this is it. That is why we will ensure that we work with the

Government constructively to ensure that the families get the justice they deserve.

Nigel Don raised an effective point and genuine concerns about the monitoring of recommendations. We must recognise that a great deal of resource and time is invested in fatal accident inquiries. The crucial part of the process is in ensuring that lessons have been learned. That is the point that Nigel Don rightly raised. The monitoring of recommendations should play a crucial role in the process and it surprises many of us that more consideration is not given to ensuring that we monitor the recommendations and that they are delivered on.

The purpose of the fatal accident inquiry process is to learn lessons. If we do not monitor the recommendations that come out of an FAI, we do not complete the process. If we want genuinely to monitor recommendations, we cannot escape the fact that resources will be required. We and Lord Cullen will have to consider that issue. As Nigel Don said, resources will be required to ensure that we implement and monitor effectively whatever recommendations Lord Cullen makes at the end of his review.

We welcome the commitment to have the review consider legal representation for families. Michael Matheson spoke effectively on that point. Fatal accident inquiries are complex, and we sometimes underestimate the challenges that families face during the process. Labour members believe that legal representation is a key issue. The current provisions may have been right in 1976, but in 2008 very different arrangements are required. Lord Cullen's findings on legal representation will be crucial.

We are encouraged by today's debate, which has been constructive. I reiterate that we will work closely with the Scottish Government and ensure that it works closely with the Westminster Government, which will be crucial in ensuring that the points that have been made today and the recommendations that Lord Cullen will make are given the priority they deserve.

16:41

**The Cabinet Secretary for Justice (Kenny MacAskill):**

I welcome the spirit in which the debate has taken place and the concordat that the parties reached beforehand on the amendment, which we are happy to support. Discussions are on-going not just in the chamber but, as Mr Martin and other members mentioned, between the Government here and the Government down in London. The attempt to achieve a solution to a shared problem is to be supported.

The chamber has taken a uniform view on some general issues. Members from all parties have

welcomed the appointment of Lord Cullen. We are fortunate to have such an esteemed member of the judiciary take charge of the review. I wish I could claim some credit for the idea but, as is so often the case in matters relating to the law of Scotland, it emanated from the Lord Advocate. The Government is grateful for her suggestion and is pleased that Lord Cullen has accepted the appointment. His appointment shows the importance that we place on the issue. Lord Cullen will bring not just his great stature but a great deal of judicial wisdom and common sense to the matter, as he has to other issues with which he has dealt.

The Solicitor General and others mentioned that the act that we are reviewing is from 1976. That is not particularly old in jurisprudential terms—Mr Aitken referred to the Social Work (Scotland) Act 1968, and Mr Matheson and others mentioned legislation with an even longer history. However, it is appropriate that we review the 1976 act, because our society has changed.

The Solicitor General and many other speakers testified to the fact that the system has served us reasonably well. Clearly, there have been some failures and people have not obtained from the system all that they hoped, expected or were entitled to expect from it. There is nothing fundamentally wrong with the system in Scotland, but we must look at how we can improve it. I am sure that that will be Lord Cullen's approach. I assure members that my officials will give Lord Cullen a note of the points that have been made today and will ensure that he is aware of the tenor of the debate. I am sure that he will consider with interest some of the specific issues that have been raised.

One such issue is the status of sheriffs' recommendations. Because Lord Cullen will address the matter, it is inappropriate for me to be other than circumspect or to do more than outline the current position. As Nigel Don and others indicated, sheriffs make recommendations in about a third of all FAIs. Justice officials maintain a database of recommendations that are made by sheriffs at the conclusion of FAIs. The database includes the name and contact details of the person or body to which the sheriff addressed the recommendations, which permits interested parties to contact that person or body to inquire into how or whether they intend to comply with the recommendations. I am sure that that procedure can be improved, and no doubt Lord Cullen will reflect on the matter.

On the question of representation, interaction will be required with the legal aid system and its interface with members of the public and bereaved families, as Christine Grahame pointed out. Of course, there has been significant progress on that

issue; for example, the Crown has published a brochure on the matter and meetings now take place with the relevant fiscal to address problems.

Michael McMahon highlighted the issue of road traffic deaths. However, as with military deaths, such matters are reserved to Westminster. As Karen Gillon pointed out, I have already made clear to the chamber my views on the various difficulties with the Scotland Act 1998, but the fact is that I can no more deal with certain aspects of road traffic incidents than I can reduce the current drink-driving limit. That interface must be dealt with.

Members have asked whether non-military deaths abroad should be considered in Scotland, and my experience as a defence agent suggests that they should not. If someone dies in suspicious circumstances abroad, the case is much better dealt with by the jurisdiction in which it happened. In my sojourn as a defence agent, I once dealt with a murder that happened outside Scotland—murder is one of the few offences that, if it happens outside Scotland, can still be tried in this country—and I do not think that the interests of justice were best served by such a move. Indeed, it became clear from the evidence that it might have been better for the authorities in the country where the incident took place to have proceeded with the case.

