

# **MEETING OF THE PARLIAMENT**

Wednesday 10 June 2009

Session 3

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## Scottish Parliament

*Wednesday 10 June 2009*

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

### Time for Reflection

**The Presiding Officer (Alex Fergusson):** As always on a Wednesday, the first item of business is time for reflection. I am very pleased to say that our time for reflection leader this afternoon is the Right Reverend Brian Smith, the Bishop of Edinburgh.

**The Right Rev Brian Smith (Bishop of Edinburgh):** Today's date, 10 June, has many associations. On this date, Lewis Carroll wrote to Tom Taylor to ask for advice on his "proposed fairy tale". He was unhappy with the title he was considering—"Alice's Adventures Under Ground"—as it sounded like a textbook on mining. He then moved to adopt the title we know.

Musing today on what might have been brings up two quite interesting Scottish resonances. Today, we might have been remembering St Margaret of Scotland, were it not for a decision a few years ago to transfer her feast day to November. Secondly, noting that today is known as white rose day, it being the birthday of the Old Pretender, we can muse on what might have been had the Jacobite campaigns of 1715 and 1745 succeeded.

In our personal lives we often muse on what might have been—"If only ...". At the General Assembly of the Church of Scotland last month, at which I was pleased to be a guest, a speaker reminded us of the remark,

"We judge ourselves by what we have the potential to do; others judge us by what we have actually done."

The issue of what might have been can come up when we reflect on our mistakes and on what might have been had we not acted in a silly way.

However, that is only one side of the story. Even when acting well, we can still be haunted by the memory of the good things that we had to neglect so that the good things that we chose could come about.

It is tempting to believe that, in life, the difficult choices that we are faced with are between the good and the bad, and between right and wrong. We can be faced with such choices but, if they were all that we faced, life would be relatively uncomplicated. Given a normal moral sensitivity, we have, more often than not, to choose between one good and another good and, in achieving one good thing, we look back with regret at what might

have been had we decided otherwise. In selecting one good thing, we were constrained to neglect another.

That is, of course, a major theme in the life of the late Sir Isaiah Berlin who remarked:

"The need to choose, to sacrifice some ultimate values to others, turns out to be a permanent characteristic of the human predicament."

It is good, in the year of his centenary, to remember that. And so it is that I say, with Isaiah Berlin in mind this year, that the ability to acknowledge the real worth of the many things that one chooses not to do may be a sure sign of sound judgment and an informed conscience, concerning the moral contours within which our life is lived.

## Business Motion

14:04

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-4330, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Sexual Offences (Scotland) Bill.

*Motion moved,*

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

Groups 1 to 5: 35 minutes

Groups 6 to 9: 55 minutes

Groups 10 to 13: 1 hour 10 minutes.—[*Bruce Crawford.*]

*Motion agreed to.*

## Agriculture and Food (Government Support)

**The Presiding Officer (Alex Fergusson):** The next item of business is a statement by Richard Lochhead on a thriving rural Scotland: the future role of Government support to agriculture and food. The cabinet secretary will take questions at the end of his statement, which will last for 15 minutes, so there should be no interventions or interruptions during it.

14:05

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Our countryside is special, as are the farmers and crofters who care for it and work the land to produce a range of public benefits. In the past few months alone, I have spoken to hill farmers on Mull and in Speyside, crofters on Lewis, and farmers in Fife and the Borders, to give just a few examples. Those people are the lifeblood of our nation. The Government's purpose of sustainable economic growth is vital to our rural areas, especially in these difficult economic times. Today, I am announcing the Government's position on three interrelated agriculture policy issues.

First, the less favoured area support scheme aims to deliver economic, social and environmental benefits that depend on active land management in the hills. LFASS expires in December, so we have to decide on successor arrangements.

Secondly, we now have the report on the independent review of the Scotland rural development programme by Peter Cook. The SRDP delivers support for a range of activities, from capital investment for businesses to environmental and community projects. Today, the Government is publishing Peter Cook's report and our position on his recommendations. I thank him for doing a tremendous job in a short timescale.

Finally, there is the recent common agricultural policy health check. Some parts of the health check are closely linked to LFASS and the SRDP, and we agreed with stakeholders that we would consider those issues at the same time.

The Government's vision for agriculture is based on optimising the use of Scotland's natural assets to produce food, other goods and services, and public benefits for which it is right that society should pay. Those assets include not just the land, but our world-renowned landscape, our rich biodiversity and our wealth in soil carbon and renewable energy sources. Therefore, the principles on which the package is based are optimisation of use of natural resources in

Scotland; provision of public support for public goods, particularly social and environmental public goods; use of public money as effectively as possible to deliver the desired outcomes for our nation, while relying on farmers and crofters to produce for the market; and preparation of Scotland for the longer term. Most observers agree that, in all likelihood, the common agricultural policy will, after 2013, look very different from today's CAP.

The first part of the package concerns the future of livestock farming on the hills. Many people have highlighted the serious situation that is faced by beef and sheep farming on our hills. Livestock numbers are falling, and land abandonment is a reality in some areas. There is, of course, a complex set of issues. For instance, Peter Cook has said that hill farming matters more for community and environmental reasons than it does for food production, and that the fall in lamb production in the north and west since 2004 could be replaced by an increase of only 3 per cent in production elsewhere in Scotland. Moreover, farmers have told me that a reduction in flock size is not necessarily always a bad thing if performance improves.

However, it is recognised throughout Parliament that hill farming faces unique challenges. A Mull farmer told me how he expresses his stocking rate not in sheep per hectare, but in hectares per sheep. The costs of transport to and from islands and remote communities cannot be ignored. We need to strike a balance in addressing that difficult issue: we need to help businesses through the short term and offer investment support for the longer term. Both elements are vital to our getting farm businesses on to a solid footing for the future.

As we are all aware, there has been lively debate among stakeholders on support for the hills and how it should be funded. In our consultation on the health check, we received 50 responses and dozens of different suggestions. Perhaps the only consensus among stakeholders is that there is no easy answer to the difficult challenge that exists.

In taking our decision, the Government has paid attention to two key factors: our ability to target the different measures and the speed with which they can make a difference. Some people suggested new support for the hills through the land managers options part of the SRDP, but because of European rules, new LMOs cannot benefit farmers' bank accounts until mid-2011 at the earliest. The Government and, I am sure, Parliament wish to see action sooner. Therefore, we have decided on a staged approach, subject to approval from Europe.

First, we will make an immediate increase in LFASS payments for 2009 for the fragile and very

fragile land categories. That increase of 19 per cent will mean, for example, an extra £1,300 for the average sheep producer in the Highlands, or an extra £1,600 for a beef producer in Orkney.

From next year onwards, the current LFASS will be replaced by a revised version—LFASS 2010. There will be three main changes. The first will be a further increase in payment rates in the fragile and very fragile areas, giving a total of a 38 per cent increase compared with 2008. The main beneficiaries will be sheep producers in the most vulnerable areas. We will also strengthen the link between payment levels and hill farming activity by updating the statistics on which payments are based. Finally, there will be reinforced rules to determine active farming, so that payments are focused on those who are genuinely active. We will consult stakeholders on precisely how to do that; it could, for example, include rules on stocking density and lambing rates.

Together, those steps should deliver £15 million of extra support over the next two years to active farmers in the fragile and very fragile regions. We will fund that partly from unspent money in LFASS, which has been caused by the decline in applications, and partly by linking payments to active farming. The remainder will be funded from increased European funding, which has been brought about by the weaker pound. We intend to deliver the extra support without reducing the budget elsewhere in the SRDP. To be clear: from now on, payments will be linked more closely to active farming. All those who are involved, including members, have told me that that is the right thing to do.

In addition, we will maintain the £20 million Scottish beef calf scheme, which is funded through the current top-slicing of single farm payments. However, after much consideration, I have for several reasons decided against any further top-slicing of SFPs under article 68. First, support can be delivered more quickly in the way that I have described. Furthermore, European Union rules limit how we can spend article 68 money, which makes it a bit more difficult to target. Ultimately, the most we can do via article 68 is redistribute 10 per cent of the single farm payment. However, the single farm payment needs to be reconsidered. That is an issue to which I will return.

The first steps that I have described will deliver short-term assistance to hill farming faster than any other tool, but I am also announcing two further stages. First, we will review the role of the land managers options in the SRDP. LMOs provide easy-to-access support for small-scale activities, such as small environmental schemes and minor investments. Peter Cook says that

although the overall balance of the SRDP is right, there is, nonetheless, a gap—the absence of an entry-level agri-environment measure through which farmers who have not previously participated in environmental schemes can test the water. The Government accepts that recommendation, so we will, with stakeholders, consider the agri-environment measures in the SRDP—specifically, the role that LMOs can play in supporting grazing in the hills.

I am also open to the possibility of there being differential limits for LMOs on hill farms. European Union rules give the European Commission up to six months to approve any changes. We will therefore submit changes to the Commission in time for implementation in 2011. Following the abolition of set aside, we will also examine the role of LMOs in preserving any environmental benefits that might be lost as a result of that change.

Those short and medium-term changes will deliver substantial extra support for our most vulnerable producers, and supplement the many other ways in which Government supports the sector. For instance, for the sheep sector alone, we fund monitor farms and we support Quality Meat Scotland and its sheep strategy. We have also funded bluetongue vaccinations and a £3 million pilot project on electronic identification for sheep. Furthermore, we are working hard to resist the current sheep EID proposals.

However, there is a longer-term issue, which forms the final part of the livestock package. Farmers in Scotland receive more than £430 million each year through the single farm payment. The payments are based on support that was received in a reference period, which means that any link between the size of the payment and the farmer's economic need or the public benefits that he delivers is at best accidental and at worst non-existent. A quick analysis illustrates the case for change. At parish level, the highest payments in Scotland average £650 per hectare, and the lowest payment is £3 per hectare. At individual field level, the highest payment in Scotland is £3,950 per hectare, whereas the lowest is 6p—not £6, but 6p—per hectare. That situation is clearly unsustainable. Stakeholders agree and EU Commissioner Mariann Fischer Boel signalled only last week that she thinks the same. Until the health check, we had no choice but to keep our current system until 2013. The health check has provided the chance to revisit our system and to make changes voluntarily, if we wish, before they are forced on us later. We must seize the opportunity, and give serious scrutiny to how we use public money to support farming in Scotland, including distribution among sectors and regions.

I have therefore asked a leading figure in Scotland's rural sector to chair an immediate

inquiry reviewing farm support in Scotland. That review will examine how the public money that we spend—more than £0.5 billion a year—contributes to the national outcomes that we have set for Scotland, and how it supports the Scottish Government's vision for a new contract between society and our farmers and crofters to support natural resource productivity with maximum impact and minimum bureaucracy. The inquiry will look especially at the single farm payment and make recommendations on whether we should use the option to revise our system. It will report by next spring, with an interim report in December. I am delighted to announce that Brian Pack, who is the former chief executive of ANM Group Ltd and is present in the gallery today, has agreed to carry out that vital task on behalf of the people of Scotland and this vital industry.

I have said many times that there is no magic bullet for solving the problems of hill farming in Scotland. There are complex issues involved. In helping a sector that is in genuine need, we must beware of inadvertently damaging other parts of the industry. Farming has its own side of the bargain to keep—it is not the Government's job to tell farmers how many sheep and cattle to keep or how to produce for the market. Against that difficult background, the package that I have described combines the quickest short-term benefit for hill farms with the most effective approach to support in the longer term. We will discuss these issues urgently with stakeholders.

Aside from the issue of hill farming, Peter Cook concluded that the overall balance of the SRDP is correct, but he made recommendations to refocus the programme in order to make it more effective. I can therefore announce further changes. First, to help attract new blood into the industry, we will introduce extra support for new entrants. We were the first Administration to introduce new-entrant support but—as Peter Cook acknowledges—European rules and the economic climate have limited that support's impact, which we accept. We will therefore use new flexibility to introduce an establishment grant of up to 75 per cent of the existing support for interest payments, bringing the maximum support for any new entrant up to €70,000.

We will increase support for slurry-handling projects from 40 per cent to 50 per cent or more for young farmers. That support will be of benefit to the pig and dairy sectors, and to farmers in nitrate-vulnerable zones in particular, and will be worth £5,000 on a £50,000 slurry-handling project.

Subject to the necessary approvals, we will increase the limit on renewable energy diversification projects from €200,000 to €500,000. Along with higher support rates for forestry, which we have already submitted for approval, that will



help towards meeting our ambitious climate change targets.

Of course, the SRDP is not just for land managers but for all our rural communities. We will increase support for community projects from 50 per cent grant aid to 90 per cent grant aid, so that more communities throughout Scotland will benefit.

Many of the changes are subject to approval from Europe, but they show that the Government is listening to stakeholders and to Peter Cook. They will help the SRDP to meet the needs of rural Scotland even more effectively in the future.

As well as refocusing the content of the SRDP, we have taken a serious look at how it operates. Understandably, Peter Cook's review has concentrated on the rural priorities scheme. He acknowledges that uptake of rural priorities money has been very high in its first year, compared with previous schemes. In the four rounds, we have approved nearly £125 million for 1,800 projects throughout rural Scotland. In the same timescale, the previous rural stewardship scheme approved only £18 million for fewer than 500 cases. As Peter Cook says:

"... the potential level of funding for individual projects greatly exceeds anything under previous schemes."

This week, David Green of Cairngorm national park said in the press that the SRDP

"has made a real difference to the national park including the viability of those businesses".

However, there have been problems. Because of delays in Europe, implementation of this complex and ambitious programme was rushed. Some things should have been done differently and mistakes were made, which I acknowledge, but the crucial question is about how we move forward.

Many of the people who were interviewed by Peter Cook see the benefits of the computerised approach and are impressed by the breadth and range of available options. We agree with him that the existing system should be improved rather than replaced. We will reduce bureaucracy and streamline the system by making the first stage of the two-stage process optional. The first stage—the so-called statement of intent—was introduced because stakeholders asked for early feedback on their application, but the strong message now is that that should be optional, which we accept.

We will make it easier for smaller applications—under £10,000—by ensuring that applicants need only provide essential data, rather than the detailed outcome plan that is currently asked for.

As recommended by the earlier McRobbie report on the forestry sector, we will approve non-contentious forestry projects on an on-going basis.

There will also be better support for applicants for whom the approval process's being online is a problem. We will provide access to broadband through our regional offices and, where possible, more locally. Help will be available in completing applications not just through better introductory guidance, but through the support of a member of the Scottish Government's staff or its partners. The customer service desk will be strengthened and other measures will be taken. Support through LEADER will be made available for businesses to establish a broadband connection. On the scale of grants, we will ensure that any grants of more than £250,000 are approved only if they meet the strictest criteria and our national outcomes.

The uptake of rural priorities shows that a massive amount has been achieved in a short time, to rural Scotland's benefit. However, improvements are needed, and the changes that I have announced will deliver them.

The Government has announced today a substantial package that will shape farm support in the years ahead in order to deliver food production and food security, a healthy environment, landscape and biodiversity, and flourishing rural communities throughout our nation. I commend my statement to Parliament.

**The Presiding Officer:** The cabinet secretary will now take questions on the issues that were raised in his statement. As I have said, we have about 30 minutes for questions, after which I must move to the next item of business.

**Sarah Boyack (Edinburgh Central) (Lab):** I would normally start by thanking the cabinet secretary for an advance copy of his statement, but we had considerably less than an hour to read his statement and the 55-page Cook report. It would have helped to have received at least the Cook report earlier, as it contains much useful detail, so we reserve our position until we have had a chance to study that report in detail.

I welcome the fact that the minister appears to have responded to some of our criticisms about support for hill sheep farmers, entrant farmers and the SRDP system's many bureaucratic failures. However, the regional proposal assessment committees are still shrouded in mystery. We are disappointed that the cabinet secretary has failed to dump the discredited online applications system. Does he not accept that that disadvantages farmers and crofters in our most fragile areas?

Overall, does the cabinet secretary see that his statement is a missed opportunity? We do not understand why he has yet again kicked into touch the big issues which we all know about and have known about, such as land managers options and single farm payments. We wish Brian Pack well,

but does the cabinet secretary not see that he is just kicking the issues into the long grass again rather than making decisions and providing certainty?

How sustainable are the cabinet secretary's new funding proposals? Funding appears to come from underspends and currency fluctuations. Who are the losers in the package? The statement suggests that everybody is winning, but that cannot be the case. Some people have lost in the past and it is clear that some will lose in the future.

The statement relies on the EU's being able to approve all the measures. What discussions has the cabinet secretary had about the proposals that he has presented? How confident is he that Brussels will approve all the proposals?

**Richard Lochhead:** I scanned the media from the past few months for coverage of the debate, in which many people in rural Scotland have engaged, but I found it difficult to locate any Labour Party comment. I concluded that Labour was reserving its position so that it could oppose anything that the Government said.

I will address Sarah Boyack's points. The SRDP is a success. I know that she meant rural priorities and not the whole SRDP, but even rural priorities has funded 1,800 projects throughout Scotland and has offered funding of up to £125 million in its first few months of operation. Peter Cook acknowledged that in his report. The evidence from many people who spoke to him was that much of the rural priorities scheme is working well.

However, we acknowledge that mistakes were made. The previous Administration designed the SRDP and left it in the current Administration's in-tray. No one had tested how the previous scheme could be put into practice, so we had to make decisions. I accept that perhaps some wrong and rushed decisions were taken, but the alternative was to delay the SRDP's implementation for another six months to a year. If that had happened, Sarah Boyack would have criticised me in the chamber for delaying the programme for a second year. Nothing that the Government could have done would have kept the Labour Party happy.

Sarah Boyack suggested dumping the online system. I have announced significant measures to improve accessibility for a number of people who feel that they cannot access rural priorities adequately because of the online process. Peter Cook did not recommend dumping the online system. He said that a dumping of the online system was the last thing that the people to whom he spoke wanted, because they had just got used to it and learned how to make it work. They did not want to have another steep learning curve.

The programme is big, ambitious and innovative. The previous Administration designed it and we have put huge effort and resource into making it work. If mistakes have been made, they will be rectified and we will improve the system.

Sarah Boyack referred to the funding situation. The funding is available. She asked who the losers are. She and other members have asked the Government to ensure that the losers are the inactive people who have destocked their operations in recent years. Under the LFASS proposals that we have announced today, the losers will be people who have become inactive and who have destocked. Their portion of the resource will go to people who are active and who are committed to the industry's future. Therefore, I can assure the member both that the funding will be available and that the only losers will be those who have chosen to destock and reduce their commitment to the future of the livestock sector in Scotland.