If a foreign tourist falls victim to an incident in this country, there are good reasons why we seek to address it here instead of remitting the case back to their home country. For example, we can deal with the preservation of evidence and the availability of witnesses, which can otherwise become hugely complicated. I understand people's concerns, but the general rule of thumb is that non-military deaths abroad are best dealt with by the jurisdiction in which the incident took place and with which we have reciprocal arrangements.

I want to take some time to address the important issue of military deaths. Like all members, we feel that there should be flexibility in addressing the needs of the bereaved. Although I accept the points that members such as Keith Brown have raised, I make it clear that we do not seek to stand on ceremony in relation to enforcement in such matters. We might be talking about the death of a young soldier or airman whose domicile became Scotland only because he had been based at RAF Kinloss or RM Condor for some time. If that soldier's family lived in east London, for example, they might wish the hearing to take place closer to their home. I will leave that matter for discussions with the UK Government and to Lord Cullen for comment, but I believe that there should be some flexibility to give such families choice. The wife and family of a young serving soldier who died might have moved to be

nearer her parents. As members have made clear, we need to look after the interests of the people who have suffered such loss.

I will give specific legal details in response to the issues raised by Karen Gillon in a moment. First, I should say that, although I wish I could treat the Scotland Act 1998 with as much disdain as people sometimes think I treat it with, the fact is that issues involving defence and international affairs, under which categories military funerals clearly fall, are reserved to Westminster. There should be changes to the reserved status of defence and international affairs—

**Pauline McNeill:** I know that we will have a debate on this matter, but will the cabinet secretary first of all accept and act on the words of the Secretary of State for Defence, who does not feel that the Scotland Act 1998 needs to be amended? If he did, he would have said so in his letter.

**Kenny MacAskill:** The short answer is that we cannot act until we have the flexibility provided by changes to the Scotland Act 1998. We are a creature of that statute and are constrained by its provisions. Members might have reservations about changing that legislation but, as I know from a civil context, we need to address practical issues such as how the Crown Office interacts with Government institutions elsewhere.

For some time, we have been pursuing a solution to the problem of how investigations and inquiries into the deaths on active service overseas of Scotland-based personnel can be dealt with, such that we can remove the additional distress that having to travel south of the border for inquest hearings causes bereaved families. The issue has been under consideration with the UK Government since last year, and I have written to the Secretary of State for Defence, Des Browne, this week to emphasise the urgency that we attach to it and to reiterate our desire to find a solution. That letter was copied to the Lord Chancellor Jack Straw and other Whitehall ministers with an interest in the issue.

As I have said, the chief complication is that the issue of inquiries into military deaths is reserved. The existing Scottish legislation only allows the holding of fatal accident inquiries into deaths that take place within Scotland or on the continental shelf. The existing legislation on coroners permits inquests to be held only within England. Inquests into the deaths of Scotland-based service personnel are triggered because bodies are repatriated by the Ministry of Defence to Royal Air Force airfields in the south of England for operational reasons, and there is no legislative basis for transferring responsibility for investigations to Scotland.

Therefore, there are difficult legal and policy issues that have to be resolved and which will take time to work through. The necessary legislative steps would require to be taken both at Westminster and in the Scottish Parliament, but only after a section 30 order under the Scotland Act 1998 had been made to permit this Parliament to deal with a matter that is currently reserved. Without a section 30 order, we cannot do so.

We have consistently argued for the section 30 route to be followed to address the issue, and the lack of progress at the Whitehall end is the subject of the letter that I sent to the Secretary of State for Defence. Members might have seen Des Browne's reply to my letter, in which he raises two issues. First, FAs cannot be held into deaths that occur outside Scotland. However, as I have said, there is no appetite to investigate all Scottish deaths abroad—military deaths are the only cause of concern, but the Scottish Parliament cannot legislate for those alone because that would cut across the defence reservation. That is why we need a section 30 order and why the Scottish Parliament cannot legislate on the matter by itself.

The second issue relates to the fact that inquests into military deaths abroad are mandatory. The Ministry of Justice is concerned that if inquiries into the deaths of Scotland-based service personnel were held in Scotland, they would not be mandatory. Des Browne says that he cannot contemplate changes until there is a commitment to mandatory investigations. The issue of whether inquiries should be mandatory or discretionary can be discussed further with Whitehall ministers and if a section 30 order is made, it will be for the Scottish Parliament to decide whether such inquiries are to be mandatory or discretionary.

**Karen Gillon:** If the Parliament votes for the amendment in the name of Margaret Smith, which suggests that the holding of FAs into the deaths of Scottish service personnel should be mandatory, would the cabinet secretary be inclined to take forward the necessary legislation?

**Kenny MacAskill:** We have indicated our general support for the idea—that is why we support Margaret Smith's amendment. I would be delighted if we could deal with the issue ourselves but, for that to happen, we would have to be able to deal with defence and international affairs, which are reserved matters. If we had that ability, we could announce the withdrawal of our people from Iraq because we would be able to act without recourse to Westminster. However, we cannot bring our troops home from Iraq—or reduce the drink-driving limit—because such matters are reserved.