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

I thank the cabinet secretary for the advance copy of his statement. I welcome the 19 per cent increase in LFASS payments to fragile and very fragile areas. I also welcome Brian Pack's appointment to look into the future of support distribution. In addition, I welcome the fact that the cabinet secretary will not invoke article 68 to further top-slice single farm payments. I also welcome the fact that future recipients of the funding will need to be deemed to be actively farming. I further welcome the extra money for new entrants and I note his intention to deliver an entry-level scheme. I congratulate him on finding £15 million from exchange-rate benefits and unused money within the LFASS scheme.

Will the cabinet secretary define clearly for Parliament where the fragile areas are that will benefit from the extra payments? How will he sustain the additional funding package if the pound strengthens significantly against the euro? How much will the support to sheep and cattle producers cost? Can that be broken down to a per-head basis? How much extra funding will actually go into the new entrants scheme? Finally, how will the measures that he has announced support food security in Scotland and the United Kingdom?

**Richard Lochhead:** I thank John Scott for his constructive comments. I agree with him that one of the biggest issues is the future of single farm payments. We all agree that the fact that such payments are currently based on 2002-03 activity levels is unsustainable, which is why we have asked Brian Pack to consider that issue.

The areas that will benefit from the new LFASS will be the existing fragile and very fragile areas as defined under the current LFASS. We received a variety of submissions from stakeholders. John Scott will be aware that there is no magic bullet and no easy answer for such an extremely complex issue. Therefore, we have taken the best route available to us—which will also deliver the quickest benefit—by sticking with the fragile and very fragile categories that exist under LFASS, which will target resources at the north-west of Scotland and the islands, where much of the concern about the future of livestock has been expressed.

I remind members that the Scotland rural development programme already has a £10 million budget line for new entrants. As I have explained, there are reasons why the number of applicants to that scheme was a lot smaller than might have been hoped for, but that resource is available for the new new entrants scheme that I have announced today, which we hope will attract more applicants. As we have said all along about all budget headings under the SRDP, we need continually to reprofile spending because the programme is largely demand led. We will keep a close eye on that resource.

John Scott's final point was about food security. The thrust of today's announcement is aimed at ensuring that we have a sustainable livestock and agriculture sector in Scotland. I believe that that is the key to ensuring Scotland's food security and to maintaining our nation's capacity to produce food.

**The Presiding Officer:** After Liam McArthur's question, we will come to open questions.

**Liam McArthur (Orkney) (LD):** I thank the cabinet secretary for the advance copy of his statement. I also record my thanks to Peter Cook, who consulted widely—including Jim Hume and me—to produce a thorough report. As Sarah Boyack does, I look forward to considering his report more fully over the coming days. His efforts have also enabled the cabinet secretary to extricate himself from a hole by announcing a number of positive proposals this afternoon.

I welcome the cabinet secretary's decision to abandon further use of article 68 to redistribute funds. As he has conceded, his proposal would have done enormous damage while doing little to address the problems that it was intended to resolve. I also congratulate the cabinet secretary on the proposed changes that will link LFASS payments for fragile and very fragile areas more firmly to activity.

Like John Scott, I wonder what effect there will be on the budget that is at the cabinet secretary's disposal if the pound recovers against the euro during 2009-10. Will the cabinet secretary clarify

whether he intends to take advantage of further Commission latitude to allow single farm payments and LFASS payments to be made by the end of this year?

I, too, welcome the announcement about the appointment of Brian Pack to undertake the review of the SFP. However, the cabinet secretary referred to the dangers of "inadvertently damaging other parts of the industry" in seeking to help hill farmers. Will he clarify what he believes are the principal risks in that respect?

Finally, does the cabinet secretary accept that, despite what he has said this afternoon, there are farmers and crofters in Orkney and other rural communities who will still be unable to complete applications online and, therefore, to access the vital funds?

**Richard Lochhead:** I thank Liam McArthur for his constructive questions and response to the statement. I look forward to the many parliamentary questions that he will no doubt lodge in due course, once he has read Peter Cook's report.

I have every reason to be confident that funding will be available until we have the outcome of the single farm payments review. A new less favoured area support scheme will be introduced at the same time. The whole Parliament will accept that it makes sense for us to examine in the round the future of agricultural support, either in 2013 or before then. As long as LFASS 2010 is in place, funding will be made available for that.

I cannot predict exchange rates—all that I know is that, at the moment, thanks to the weak pound and the strong euro, funds are available for us to call down for the measures that I have announced today for the coming years.

I made the point that the implementation of article 68 could have caused inadvertent damage to other parts of the farming sector in Scotland. I did so because, over the past year or two, there has been much volatility in the sector. If we decided to implement top-slicing, we could not be certain about the impact that that would have on sectors that would have to give up a slice of the single farm payment.

Liam McArthur raised the issue of online access. I have outlined a number of measures that are aimed at the constituents to whom Liam McArthur referred. There will be dedicated Scottish Government staff to help applicants through the process. Staff cannot make applications on applicants' behalf—the audit process would not allow that—but the more help we can give, the more accessible the process will be to those who do not find online access easy. Dedicated terminals will be made available in regional offices and other measures will be taken to make the

process easier for smaller applications, especially those for less than £10,000, which will not have to go through the whole process, as they do currently.

**The Presiding Officer:** We come to open questions. Time is limited, so it will be strictly one question per member.

**Maureen Watt (North East Scotland) (SNP):** I welcome the cabinet secretary's statement and congratulate Brian Pack on his appointment. Brian Pack and I have had a number of robust discussions over the years. He is regarded as one of the brightest brains in the industry, and I look forward to the outcome of his inquiry.

I am sure that the cabinet secretary agrees that new entrants to farming are vital to the sector's long-term future. Will the forthcoming inquiry give careful consideration to the needs of new entrants in any reform of single farm payments and seek to build on the improvements that the Scottish Government has put in place to support new entrants?

**Richard Lochhead:** I hope that Brian Pack will look at the wider issues to which the member refers, as they are directly related to how we will use farming support in Scotland in the years ahead. We must make efforts to attract new blood into the sector. Interestingly, in his report Peter Cook was sceptical about whether any measures under the SRDP could help new entrants. He believes that tackling bigger issues, such as tenancy issues, may be the way in which to attract new entrants or to give people the opportunity to enter the industry. Clearly, being able to access a farm and land is pivotal to the opportunities that are available to new entrants. I agree that the issue is central to the work that must be done in the future on how we use agricultural support in Scotland.

**Karen Gillon (Clydesdale) (Lab):** I was surprised to hear the cabinet secretary welcome the fact that we have a weak pound. I return to the issue of sustainability of LFASS payments. Will the cabinet secretary identify how he will fund those payments in 2010 and 2011 if the pound recovers against the euro? He has still not done that.

In opposition, the cabinet secretary saw local procurement as key to sustainability in farming. Twenty-five months on from the election, the Government has still made no commitment on the issue. What is taking the time? When will the cabinet secretary bring such a commitment to the Parliament?

**Richard Lochhead:** I thank Karen Gillon for her usual negative contribution to the debate. However, she asked a couple of genuine questions that I will address.

If the issues relating to public procurement were so easy to resolve, I am sure that the Administration that Karen Gillon supported would have found a magic solution during its eight years in power. The Government is taking action. We have a Scottish Government catering contract, which will be an exemplar for other public sector contracts in Scotland. As the member well knows, we are developing our food and drink policy and Robin Gourlay of East Ayrshire Council has undertaken good work on recommendations about how we can take forward public procurement.

I see that Labour members are shaking their heads and I remind them that they had eight years in power, when they could have addressed public procurement but failed to do so—

**Karen Gillon:** You've had two years.

**The Presiding Officer:** Order.

**Richard Lochhead:** At last, we have a Government in Scotland that is addressing issues that are important to the future of the food and drink sector in Scotland.

LFASS payments will not be funded just as a result of the exchange rate. We are rebaselining the figures that determine to what extent LFASS recipients are active, to bring the figures up to date. Stocking levels will be used. If people fall out of the system because they have destocked, the contributions that they used to receive will be available for recipients who stay in the scheme.

We have an underspend of £2 million in LFASS, irrespective of the exchange rate, which will be part of the extra money that we will pay in 2009—an increase of 19 per cent in the first year. There is also money that we can call down, due to the changed exchange rate. We cannot put an exact figure in the public domain, because we do not know what the exact figure will be in the course of the programme, given that it will depend on future exchange rates. However, funds are currently available.

**Dave Thompson (Highlands and Islands) (SNP):** The decline in cattle and sheep numbers in the Highlands and Islands is well documented, so I am pleased that the cabinet secretary has announced extra support of £15 million for fragile and very fragile areas. Will he elaborate on what that is likely to mean for the average beef or sheep producer in the Highlands and Islands?

**Richard Lochhead:** It will vary from farm to farm. Two factors will influence the LFASS payments that producers in the Highlands and Islands receive: first, the impact of the rebaselining of activity to bring it up to date in 2009; and secondly, the extent to which producers will qualify for the new rates. In my statement I talked about an extra £1,300 for the average sheep producer in

the Highlands and Islands and up to £1,600 for the average beef producer. Those are average figures; the circumstances of each farm will determine the extent to which the farm is a winner or a loser.

**Peter Peacock (Highlands and Islands) (Lab):**

The cabinet secretary placed much emphasis on the linking of farming activity with payments—we can understand why he is doing that when we consider the slipper farmers. He talked about rebaselining, to update the statistics.

There is concern in the crofting counties about the potential use of information on the Agriculture Industry Advisory Committee form, which could be interpreted as showing that a crofter was inactive. The statistics refer to common grazing, as opposed to in-by land, but if common grazing is removed from the size of the holding the croft size might be reduced to less than 3 hectares, which would make the crofter ineligible for payments. Will the cabinet secretary assure me that crofters will not be classed as inactive or lose payments—let alone increased payments—just because of the pattern of use of common grazings?

**Richard Lochhead:** Many members have called on the Government to tighten the criteria that define activity on farms and crofts throughout Scotland, which determines the level of public support that they receive. That is why we have introduced a measure to consider activity on a field-by-field basis. We must be as accurate as possible.

The measures that I announced today should have a positive impact on any crofter who has not destocked, because rates will increase dramatically—by 19 per cent in the first year and a lot more thereafter. I cannot understand why any active crofter should suffer as a result of today's announcement, but I will investigate the matter that the member raised, to ensure that there is no technical reason why that might happen. We have no evidence to suggest that a crofter who continues to be active will not enjoy the substantial benefit of increased LFASS payments.

**Nanette Milne (North East Scotland) (Con):**

The cabinet secretary said that he will respond to the Cook report by meeting stakeholders to consider agri-environment measures in the SRDP. Will he guarantee that the environmental benefits that have been attained from the SRDP will continue?

**Richard Lochhead:** A working group with stakeholders is considering the impact of the loss of set-aside, which has been abolished. That is just one example of work that is taking place. The group is also considering how new LMOs could reintroduce benefits that might be lost. Much analysis is taking place to ensure that we do not

lose the agri-environment benefits that schemes have brought in the past.

**Jim Hume (South of Scotland) (LD):** I, too, welcome the dropping of article 68. It would have been a case of robbing Paul to pay Peter—and I do not mean Peter Cook.

The cabinet secretary mentioned an increase in LFASS payments in fragile and very fragile areas. Will he confirm that there will be no decrease in other less favoured areas where there is active farming?

The cabinet secretary also mentioned new entrants. Will he consider reintroducing modern apprenticeships for rural industries to get new blood in? We need not only to get farmers in to farm, but to get a vibrant workforce in.

**Richard Lochhead:** Jim Hume refers to LFASS recipients in the standard areas. Those who have not destocked should have nothing to fear. The basis of the new arrangements is ensuring as strong a link as possible between the level of payment and the level of activity. That will apply to all LFASS recipients in Scotland.

I agree that apprenticeships are a fantastic way to encourage new skills for the future in the agricultural sector. As Jim Hume may be aware, some good discussion about the potential for new apprenticeships on Scotland's farms is taking place in the sector. The Scottish Government is supporting that discussion. Such apprenticeships would be an exciting development that I am sure would attract cross-party support in the Parliament.

**Kenneth Gibson (Cunninghame North) (SNP):**

I welcome the cabinet secretary's statement—in particular, the announcement of extra support for new entrants. How many new entrants does he expect will benefit from the scheme over the next two years and to what extent will it help to revitalise Scotland's agricultural sector?

**Richard Lochhead:** I thank Kenneth Gibson for that challenging question. I would not dare to put a figure on the number of potential applicants to the new scheme for new entrants in the SRDP, as we have learned our lesson from the initial scheme. We are making every effort possible under the existing regulations to introduce new levels of support, and the new scheme will offer support of up to €70,000 for a new entrant.

We are reducing the level of farm activity that any individual must have to qualify for some of the new entrant measures in the SRDP. That means that a part-time farmer who needs to get a foothold into agriculture will be able to qualify for some of the new entrant measures, albeit at a reduced rate. One of the issues that Peter Cook raised with us was the fact that people sometimes find it

difficult to get a foothold in agriculture. Therefore, someone who is only 25 per cent full-time equivalent will be able to qualify for some of the new entrant measures.

I draw Kenneth Gibson's attention to the fact that we need to address the tenancy issue if we are to attract new entrants into agriculture. Capital cost is one thing but, if there are simply no parcels of land being let in any parts of Scotland or if there is an inadequate supply for people who want to start farming, the issue will not move forward. It is in the hands of the various stakeholders—the landowners and tenants—to come up with as much of a consensus as possible to break the logjam and give people who want to enter the industry the best opportunity to do so.

**Elaine Murray (Dumfries) (Lab):** As the cabinet secretary is aware, there has been heated discussion elsewhere in the Parliament about the method of increasing forestry planting. He stated that he has accepted the McRobbie recommendations, but is he also considering giving the Forestry Commission the authority to process applications without going through a regional proposal assessment committee and fast-tracking forestry grants by bypassing the statement of intent, as suggested by the Confederation of Forest Industries, to make progress towards the target of 1,000 hectares per annum?

**Richard Lochhead:** I can give Elaine Murray some positive responses on that. We are already increasing the rates of forestry grants. As she may be aware, that is in the pipeline. As I mentioned briefly in my statement, we are also introducing measures that will allow the forestry sector to bypass the full application route—basically, to bypass the RPACs as she suggests. We are considering how to implement that, but it is one of the announcements that we are making today.

**Jamie McGrigor (Highlands and Islands) (Con):** In the Highlands and Islands, it is normal practice to express stocking rates in hectares per sheep, rather than the other way round. I welcome the news of an increase in the LFASS payments, for 2009-10, which will give an average sheep farmer in a fragile area an extra £1,300. However, does the cabinet secretary accept that that falls far short of the extra £8 per ewe that the NFU Scotland wanted and that the money will be wiped out by the cost of electronic identification tagging in sheep if it is implemented?

**Richard Lochhead:** I fear that Government announcements always fall short of what stakeholders demand. However, I am sure that the farming sector stakeholders in Scotland will welcome today's announcement as an effective contribution to the future of agriculture in Scotland.

One measure that we are taking to help the sheep sector in Scotland is to resist the European proposal, as it stands, for sheep EID. We hope to get some new concessions and are pursuing, as we speak, the maximum number of concessions that we can get under the current regulation. I cannot predict what the outcome will be, but we know that, if the regulation goes ahead as it stands, it will have a serious impact on the viability of many sheep farms in Scotland; we want to avoid that.

**Margo MacDonald (Lothians) (Ind):** I am a less than bucolic member, but I am interested in what the cabinet secretary said about the availability of funds. He suggested that there was enough money in the pot to meet all the Government's obligations just now. What happens if the euro implodes?

**Richard Lochhead:** The member is being a bit pessimistic. We hope that the euro will not implode in the next few weeks. However, even as things stand, with the SRDP funding expressed in pounds, funding is available for the Government to reprofile in terms of our new priorities. Therefore, I do not think that what the member implied will come to pass. Clearly, we must adapt to changing circumstances but, as I have said, only one element of the increased support for LFASS is dependent on the exchange rate. However, as I have also said, the money is sitting waiting for the Government to call down.

## Sexual Offences (Scotland) Bill: Stage 3

14:45

**The Presiding Officer (Alex Fergusson):** The next item of business is stage 3 proceedings on the Sexual Offences (Scotland) Bill. Members should have with them the bill as amended at stage 2—that is, Scottish Parliament bill 11A; the marshalled list—that is, SP bill 11A-ML; and the groupings, which I, as Presiding Officer, have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate, and 30 seconds for all other divisions. I remind members that, if they wish to speak to any grouping, they should press their request-to-speak buttons when the group is announced.

### Section 10—Circumstances in which conduct takes place without free agreement

**The Presiding Officer:** We start with group 1. Amendment 1, in the name of Margaret Curran, is the only amendment in the group.

**Margaret Curran (Glasgow Baillieston) (Lab):** Amendment 1 is an important amendment that seeks to close a significant loophole in the bill. I express my thanks to Central Scotland Rape Crisis and Sexual Abuse Centre, Scottish Women's Aid and the Equality and Human Rights Commission for their guidance and support towards the lodging of amendment 1.

It is important to remember the context in which I lodged amendment 1. Scotland's conviction rate for rape of 3.7 per cent, which is a welcome improvement, is nonetheless still appalling and still the lowest across Europe; no doubt that will be said often during the debate. We must focus on that point and ensure that, for that reason, we tighten everything that we can in the bill.

Section 10(2) sets out a list of circumstances in which free agreement is considered to be absent. It is welcome that the bill addresses circumstances in which the complainer is incapable of consent to conduct through the effect of alcohol or any other substance. However, amendment 1 is necessary because it addresses the issue of prior consent. Just as it is not permissible to argue that consent was given when the victim was incapable of doing that, my amendment prohibits a defence that consent was given earlier. If, at the time of sexual activity, consent is not forthcoming, the activity is non-consensual. Amendment 1 ensures that there

are no get-out clauses; the argument can no longer be made that consent was given earlier.

As members reflect on my amendment in reaching a decision on it, I ask them to consider the evidence from Rape Crisis Scotland. As we heard, some men go to bars and clubs to target, deliberately, women who are very drunk. We must close any loophole that such men can exploit. Furthermore, as Rape Crisis Scotland argued, the notion that someone can give advance consent to sex at 6 pm and that that consent should still apply at 1 o'clock in the morning when they are incapable of giving meaningful consent is absurd.

I welcome the support that has been expressed for amendment 1. I make it clear that in no way does it change the burden of proof; indeed, even with the provision, the burden of proof that the Crown must discharge is very high. As the Scottish Parliament information centre briefing indicates, amendment 1 is a significant amendment. I am sure that it will gain support across the chamber.

I move amendment 1.

**Robert Brown (Glasgow) (LD):** I know where Margaret Curran is coming from and I sympathise with what she is trying to do, but I want to be sure that she has got right this notoriously difficult area. She is rightly concerned about the principle of sexual autonomy and the problem of men who target drunk women for sex—indeed, all situations in which people take advantage of those who are inebriated. My fear is that, if we are not careful, her amendment may water down the overriding principle of sexual autonomy.