**Margaret Smith:** Is it the cabinet secretary's understanding that the UK Government would be

prepared to support the making of a section 30 order on the issue, given that both Governments appear to support the taking of the proposed action? The letter from the Secretary of State for Defence, which we have all seen, makes no mention of the need for such an order. Des Browne makes it clear that he considers the issue to be one for the Scottish Government to take action on. As the cabinet secretary knows from what has been said during the debate, the taking of such action would receive cross-party support in the Parliament.

**Kenny MacAskill:** If Des Browne agrees to the making of a section 30 order, we can begin to make progress; without a section 30 order, it would be ultra vires for us to proceed—the Parliament simply could not take such action. That is the position. As long as defence and international affairs are reserved matters, the Parliament could decide that it wished to bring our troops home from Iraq, but it could not legislate to that effect because to do so would be outwith our competence and our powers. If a section 30 order is not made, we will not be able to proceed, and although we have requested an order, one has not been forthcoming. We have written back to Des Browne, and I am open to meeting him or Jack Straw—or their officials—because I recognise that there is a desire not only in my party and the Government but throughout the chamber to take action. That is why we support the amendment.

I welcome Des Browne's letter, but I cannot agree with him that the matter is for Scottish ministers alone. To be fair to him, I accept that it is not a matter for him alone, either. There must be agreement. However, a section 30 order must be the initial trigger to allow us to have the legislative competence to bring about change.

Further meetings involving officials will take place soon to iron out the problems. Of course, we will have to consider the significant practical difficulties that are involved in carrying out fatal accident inquiries, or variations of them, if the death occurs abroad—particularly the difficulties that relate to the compellability of witnesses and the obtaining of evidence. I know that the Lord Advocate and the Solicitor General have legitimate concerns about those difficulties, and it would undoubtedly take time for appropriate processes to be introduced. There will also be considerable resource implications if investigations into military deaths abroad are to be investigated here—Mr Martin and other members mentioned that. However, the coroners service in England has long experience of such investigations and of dealing with such complications, and I am confident that the issues can be addressed in Scotland. [*Interruption.*]

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

**Kenny MacAskill:** Ministers are acutely aware of the sensitivity of the subject and will continue to press the UK Government in order to find a solution that will ease the position of bereaved families. Movement and legislation north and south of the border will be needed. However, I give members the undertaking that if the Government, as a body politic, is given a section 30 order, it will not seek to impede matters or interfere in any way. The Government and the Parliament cannot act without that order.

Des Browne's openness in spirit and his suggestions must be matched by a contribution from him. Given what has been said in the debate and members' willingness to act, I hope that the consensus that has been reached by all the major parties in the chamber will be replicated between the Government here and that south of the border.

## Parliamentary Bureau Motion

16:57

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of a Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-1646, on the approval of a Scottish statutory instrument.

*Motion moved,*

That the Parliament agrees that the draft Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2008 be approved.—[*Bruce Crawford.*]

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

I suspend the meeting until decision time at 5 o'clock.

16:57

*Meeting suspended.*

17:00

*On resuming—*

## Decision Time

**The Presiding Officer (Alex Fergusson):** There are six questions to be put as a result of today's business. The first question is, that motion S3M-1599, in the name of Bill Aitken, on the Home Detention Curfew Licence (Prescribed Standard Conditions) (No 2) (Scotland) Order 2008 (SSI 2008/125), be agreed to. Are we agreed?

**Members:** No.

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

**For**

Aitken, Bill (Glasgow) (Con)  
 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)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (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)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 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)

#### 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)  
 Crawford, Bruce (Stirling) (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)

**The Presiding Officer:** The result of the division is: For 58, Against 66, Abstentions 0.

*Motion disagreed to.*

**The Presiding Officer:** The next question is, that amendment S3M-1631.1, in the name of Tavish Scott, which seeks to amend motion S3M-1631, in the name of John Swinney, on the Local Government Finance (Scotland) Amendment Order 2008, be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

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)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gordon, Charlie (Glasgow Cathcart) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hume, Jim (South of Scotland) (LD)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Kelly, James (Glasgow Rutherglen) (Lab)  
 Kerr, Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McArthur, Liam (Orkney) (LD)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Elaine (Dumfries) (Lab)  
 O'Donnell, Hugh (Central Scotland) (LD)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Park, John (Mid Scotland and Fife) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stewart, David (Highlands and Islands) (Lab)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Tolson, Jim (Dunfermline West) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Ahmad, Bashir (Glasgow) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)  
 Brownlee, Derek (South of Scotland) (Con)  
 Campbell, Aileen (South of Scotland) (SNP)  
 Carlaw, Jackson (West of Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
 Constance, Angela (Livingston) (SNP)  
 Crawford, Bruce (Stirling) (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)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Annabel (West of Scotland) (Con)  
 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)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kidd, Bill (Glasgow) (SNP)  
 Lamont, John (Roxburgh and Berwickshire) (Con)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Paterson, Gil (West of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Salmond, Alex (Gordon) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 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)  
 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 58, Against 65, Abstentions 1.

*Amendment disagreed to.*

**The Presiding Officer:** The next question is, that motion S3M-1631, in the name of John Swinney, on the Local Government Finance (Scotland) Amendment 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)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 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)  
 Brown, Keith (Ochil) (SNP)  
 Brownlee, Derek (South of Scotland) (Con)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Campbell, Aileen (South of Scotland) (SNP)  
 Carlaw, Jackson (West of Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
 Constance, Angela (Livingston) (SNP)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Don, Nigel (North East Scotland) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 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)  
 Grahame, Christine (South of Scotland) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Christopher (Mid Scotland and Fife) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)

Hepburn, Jamie (Central Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Adam (South of Scotland) (SNP)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Glasgow Rutherglen) (Lab)  
 Kerr, Andy (East Kilbride) (Lab)  
 Kidd, Bill (Glasgow) (SNP)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lamont, John (Roxburgh and Berwickshire) (Con)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Central Fife) (SNP)  
 Mather, Jim (Argyll and Bute) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McMillan, Stuart (West of Scotland) (SNP)  
 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)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Murray, Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Park, John (Mid Scotland and Fife) (Lab)  
 Paterson, Gil (West of Scotland) (SNP)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Salmond, Alex (Gordon) (SNP)  
 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)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stewart, David (Highlands and Islands) (Lab)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### AGAINST

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

#### ABSTENTIONS

Brown, Robert (Glasgow) (LD)  
 Finnie, Ross (West of Scotland) (LD)

Hume, Jim (South of Scotland) (LD)  
 MacDonald, Margo (Lothians) (Ind)  
 McArthur, Liam (Orkney) (LD)  
 McInnes, Alison (North East Scotland) (LD)  
 O'Donnell, Hugh (Central Scotland) (LD)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Tolson, Jim (Dunfermline West) (LD)

**The Presiding Officer:** The result of the division is: For 107, Against 1, Abstentions 16.

*Motion agreed to.*

That the Parliament agrees that the Local Government Finance (Scotland) Amendment Order 2008 be approved.

**The Presiding Officer:** The next question is, that amendment S3M-1638.2, in the name of Margaret Smith, which seeks to amend motion S3M-1638, in the name of Frank Mulholland, on fatal accident inquiries, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The next question is, that motion S3M-1638, in the name of Frank Mulholland, on fatal accident inquiries, as amended, be agreed to.

*Motion, as amended, agreed to.*

*Resolved,*

That the Parliament welcomes the review of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, to be led by Lord Cullen of Whitekirk, which will ensure that Scotland has an effective and practical system of public inquiry into deaths which is fit for the 21st century; considers that there is a pressing need for the Scottish Government to enable inquiries to be held in Scotland into the deaths of military personnel, normally domiciled in Scotland, who are killed in active service overseas, and believes that the Scottish Government should give consideration to all available options, including the holding of fatal accident inquiries on a mandatory basis, so that the families of Scottish military personnel no longer have to suffer from the additional burden of attending coroners' inquests in England."

**The Presiding Officer:** The final question is, that motion S3M-1646, in the name of Bruce Crawford, on the approval of a Scottish statutory instrument, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the draft Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2008 be approved.

## Elgin Bypass

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S3M-1529, in the name of Mary Scanlon, on an Elgin bypass. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament supports the need for a bypass for the city of Elgin; recognises the efforts of Moray Council, Elgin Community Council, the Elgin Bypass Steering Group and many other individuals and groups who have campaigned for this bypass for many years; notes that 26,000 vehicles pass through Elgin on a daily basis; further notes that four successive ministers with responsibility for transport have visited Elgin since the formation of the Parliament, all of whom have been supportive of the proposal; notes that Moray is the base of many world-renowned companies that distribute their produce globally but feel restricted in Elgin where traffic slows considerably; also notes that the Moray 2020 strategy recognised that local transport links needed to be transformed in order to enhance the area and to attract inward investment, government dispersals and growing businesses, and notes the need for bypasses for other towns along the A96 corridor.

17:05

**Mary Scanlon (Highlands and Islands) (Con):** I thank all the members who supported my motion and those who have stayed behind to speak in the debate. I welcome the councillors from Moray Council who are in the public gallery. I know that several more campaigners who were unable to attend are watching the debate on the webcast. I acknowledge the work that was done in the two previous sessions of the Parliament to support an Elgin bypass, particularly by Margaret Ewing in the first session of Parliament and Maureen Macmillan in the second session, both of whom secured members' business debates on the subject. I hope that this debate will be third time lucky for Elgin.