My understanding of the proposed definition is that it applies not only to rape but to sexual assaults of all types—it goes beyond the rape issue. I refer not only to sexual intercourse, but to sexual touching or physical contact of a sexual kind. An indictable crime would be committed when someone is incapable of consenting at the time of the activity because of the effect of alcohol or other substances. The effect of amendment 1 will be that free agreement to sexual activity is absent. It seems to do away with the overriding necessity for the Crown to establish that no consent was given to sex. If amendment 1 is agreed to, it will be a serious crime, always and in every circumstance, to have sex or sexual contact with a person who is drunk. That may be right; it is a possible alternative to what exists at present.

My question for Margaret Curran is this: am I right in believing that, when a husband and wife go out for the evening to celebrate their wedding anniversary and overdo the wine to the extent that one of them is drunk and incapable, the other commits the serious crime of rape if sex takes place? Could even an intimate cuddle in bed

amount to sexual assault because the drunk partner is legally incapable of giving consent? I am serious in making the point; it is an important one.

The proposal goes beyond the recommendation of the Scottish Law Commission. I accept that there is a possible qualification, given that section 10(1) states:

“free agreement to conduct is absent in the circumstances”

that are described, but it says, too, that that is

“without prejudice to the generality of”

section 9, which is where the definition of free consent is given. I am not entirely clear about the effect of all that, but it may be to retain the need for the Crown to prove the absence of free agreement.

I have three questions for Margaret Curran and, more particularly, for the Cabinet Secretary for Justice. First, is it the intention that sexual intercourse, including sexual contact and touching, when one party is drunk and incapable, will be a criminal offence in all circumstances whatever? That seems to be the effect of amendment 1. Secondly, will juries find it easier to convict on the basis of incapacity than on the basis of lack of consent? No definition of incapacity is given. Thirdly, is the overriding principle of free agreement still contained in the bill? What is the effect of the qualification in section 10(1) that all this is

“without prejudice to the generality of”

section 9? In short, does amendment 1 close the loophole that Margaret Curran thinks she has identified? If so, does it do that in a way that will not create more complexity and confusion in this difficult area?

Like others, Liberal Democrats are concerned that people who commit rape and other serious sexual crimes should be convicted. If we are reassured on these matters, we are prepared to support amendment 1. However, we have some doubts over the effect of amendment 1, as set out by Margaret Curran.

**Richard Baker (North East Scotland) (Lab):**

Clearly, the vast majority of the amendments that we will consider are non-controversial. Margaret Curran's amendment 1 is important. We, on this side of the chamber, are very pleased that the Scottish Government will accept it.

As Robert Brown said, Margaret Curran's amendment deals with the vexed issue of prior consent. I welcome whole-heartedly the fact that the cabinet secretary listened to the concerns that were raised not only by Margaret Curran in lodging the amendment, but by Rape Crisis Scotland and

other organisations. They support the intention to, as the cabinet secretary himself put it,

“provide greater protection from unwanted sexual activity to those lacking the capacity to consent.”

That is an important principle, which amendment 1 guarantees. It will be for Margaret Curran and the cabinet secretary to answer Robert Brown's questions directly, but we think that the amendment strikes the right balance.

I am not convinced that amendment 1 will have the effect on the bill that Robert Brown says it will have. It will still be available to prosecutors to make the most sensible decision. I think that we are reaching a consensus that the amendment is the right way forward. The issue is difficult, and I am pleased that the cabinet secretary sees the amendment as the best balance to strike. In the past few weeks, I have not exactly been fulsome in my praise for the cabinet secretary, but his approach to the bill has been constructive and his approach to the amendment has been the right one. Labour supports amendment 1 enthusiastically, and the amendment is also supported by Rape Crisis Scotland and the other organisations that have taken a great interest in the detail of the bill and its effect. I hope that it will receive support throughout Parliament today.

**Bill Aitken (Glasgow) (Con):** At this stage, the Conservatives have some reservations about amendment 1. However, perhaps for the first time in her life, Margaret Curran has the opportunity to persuade me. We will listen carefully to what she says when she winds up on the amendment.

Part 2 of the bill deals with consent and the circumstances in which conduct takes place without free agreement. The list of circumstances is not exhaustive; nor, for the purposes of simplicity, should it be, as that could result in loopholes being discovered in the act—we are all anxious to avoid that.

A great deal of time and effort has been expended on the bill in general and on this part in particular; I know that Margaret Curran accepts that. All members wish to ensure that the maximum protection is available, but if there is a loophole that requires to be plugged, it has not been effectively identified by the Scots Law Commission, the Scottish Government or the Justice Committee. The matter was certainly not canvassed at stage 2. If the law is to be successful—and we all hope that the bill, when passed into law, will be successful—we must ensure that it is workable and not unnecessarily complicated. The Conservatives wish to ensure that that is the case.

As Margaret Curran suggests, there are some people—usually men, I have to concede—who behave in a highly predatory manner and who



home in on women who are drunk or who are incapable because of drugs. The bill is clear that were such a person to home in on a particular woman, to take that woman to their home or even to premises outside, and to have sexual intercourse with her, that would be rape. The law, as outlined in the bill, is especially clear on that. What I suggest—and I seek reassurance from Margaret Curran on this point—is that, basically, the law would not revert back to the issue whereby the woman was incapable of giving consent. Therefore, what is the problem? The Crown can seek a conviction. The wording of the bill is clear that if the woman is incapable of consent because of drink or drugs, it is a case of rape or sexual assault, as defined in part 1.

At the same time, we must look in other directions and anticipate the difficulties. There are some difficulties that we will not overcome, for example juries; I will turn to that issue in the wider debate. We must be careful. The defence of reasonable belief, which is dealt with in part 2, would cover the danger of any injustices.

My initial view was that the law as defined in the bill is adequate. It is no great issue, perhaps, but I seek reassurance from Margaret Curran that our agreement to amendment 1 will not have the unintended consequence of making something a little bit more complicated than it needs to be.

**Robert Brown:** Mr Aitken suggests that section 12, which relates to reasonable belief, would be an overriding defence that would exist notwithstanding amendment 1. However, I am not sure that that is right. This is not about knowledge, or about consent in the normal sense of the word; this is about the key issue being the incapacity of a person at the time. There is at least a question mark over whether section 12 would apply.

15:00

**Bill Aitken:** That is an arguable point that, as well as the degree of incapacity of the person, will have to be determined by the court. I acknowledge the point, but I am reasonably relaxed about it. I look to Margaret Curran for wider reassurance.

**Patrick Harvie (Glasgow) (Green):** Like Margaret Curran, I acknowledge that certain men target, very deliberately and in a predatory way, individuals who are drunk and incapable. If the scope of amendment 1 is only in relation to sexual assault and rape, I agree that it is proportionate. However, like Robert Brown, I would like to ask a couple of questions that I hope Margaret Curran and the Cabinet Secretary for Justice will be able to address.

I am new to the bill, but it seems to me that the definition of circumstances in which free agreement is absent, which will be changed by amendment 1, relates to the whole of part 1 of the

bill. That will include not only rape and sexual assault but sexual communication and other less serious issues. Am I correct in saying that amendment 1 will change the definition of consent in relation to sexual communication or the operation of recording equipment? Such things might be entirely appropriate and none of the law's business in the context of an established relationship but might subsequently be the subject of a complaint if the relationship broke down. I am simply concerned about the scope of amendment 1 and about what its full impact will be if we agree to it.

**The Cabinet Secretary for Justice (Kenny MacAskill):** We are grateful to Margaret Curran for making her valuable points and for lodging amendment 1. We support the amendment. We acknowledge that this is a complicated area of law, and Mr Brown, Mr Harvie and Mr Aitken have acknowledged that too. However, we believe that the amendment is proportionate and balanced.

The central principle of the bill is that people should have the autonomy to give their consent but also to withdraw it. A person might be incapable because of alcohol or another substance, or because they are asleep, and the law should make it clear that the person cannot give consent while in that state. That is how the law operates at present, and it is our clear intention that there should be no lessening of the protection afforded to people who are incapable of giving consent.

Rape Crisis Scotland and others have expressed concern that the bill fails to protect the sexual autonomy of people who are incapable of consenting to sexual activity because of the effects of alcohol or any other substance. The Government agrees that the law should protect the vulnerable. Amendment 1 will amend section 10(2)(a) so that there can be no consent to sexual activity if the conduct occurs when the complainer is incapable of consent because of the effects of alcohol or any other substance. The Government agrees with that.

Furthermore, we consider that amendment 1 will bring greater clarity to the law. It will send a simple message: that sexual activity with a person who is so intoxicated that they are not capable of giving consent is criminal.

We are not suggesting that anyone who has consumed alcohol, or even anyone who is quite drunk, cannot consent to sexual activity. The provision that we are discussing is concerned only with protecting people who are so intoxicated as to have lost the capacity to choose whether to engage in sexual activity.

**Patrick Harvie:** Am I correct in thinking that amendment 1 changes the definition of consent in

relation to the sending of sexual communications, including text messages and phone calls? Will it become a criminal offence to send such messages, under section 6 in part 1, if the recipient is drunk?

**Kenny MacAskill:** That is a separate matter, and not the one that Margaret Curran has correctly raised. The convener of the Justice Committee rightly suggested that there was a lacuna. The issue was raised by Rape Crisis Scotland and it has been pursued by Margaret Curran. This is about protecting intoxicated people from what might happen to them in their vulnerability.

Text messaging and other matters are dealt with in the bill because we realise that sexual offences come in a variety of forms other than rape and sexual activities. However, what we are dealing with here relates specifically to consent to sexual activity. I cannot foresee any circumstances in which sending a text message to somebody who was comatose, for whatever reason, would be relevant to that. The amendment ties up one specific matter. Mr Harvie raises issues of concern that are dealt with elsewhere in the bill but not in the amendment, which deals with other specific matters.

The purpose of the amendment is to protect those who are unable to consent. It is not to interfere with people's opportunity to do whatever they choose when they have had too much to drink. Nevertheless, there are some people—as Mr Harvie has said—who target people and seek to use alcohol or other substances to get people into a state in which they cannot consent. Therefore, we fully agree with Margaret Curran.

**Bill Aitken:** Does the cabinet secretary agree that there is already a safety net in the bill and that the fact that a woman was incapable of making a decision is picked up earlier in the bill, so there is no requirement for the amendment?

**Kenny MacAskill:** We are having belt and braces, to be frank. Yes, there are other aspects of the bill that provide other protections, but the amendment deals with the specific matter of somebody being so incapable that they cannot consent. There are other protections in the bill relating to a myriad of matters from text messaging to the abuse of children, but we believe that Margaret Curran has made an important point and we are happy to support the amendment.

**The Presiding Officer:** I call Margaret Curran to wind up the debate on amendment 1.

**Margaret Curran:** I do not know whether it will be an achievement or a disaster if I persuade Bill Aitken to agree to the amendment, but I will give it a go anyway. I thank members for their comments on the amendment.

I should have said during my opening remarks that I pay tribute to the Justice Committee, the Government and all who have been involved with the bill. The process has been very thorough, and it is a tribute to that process that, at stage 3, we can still listen to people who have considerable expertise in the subject. I genuinely respect the thorough work that has been done by Bill Aitken and my colleagues on the committee. I also appreciate the work of the Government on the issue. I know from experience the thorough work that is done by bill teams to ensure that we do not agree to amendments that have unintended consequences such as those that Robert Brown and Bill Aitken were, quite properly, concerned about.

I think that the amendment is more narrowly drawn than Robert Brown has suggested. It deals with the very significant principle of consent to sexual activity. Even within marriage, people cannot assume that any kind of sexual activity is a given. That is the principle that I am trying to protect. The principle behind the amendment is that, if someone is so incapable that they cannot give their consent, it cannot be argued that prior consent applies. That is the core argument on which I ask members to focus their minds.

I take it that members have had the opportunity to look at the SPICe briefing, which I interpret as supporting my amendment. It sets out that my amendment is trying to make explicit what we intend the legislation to do. Judging by what I have heard from all members in the debate, none of us wants a get-out clause that would allow prior consent to be used as an excuse even by a very small minority of exploitative people. The amendment makes that explicit and ensures that there is no doubt about that.

I agree with what the minister said in response to Patrick Harvie's questions. I cannot understand the circumstances in which text messaging would be used to cut across the amendment. I hope that I can offer reassurance on that.

**Robert Brown:** Will Margaret Curran respond to the practical question of what the Crown will have to prove if the amendment is agreed to? Will it still have to prove the absence of free agreement, or will the need for it to do that be taken away entirely by the amendment?

**Margaret Curran:** As I understand it, the Crown will still have to prove that free consent is not there. What my amendment does is disallow a defence of prior consent. I hope that that clarifies the matter.

*Amendment 1 agreed to.*

### **Section 20—Belief that child had attained the age of 13 years**

**The Presiding Officer:** Amendment 2, in the name of the minister, is grouped with amendments 10, 21 to 47 and 69 to 71.

**Kenny MacAskill:** The amendments in the group deal with restrictions on the defence of mistaken belief as to age, which can be a defence to offences against children. Amendment 2 provides that section 20, which states that it shall not be a defence to an offence against a young child that the accused believed the child to have attained the age of 13 years, shall apply to the new offences against young children that were introduced at stage 2.

Amendment 10 is a technical amendment that is intended to ensure consistency in the wording of the provision in section 29. Amendments 21 to 47 amend schedule 1Z to add other sexual offences to the list of relevant sexual offences. If an accused person has previously been charged by the police with such an offence, that will preclude an accused from claiming the defence of reasonable mistaken belief as to age, when they are charged with an offence against an older child. The amendments have been lodged to take account of the commencement of the Sexual Offences (Northern Ireland) Order 2008 and to ensure that the schedule covers all sexual offences against children in Scotland, England and Wales and Northern Ireland, both current and historical.

Amendments 69 to 71 make consequential amendment to section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995, which makes it an offence to permit a girl to use premises for intercourse. Section 9 of the 1995 act provides that an accused can make use of a defence of reasonable mistaken belief as to age, and sets out the restrictions on making use of that defence. The amendments provide that the defence under section 9 of the 1995 act cannot be used if an accused person has previously been charged by the police with a relevant sexual offence, or is subject to a risk of sexual harm order. That was done to make the defence in section 9 of the 1995 act subject to the same restrictions that are placed on the equivalent defence in section 29 of the bill.

I move amendment 2.

**Bill Aitken:** It is important to stress that a great deal of time was spent on consideration of this matter in respect of the way in which offences could be carried out against young people.

The amendments in this group simply highlight changes that the Government thought about making. In particular, I underline the point that the defence of mistaken belief is one that has to be fairly tight—one can make a mistake in these

matters once; it is stretching credibility somewhat to say that the mistake can be made more frequently than that.

*Amendment 2 agreed to.*

### **Section 21—Having intercourse with an older child**

**The Deputy Presiding Officer (Trish Godman):** Amendment 3, in the name of the minister, is grouped with amendments 4 to 9, 11 and 12.

**Kenny MacAskill:** These amendments are technical amendments to the provisions at section 30 and 30A concerning circumstances in which it is not possible to establish beyond doubt whether a child had or had not attained a particular age at the time when an offence was committed. Those amendments extend those deeming-of-age provisions to the new offences that were introduced at stage 2. The amendments also make minor changes to the drafting of the provisions for clarity and brevity, but they do not have a substantive effect on how the provisions will operate.

I move amendment 3.

*Amendment 3 agreed to.*

### **Section 21A—Engaging in penetrative sexual activity with or towards an older child**

*Amendment 4 moved—[Kenny MacAskill]—and agreed to.*

### **Section 22—Engaging in sexual activity with or towards an older child**

*Amendment 5 moved—[Kenny MacAskill]—and agreed to.*

### **Section 23—Causing an older child to participate in a sexual activity**

*Amendment 6 moved—[Kenny MacAskill]—and agreed to.*

### **Section 24—Causing an older child to be present during a sexual activity**

*Amendment 7 moved—[Kenny MacAskill]—and agreed to.*

### **Section 25—Causing an older child to look at a sexual image**

*Amendment 8 moved—[Kenny MacAskill]—and agreed to.*

### **Section 26—Communicating indecently with an older child etc**

*Amendment 9 moved—[Kenny MacAskill]—and agreed to.*

### **Section 29—Defences in relation to offences against older children**

*Amendment 10 moved—[Kenny MacAskill]—and agreed to.*

### **Section 30—Special provision as regards failure to establish whether child has or has not attained certain ages**

*Amendments 11 and 12 moved—[Kenny MacAskill]—and agreed to.*

#### **After section 30A**

15:15

**The Deputy Presiding Officer:** Group 4 is on a requirement to undertake an information and publicity campaign for children. Amendment 120, in the name of Robert Brown, is the only amendment in the group.

**Robert Brown:** Amendment 120 echoes an amendment that I lodged at stage 2 and withdrew on the condition that I would have discussions with the minister before stage 3.

Members will recall that the second half of part 4 of the bill is on sexual activity by or with older children—that is, those aged between 13 and 16. Members of all parties and many knowledgeable organisations and individuals who gave evidence on the bill were concerned, as we all are, about the high and increasing levels of underage sexual activity and pregnancy, the risk to sexual health that that involves, and the need for sound relationships that support stable and supportive families in the future. It is thought that one young person in three is sexually active before the age of 16, and there is a strong link between teenage pregnancy and levels of deprivation and vulnerability.

The background to the amendment is the fact that, when the Government prepared the bill, it did not consult young people to find out their views and attitudes on the matters that it covers, despite the obvious necessity for policy to be closely informed by what young people tend to think, how they react, and what circumstances have led to the issues being more problematic in Scotland than they are in most other European countries. Those criticisms were echoed by Scotland's Commissioner for Children and Young People and a number of children's organisations.

The Government responded to those criticisms, to a degree, at stage 2. The purpose of amendment 120 is to push the cabinet secretary a little further than he went before. The Government has undertaken to implement an age-appropriate information and publicity campaign about the bill, and the cabinet secretary said that the campaign

will link in with plans to increase drop-in services for young people throughout Scotland. That is all well and good, although it would be helpful to hear more detail about that.

I am less satisfied with the further commitment that the cabinet secretary made at stage 2, which sounded more promising at the time than it reads on the record. He said that the Government would consult young people on the best way in which to communicate with them. That misses the point. The aim of the Justice Committee and, I hope, of the Parliament is to make a difference—to equip young people to make responsible choices about sex, to influence and if possible delay the age at which sexual activity begins, and to ensure that there is good access to services, perhaps with an emphasis on the needs of more vulnerable families. Everyone agrees that sexual relations under 16 are not a good thing and that they raise all sorts of difficult issues. The process must be informed by knowledge of young people's attitudes to the bill and the motivation and drivers that influence them.