Given the recent visit to Elgin by the Minister for Transport, Infrastructure and Climate Change and that the findings of the strategic transport projects review will be announced in the next few months, the debate is likely to be one of the last chances for members to show their support for an Elgin bypass. Moray Council and the *Northern Scot* have provided excellent briefings that have been passed to most members. Moray Council has been proactive in the campaign for a bypass. For successive administrations, the issue has been a top priority in recent times. I know that councillors, members of Parliament and members of the Scottish Parliament, from all parties and none, have supported the campaign. The *Northern Scot* has always been at the forefront of efforts for a bypass. Its extremely useful briefing highlights the

time for which the campaign has been running and the support that it has received over the years.

I will highlight some of the points in support of a bypass. Elgin is the largest conurbation in Scotland that is between two cities and does not have a bypass. It is the capital of a picturesque constituency, yet commuters face significant delays getting through the city at peak times. That has an adverse effect on the environment, as more fumes are emitted by vehicles slowly winding their way through the narrow roads or sitting idle in traffic jams. Thousands of vehicles pass through Elgin every day. Vehicles are getting larger, which contributes to the delays and queues that people face. It is almost unbelievable that, in 2008, the main trunk road between Aberdeen and Inverness can be blocked by someone unloading their shopping from their car on the West Road in Elgin, or that buses have significant problems leaving the bus station as they try to access the main road.

Moray is home to some of Scotland's most renowned companies, such as Baxters of Fochabers, Johnstons of Elgin and Walkers Shortbread, as well as half of all Scotland's distilleries. Those companies have prospered despite the poor transport links, but their businesses could be significantly improved with better roads in and out of Moray. The airbases at Kinloss and Lossiemouth contribute significantly to Moray's economy. The efficient movement of personnel and material associated with the Royal Air Force bases relies on good road links and would be greatly assisted by an Elgin bypass. The poor trunk road infrastructure is also a negative for inward investment and undoubtedly affects tourism. Pressures also arise from the increasing housing developments in the area.

When people leave Inverness, they see a sign that says it is 110 miles to Aberdeen; that distance would take an hour and a half or an hour and 40 minutes on normal roads or motorways, whereas I certainly cannot get to Aberdeen in much less than two and a half hours. I think that the Cabinet Secretary for Rural Affairs and the Environment, who is the constituency MSP, is nodding in agreement. In the Highlands, we hear a lot about the upgrading of the A9, which I support fully, but we must not forget the need to upgrade the A96.

While he was in opposition, the First Minister, Alex Salmond, pledged his support, along with thousands of others, by signing the petition for the Elgin bypass. I do not think that the Minister for Transport, Infrastructure and Climate Change needs to be reminded of his manifesto commitments, but the Scottish National Party manifesto promised

"key improvements to ... the A96".

I am pleased to offer the minister the opportunity to confirm that pledge, given that no improvement to the A96 could possibly leave out an Elgin bypass or a commitment to a Nairn bypass.

The motion mentions the A96 corridor. Massive developments are planned around Nairn and in the A96 corridor between Nairn and Inverness. We are talking about not hundreds but thousands of houses and, indeed, about new towns and villages. Surely it would be wise to plan the Nairn bypass infrastructure prior to those developments taking place.

Angus Robertson, MP for Moray, said to the transport minister in 2002:

“What we would like to know is whether the Scottish Executive is committed to help deliver an Elgin bypass. We would like to know how long this will take and where an Elgin bypass stands as a priority for the Scottish Executive.”

Those are the very questions that I would like answered today.

17:12

**Peter Peacock (Highlands and Islands) (Lab):**

I congratulate Mary Scanlon on securing the debate. As she said, it follows a succession of similar debates over the years—Margaret Ewing sponsored one, as did my former colleague Maureen Macmillan. As Mary Scanlon also said, part of what lies behind these debates is the well-organised local campaigns that have been run over many years. Those campaigns, notably led by the *Northern Scot* and its previous editor, carry on.

I have lived in Inverness for more than 30 years and have travelled the A96 for most of that time. In my previous job, I covered territory that included Aberdeen, so I was a frequent traveller down that route. I remember travelling through Elgin before the first bypass—or relief road, as it was properly called—was constructed. I remember all the rat runs that people learned. We avoided the traffic jams in the centre of Elgin by going along roads that were not constructed for that purpose. The relief road that was built a number of years ago provided significant relief for the traffic congestion problem, but it was quickly overtaken by the growth in traffic, which continues today and, given current projections, is bound to continue into the future.

The traffic problem in Elgin is chronic and getting worse by the week, month and year. There is no question but that chronic traffic congestion in any town or city impedes the economic growth of the area. The Elgin problem is a complicated mix of through traffic and local traffic. The solution to the problem is complex, too. There are delays to traffic through Elgin, which impedes not just

Elgin's future growth but the growth of the whole A96 corridor. There are also delays to local traffic within Elgin. Congestion reduces the quality of life of the citizens of Elgin and the surrounding area and causes various environmental problems. As Mary Scanlon said, there is cross-party agreement that the current situation requires attention.

The issue is not about the nature of the problem, which we all understand, but about the nature of the answer. Not just a bypass is required, although that is critical; local traffic distribution questions must also be addressed as part of an overall package.

I was a councillor for about 17 years before I came to the Parliament, and I was responsible for council budgets and for building and procuring roads—we were trunk road agents at the time—so I fully appreciate that procuring a road is a very complex process that involves Scottish transport appraisal guidance appraisals, consultants' reports, physical planning, possible public inquiries, detailed options appraisals, detailed design, statutory orders and land assembly questions—which are themselves hugely complex—before it is possible to procure a contractor and start to build. Those things do not happen overnight.

It is important to keep drawing attention to the issue and to keep trying to find the right solution. All that work requires to find a place among competing priorities across the country. As Mary Scanlon said, the A96 has many problems in several places: east of Inverness and towards Culloden; out from there to Inverness airport; towards Nairn, where a bypass is also needed; and east of Elgin.

During the election campaign, the minister's party promised a lot on roads. Notwithstanding that, I will be surprised if the minister says tonight that he will give a full green light to the proposal for an Elgin bypass, with a detailed timetable for its completion. However, I like surprises, and I hope that he might do that. What he could do, at any rate, is make clear his Government's support for the project advancing. He could also make it clear to Moray Council and Transport Scotland that he will help them to finance the work that is required to select a line for the bypass and to do the other work that is necessary to find complementary solutions to the problem in Elgin. On the basis of getting that work advanced significantly, further detailed planning to secure the road can move ahead.

Finding a line for the bypass will not be easy: to the south there are issues with current amenities such as Elgin golf course; to the north the route could impede on statutorily designated areas of land. Without a line for the road, the progress that everybody wants cannot be made. I hope that the

minister will be able to signal tonight that he can make some progress.

There is a clear problem and a clear impediment to growth in and around Elgin. The Government can, I hope, signal that the next stage of important actions can be reached. I trust that the minister will provide that signal tonight.

17:17

**Jamie McGrigor (Highlands and Islands) (Con):** I congratulate Mary Scanlon on securing the debate, which I hope will inform the Minister for Transport, Infrastructure and Climate Change as he prepares to finalise the Scottish Government's strategic transport projects review. I also hope that it will demonstrate to him the cross-party support for a bypass for Elgin and other much-needed transport improvements along the A96 corridor.

Like other members, I pay tribute to all the organisations that have campaigned for the Elgin bypass with such enthusiasm and vigour. As with Robert the Bruce and the spider, they will not give up. As I know from personal experience, Elgin suffers the worst traffic congestion anywhere between Inverness and Aberdeen. It is common sense to conclude that that must act as a deterrent to business investment in the Elgin area. Moray has some of the lowest average weekly earnings in Scotland. Improving the area's transport links is a key part of tackling that by attracting new businesses and employment to the area.

Highlands and Islands Enterprise's valuable study of drivers' perceptions of the A96 highlights the slow-moving agricultural traffic, the lack of overtaking opportunities and stressful journeys. The quality of the route is viewed as a constraint to future economic expansion. The Scottish Government has a duty to respond to those issues without delay. I note that Moray Council's Elgin traffic management document suggests that public transport provision along the A96 route needs to be boosted in conjunction with road improvements. Perhaps the minister will want to address that tonight.

Does the minister agree with almost 90 per cent of the Moray citizens panel that more goods should be transported by rail along the route, rather than by road? What action can he take to support that?

Apart from the economic aspects of the bypass campaign, there are important safety and environmental issues, which other members have spoken about and which add weight to the arguments of local campaigners.

I welcome the fact that, during his visit to Elgin last month, the minister agreed with local

campaigners that improving the area's transport infrastructure is the key to unlocking Moray's economic potential. We are now all looking to the minister to set himself apart from his predecessors by actually delivering the Elgin bypass, and not just delivering lip service to it.

17:20

**Alison McInnes (North East Scotland) (LD):** I thank Mary Scanlon for affording us the opportunity to debate this matter this evening. I apologise that I cannot stay for the whole debate. I add my voice to the call for much-needed improvements on the A96 and state my support for a bypass for Elgin.

Today, the Government published its infrastructure investment plans. However, the only piece of work on the A96 that I could find in the plan is the bypass at Fochabers and Mosstodloch. Residents, businesses and public transport operators along the route will, no doubt, react with disappointment to that news. The minister will say that other schemes are being considered as part of the strategic transport projects review. Although I recognise the need to consider how transport projects fit within the wider context, the fact that the review does not conclude until the summer, at the earliest, leads to uncertainty. Perhaps the minister can give us an assurance that the strategic transport projects review will not be delayed beyond the summer and that the prioritisation of projects will include criteria that ensure that there is a fair geographical spread of investment across Scotland.

The A96 suffers from low average speeds, poor journey time reliability and, of course, a mix of traffic, including quite a lot of slow-moving agricultural traffic. Road safety is often compromised when drivers become frustrated. I urge the Government to develop a programme of improvements that increases safety at accident black spots, provides unambiguous overtaking opportunities and tackles bottlenecks. Elgin is one of those bottlenecks and is in great need of a bypass. That need is something that it shares with other towns along the A96. Keith, Elgin and Nairn would all gain significantly from such infrastructure investment. My colleague Danny Alexander has campaigned vigorously on Nairn's behalf.