**Johann Lamont (Glasgow Pollok) (Lab):** Does the member agree that any such campaign should identify the distinctive experiences of boys and girls, and young women and young men? There is some evidence that young women are inappropriately pressured into being involved in sexual activity. Does the member agree that any such campaign must have at its heart an understanding of proper respect between boys and girls?

**Robert Brown:** I recognise that entirely. I thank Johann Lamont for making that point, which emphasises the main point that I am trying to make, which is that it is important to know what drives young men and women towards particular actions and situations.

The Terrence Higgins Trust expressed to me its fear that the change that the bill brings about in the liability to criminal prosecution of girls under 16 might send out mixed messages to young girls and discourage them from accessing services. That view was also expressed to the committee in evidence from witnesses.

Any information and communication campaign on such matters must be informed by the views of young people. We should consult them not just on the slightly condescending aspect of how to communicate with them but on the substantive matter of what they think about the issues. That is essential if the campaign is to be focused, targeted and successful. I will be happy to seek to withdraw the amendment if the cabinet secretary can assure me on that specific point.

I move amendment 120.

**Richard Baker:** We support Robert Brown's proposal. The requirement to undertake an information and publicity campaign for children on their attitudes to part 4 of the bill was raised in the Justice Committee and in its report, not least by my colleague Cathie Craigie. I accept that the cabinet secretary has made a commitment to undertake such a campaign and to provide age-appropriate materials, but amendment 120 is still beneficial. If it leads to further reassurances on the point and more detail on the Scottish Government's plans for a campaign, that will be welcome.

The issue is particularly important because there was such a focus on it during the committee's deliberations and in the stage 1 debate, as Robert Brown pointed out in some detail, and members throughout the chamber have stressed that young people need education and support on the issues. Notwithstanding the questions that the cabinet secretary raised in his letter to Margaret Curran, about the detail of implementation of the amendment, it is pretty clear how its intention would be achieved.

I do not doubt that such a campaign will be forthcoming, but I am sure that the chamber will be further reassured by details of what it will cover and when it will take place. At this stage, though, we are minded to support amendment 120, which addresses a particular concern for the committee.

**The Deputy Presiding Officer:** Before I call Bill Aitken, I propose to exercise my power under rule 9.8.4A(a) and (c) to extend the time limit for debating groups 1 to 5 to allow this group to be debated and to allow members to speak to the amendments in group 5.

**Bill Aitken:** As Robert Brown stated, he quite properly canvassed this issue at stage 2, although he did not press his amendment at the time.

Mr Brown makes an arguable case. It is clear that the wider we consult on and publicise this matter, the better, given, as he has pointed out, Scotland's significant problem of underage pregnancies and sexually transmitted disease. Unfortunately, when one looks at the practicalities of the matter, it is difficult to see how any kind of balanced consultation and information exchange could be carried out. We also have to bear in mind the cost factor.

Although the case for amendment 120 is arguable, I do not think that at the end of the day it would be workable, and we are not inclined to support it.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** The Parliament will be aware of the Justice Committee's concerns about the consultation process for this bill, particularly the lack of consultation with young people. How the

Government has gone about this surely cannot be in line with best practice or meet the requirements of the United Nations Convention on the Rights of the Child, to which the Scottish Government claims to be committed. When, during the bill's committee stages, I asked the cabinet secretary to consult young people and perhaps to extend the time between stages 2 and 3 to allow such a consultation to take place, he declined.

Amendment 120, which I am minded to support, is the second-best option, given that the consultation has not been carried out before we pass the bill. However, it is important that we consult young people in an age-appropriate way. After all, we will never know what encourages some young people to engage in underage sex and others to delay sexual activity unless we ask them about it.

**Stewart Maxwell (West of Scotland) (SNP):** I have no objection to consulting young people; indeed, I think that the whole chamber agrees with such a move. However, does the member not recall that, at stage 2, Robert Brown decided to withdraw his amendment and reconsider the matter for stage 3 when the cabinet secretary made a commitment to consult young people? I think that that is the appropriate way of dealing with this issue. Surely putting a provision in the bill without any financial commitment or even context does not set a helpful precedent.

**Cathie Craigie:** I realise that amendment 120 is not the best way of proceeding with this matter, but we are in this situation because the Government failed to consult young people. I remind Mr Maxwell that, although the Scottish Government is committed to the UN Convention on the Rights of the Child, it did not meet that commitment. I am therefore concerned that its commitment to consult young people will also not be met. Amendment 120 might ensure that the Government carries out this consultation, gets to the bottom of young people's needs and tackles the very difficult situations that arise not only for young people but for their families as a result of underage sex.

**Kenny MacAskill:** I fully appreciate Robert Brown's comments and will do my best to reassure him that the issue that has been raised is a matter of concern and that how we address and discuss it with our young people is important.

However, Stewart Maxwell has made an appropriate point. It is difficult to deal with the matter in the bill, when we are dealing with specific matters relating to sexual offences, or even for me to be able to provide a reassurance in the heat of a debate. However, I can give a general view on the Government's general direction of travel, which is that we will ensure that we deal with the matter.

Amendment 120 seeks to impose two obligations on the Government that it would require to discharge before part 4 of the bill is commenced. The first obligation would be to consult under-18s on their attitudes to part 4 of the bill; the second would be to

“undertake an information and publicity campaign about this Part.”

Both obligations must be carried out before part 4 of the bill is commenced. The motive behind the amendment is to be applauded, but there are considerable flaws in both those aspects, which is why we urge members to vote against the amendment.

**Robert Brown:** The minister makes valid points, but can he give me any reassurance that young people’s attitudes will be considered as part of the information campaign that he will undertake? We need to understand such things; that is the motivation behind the amendment. If the minister can give me a degree of satisfaction that young people’s attitudes will be considered in his consultation, that will be satisfactory.

**Kenny MacAskill:** Absolutely. I hope that Robert Brown will take what I am going to say in the spirit in which it is meant. A requirement to consult children on their attitudes to part 4 of the bill after it has passed into law seems to be of very limited value. We agree that it would be helpful to consult children and young people to help us to decide how best we should progress the bill, but their attitudes to part 4 should not be the focus. It would be much more productive to engage with children and young people on how best we can communicate with them about the issues that the bill deals with—certainly in part 4, but not exclusively in that part. The bill deals with other issues that will be relevant to children and young people, particularly its provisions on consent and positions of trust.

**Margo MacDonald (Lothians) (Ind):** Before the minister proceeds to the next issue, can he assure me that the Government has done what it can do to engage the makers of videos, the literature that young people read and so on? Those things carry the culture that the Government is seeking to change with a piece of legislation.

**Kenny MacAskill:** We are doing what we can. The Government has made it clear that we believe that the bill, as amended by Margaret Curran, Bill Aitken and perhaps by others, is appropriate and that we should have an appropriate legislative base. However, we would delude ourselves if we thought that the problem in Scotland would be entirely solved by the legislative base. We must change the culture and attitudes that are prevalent among far too many people, albeit that those

people represent a minority of our population. It is a journey.

**Johann Lamont:** I again raise the point that I raised with Robert Brown. Will the cabinet secretary confirm that any such campaign will recognise the distinctive experiences of boys and girls and that some attitudes of young men towards young girls must be addressed? If girls are to be kept safe, some boys’ attitudes that have perhaps been prevalent in the past must be challenged.

**Kenny MacAskill:** Absolutely. There is a requirement on the Government under the European convention on human rights to make aspects of the law gender neutral. Equally, it is clear that young females face different problems. The pressure that has been mentioned is clearly one matter. The issue is how to implement things—through the police, the prosecution or the health service, for example. We need to raise awareness, change attitudes, do what we can to protect the vulnerable, and have the legislative basis to ensure that we can prosecute predators and those who act against the will of our Parliament and our laws.

As I explained when Mr Brown lodged his amendment at stage 2, our response to the committee’s stage 1 report on the bill confirmed that

“The Government intends to undertake an information and publicity campaign following enactment of the Bill and that this will include age-appropriate material aimed at young people.”

I am happy to confirm that that continues to be our intention. As I have said previously, as part of our planning for that campaign, we intend to consult children and young people on the most effective way in which to communicate with them on the important issues that the bill deals with and, indeed, on other matters that are, as Margo MacDonald suggested, equally important in terms of getting the message across.

I am happy to repeat our earlier commitment that the Government will undertake a publicity campaign before commencement of part 4 of the bill. I am also happy to reiterate our commitment that children and young people will be consulted on the best way for that campaign to communicate with children on part 4.

Finally, we consider that there are technical defects in the drafting of amendment 120. It does not make clear what kind of consultation with children and young people is required. It is also unclear whether ministers are required to consult every child under 18 in Scotland. If they are, can very young children be said to have formed attitudes about the content of part 4? If the intention is that consultation should be limited to

certain age groups, the amendment does not set a lower age limit on children who should be consulted.

15:30

The requirement for “appropriate” consultation does not appear unreasonable, but it does not answer the question of what appropriate consultation is. In addition, amendment 120 does not set out what ministers should do following such a consultation. In effect, that means that the duty to consult is somewhat meaningless. As mentioned, a statutory requirement to consult children before the commencement of part 4 would not appear to serve any purpose, in light of the fact that the law, which reflects the will of the Parliament, will already have been passed.

I acknowledge the points that Robert Brown and other members have made. What matters is that we communicate to our young people and children, whether they are being pressured to engage in such activity or are doing it out of foolhardiness or whatever. We need to get that right. I give Robert Brown the undertaking that we will seek to ensure that the communication is age appropriate. That is perhaps not best dealt with by me. We have people who are better qualified to ensure that we have the appropriate vehicles and mechanisms. However, I give Robert Brown that reassurance.

**Robert Brown:** I confess to being a bit disappointed with the cabinet secretary’s response. I went out of my way to say that we must not simply consult young people but must have a bit of input from them. The process should be not only about us telling them but about them telling us and informing the communications that then take place. Unfortunately, I did not get a sense from the cabinet secretary that that is the intention. I accept that the detail of the campaign will be worked out by people who are more expert in the field than he is. I take that as a reasonable assurance on the matter. There is an element of good will.

I accept Stewart Maxwell’s point—perhaps not for general application, but in the context of the bill—that including measures on an information and publicity campaign is not ultimately the appropriate approach. That campaign should take place before the commencement of the act. I take note of that point.

Against that background, I seek to withdraw my amendment, but I do so with reluctance, as I had hoped to get a little more out of the cabinet secretary. I hope that he will reflect on the debate and discuss with his advisers some of the points that have been made in it. I hope that he takes account of the views of the children’s groups and

others who know about the issues. They know how important it is that the Government does not simply communicate to young people, but hears their voice.

*Amendment 120, by agreement, withdrawn.*

### Section 37—Penalties

**The Deputy Presiding Officer (Trish Godman):** Group 5 is on offences by non-natural persons. Amendment 13, in the name of the minister, is grouped with amendments 14 and 19.

**Kenny MacAskill:** Amendments 13, 14 and 19 deal with offences by non-natural persons, that is, companies. Although the nature of the offences in the bill are such that they cannot normally be committed by a non-natural person as the principal actor, a non-natural person could be found guilty of aiding and abetting or indeed conspiring to commit the offences that are contained in the bill. For example, as sexual offences against children are extra-territorial in extent, a company that is involved in the arrangement or facilitation of child sex tourism might be art and part guilty of offences in the bill. The amendments will ensure that we are fully compliant with our international obligations to establish the liability of persons, including non-natural persons, who are guilty of certain behaviour concerning the exploitation and abuse of children.

It is not possible to imprison or impose a community penalty on a non-natural person. Amendments 13 and 14 will ensure that it will be possible to impose a fine on a non-natural person, such as a corporate body or partnership, that is convicted of an offence for which a fine cannot be the sole penalty that is imposed on an individual. Amendment 19 provides that, if any offence in the bill is committed by a non-natural person with the consent or connivance of—or because of neglect on the part of—any director, manager, secretary, partner in a partnership, trustee of a trust, member of an unincorporated association or other similar non-natural person, including any person who purports to act in that capacity, that individual, as well as the non-natural person, commits the offence and may be liable to be prosecuted and punished accordingly.

I move amendment 13.

*Amendment 13 agreed to.*

**The Deputy Presiding Officer:** We come to group 6, which is on penalties. Amendment 121, in the name of Robert Brown, is grouped with amendments 122, 124 and 125.

**Robert Brown:** These amendments are intended to deal with a loophole that was inadvertently created at stage 2 and identified in the SPICe briefing on the matter. At stage 2, the

Justice Committee rightly took the view that the penalty on conviction of a rape or serious sexual assault could not conceivably include the option of a fine by itself. Accordingly, the option of a fine was removed for rape, sexual assault with an implement and sexual assault, following conviction on indictment. A fine still remains possible for a more minor summary conviction in the sheriff court for sexual assault, that is entirely right, because sexual assault covers a wide range of situations from extremely serious and harrowing attacks to more trivial matters.

**Paul Martin (Glasgow Springburn) (Lab):** Will Robert Brown confirm what he means by “trivial matters” in relation to sexual assault?

**Robert Brown:** I will deal with that in a second.

Another situation might occasionally occur. Someone who is indicted before a jury on a serious sexual assault charge, or charges, which if proved, would justify a prison sentence might be acquitted of the serious aspects of the charge, or the serious charges, and convicted only of a relatively minor matter. In that event, a fine might indeed be an appropriate disposal. If we fail to give the court that option, the judge or sheriff might in practice be left in the invidious position of either imposing a prison sentence, which is clearly inappropriate for the offence, or admonishing the individual.

I will provide an example to answer Paul Martin’s question. Suppose that a 21-year-old man is indicted before a jury for a significant sexual assault on an 18-year-old girl at a party. In the event that the evidence does not stand up fully and he is convicted only of kissing the girl against her will to her considerable upset, a fine might be manifestly the proper penalty. I am sure that no one in the chamber—I hope not even Paul Martin—believes that that should lead to a prison sentence. Equally, however, I do not think that anyone in the chamber would think that such a person should get off scot-free.

Similar considerations could apply to a 17-year-old convicted in similar circumstances of an offence against a 15-year-old, which is why the same principle would be applied, by amendment 122, to the offence of sexual assault on a child.

Let me be absolutely clear that I am not suggesting—I am not imposing this on anybody—that a fine should be the outcome for one of the situations that I have described. I am saying that there should be a judicial option of a fine in a situation in which a fine would have been available if the individual had been charged summarily in the first place. It should be exactly the same when a person is convicted of a more minor offence. Such situations will not occur often, but they will

occur and the court has to have the appropriate tools to deal with them if justice is to be done.

I reiterate that, if the option of a fine was not put back into the bill, the judge could possibly have only the option of a prison sentence or an admonition and absolute discharge. I am sure that that was not the intention of the member who moved the stage 2 amendment.

**Paul Martin:** During stage 2, I said that I thought that the Government had got it right by lodging amendments to ensure that a fine may not be imposed as the sole penalty when an accused is convicted of rape, sexual assault or sexual assault by penetration or rape of a young child. I do not say this often, but the Government got it right on that occasion, and we were satisfied with its approach during stage 2.

Robert Brown’s attempt to reverse that, which the Government supports, is wrong. In effect, those who have been charged on indictment with sexually assaulting a child could get a fine, which is beyond belief.

**Robert Brown:** Paul Martin asked me for an example and I gave him the example of a 17-year-old girl being forcibly kissed by a man at a party. In that case, the conviction would be for sexual assault of a child. Does he believe that there ought to be a mandatory prison sentence as a consequence of such a conviction?

**Paul Martin:** I think that that is a serious offence. It is sexual assault and it demeans the girl. Robert Brown provides a minor example of something that can be a serious sexual assault, for which the possibility of a sentence and a fine is required. I do not think that Robert Brown has provided a very clear example. We believe that we should proceed on the basis of the amendments that were agreed to at stage 2.

**The Deputy Presiding Officer:** I must again exercise my power under rule 9.8.4A (a) and (c) of standing orders to extend the next time limit, to allow this group to be debated and to allow members who are entitled to speak on the next group to do so.

**Bill Aitken:** After the bill is passed at 5 o’clock, as I am certain it will be, the Crown’s attitude will be more and more to prosecute offences under the new act. Much of the relevant common law will no longer apply. Under existing common law, the full gamut of court disposals is available for such offences, including a fine. The fact is that—sadly—we got it wrong at stage 2. I confess that I should perhaps have been clearer about the unintended consequence, which is precisely as described by Robert Brown.

**Richard Baker:** Will the member take an intervention?



**Bill Aitken:** Unfortunately, I do not have time to take an intervention.

In the vast majority of cases that are indicted for such offences, a lengthy prison sentence will be the only appropriate disposal. However, when the judge or the jury shreds the indictment so that only a minuscule part of it is left, the ability to impose a monetary penalty will be important. The amendments will allow that disposal to be available, which is appropriate.

**The Deputy Presiding Officer:** I prevented Mr Baker from speaking, so he can have one second for an intervention, to which Mr Aitken can respond.

**Richard Baker:** The key point for us is that, whatever the intention behind the amendments, they would have the effect that conviction for a sexual assault or a sexual assault on a child that was prosecuted on indictment could result in the imposition of a fine. We feel strongly that that would be unsatisfactory.

**Bill Aitken:** The answer is straightforward. When an indictment is served, it could concern a serious matter for which only imprisonment would be appropriate. The issue is what would happen when only a minor part of the indictment was left. At that stage, a fine would be appropriate.

**Kenny MacAskill:** I thank Robert Brown for explaining his purpose in lodging amendments 121, 122, 124 and 125, and the Justice Committee's convener for his lucid explanation. I am sure that every member agrees with the committee's stage 1 report that a fine is not an appropriate sole penalty for a person who is convicted of a serious sexual offence. That is why we lodged stage 2 amendments to ensure that a fine cannot be imposed as a sole penalty when a person who is tried on indictment is convicted of rape, rape of a young child, sexual assault by penetration, sexual assault on a young child by penetration, sexual assault or sexual assault on a young child.

However, as Mr Brown and the committee's convener explained, a person who is tried on indictment for a serious sexual assault might be cleared of most allegations and convicted only of a relatively minor sexual assault that would not normally be tried on indictment. In those circumstances, it would be inappropriate to provide that the court could impose only a sentence of imprisonment or, indeed, an admonition. The full range of sentencing options should be available to the court in dealing with people who are convicted of sexual assault or sexual assault on a young child.

I make it clear that the bill will give the High Court the power to jail for life anyone whom a jury convicts of rape or sexual assault. We would

expect any conviction for a serious sexual assault to result in a tough sentence and not just in a fine. It is simply the case that no substantive evidence suggests that that will not happen.