The Highlands and Islands strategic transport partnership and the north east of Scotland transport partnership jointly commissioned the A96 corridor study, which led to a series of recommendations for all modes of transport. Flowing from that, a further piece of work was commissioned by HITRANS recently to consider road improvements specifically, including bypasses for those three towns. That objective work is now almost complete, and I believe that it

will give further valuable ammunition to the local campaigns.

I am disappointed that the regional transport partnerships' role in helping to bridge national and local strategies in a coherent way has been a little undermined. It is not too late for the Government to reconsider the value that it places on RTPs.

For local residents in towns along the A96, the congestion, pollution and noise are a real headache. Even crossing the road has become a challenge for elderly residents. Further, the congestion also prohibits the opportunity to introduce more sustainable transport modes, such as cycling and walking within the towns. However, the congestion in those towns is not only causing local problems; it is clear that it is beginning to act as a brake on the economic growth along the whole corridor. The economy of Elgin is more fragile than any of us would like it to be, and I would like to emphasise that good transport links help to build a stronger economy.

It is also worth noting that shorter and more reliable journey times can have benefits for the provision and take-up of bus and coach services, particularly long-distance ones.

I commend the local community, the council and the *Northern Scot* on their persistence, which I am sure will pay off. These bottlenecks are strategic constraints that need to be addressed sooner rather than later, so I urge the minister to bring forward plans to tackle them.

17:23

**Nanette Milne (North East Scotland) (Con):** I congratulate Mary Scanlon on securing the debate. As a North East Scotland MSP, I am particularly pleased that her motion notes the need for bypasses for other towns along the A96 corridor as well.

"We are all paying for the lack of investment in our roads network at the hands of the Labour/Liberal Government".

Those are not my words but those of the First Minister during the Holyrood election campaign in May 2007. During that election, the Scottish National Party pledged to lead a step change to bring our beleaguered transport network into the 21<sup>st</sup> century, including the dualling of the A96 and A90. I hope that that pledge will soon be acted on.

Scottish Conservatives have a long-standing commitment to the dualling of the A96 and a positive record of delivering for the communities that the road serves. For the record, the previous Conservative Government delivered the Huntly, Inverurie and Kintore bypasses, as well as the dualling of the A96 between Aberdeen and Inverurie, as the starting point for the dualling of the road between Aberdeen and Inverness.

Like my Highlands and Islands Conservative colleagues, I support the call for a bypass for the city of Elgin. The recent announcements on progressing the bypasses at Fochabers and Mostodloch are welcome. However, those developments alone, which were already in Transport Scotland's road infrastructure programme prior to last May, do not go far enough to address the dangers of the A96 or the transport infrastructure improvements that are desperately needed by Elgin and the communities along the A96 corridor.

I recently contacted Transport Scotland to find out what timescale the new SNP Government had set out to undertake a study into dualling the A96. Its response stated:

"MTRIPS is undertaking a study into the dualling of the A96 between Inverness and Inverness Airport".

There was no mention of any other dualling studies on the A96. Anyone who regularly uses the road will agree that it is a joke that the main road connecting the two great cities of Aberdeen and Inverness grinds to a halt at the bottleneck at the Inveramsay bridge, north of Inverurie. That situation will soon get even worse, with the instalment of another two sets of traffic lights in Keith, solely for the access to the new Tesco store in the town.

As I said, the recent announcements on the Fochabers and Mostodloch bypasses are welcome. However, welcome as those are for the Moray communities, they expose the greater need for the community of Keith to have a bypass. In fact, just glancing at a map of the north-east, what shows up starkly is that only the communities of Keith, Elgin and Nairn are without bypasses. Just over a year ago, prior to the election, I lodged a motion calling on the previous Scottish Executive to reinstate plans for a Keith bypass. I was pleased that my motion attracted cross-party support, including that of fellow North East Scotland MSP Maureen Watt. Scottish Conservatives would like the SNP Government to right the wrongs of the previous Lib Dem-Labour Scottish Executive and reinstate the plans for a Keith bypass that were proposed by the previous Conservative Government.

I hope that when he responds, the Minister for Transport, Infrastructure and Climate Change will be able to announce that he will start the process to support a bypass for Elgin and instruct Transport Scotland to undertake a study into the dualling of the A96. I hope that he will, at the very least, agree to meet me and other local representatives in Keith to discuss the reinstatement of the plans for a Keith bypass as a transport priority for the north-east of Scotland.

17:27

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** I add my thanks to Mary Scanlon for lodging the motion and giving members a fourth opportunity since 2002 to engage in a debate about a bypass for Elgin. I thank all members for their contributions to the debate. I have at my elbow Richard Lochhead, the Cabinet Secretary for Rural Affairs and the Environment, who lives in Elgin and is the local member. Members can be sure that although protocols prevent his direct participation in the debate, his regular attendance at the Elgin bypass steering group and his engagement on the issue show that he shares their concerns.