**Paul Martin:** I will raise a technical point. If Robert Brown's amendments were agreed to, would it be possible for a sexual assault on a child to result in only a fine?

**Kenny MacAskill:** The position is clear. For the avoidance of doubt, I will run through again the list that I gave earlier—it relates to convictions of persons tried on indictment for rape, rape of a young child, sexual assault by penetration, sexual assault on a young child by penetration, sexual assault and sexual assault on a young child.

We seek to address the situation, which Mr Brown dealt with lucidly. The intention is to make sentencing options available to the court, as under the current common law. The bill will consolidate and improve the law on sexual offences and will deal with the matter that Margaret Curran raised. We do not want the law of unintended consequences, which was raised in relation to Margaret Curran's amendment 1.

If the amendments in the group were not agreed to, we would allow the unintended consequence of not making the option of a fine available, as elucidated by Mr Aitken and Mr Brown. Jail will be available and should be the option in most instances for those who are tried on indictment. However, when the offence is reduced and when the wisdom of hindsight shows that it should have been dealt with in summary proceedings, the court should be in the position that currently applies.

15:45

**The Deputy Presiding Officer:** In winding up the debate, Robert Brown should state whether he will press or withdraw amendment 121.

**Robert Brown:** Let me say immediately that amendment 121 deals not with an issue that I have invented at the back of my mind but with a loophole that was identified—and rightly so—by parliamentary researchers. Across the parties in the chamber—apart from, amazingly, the Labour Party—there is broad acceptance that the amendment is necessary. Let me also say that the amendment would make no change to the position that was agreed to at stage 2 regarding rape or sexual assault with an implement. For such offences, the option of a fine alone will continue not to be available.

I thought that I had given a clear example, which even the smallest mind could understand, of the sort of offence that should not result in a prison sentence. I gave that example to illustrate why it is important that the option of a fine should be

available to our judges. Amendment 121 would not require judges to impose such a sentence. In the limited circumstances in which the conviction before the High Court or the sheriff court with a jury—

**Bill Aitken:** Does Robert Brown agree that, in the circumstances that pertain today, the common law under which such offences are indicted provides for the facility of a fine? Does he agree, therefore, that the amendment would in effect result in no change?

**Robert Brown:** I agree absolutely, although I point out that it will not now be possible to impose a fine alone for rape or sexual assault with an implement.

All members accept that sexual assault can range from extremely serious offences, for which long prison sentences are manifestly appropriate, to relatively much more trivial and insubstantial offences, which are nevertheless criminal and so must be marked by a penalty, for which a fine should be one option that is available to the court. I am not sure whether Paul Martin understands that the options that will be available to the court—

**Paul Martin** *rose—*

**Robert Brown:** Let me finish the point, if I may.

If amendment 121 is not agreed to, the options available to the court will be limited to prison, probation, community penalties, or admonition and absolute discharge. The court will be able to admonish an accused. Amendment 121 will add to those options the much more relevant option of imposing a fine.

As I said before, few people would consider a custodial sentence appropriate for minor offences such as a boy kissing a girl against her will at a party. Under the bill as it stands, the only option would be to send such an offender to prison or to let him off scot-free. There will be cases in which those found guilty of such minor sexual assaults deserve more than a slap on the wrist, but prison might not be the right punishment. People who commit minor sexual assaults can develop into those who commit more serious sex crimes later in life, so it must be clear to offenders that sex crime will be punished. That should act as a deterrent. That is why we are pushing for fines to be available as a separate penalty.

**Paul Martin:** Robert Brown raises a genuine challenge in highlighting the issue of the forcible kiss that he referred to, but we should also look at the other end of the spectrum. If amendment 121 is agreed to, it will be technically possible for the sexual assault of a child to result in a fine. Surely we should deal with that loophole, which would clearly exist.

**Robert Brown:** It is also technically possible for someone who is charged on indictment with a serious assault—sexual or otherwise—to end up with an admonition. That is the point that is being made.

It is very important that our judges are provided with the appropriate penalties and are not unduly restricted in the sentencing options for those who are found guilty of sexual assault. Amendment 121 will deal with a loophole that needs to be closed.

I have some difficulty in understanding where the Labour Party is coming from on the issue. I know that Labour members have been briefing the press all through the night about the issue, on which they seem to be very exercised for some reason. The reality is that amendment 121 is a reasonable, technical, sensible amendment that will put a conviction on indictment in those limited circumstances in the same position as a conviction on summary charge for the offence of sexual assault or sexual assault on a child. Having been given some good examples, I think that members can now make up their own minds about the matter.

I insist on amendment 121.

**The Deputy Presiding Officer:** The question is, that amendment 121 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. As this is the first division, there will be a five-minute suspension.

15:49

*Meeting suspended.*

15:54

*On resuming—*

**The Deputy Presiding Officer:** We move to the division on amendment 121.

**For**

Adam, Brian (Aberdeen North) (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)  
 Brown, Robert (Glasgow) (LD)  
 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)  
 Finnie, Ross (West of Scotland) (LD)  
 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)  
 Hume, Jim (South of Scotland) (LD)  
 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)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 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)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Tolson, Jim (Dunfermline West) (LD)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 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)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Foulkes, George (Lothians) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 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)  
 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)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 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)  
 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)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 77, Against 45, Abstentions 0.

*Amendment 121 agreed to.*

**The Deputy Presiding Officer:** I invite a motion without notice to extend the time limit for the next debate by 15 minutes, to allow proceedings on amendments to be concluded and to allow discussion on this important bill.

*Motion moved,*

That, under Rule 9.8.5A, the debate on Groups 6 to 9 be extended by 15 minutes.—[Bruce Crawford.]

*Motion agreed to.*

*Amendment 122 moved—[Robert Brown].*

**The Deputy Presiding Officer:** The question is, that amendment 122 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)

Brown, Robert (Glasgow) (LD)  
 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)  
 Finnie, Ross (West of Scotland) (LD)  
 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)  
 Hume, Jim (South of Scotland) (LD)  
 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)  
 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)  
 McInnes, Alison (North East Scotland) (LD)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 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)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Tolson, Jim (Dunfermline West) (LD)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

# **AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Foulkes, George (Lothians) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 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)  
 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)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 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)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 77, Against 44, Abstentions 0.

*Amendment 122 agreed to.*

*Amendment 14 moved—[Kenny MacAskill]—and agreed to.*

## **Section 38—Power to convict for offence other than that charged**

**The Deputy Presiding Officer:** Group 7 is on alternative offences. Amendment 15, in the name of the minister, is grouped with amendments 16 to 18 and 48 to 68.

**Kenny MacAskill:** The amendments in this group are minor, technical amendments that are consequential to changes that were made to the bill at stage 2. Amendments 15 to 18 will amend the provisions in section 38, which provide a court with powers to convict an accused of an offence other than that charged, to take account of the

new offences that were introduced at stage 2. Amendments 48 to 68 will amend schedule 2, which lists the alternative verdicts that are available in respect of the offences that are contained in the bill, again in consequence of the new offences that were introduced at stage 2.

I move amendment 15.

**The Deputy Presiding Officer:** May I ask Mr Tom McCabe why he pressed his request-to-speak button? I cannot see him in the chamber.

**Tom McCabe (Hamilton South) (Lab):** I did not know that I had pressed it.

**The Deputy Presiding Officer:** Mr Tom McCabe made a mistake and then sat with the Tories, which was very helpful of him. [*Laughter.*]

*Amendment 15 agreed to.*

*Amendments 16 to 18 moved—[Kenny MacAskill]—and agreed to.*

#### **Before section 45**

*Amendment 19 moved—[Kenny MacAskill]—and agreed to.*

#### **Section 46—Orders**

**The Deputy Presiding Officer:** Group 8 is on ancillary provision and parliamentary procedure. Amendment 20, in the name of the minister, is the only amendment in the group.

16:00

**Kenny MacAskill:** Amendment 20 is intended to address concerns that the Subordinate Legislation Committee expressed in its stage 1 report. It provides that any order made under the ancillary order-making power at section 45, which contains supplemental, consequential or incidental provision, will attract affirmative procedure, and that an order that makes transitional, transitory or savings provision will be subject to negative procedure. That means that a higher level of scrutiny will be afforded in relation to ancillary provision that contains supplemental, consequential or incidental provision, because affirmative procedure will apply, whether or not such provision will modify primary legislation.

We proposed the change because we recognised that special circumstances apply to the subject matter of the bill, because it replaces the common law and deals with the sensitive area of sexual offences. Therefore, the higher level of scrutiny that affirmative procedure affords is appropriate in the circumstances.

Any ancillary order that makes transitional, transitory or saving provision will be subject to negative procedure irrespective of whether it

modifies primary legislation. That is considered to be the appropriate level of scrutiny for provisions of that nature. The transitional provisions that are required for the bill—in particular, those that relate to criminal trials—are significant. As a consequence, we have included the necessary provisions in the bill, which means that they have already been subject to parliamentary scrutiny. The Subordinate Legislation Committee indicated at its meeting on 2 June that it is content with the approach that we have proposed.

I move amendment 20.

*Amendment 20 agreed to.*

#### **Schedule 12**

##### RELEVANT SEXUAL OFFENCES

*Amendments 21 to 47 moved—[Kenny MacAskill]—and agreed to.*

#### **Schedule 1**

##### PENALTIES

*Amendment 124 moved—[Robert Brown].*

**The Deputy Presiding Officer:** The question is, that amendment 124 be agreed to. Are we agreed?

**Members:** No.

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

##### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)  
 Brown, Robert (Glasgow) (LD)  
 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)  
 Hume, Jim (South of Scotland) (LD)  
 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)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 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)  
 Russell, Michael (South of Scotland) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Tolson, Jim (Dunfermline West) (LD)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### AGAINST

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)  
 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)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Foulkes, George (Lothians) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 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)  
 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)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 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)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 77, Against 43, Abstentions 0.

*Amendment 124 agreed to.*

*Amendment 125 moved—[Robert Brown].*

**The Deputy Presiding Officer:** The question is, that amendment 125 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)  
 Brown, Robert (Glasgow) (LD)  
 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)  
 Finnie, Ross (West of Scotland) (LD)  
 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)  
 Hume, Jim (South of Scotland) (LD)  
 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)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 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)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Tolson, Jim (Dunfermline West) (LD)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 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)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Foulkes, George (Lothians) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 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)  
 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)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 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)  
 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)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 78, Against 45, Abstentions 0.

*Amendment 125 agreed to.*

#### Schedule 2

##### ALTERNATIVE VERDICTS

*Amendments 48 to 68 moved—[Kenny MacAskill]—and agreed to.*

#### Schedule 4

##### MINOR AND CONSEQUENTIAL AMENDMENTS

*Amendments 69 to 71 moved—[Kenny MacAskill]—and agreed to.*

**The Deputy Presiding Officer:** Group 9 is consequential amendments on sexual assault by penetration, voyeurism, sexual exposure etc. Amendment 72 is grouped with amendments 76 to 82 and 84 to 98.

**Kenny MacAskill:** This group is a series of minor technical amendments, most of which are consequential on changes made to the bill at stage 2. Amendment 72 amends the consequential amendment to section 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 to take account of the introduction of new offences at stage 2.

Amendment 76 ensures that paragraph 2(3) of schedule 4 is amended to ensure that the description of section 7(8)(b)(i) of the Criminal Procedure (Scotland) Act 1995 reflects the fact that district courts are to be replaced with justice of the peace courts.

Amendments 77 to 82, and 84 to 98 are consequential on the introduction of the new offence provisions at stage 2. They extend amendments to the 1995 act concerning the retention of DNA samples of violent and sex offenders; powers to impose extended sentences for sex and violent offenders; prohibition on

personal conduct of defence in cases of certain sexual offences; and provisions concerning offences against children under 17 years of age to which special provisions apply as to when a person can be brought into custody without a warrant, so that they cover the new offences introduced at stage 2.

I move amendment 72.

*Amendment 72 agreed to.*

**The Deputy Presiding Officer (Alasdair Morgan):** We come now to group 10, on the Criminal Law (Consolidation) (Scotland) Act 1995. Amendment 73, in the name of the minister, is grouped with amendments 74, 75, 123 and 116.

**Kenny MacAskill:** During stage 2, Robert Brown MSP lodged amendments that were intended to clarify that the remaining offence provisions in section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 are concerned solely with male prostitution. I am grateful to Mr Brown for raising that issue during stage 2. He pointed out that section 13(9) of the 1995 act contains an offence of soliciting or importuning to procure the commission of a homosexual act, but that it is not clear that the offence is restricted to male prostitution. I agree that the offence as drafted goes wider, but I am informed by the Crown Office and Procurator Fiscal Service that it is no longer to prosecute behaviour other than that of those who live off the earnings of male prostitution. However, the offences at section 46 of the Civic Government (Scotland) Act 1982 and section 1 of the Prostitution (Public Places) (Scotland) Act 2007 criminalise soliciting or loitering in any public place for the purpose of engaging in prostitution, by a male or female. As such, we consider that the element of section 13(9) to which I referred is not required to deal with male prostitution activity. Amendment 75 therefore repeals that element of the offence. That leaves the remaining offence at section 13, which is concerned solely with activity relating to male prostitution.

Amendment 74 amends the title of section 13 to "Living on earnings of another from male prostitution", as this is all that the remaining offence provision at section 13(9) is concerned with.

Amendments 73 and 116 repeal and replicate section 13(10) of the 1995 act to provide that, for the purpose of offences at sections 11(5) and 12 of the 1995 act, a premises shall be treated as a brothel if it is resorted to for homosexual acts in circumstances in which resort thereto for heterosexual practices would have led to its being treated as a brothel for the purposes of those sections. The amendments also include a definition of a homosexual act in new section 12A

and consequently repeal section 13(4) of the 1995 act.

Amendment 123 amends schedule 5, to make further consequential repeals to section 13 of the 1995 act.

I move amendment 73.

*Amendment 73 agreed to.*

*Amendments 74 to 82 moved—[Kenny MacAskill]—and agreed to.*

**The Deputy Presiding Officer:** We come to group 11, on notification of the defence of consent. Amendment 83, in the name of the minister, is grouped with amendment 118.

**Kenny MacAskill:** These amendments are consequential on the amendment made at stage 2 to retain the existing provisions requiring an accused to give advance notice to the Crown if he or she intends to claim in defence that the complainer consented to the conduct to which the charge relates. The Scottish Law Commission had provided for the repeal of those provisions, considering them redundant as the offences are now defined in terms of the absence of consent and, as such, that is an element of the crime that the Crown would always have to prove. However, the Crown Office and Rape Crisis Scotland are both of the view that the provisions are valuable in providing advance notice to the complainer of the accused's intent to claim that sexual activity did occur but that the complainer consented to the act, and that the bill's provisions do not change that fact. Amendments 83 and 118 delete the repeals that were consequential on the repeal of these provisions.

I move amendment 83.

*Amendment 83 agreed to.*

*Amendments 84 to 98 moved—[Kenny MacAskill]—and agreed to.*

**The Deputy Presiding Officer:** Group 12 is on consequential amendments to the Protection of Children (Scotland) Act 2003 and the Protection of Vulnerable Groups (Scotland) Act 2007. Amendment 99, in the name of the minister, is grouped with amendments 115, 117 and 119.

**Kenny MacAskill:** Amendment 99 amends schedule 1 to the Protection of Children (Scotland) Act 2003. It adds the offences that are contained in the bill to the list of offences against children, conviction for which will lead to an offender being listed as unsuitable to work with children.

Amendments 115 and 119 reverse the amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 on the offences that will lead to the offender being listed as unsuitable to work with children and protected adults. The



provisions have not been commenced as yet and a wider consultation will be held later in the year. The question of the treatment of the offences that are contained in the bill will be considered as part of that wider consultation exercise.

Amendment 117 ensures that offences of sexual abuse of trust and non-consensual sexual acts with a person with a mental disorder, which the bill repeals, will continue to be considered as sexual offences for the purpose of section 210A of the Criminal Procedure (Scotland) Act 1995. The effect is to enable extended sentences to be imposed.

I move amendment 99.

**Richard Baker:** I seek reassurance from the cabinet secretary on the list of offences for which conviction results in an automatic listing as unsuitable to work with children. Will not the absence of the provisions in the schedule allow unsuitable people to work with children in the period until the consultation on the list of offences is concluded? I seek further detail on that and the timescale for the consultation.

**Kenny MacAskill:** The measures will remain in place. Clearly, protection of our children is fundamental. The purpose of the consultation is to ensure that we get right the Protection of Vulnerable Groups (Scotland) Act 2007. The member has my assurance that measures will remain in place to ensure the protection of our children. We will consult as widely as we can. I am more than happy to discuss with him at some future juncture how to ensure that we get that right. Our current protection remains in place. We will ensure that we enhance protection in future.

*Amendment 99 agreed to.*

**The Deputy Presiding Officer:** I am minded to take a motion without notice to extend the debate by up to 15 minutes.

*Motion moved,*

That, under Rule 9.8.5A, the debate on Groups 10 to 13 be extended by a further 15 minutes.—[*Fergus Ewing.*]

*Motion agreed to.*

**The Deputy Presiding Officer:** If it is any comfort, we will probably not need it.

Group 13 is on sexual offender notification requirements. Amendment 100, in the name of the minister, is grouped with amendments 101 to 114.

**Kenny MacAskill:** Amendment 100 deals with shameless indecency and public indecency. It addresses an issue that has arisen as a consequence of the decision in the Webster v Dominick case in 2003 that certain conduct that had previously been prosecuted as “shameless indecency” should in future be prosecuted as

“public indecency”. The amendment provides that an offender will be subject to sex offender notification requirements when convicted of public indecency in the same circumstances as would have applied had he or she been convicted of shameless indecency prior to the Webster decision.

Amendments 101 to 113 ensure that, in circumstances where an offender would be subject to the sex offender notification requirements on imprisonment, the offender will also be subject to the notification requirements if he or she is detained in hospital due to having been found insane in bar of trial, or not guilty by reason of insanity.

Amendment 114 is a technical amendment that preserves the general power to make offenders subject to sex offender notification requirements where there is a significant sexual element to their offending and even where the offence is not otherwise specified in schedule 3.

I move amendment 100.

*Amendment 100 agreed to.*

*Amendments 101 to 115 moved—[Kenny MacAskill]—and agreed to.*

## Schedule 5

### REPEALS

*Amendments 123 and 116 to 119 moved—[Kenny MacAskill]—and agreed to.*

**The Deputy Presiding Officer:** That ends consideration of amendments.

## Sexual Offences (Scotland) Bill

**The Deputy Presiding Officer (Alasdair Morgan):** The next item of business is a debate on motion S3M-4057, in the name of Kenny MacAskill, on the Sexual Offences (Scotland) Bill. Because we are running a bit behind schedule, I will cut one minute off the time that every member expected to have.

16:15

**The Cabinet Secretary for Justice (Kenny MacAskill):** It is a pleasure to open this debate on a landmark piece of legislation. [*Interruption.*]

**The Deputy Presiding Officer:** Order. Members must leave the chamber if they are not staying for the debate and must not carry on conversations—that applies even to ministers.

**Kenny MacAskill:** In reforming the law on rape and sexual offences, the bill will modernise and clarify a complex and sometimes confusing patchwork of common law and statutory provision, sweep away outmoded attitudes and terminology, and put sexual offences law on a statutory footing for the first time. It will provide Scotland with the clear, modern and robust legal framework that is required to ensure that victims are protected and offenders punished.

We should take a moment to recognise that the bill also represents a major step forward for the Parliament. For the first time, an entire area of Scots common law is being codified—in other words, placed on the statute book. The primacy of Parliament in determining the law of the land is one of the hallmarks of democracy, and I regard the bill as a landmark that is worthy to mark the 10<sup>th</sup> anniversary of devolution.

Although the common law has been in place for hundreds of years, it has of course changed over time. It was only 20 years ago that it changed to recognise that a man could rape his wife. Until then, a woman was deemed on marriage to have given her irrevocable consent. It was only in 2001, following an appeal by the then Lord Advocate, that Scots law formally recognised that rape occurs when sexual intercourse takes place without a woman's consent, regardless of whether force is used to overcome her will.

The bill consolidates those advances in the law and builds on them. In particular, it provides, for the first time, a statutory definition of consent. That is important because consent is central to the definition of sexual offences—sexual activity without consent is criminal. It is important that the law in this area is clear and easily understood, not only by specialist lawyers, but by ordinary members of the public. The bill defines consent as

“free agreement”, which is a term that can be easily understood by all.

The bill widens the present definition of rape, which, as the Lord Advocate has said, is one of the most restrictive definitions of rape in the western world. There is no doubt that other forms of attack, including male rape, are perceived by their victims as rape, and it is right that the law recognises that.

At stage 2, we amended the bill to respond to the Justice Committee's view that there should be a specific offence of sexual assault by penetration. Such assaults can be particularly horrific for their victims, and the witnesses who gave evidence to the committee made strong arguments for distinguishing such behaviour from other forms of sexual assault.

Despite those and other improvements, we must recognise that legislation cannot be the justice system's only response to rape and other sexual offending. That is why the Crown Office's work to improve the investigation and prosecution of rape and serious sexual offences is vital. In 2006, it published a report that made 50 recommendations on the reform of the investigation and prosecution of serious sexual offences, and it is now well on its way to implementing them all, thereby improving the way in which such offences are prosecuted.

I take the opportunity to thank the Lord Advocate, who has long championed reform of the way in which the Scottish justice system deals with rape and other sexual offences. Her commitment has been instrumental in driving forward the reform of the substantive law and the modernisation and improvement of the way in which the Crown Office investigates and prosecutes such offences.

It is crucial that steps are taken to change public attitudes and to challenge misconceptions. Rape Crisis Scotland has been at the forefront of that work. It has striven to change attitudes and to challenge the significant minority who are still too willing to blame the victim rather than the perpetrator. That is why we provided the organisation with funding for its hard-hitting campaign, “This is not an invitation to rape me”, which sets out to challenge the myths and misconceptions about rape and to change the culture that exists in our country. It is vital that we challenge myths, assumptions and unacceptable attitudes if the legislative reforms and the changes that are being made to the prosecution of such offences are to be fully effective. We are on a journey that is not simply about legislation, but is about Scotland becoming a modern and progressive country in which the position of women is recognised and they are treated with the respect to which they are entitled.

The Government remains committed to doing all that it can to strengthen the justice system's response to those who commit these appalling crimes, and to making Scotland a stronger and safer place for all. This bill will provide a solid basis for that work, setting out a clear, modern and robust framework within which to prosecute these appalling and despicable crimes.

This is only the beginning of what will be a long road, but I believe that we have made a good start. I am sure that Parliament will continue to take a close interest in the law as it develops in practice.

We need to ensure that, as well as providing the legislative basis, we help the nation to make cultural and attitudinal changes. It gives me great pleasure to move,

That the Parliament agrees that the Sexual Offences (Scotland) Bill be passed.

16:21

**Paul Martin (Glasgow Springburn) (Lab):** I think that many other members of the Justice Committee would agree that we have successfully interrogated a number of the challenges that we faced during the progress of this bill. It is important to put on record our appreciation of the clerks who have provided us with support during the process, and our appreciation of the Scottish Parliament information centre, which provided information to Robert Brown that allowed him to further his interrogation of issues that we discussed earlier.

I also want to put on record our appreciation of the Lord Advocate, who has played a crucial role in the modernisation of our legal system in relation to this issue. On many occasions she has been a champion who has ensured that victims and their experiences are considered very carefully. That has been important.

Robert Brown was right to raise the issue of consulting young people on the effects that this bill will have on their lives. I hope that he has been successful. A key theme during our interrogation of this bill was that young people were key stakeholders. A trend has appeared, not only in the Scottish Parliament but in various organisations that are responsible for implementing legislation, of talking at young people and not listening carefully to the points that they raise. I hope that Robert Brown's points will be taken on board. They were constructive, and I welcomed the Government's response. The committee acknowledged the issue and recommended the need for a meaningful and age-appropriate response to providing young people with the information that they require. I believe strongly that we have to encourage young people to pursue positive lifestyle changes. That can only

be achieved by our working with them. Johann Lamont gave a very positive example of that.

Earlier, we discussed Robert Brown's amendment 125. I have no doubt that every member of this chamber wants to protect the welfare of every child in Scotland, and I understand some of the points that Robert Brown raised. However, I make no apology for considering the other end of the spectrum. I am not saying that the possibility is not remote, but the technical possibility remains that the sexual assault of a child could result only in a fine. That is unacceptable. I appreciate that other members feel that it could not happen and that there would be an appeal, but it remains technically possible. We have received information that the sexual assault of a child could result in a fine. That is unacceptable, and it is quite right for the Labour Party to interrogate the issue. It is also right for Robert Brown to raise his particular example. However, we have to have the debate, because sometimes we are not quick to represent possible victims. As a result of amendment 125, children could be at risk.

**Nigel Don (North East Scotland) (SNP):** I understand the member's point, but does he not accept that, with the law as it was, the only alternative would have been an admonition?

**Sandra White (Glasgow) (SNP):** That is right.

**Paul Martin:** It is all very well for members to say, "That is right" from a sedentary position. It is also right to say that it is technically possible for the sexual assault of a child to result in a fine. Members may shake their heads, but that was made clear in the information that was provided to the committee. If members take the time to read the *Official Report* and the responses that we received from Professor Maher and the Lord Advocate, they will see that nobody disputes that that is the current position. As I said repeatedly throughout the three stages of the bill, that is unacceptable. It is important to make that point.

There have been many positive aspects to the bill. We have successfully interrogated every aspect of this complex bill, and I hope that members will support it at decision time.

16:25

**Bill Aitken (Glasgow) (Con):** Some five years ago, the previous Scottish Executive realised—and there was a general parliamentary view—that the existing law of sexual assault was no longer fit for purpose. Since then, we have followed a fairly lengthy route, but one that has arrived at a successful conclusion. I pay tribute to all those who were involved in the bill: the Scottish Government; the members of the Justice Committee, who put in a tremendous amount of

hard work; the clerks to the committee; and SPICe. At the end of the day, we have a bill that is worthy of the Parliament and that will make things better.

The definition of rape, which was defined in somewhat narrow terms over centuries, has been widened to include, as the minister said, rape with an implement, sodomy and male rape. In our contemporary society, those are necessary and appropriate changes. We have also disregarded, to some extent, the siren voices of those who believe that our young people should be exposed to a degree of risk. In that respect, the Justice Committee arrived at a measured and correct conclusion, which has been fully supported by the Scottish Government and the wider Parliament today.

There are some outstanding matters, regarding public attitudes, that are not really for the Parliament. We will have to wait and see what effect those will have. Courts will be required to determine what terms such as “free agreement” and “incapable” mean in common usage. Nevertheless, we are now further down the road, which will enable those determinations to take place, and we can be sure that there will be the widest possible protection for the potential victims of rape.

For the first time in almost 11 years, Margaret Curran has been able to persuade me to support her case. I trust that that will not render her too uncomfortable.

This has been a good piece of work. We may sometimes be frustrated at the limitations of what we can do. People sometimes behave foolishly and even irresponsibly. However, it is our duty to ensure, as far as is possible, that they are protected against their own actions. The bill is a clear illustration of what can happen when our albeit limited intellects operate in a combined way to produce legislation that is worthy of the Parliament.

16:29

**Robert Brown (Glasgow) (LD):** I join colleagues in thanking my fellow members of the Justice Committee, the clerking and other parliamentary staff, and the cabinet secretary and his staff for their professional and helpful attitude during consideration of the bill. I also thank the witnesses who gave us written and oral evidence during its passage, not least the Lord Advocate.

The bill addresses many difficult and sensitive areas, some of which are potentially controversial and provoke strong feelings in people. Not for the first time, the Parliament’s committee system has unravelled and analysed many of the issues with great skill—corporately, not individually—so that

we have ended up with a bill that will command wide consent and a sense that individual views have contributed to the end result—as, indeed, they have.

The most controversial and difficult area relates to the age of consent, in respect of which the Government departed from the Scottish Law Commission’s recommendation. That was the right decision, not least because it sends out a clear and easily understood message to young people, but it raised issues about whether the provision might deter young people, not least girls, from accessing sexual health and other services at the right time. That was one of the reasons why Liberal Democrats and others made such an issue of the importance of finding out young people’s views and attitudes so that those views, as opposed to our assumptions about their views, could inform the bill and its implementation. It has been a useful debate.

Any age limit is arbitrary to a degree, but there is a big difference between the position of young children under 13, who have no capacity to consent to sexual relations and who require clear and unambiguous legal protection, and the position of young people from the ages of 13 to 16, who also need protection, advice, support and guidance but who should not normally be criminalised for consensual activities with young people of roughly their own age.

The other major difficulty relates to the concept of consent in cases involving rape and other sexual offences. Matters of sexual relationships are unusual in being criminal and highly reprehensible when conducted against the will of one party, particularly in a brutal or violent way, but an entirely legitimate part of ordinary life—and, dare I say it, necessary for the continuation of the species—when conducted via consent. That underlying principle, elegantly explained in the Law Commission’s report, is joined together with the concept of sexual autonomy.

The bill is a progressive one, modernising the law and putting heterosexual and same-sex issues on the same basis. It provides protection and sanctions in cases in which men are the victims of nasty and brutal sexual attacks, as well as when women are the victims. The tidying up of outdated phraseology relating to male prostitution is also welcome, having been agreed to by the Government, at the suggestion of the Justice Committee, at stage 2.

The bill replaces the common law, and it should provide greater clarity and certainty and a more modern definition in some important areas. As a whole, it provides what we hope will be a modern statute, fit for purpose in the 21<sup>st</sup> century, playing its part in deterring crime and securing justice for the victims of serious crimes of a sexual nature.

I am glad to add my support and the support of the Liberal Democrats to the passage of the Sexual Offences (Scotland) Bill.

16:32

**Sandra White (Glasgow) (SNP):** I also thank the Justice Committee, its clerks and the Cabinet Secretary for Justice for the hard work that they have done. They listened to everyone and produced an important bill.

I am pleased to be able to speak on this bill. As I said, I do not think that it is the most important bill in the Parliament, but it is certainly one of the bills that I have spoken about and I feel is important. It is also historic. Lots of bodies have raised issues regarding the subject of the bill, as have the public and academia, because they have felt that Scots law is out of date in relation to rape and sexual offences. I thank the previous and present Governments for taking those issues seriously and enabling the Parliament to pass this bill in a consensual manner. We must remember that, whatever decisions we make in this Parliament, the rights of victims and the protection of the most vulnerable in our society must be what we focus on.

I am pleased that Margaret Curran's amendment 1 was accepted, as I believe that the defence of prior consent has been used far too often in rape and sexual assault cases involving intoxication.

I am sorry that Paul Martin and the Labour Party appear not to understand exactly what Robert Brown's amendments 121 to 125 mean. I think that Robert Brown explained the position, but I will try again to make it clear. The accepting of the amendments means the addition of fines, whereas Paul Martin is advocating that the accused be admonished—I wish that he would accept that point. We all agree that any sexual offence is a terrible indictment of human society. I would like Paul Martin to clarify in his own mind the fact that the fines would be an additional disposal and that the alternative is that the accused would merely be admonished. I wish that he would listen to that point.

My only regret involves the issue of consensual sex between young people of between 13 and 15 years of age and the threat that those young people might end up with a criminal record, which Robert Brown touched on. The matter might be outwith the remit of the Scottish Government, but I hope that we can return to it, as it is important, and that it will be part of the consultation with young people that the Cabinet Secretary for Justice mentioned. The issue might be controversial, but it is an important issue for the 21<sup>st</sup> century, and I think that young people should have an opportunity to speak about it.

16:34

**Johann Lamont (Glasgow Pollok) (Lab):** I am not sure that I agree with Sandra White that the Sexual Offences (Scotland) Bill is not one of the most important bills to go through the Scottish Parliament. It is among the most important, in my view, because it speaks to something very deep in our society—the experience of women who face violence and the fact that somebody would choose to use their power to violate somebody in a sexual way.

It is telling that the First Minister has chosen to be absent and not to participate in this afternoon's critical debate. It is a symbolic as well as a political matter for our First Minister to choose to participate in a political stunt with his Conservative colleagues at Westminster rather than recognise what politics is actually about. People are alienated from the brouhaha of politics, but the bill is an example of what we can do together when we examine important issues. Today, we have an opportunity to support a bill that is radical in its intention and will have significant consequences for women. Our First Minister should be here to recognise the importance of that kind of politics.

The debate is not an easy one. The reality at its heart is that there is still a view that, if a woman is raped, it is somehow her fault. Through time, that justification has changed, but it remains instructive to make the point that people look not to the crime or the alleged criminal but to the victim. That can overwhelm us, and the fact that the conviction rate is as low as it is can lead to despair, but today we are taking a significant step forward. We know that there has been progress, but more has to be done to meet further challenges.

In the early stages of the Scottish Parliament, action was taken to address the need to support survivors, to make agencies responsive, and to recognise that the legal system revictimises women who go through the process. The Abernethy ruling seems a long time ago. Robert Brown spoke earlier about small brains, but we must reflect that, at that time, big brains told us, "You cannot do this." They said that we could not protect women from the people against whom they complain in relation to sexual offences. I particularly commend my ex-colleague Angus MacKay, who, as Deputy Minister for Justice at that time, had the courage to take on the establishment who said, "These things cannot be done." We are now moving from that place to liberating and progressive legislation.

At one time, no one believed that there could be rape inside marriage. There has been progress, and we have to hold on to that. We must commit ourselves to ensuring that we have sustained support services for survivors, and we must challenge attitudes, starting in schools, and

liberate boys and girls from the expectations that are placed on them. If we do not understand how gender roles are applied, we will not change those attitudes. If anything can give us confidence in the shared journey on the legislation, it is to understand the progress that has come because of the powerful role of Rape Crisis Scotland and women's organisations who have given voice to women's experience—

**The Deputy Presiding Officer:** The member must conclude now.

**Johann Lamont:** We must allow that experience to shape our legislation on sexual offences, and we must learn from it in other legislation.

16:38

**Nigel Don (North East Scotland) (SNP):** I would like to comment—briefly, under the circumstances—on the process of getting to where we are today.

I reflect that anybody who has picked up a book on Scots criminal law knows that it is particularly unsatisfactory in the area that we are discussing this afternoon. The Lord Advocate's reference of 2001 and *McKearney v Her Majesty's Advocate* in 2004 made it clear that the law was unsatisfactory, and at that point the Scottish Law Commission got involved. The commission was mentioned earlier, but I pay particular tribute to it because, despite the huge number of small amendments that have been made to the bill, it is by and large the bill that the commission proposed after serious consideration of the issues in 2007. We should congratulate it on a good piece of work. I am sure that it will be pleased that the bill has gone through the Parliament, and I am sure that the authors of standard textbooks will also be delighted with what has happened today.

I reflect on the principles, as enunciated by the Scottish Law Commission, that the law should be clear; that it should respect sexual autonomy, which is the basis on which consent came into the bill; that it should recognise the protective principle and those in our society who need to be protected by the law because they cannot protect themselves; and that there should be no distinction on the basis of sexual orientation or gender, which is, of course, where we have got to in the 21<sup>st</sup> century.

I too thank and pay tribute to my Justice Committee colleagues. Our consideration of the bill was an extraordinary bit of teamwork and, as a relative new boy to parliamentary politics, I found it a great pleasure to witness the way in which the committee worked so well together.

That said, certain issues outwith the scope of the bill still have to be addressed. First, the bill does not change the fact that women in particular remain unlikely to report rape. Not only will the Government have to continue its work on this issue but, as others have mentioned, society itself will have to work on such attitudes.

Secondly, during its consideration of the bill, the committee reflected on the way in which reported cases were dropped while being investigated by the police and considered for prosecution. I believe that we agreed to call for an attrition study on the matter. In any case, it is hugely important that we understand the process that cases go through; otherwise, the passing of better law will not necessarily lead to better results.

Finally, we do not know very much about how juries work. The committee realised that it could not address that matter immediately, but it is a real issue and work really needs to be carried out on that part of the process.

16:41

**Margaret Curran (Glasgow Baillieston) (Lab):** I concur with other members on the significance of this legislation but, notwithstanding Robert Brown's very important comments about the bill's breadth, I will focus on the issue of rape.

The bill represents another step in our many efforts over the lifetime of the Parliament to tackle the appalling levels of conviction for reported rape. It is indeed distressing that Scotland has the lowest rape conviction rate in Europe. Research from Rape Crisis Scotland has established beyond any doubt that complainers find the trial process traumatic, degrading and humiliating, and I would never recommend that a woman put herself through the process. However, I believe that there is a will in all quarters of the Parliament to tackle not only that factor but the others that contribute to the low conviction rate to which Nigel Don referred.

This legislation, which represents a key and very welcome step, broadens the definition of rape and sets out for the first time a definition of consent. I pay tribute to the cabinet secretary and his team for the way in which they have conducted themselves and to the Justice Committee, which has served the Parliament very well.