It is opportune to debate this subject in the year in which I look forward to receiving the results of the strategic transport projects review, which, as all members must know by now, will shape our transport investment plans for 2012 to 2022. The review will produce a plan that is not determined by geographical fairness but which addresses the needs of different parts of Scotland. Each part of Scotland has needs and future investment will be needs-driven, which is the correct way to proceed.

As other members have mentioned, I recently visited Moray, where I benefited from a presentation by Moray Council on the traffic problems affecting Elgin. I had the opportunity to meet and have discussions with the Elgin bypass action group. In a private capacity, I am a regular visitor to Elgin, as I live within a short distance of the city.

On the subject of Nairn, members can be confident that the local member, Fergus Ewing, is in regular contact with me and that I am entirely aware of the issues there.

The local member with Inveramsay bridge in his constituency occasionally draws to my attention the need to address that issue. I am well aware of the issues that affect people right along the A96 corridor and of the need to respond to them.

No transport minister could be ignorant of the local aspirations to solve the problems in Elgin town centre. Such steadfast, cross-party campaigning over a significant period deserves a response. I acknowledge Peter Peacock's extremely well made point that it is not simply about the bypass. The council needs to work with any upgrading in the trunk road network to ensure that local roads make their contribution. I engaged with the council on that important point during my visit. I know that a study by Moray Council in 2003 concluded that a bypass for strategic traffic would not be the appropriate short-term solution for Elgin because much of the traffic was local. Mr Peacock developed that point. However, events have moved forward. Moray Council commissioned

consulting engineers to develop a transport model for Elgin that would inform a fresh STAG appraisal. That new STAG report identified three potential route options but, unfortunately, shows that all three routes offer relatively poor value. I have just been made aware that the cost benefit outcomes are in the range of 0.50 to 0.53, which would mean that we would not get our money back for the investment.

I understand that Moray Council has taken the position that the bypass options should be allocated to the council's medium-term delivery programme, as they are not the whole answer. Nonetheless, and despite the disappointing benefit cost ratios for the options in the council's report, my officials in Transport Scotland have been in touch with Moray Council to request a copy of the new STAG report so that we can consider it alongside other information and evidence that will help us to identify the future investment priorities for the A96 corridor. One of the things that encouraged me when I spoke to the council and campaigners was that there is considerable interest in developers who want to develop in Elgin contributing. That gives us some insight into the ways in which we can close the gap that there appears to be in the current STAG appraisal.

**Peter Peacock:** I understand the technical points that the minister is making about the STAG appraisal. Earlier in his speech, he mentioned that the future investment priorities for Scotland will be based on need, and I understand that point too. However, do opportunities as well as needs feature in his considerations? There is an area of Scotland in which there are huge economic opportunities, but we require investment to exploit them.

**Stewart Stevenson:** I absolutely accept what Peter Peacock says. That is precisely the point. The economic hot spot of Scotland is in Inverness and extends east along the Moray Firth to Elgin. We have to capture and make the best of the potential there. It is not just about roads. Reference has been made to rail, and we want to get an hourly service on the route. As a Government, we have increased the money that is available for improving cycling and supporting walking.

All those are issues that we wish to consider in relation to Elgin and the A96 corridor. We will resolve the tension between longer-distance traffic and local traffic by the STPR process, and will identify how we can improve journey times and increase the reliability of public and private transport. There is great access to the area, but we need to discover the right way to proceed. We are fortunate in having considerable resources ready that help us to understand how we might



proceed. The work that has been done over a considerable period has been worth while.

Many communities would benefit from improvements in Elgin; it is not simply a local issue. We are looking at a 10-year programme, and I expect that that will include projects that relate to the A96, although we have not as yet finalised which ones to take forward.

We are looking to have a significant number of projects in that period, and we also have a planned programme of 40 major projects in the period to 2012, so we are not simply standing still. I hope that Mr McGrigor will have noticed that we have included the Newtongary to Adamston climbing lane in 2004—which was under the previous Administration—and the Coachford climbing lane in 2005. There has been some investment, which has made some contribution. However, the major project is the Fochabers to Mosstodloch bypass during 2010-11. We have to deliver the projects that are in the queue. One aspect of transport is that we need a portfolio of projects to ensure that we do not lose a sense of pace.

Mr Peacock said that he would not be surprised if I did not announce a start on the Elgin bypass today, and I do not want to disappoint him. The right time for that work is in the context of the STPR. We expect to start engaging with stakeholders in local communities over the summer. I have given many answers in response to parliamentary questions and correspondence: the STPR is the best way of making progress and building our new investment programme for the 10-year period.

We are deploying Scotland's resources for the benefit of people throughout Scotland and we are committed to doing that in a way that is equitable for the whole of Scotland. That means recognising the needs in every part of Scotland.

*Meeting closed at 17:36.*



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