That said, we should not get too complacent and start congratulating ourselves or believing that this legislation is enough. Despite earlier changes to the use of sexual history and character in court, seven out of 10 women who give evidence are almost guaranteed to be asked about those aspects. Increasingly, defence lawyers have sought complainers' medical records and frequently cited, for example, periods of

depression as relevant to the trial. That is certainly a concern and will obviously influence a woman's decision to proceed with her case.

Rape is a vile and violent crime. Although it largely affects women, we know that everyone is revolted by this kind of grievous assault and its consequences. Reporting rape demands courage and fortitude, and I have no doubt that women and men throughout Scotland understand that and want a sensitive and effective judicial system that delivers truth and justice.

That is why I have to tell the Parliament that the absence of the First Minister represents a glaring omission of leadership—it is a breach of our normal approach in this Parliament when we are reaching across party divides to ensure that there is leadership and that we deliver on such important issues.

This legislation is an important milestone, but the work does not stop here, and I ask the minister to address other key issues such as the use of sexual history and medical records in court and the growing campaign for independent legal representation for rape victims in the trial process. We need to ensure that rape crimes are investigated and prosecuted and that victims receive the proper support. The bill's provisions will assist us in that process, but this is only the beginning, not the end.

16:44

**Mike Pringle (Edinburgh South) (LD):** I welcome today's debate. Although the Liberal Democrats fully support what this vital piece of legislation is trying to achieve, the law on sexual offences is by its nature a sensitive topic and should be scrutinised thoroughly.

Many members have remarked today that Scotland's low rape conviction rate is nothing short of a national shame, and I welcome the fact that further legislative steps are being taken to address that pressing problem. In particular, I acknowledge the importance of new provisions that define consent in law and include the abuse of males in the definition of rape. I also state my support for the introduction of new statutory offences for anyone spiking drinks for sexual purposes and coercive sexual conduct.

Any legislative provision must be backed up by a radical change in the way in which our society views and supports victims. That point has been well made by the minister and other members during this short debate. Rape is the only crime in which we, as a society, denigrate and blame the victim, and any legislative effort is at risk of being rendered ineffective unless there is widespread cultural change. Tackling the stigma of being a

rape victim is, in many ways, equally important to securing convictions.

I will also comment on the matter of underage sexual relations. Everyone agrees that sexual relations by persons under the age of 16 are not a good thing, with regard to emotional and physical maturity as well as to sexual health, but that does not take away from the fact that a significant minority of youngsters engage in underage sexual relationships. It is of vital importance that legislation fully acknowledges that. A blanket approach runs the risk of ignoring underlying issues rather than establishing how the law can be most beneficial in influencing young people.

Professor Kathleen Marshall, formerly Scotland's Commissioner for Children and Young People, expressed concern that the bill was

"proceeding on the basis of insufficient information"—[*Official Report, Justice Committee*, 4 November 2008; c 1277.]

as far as the views of young people were concerned. That raised legitimate concerns regarding the bill's future effectiveness, and—as my colleague Robert Brown has said—it is regrettable that the Scottish National Party did not carry out more consultation with young people before the bill started its passage. That is why Liberal Democrats have pushed the Government to undertake appropriate consultation with children and young people about their attitudes towards part 4 of the bill prior to its commencement. We have also called for a publicity and information campaign to inform children and young people about changes to the law that directly affect them, so that the system of rules is equally clear to young people, parents and the police.

The bill has been widely acknowledged by ministers and campaign groups as an historic opportunity. Like other members, I congratulate the Lord Advocate; I know that the issue is close to her heart. I hope that the Parliament can seize the opportunity and deliver a Sexual Offences (Scotland) Bill that is capable of addressing the sensitive and important matters at hand. I support the bill.

16:47

**John Lamont (Roxburgh and Berwickshire) (Con):** Like other members, I begin by welcoming the progress of the bill to stage 3. The quality of evidence throughout and the measured and reasonable contributions from witnesses during the bill's earlier stages are to be commended.

The bill provides important clarification in a number of complex and delicate areas relating to sexual offences and the law of rape. The law on rape and other sexual offences has been long overdue for clarification and updating. As Nigel

Don said, academics and petitioners have been critical of the Scots law on rape for many years.

The bill undoubtedly modernises the law on rape and sexual offences. Creating a non-gendered approach to rape and widening its definition will, we hope, create a more supportive environment in which victims can come forward. The inclusion in the bill of other forms of sexual penetration, including the use of an implement, is appropriate, and that will be seen as an important step in the evolution of the law on rape and sexual offences.

By addressing offences committed on mentally disordered persons and children and offences committed by people who are deemed to be in a position of trust, the bill provides a voice for vulnerable sections of society who are less able to speak out for themselves. Although we acknowledge that children are maturing earlier, it is right that the age of consent has been kept at 16 and that there will be legal consequences for those who do not abide by that law. That view is supported by church groups and others, and it was appropriate for the Scottish Government to retain in the bill the option of criminal prosecution for consensual penetrative sexual conduct between older children.

Once it is enacted, the bill will go a long way to addressing and changing the blame culture that surrounds rape and sexual offences in our society. The view that women might invite rape by wearing revealing clothes or by being flirtatious, or if they are drunk, must be completely rejected—a point that was made by Johann Lamont.

Some problems in this area of law will remain harder to solve. For example, the definition of consent as “free agreement” does not eliminate the issue that the line between true consent and submission is still somewhat elusive. It is likely that problems will always occur in this complex area of the law. The bill is a step in the right direction, clarifying definitions and providing support for a wider range of victims, but it is important to acknowledge that more is to be done outside the legal arena to tackle attitudes towards the victims of rape. We look forward to supporting the bill at decision time.

16:49

**Richard Baker (North East Scotland) (Lab):** All members want Scotland to have the most robust legal framework possible in relation to sexual offences. The impact that such offences have on their victims makes it all the more important that we have the right laws to deal appropriately with those who commit such offences and that we deal in a fair and informed way with the sensitive issue of what constitutes a sexual offence.

As members have said, we have dealt with the issues against the backdrop of what remains a worryingly low conviction rate for rape. Reports today suggest that the conviction rate is going up, but it nevertheless stood at only 3.7 per cent in 2007-08. The Lord Advocate rightly pointed out in evidence to the Justice Committee that there is no panacea for the problem and that the bill is not specifically about improving conviction rates. We require further detailed research into the system of investigation and prosecution of cases. A package of measures will be required, so that people have more confidence to come forward and report rape, which still too often goes unreported.

**Robert Brown:** Does Richard Baker acknowledge that the problem lies further back? The Lord Advocate said that, after an indictment or charge, 70 to 80 per cent of cases result in conviction.

**Richard Baker:** That is a valid point, but the crucial point that I am making is that the perpetrators of such crimes should not expect to go unpunished and should face severe penalties for their actions.

The understanding of consent to sexual activity has also been debated. Margaret Curran’s successful amendment will ensure that someone who is incapable of giving their consent to sexual activity cannot be deemed to have consented simply because of earlier statements. That move forward provides greater protection from unwanted sexual activity to those who lack the capacity to consent. That has helped to make the bill better.

Another key debate was on consensual sexual relationships between 13 to 16-year-olds. Like John Lamont, I believe that the retention of the status quo is right. However, it is important that we consider the welfare issues that have been raised in connection with that, particularly by many organisations that work with children and young people. It is important to implement the Justice Committee’s recommendation that multi-agency co-operation should provide effective support to children who are involved in underage sexual activity. Consultation with young people on the impact of the bill is important, too. My colleague Cathie Craigie raised that issue on several occasions.

We are not happy with Robert Brown’s amendments on penalties that were agreed to today. We believe that, in minor cases of sexual assault or sexual assault on a child, it is for prosecutors to ensure that cases are prosecuted effectively. However, we are not comfortable with the fact that sexual assault or sexual assault on a child that is prosecuted under the solemn procedure could result in only a fine. The issue is not about an additional disposal. People have talked about the status quo, but we are discussing



how the law should be modernised. I fail to see why Robert Brown cannot understand, in whatever size brain he has, why we feel it was more appropriate to maintain the status quo after stage 2, in which sexual assault or sexual assault on a young child, when prosecuted under the solemn procedure, could not result in simply a fine. I thought that Bill Aitken would be with me on that, given his attitude on the general issue. A fine is the most unsatisfactory outcome. Robert Brown mentioned community sentences, which would be a more appropriate disposal. However, we are where we are.

The vast majority of the process has been consensual. It is important to give credit for the hard work that has been done on the bill. Ministers, the committee, the clerks and civil servants deserve great credit for reaching a broad consensus on difficult issues. It is of great importance that we do all that we can to protect people in our country from harm and that we have effective and modern laws on sexual offences.

16:53

**The Minister for Community Safety (Fergus Ewing):** I am pleased that we have had the opportunity to debate the Sexual Offences (Scotland) Bill, which will bring much-needed clarity and consistency to the law on sexual offences. I thank all those who contributed to the bill's development.

The previous Administration asked the Scottish Law Commission to review the law on rape and other sexual offences in 2004. The Scottish Law Commission's carefully considered "Report on Rape and Other Sexual Offences" and its draft bill provided a solid foundation on which to work in making progress on the reform of the law. We are fortunate to have the Scottish law commissioners and their staff. Their excellent work helps to provide a useful foundation for our legislative work.

I also thank all those who took the time to share their experience and expertise on these difficult issues in response to the Scottish Law Commission's discussion paper of 2006 or our consultation on the commission's final report prior to introducing the bill into Parliament, or in giving written and oral evidence to the Justice Committee as part of its consultation on the bill. That wide and informed input was invaluable in helping us and the Justice Committee to identify ways in which the bill could be strengthened and improved.

I pay tribute to the Justice Committee, under the avuncular convenership of Bill Aitken, whose stage 1 report on the bill was carefully considered and balanced and identified a number of ways in which the bill could be improved. The Government

worked closely with all committee members to lodge amendments at stage 2 to address the points that they raised and to deal with issues of concern to the Government that had not been the focus of the debate. I put on record the Government's thanks to the committee and its clerks for their careful work in scrutinising the bill's provisions and, more generally, for the balanced and constructive way in which they approached their work on the bill. It is truly appropriate that we have found a *modus operandi* on the part of the Government, in working with the committee, that is entirely co-operative and not at all adversarial. What more appropriate topic of legislation could there be for such an approach, if one thinks about it?

Almost all members have paid tribute to the Lord Advocate. Elish Angiolini has been a long-standing supporter of reform of the law. Her formidable leadership on this issue and her steely commitment to improving the way in which the Scottish justice system deals with rape and other sexual offending were of huge importance in progressing the bill.

I thank all those members who contributed during the passage of the bill. We welcome Margaret Curran's amendment to the provisions concerning capacity to consent and intoxication, which brings greater clarity to the law by sending the simple message that sexual activity with a person who is so intoxicated that they are not capable of giving consent is criminal.

Sandra White raised concerns about the possible adverse consequences of criminalising girls for engaging in consensual sex while under the age of consent. I understand those concerns and I believe that it is vital that the law distinguishes clearly between the victim of an offence and the perpetrator and treats them differently. However, when we are talking about an offence that is committed by two people acting consensually, it must be right that the law treats them in the same way. It is important that the policy is seen in the context of our broader policy on children who commit offences. In all but the most exceptional circumstances, children would be dealt with through the children's hearings system, with the emphasis on the welfare of the child, rather than being subject to criminal prosecution.

We lodged amendments at stage 2 to deal with prior consent and sleep. The new section 10A replicates our understanding of the current law by providing that someone who is asleep or unconscious cannot give consent while in that state. Although the new section provides that consent cannot be given in such circumstances, it does not exclude the possibility of a reasonable belief in consent, nor does it place any specific

restrictions on how such a reasonable belief may arise. In practice, it will be for the court to decide whether any claim of reasonable belief in consent on the part of the accused is credible in cases in which such circumstances arise. It is highly unlikely that a court would regard a belief that a victim gave consent while he or she was incapable of giving consent as a reasonable belief.

The cabinet secretary said earlier that the Government agrees that it would be helpful to consult children and young people to help us to decide how we can best take forward the bill. I mention that specifically because of the comments that Robert Brown and Mike Pringle made in their speeches. I therefore echo the cabinet secretary's assurances in that regard.

I thank all members for their contributions. The passage of the bill has demonstrated that the Government and MSPs can work across party boundaries to agree important legal reforms in a complex and sensitive area of public policy. I hope that the Parliament will vote unanimously to pass the bill.

## Business Motions

17:00

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-4338, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which seeks to make a substitution in rule 2.2.3, to allow the Parliament to meet at 8.45 tomorrow morning. I ask any member who wishes to speak against the motion to press their request-to-speak button and I call Bruce Crawford to move motion S3M-4338.

*Motion moved,*

That the Parliament agrees that "8:45" be substituted for "9:15" in Rule 2.2.3 for the purpose of allowing the meeting of the Parliament on Thursday 11 June 2009 to begin at 8.45 am.—[*Bruce Crawford.*]

**The Presiding Officer:** George Foulkes has indicated a desire to speak.

**George Foulkes (Lothians) (Lab):** I think that the button was pressed accidentally.

**The Presiding Officer:** We are grateful to hear that.

No member has asked to speak against the motion. The question is, that motion S3M-4338, in the name of Bruce Crawford, be agreed to.

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S3M-4339, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a revised business programme for tomorrow.

*Motion moved,*

That the Parliament agrees the following revision to the programme of business for Thursday 11 June 2009—

delete

9.15 am Parliamentary Bureau Motions

*followed by* Scottish Conservative and Unionist Party Debate: Scotland Needs a General Election

and insert

8.45 am Parliamentary Bureau Motions

*followed by* Ministerial Statement: Influenza A (H1N1)

*followed by* Scottish Conservative and Unionist Party Debate: Scotland Needs a General Election—[*Bruce Crawford.*]

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S3M-4340, in the name of Bruce Crawford, on behalf of

the Parliamentary Bureau, which sets out a business programme.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 17 June 2009

2.30 pm Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Ministerial Statement: School Buildings Programme  
*followed by* Stage 3 Proceedings: Scottish Local Government (Elections) Bill  
*followed by* Scottish Parliamentary Corporate Body Debate: Nomination of Pension Trustees for the Scottish Parliamentary Pension Scheme  
*followed by* Business Motion  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Thursday 18 June 2009

9.15 am Parliamentary Bureau Motions  
*followed by* Debate on a Government Motion to treat the proposed Convention Rights Proceedings (Amendment) (Scotland) Bill as an Emergency Bill  
*followed by* Stage 1 Debate: proposed Convention Rights Proceedings (Amendment) (Scotland) Bill  
*followed by* Review of SPCB Supported Bodies Committee Debate  
 11.40 am General Question Time  
 12 noon First Minister's Question Time  
 2.15 pm Themed Question Time  
 Education and Lifelong Learning;  
 Europe, External Affairs and Culture  
 2.55 pm Committee of the Whole Parliament:  
 Stage 2 Debate: proposed Convention Rights Proceedings (Amendment) (Scotland) Bill  
*followed by* Stage 3 Proceedings: proposed Convention Rights Proceedings (Amendment) (Scotland) Bill  
*followed by* Scottish Government Debate: Festivals' Contribution to Scotland's Success  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Wednesday 24 June 2009

9.15 am Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Stage 3 Proceedings: Climate

Change (Scotland) Bill

2.35 pm Continuation of Stage 3 Proceedings: Climate Change (Scotland) Bill  
*followed by* Business Motion  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business  
 Thursday 25 June 2009  
 9.15 am Parliamentary Bureau Motions  
*followed by* Scottish Government Business  
 11.40 am General Question Time  
 12 noon First Minister's Question Time  
*followed by* Members' Business  
 2.15 pm Themed Question Time  
 Health and Wellbeing  
 2.55 pm Scottish Government Business  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time—[Bruce Crawford.]

*Motion agreed to.*

## Parliamentary Bureau Motions

17:01

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of three Parliamentary Bureau motions. I ask Bruce Crawford to move motions S3M-4341 to S3M-4343, on the approval of Scottish statutory instruments.

*Motions moved,*

That the Parliament agrees that the draft Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009 be approved.

That the Parliament agrees that the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 be approved.

That the Parliament agrees that the draft Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 be approved.—[*Bruce Crawford.*]

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

## Decision Time

17:02

**The Presiding Officer (Alex Fergusson):** There are just two questions to be put as a result of today's business. The first question is, that motion S3M-4057, in the name of Kenny MacAskill, on the Sexual Offences (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 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)  
 Brown, Robert (Glasgow) (LD)  
 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)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Foulkes, George (Lothians) (Lab)  
 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)  
 Harvie, Christopher (Mid Scotland and Fife) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Hepburn, Jamie (Central Scotland) (SNP)  
 Hume, Jim (South of Scotland) (LD)  
 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)  
 McArthur, Liam (Orkney) (LD)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (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)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Murray, Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 O'Donnell, Hugh (Central Scotland) (LD)  
 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)  
 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)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 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)  
 Stewart, David (Highlands and Islands) (Lab)  
 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)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)

**The Presiding Officer:** The result of the division is: For 121, Against 0, Abstentions 1.

#### *Motion agreed to,*

That the Parliament agrees that the Sexual Offences (Scotland) Bill be passed.

**The Presiding Officer:** If no member objects, I propose to ask a single question on motions S3M-4341 to S3M-4343, on the approval of Scottish statutory instruments.

The question is, that motions S3M-4341 to S3M-4343, in the name of Bruce Crawford, on the approval of SSIs, be agreed to.

#### *Motions agreed to,*

That the Parliament agrees that the draft Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009 be approved.

That the Parliament agrees that the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 be approved.

That the Parliament agrees that the draft Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 be approved.

**The Presiding Officer:** That concludes decision time. If members who are leaving the chamber did so quietly, it would make a change.

## Supporting Town Centres

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S3M-3611, in the name of Aileen Campbell, on supporting town centres. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament recognises the central role that high streets play in local communities and town centres as a focal point for both economic and social activity, especially in the south of Scotland region; believes that high streets and town centres must be supported and invested in during the current economic downturn; notes calls from the Local Government Association in England to allow local authorities temporarily to use vacant high street shops as sites for community projects; welcomes the cross-party support for a Town Centre Regeneration Fund in the recent budget, and looks forward to the improvements that this will generate in high streets and town centres across Scotland.

17:04

**Aileen Campbell (South of Scotland) (SNP):** Town centres are, almost by definition, at the very heart of many of Scotland's communities. Often, they are literally and geographically central to an area and provide an economic and social focus for local activity. With the right support, our high streets and town centres can help Scotland to find its way to economic recovery. For that reason, I am grateful both to the members who have given their support to allow us to debate the motion tonight and to those members who have stayed behind to participate in the debate.

I am pleased to welcome a journalist from the local newspapers that serve the towns of Lanark, Carluke and Biggar in the South of Scotland region who is following our debate from the media gallery. I will focus on the South of Scotland region tonight, although the issues that I will raise are, of course, relevant to the country as a whole.

Since being elected to Parliament in 2007, I have made my home in Biggar. As anyone who has read some of my recent motions will know, Biggar is a town full of good news stories. Its High Street benefits from the presence of an award-winning chippie, an ice-cream shop and an Indian restaurant. The town's youth project, which is supported by the cashback for communities fund, provides healthy lunches and a safe environment for local schoolchildren. The town is thriving with many small independent shops, where folk can meet for a coffee and a chat. Biggar is a place that people are proud to be part of and to do their bit to maintain. Biggar demonstrates the positive contribution that town centres can make to our economy and society during the economic downturn.

Like many towns in rural South Lanarkshire, this very week Biggar is celebrating its annual gala, with traditional ridings and marches. The town's Fleming queen is a local primary school pupil by the name of Aileen Campbell—I wish her the best of luck. Tomorrow, the county town of Lanark celebrates its Lanimers festival. I look forward to joining the crowds on Lanark High Street and I hope that the sun shines for all. The Lanimers procession shows the High Street at its very best: full of young families cheering the lorries as they go past and demonstrating a civic pride that media commentators often think is lost nowadays.

Although I have no doubt that Lanimers provides a boost to the local economy, I want to work with colleagues to ensure that, for the other 364 days of the year, Lanark town centre gets the help and support that it needs. I understand that the community council and the local council-led town group have put aside their differences to examine how best they can apply to the Scottish Government's town centre regeneration fund. That is very much to be welcomed.

Indeed, the Scottish Government's town centre regeneration fund itself is to be welcomed. The fund has been welcomed by members from across the parties, as is evidenced by the many motions and parliamentary questions on the fund since it was announced. Members on all sides recognise the importance and significance of the Government's finding £60 million to invest in our town centres just as the downturn begins seriously to take hold.

Despite the examples that I have given, there is no question but that many of our high streets are struggling. The most obvious example is the closure of Woolworths. It is not uncommon to see people shaking their heads sadly as they walk past a closed and forlorn-looking former branch of Woolworths on their high street. Lanark, Irvine, Ayr and Dumfries are just some of the towns in the South of Scotland that lost a Woolworths branch. Such closures can have a knock-on effect on the rest of the town centre, as smaller shops lose passing trade and boarded-up shopfronts deter visitors—as, perhaps, do the takeaways that are open at night but closed during the day.

Many constituents have contacted me about the perilous state of other town centres in the region, plenty of which never had a Woolworths. For example, Carluke has been hit by various closures in recent times and a number of its residents have expressed concern about the possibility of a new supermarket development outside the town's traditional central shopping area. Instead of being downbeat, however, plenty of local residents and businesses have positive ideas about how to develop the town centre. I have met representatives of the town's development trust

who are interested in finding ways of making the town centre regeneration fund work for Carluke. Local entrepreneurs have also enthusiastically outlined their plans for a children's activity centre that would entertain younger residents while their parents made the most of the town's shopping facilities.

Many similarly imaginative initiatives are taking place across the United Kingdom. For example, England's Local Government Association has called for artists and other community projects to be allowed to take over disused shop spaces. Even simple steps like that can help to brighten up an area and keep a town centre attractive during the downturn.

Another successful initiative from which we in Scotland can learn is the renaissance town movement. The movement places local empowerment at the heart of work to redesign and improve town centres. Towns in East Renfrewshire have been exploring the possibilities that are offered by that idea. In doing so, they have been supported by Architecture and Design Scotland, which is funded by the Scottish Government and is a partner in the initiative. A conference to discuss the ideas involved will be held on 25 June. I hope that many local authorities will participate and learn more about how those creative ideas can be applied to their areas. Such ideas help to give local residents and visitors a reason to spend time—and to enjoy doing so—in their local high streets and, importantly, to have a say in what their town looks like.

During this year of homecoming, we can also be creative about how we raise the profile and tourism value of our town centres. Recently, I was delighted to be contacted by the civic government of Irvine, California, which suggested that the city establish formal friendship city ties with its namesake in Ayrshire. I am actively pursuing the suggestion with the local council, as it is exactly the sort of shot in the arm from which many of our smaller towns and high streets could benefit.

Not every application to the town centre regeneration fund will be successful, but I believe that the Government's criteria are fair and that, if local stakeholders get their act together and co-operate properly, there is a level playing field and all to play for. One criterion is the definition of a town centre. For an area to be defined as a town centre, it must be described as such in the development plan. That means that some communities that have high streets and an array of different shops that face some of the challenges that I have outlined may miss out on part of the fund; Lesmahagow and Carnwath in South Lanarkshire are examples. I am working with the community councils in those places to see how they can be supported outside the regeneration

fund process. One important step would be for the local authority to reverse its decision to close Lesmahagow's much-loved Jubilee hall, which was opposed by more than 80 per cent of respondents to a recent survey of mine.

I am glad that the Parliament has this opportunity to raise awareness of both the challenges facing our high streets and the examples and initiatives from which others can learn. I am sure that other members will be able to offer interesting examples from their areas. I look forward to hearing the minister outline how the Scottish Government will continue to invest in and develop town centres in the South of Scotland and throughout the country.

17:12

**Mary Mulligan (Linlithgow) (Lab):** I congratulate Aileen Campbell on bringing this issue to the chamber. We have debated the matter a number of times before, but I have no problem with our discussing it again.

Traditional town centres in Scotland provide a hub for both business and pleasure. However, we all agree that pressures on many town centres have meant that they are not always what we would want them to be. Whether that deterioration is due to competition from other centres or the economic effects of the loss of local jobs or businesses in the town centre closing down, the effect is the same—a poor town centre that meets no one's needs.

Just over a year ago, I was pleased to lead a members' business debate in the chamber that recognised the establishment of the first business improvement district in Scotland in the town of Bathgate in my constituency. I was and still am proud of what Bathgate has achieved. It suffered from all the challenges that I have mentioned—a major indoor shopping development in Livingston, just a few miles away, and significant job losses, including at Motorola and NEC. However, local businesses decided to get together, working in partnership with the local authority and the Scottish Executive, to look at ways of improving the town centre.

First, people considered what their business, shop or service was offering to potential customers. They recognised that they could not compete with some of the large retailers, so they tailored their business to local demand. Let me be clear—that did not mean any reduction in quality or diversity. Some of the goods and services that are provided are for smaller, perhaps more specialised markets and are therefore suited to being provided in smaller towns.

Secondly, the environment must be attractive and safe. Car parks must be convenient and

customers must feel safe using them. Public transport—buses or trains—is equally important. It is clear that, if buses stop at 6 pm or do not run on a Sunday, the town centre will be dead at those times. Perhaps the minister will take the opportunity to ask his colleague, the Minister for Transport, Infrastructure and Climate Change, what he is doing to improve bus services.

The shopfront project that the previous Scottish Executive match-funded in Bathgate allowed businesses there to improve the frontage of their premises, which helped to improve the attractiveness of the town. That may seem superficial, but it has been shown to affect customers' shopping habits—it helps businesses.

There are two further areas that the Scottish Government needs to consider. The first is the issue of the derelict buildings that blight a number of our town centres. Will the minister consider establishing a fund to deal with that problem? Will the Scottish Government make it easier for people to find out who owns derelict, and sometimes seemingly abandoned, properties? It is often quite difficult to find out that information. Secondly, how will the Scottish Government promote the use of residential properties in town centres, particularly now that improvement grants are no longer available?

I welcome the fact that the Scottish Government has followed Labour's suggestion and established the £60 million town centre regeneration fund. However, I am concerned that there should be a clear strategy to guide the allocation of that money, as the minister has not yet made that clear. I strongly believe that allocations should be made only where there is a partnership approach involving businesses, local authorities and the voluntary sector. I hope that the minister will confirm that he agrees with that.

I welcomed the Scottish Government's change of position on business improvement districts. Will the minister tell members how the Scottish Government is supporting them, both financially and in kind? I have saved the biggest question for last: will the £60 million be a one-off or an on-going budget line?

17:16

**Bob Doris (Glasgow) (SNP):** I congratulate Aileen Campbell on bringing this important debate to the chamber. The plight of town centres throughout Scotland should concern us all. I am concerned about the decay of many of our town centres in Glasgow, but the town centre regeneration fund offers an opportunity to assist in turning many of those areas around.

We should not pretend that £60 million will solve the problems that town centres face, but, as the

minister said, we should make the best of that cash by using it effectively to leverage in additional moneys and make the biggest impact for town centres and the local communities that they support. I will return to that point later.

When the town centre regeneration fund was first announced, it was widely assumed that city-located town centres need not apply. There was a clear belief that towns were towns and cities were cities, but, in planning terms, that is not true. In taking up the campaign to ensure that our cities—including Glasgow, the city that I represent—did not miss out, I met Alex Neil, the Minister for Housing and Communities. I am delighted to say that the Scottish Government has ensured that cities can apply and has attempted to make the qualification criteria as flexible and inclusive as possible.

I have not left the matter there; I also met the head of Glasgow's development and regeneration services, Mr Steve Inch, and Cathy Laing, of the Glasgow North Regeneration Agency, to discuss possible bids. One of the bids is for Maryhill, so I declare an interest in the matter. Although I am a list MSP for the Glasgow region, I am a resident of Maryhill, which I consider to be home, after staying there for more than 10 years.

Maryhill is a proud community, but it is not without its problems. Like many areas, it suffers from high levels of poverty and social exclusion. The more prosperous members of our community are often drawn into the city centre to high-end shops and better amenities, or to the out-of-town shopping facilities with which other town centres have experienced problems. Those who remain are often from the lower income groups, and they are left with a relatively small amount of local facilities and poor amenities.

Communities should be able to celebrate their diversity, and social integration is a core element of any society. Maryhill needs more facilities that will benefit all who stay there—irrespective of their income level—and bring all parts of the wider Maryhill community together. I hope that the historical canal and botany areas, which are flanked by the barren valley area, will be at the heart of one of Glasgow's transformational regeneration areas. I hope that there will be a sizeable mix of housing developments, and a real opportunity to breathe life into an area that—as it has just lost two local schools—is crying out for amenities.

At the heart of the area sits Maryhill burgh halls—a once-proud building that now lies in ruins. However, it is rising from the ashes, and the Maryhill bid for the town centre regeneration fund is critical to the regeneration of the building. The plan for the new burgh halls is central to a £1.8 million bid from Glasgow.



I will list for the minister some of the facilities that will be in the new burgh halls: a wide hall meeting area, a cafe with healthy eating options, a nursery offering up to 40 child care places, a garden courtyard civic meeting area, a gallery that will tell people about local history to build civic pride in the area, and even, believe it or not, a commercial recording studio. The project will provide child care for low-income families and create more than 100 jobs. Glasgow is asking for £1.8 million to allow more than £9 million to be invested. That really leverages in extra cash and, as the minister would say, is a big bang for the Government's buck.

17:20

**Karen Gillon (Clydesdale) (Lab):** I, too, congratulate Aileen Campbell on securing the debate, and I welcome the opportunity to participate. Having represented Clydesdale for the past 10 years and having been brought up in the market town of Jedburgh, I know how important the town centre is to a local community.

Town centres cannot have everything. When my husband first visited us in Jedburgh from his home town in Airdrie, he wondered where we bought compact discs and was dismayed to learn that he had to go 20 miles on the bus to Galashiels to be able to pick up his favourite music. However, town centres are vibrant parts of local communities. One of the key issues for us to think about in the debate is how we spend and act as consumers and whether we, as MSPs, take the lead and demonstrate our commitment to the centres of the towns in which we live and which we represent. Do we do all that we can? Do we buy all that we can from our town centres to support local businesses?

Most of the things that I need can be bought in the town centre of Carluke where I live, or in Lanark or Larkhall. We are lucky and, if we look, we can find what we want. However, many of us—I am as guilty of this as anybody else—sometimes take the easy option of shopping at out-of-town supermarkets and shopping centres, which deprives our town centres of much-needed revenue. We must consider our shopping habits and how we spend our money, because there is a bit of a chicken-and-egg situation in our town centres: do the shops or the consumers come first? How do we get businesses to come to town centres if consumers are not using them? How do we get businesses to react to the needs of the new workplace? Many of us are not back in our home towns at 5 o'clock at night when many local shops close. How can town centre businesses respond? Can they open late into the evening one night a week to allow those of us who live outside

the town to buy things in town centre shops that are traditionally shut during the evening?

One of the issues with the fund is the short timescale that is involved. I hope that the minister will reflect on that. I appreciate why the timescale is short, but some of the projects that have been discussed in the communities that I represent will not be able to comply with the timescale this time round because it will simply not be possible to tie up all the things that need to be tied up, such as planning permission. One issue in particular is that it will not be possible to bring partners together to upgrade shopfronts and make the town centre more attractive in the time available. I also ask the minister to respond to Mary Mulligan's question about whether the fund will be a rolling programme. If so, that would enable people in places such as Carluke to plan for the future by looking to next year's applications as well as this year's.

I congratulate South Lanarkshire Council—not something that I always do—on the work that has been undertaken to improve the streetscapes and make the landscape more attractive in many of its town centres. I also commend to the minister the bids that the towns that I represent are making. He will not be surprised to hear me do that. I hope that Clydesdale will get its fair share of the available funding, because the people in that community certainly deserve it. I hope that the minister will see the sense of those applications and, in due course, make the announcements to which I look forward.

17:25

**Gavin Brown (Lothians) (Con):** I, too, congratulate Aileen Campbell on securing this debate on an extremely important topic.

In preparation for the debate, I reread the report "A strategy for successful community hubs", which was written last year by the Conservative party south of the border and based on the findings of the commission into small shops in the high street, which Brian Binley MP chaired. I mention the report not for party-political purposes but because one of its conclusions was interesting: we have seen a decline in our town centres over approximately 30 years and local and national Governments of all stripes must take some responsibility for that and take strong responsibility for turning the situation round.

I will throw in one fact: in Scotland approximately 200 small shops a year close down—in years that are not hit by an economic storm. Some of the difficulties behind that fact lie squarely at the door of local and national Governments: they are to blame. For example, taxes on many of our small shops are far too high, regulations are far too

burdensome—70 per cent of them come from Europe rather than from Westminster or from here—and parking is an enormous problem in many of our high streets. Of course local authorities want to bring in as much revenue as they can in order to spend it on local services, but there is a question to be asked about whether some of our local authorities have tried to bring in too much revenue at the expense of the local economy. Retail crime is another problem for our shops—it will be an even bigger problem during the downturn.

Many other difficulties are not necessarily to do with Government, but arise from consumer behaviour: people like to go to supermarkets and hypermarkets. That point was well made by Karen Gillon in what was a particularly thoughtful speech. There is also, of course, internet shopping, which has increased year on year over the past five years and looks set to accelerate. All our small shops face that challenge. The internet can be an opportunity, but it is more of a threat at the moment for many of our town centres and high streets.

What do Scottish Conservatives propose to do about the problem? First, we were very much in favour of the small business bonus, which will, by definition, help small businesses far more than it will help out-of-town centres. The bonus has helped approximately 146,000 businesses across Scotland. We pushed hard for the Government to accelerate that scheme from three years to two years, which it did. From 1 April this year, many small businesses do not pay any business rates. Secondly, we pushed hard in this year's budget for another policy in which we believe, which is the town centre regeneration fund, to which every speaker in the debate has referred. The £60 million in the fund will go into two tranches: £40 million for tranche 1, and £20 million for tranche 2. We hugely approve of that fund and look forward to seeing its results.

I have two comments for the minister, which I hope he will be able to address in the short time he will no doubt have for his wind-up speech. First, there are restrictions on the town centre regeneration fund in relation to who can apply and what is classed as a town centre. I am sure that that was unintended, but it is clear that there are towns across Scotland that ought to be included. I am sure that they would be thought of as towns by the man walking the streets, but they are excluded because of the definitions. Obviously, my request is too late for tranche 1, but I wonder whether the criteria can be widened for tranche 2.

Secondly, and finally, will the minister not simply provide a cure for high streets that have serious problems, but undertake prevention as well? Some people may describe high streets in some

areas, such as Stockbridge and Morningside, as well-heeled, but high streets nonetheless need support if they are to continue to thrive. Some money should therefore go to preventing high streets from going downhill, as opposed to trying simply to cure high streets that have already gone downhill.

We supported the Government's policy on business rates and we look forward to seeing how the town centre regeneration fund works. I look forward to hearing what the minister has to say.

17:29

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I, too, congratulate Aileen Campbell on securing the debate and on making a characteristically eloquent contribution.

Members who have spoken have touched on the main story here, which is about out-of-town developments and encouraging people to live in our town centres. I want to mention some examples of good practice that I think would be of interest to the minister and to put one new thought to my colleagues in the chamber, but before I do that I want to say to Aileen Campbell that I listened with great interest to her comments about Lanarkshire and point out to the chamber that Lanarkshire is, of course, the source of some extremely good cheese: Lanark blue and Dunsyre blue. I need to declare no interest in saying that; those cheese makers are in competition with my brother.

The towns to which I will refer are my home town of Tain and the towns of Wick and Thurso. I hope that the minister will find the time to visit them in his summer schedule, when he can. The town centre regeneration that is happening in Tain is very much due to the work of the local Highland Council councillor, Alastair Rhind. For example, a superb new rose garden is now being completed.

In Wick and Thurso, the harbour areas, which are in the town centres, are being developed. There is some anxiety about the pleasure boat use of Scrabster harbour, which is next door to Thurso. People there hope to benefit from west of Shetland and other developments, and it makes sense to move pleasure boat moorings from Scrabster to Thurso. There is also windsurfing and diving in the area; investment is being put into both those sports. That is a tribute to the work of all agencies—the Scottish Government, I am sure, included. Again I invite the minister to make time when he can to come and see how that is being done.

When Aileen Campbell mentioned Woolworths, I am sure she struck a chord with every member. The empty Woolworths in our town centres symbolise everything that we must strive to put

right. In Wick, the empty store in the centre of the town has become a symbol of decay. The question that I am asked again and again is, "When will Woolworths be filled with something else?" The question is a potent one for me, all politicians in the area and the enterprise network.

Now the new thought that I wish to present to the chamber. All those who are involved in trying to make our town centres more vibrant and attractive know that a key issue is getting people to work together. How can we get ordinary people filling up and watering flower baskets and coming together to think up good ideas? I have a radical proposal, albeit that I do not want to raise any ghosts from the grave in making it: our community councils across the 32 Scottish unitary council areas have the potential to do other than simply whine, carp, criticise and regularly carpet their councils; they could do more by their own hand.

We should consider what can be done to encourage community councils to do more. I am not saying that we should roll back the clock to before the passing of the Local Government Act 1974 and return to the ancient powers and privileges of our town councils—provosts, deacons, bailies et al—but if certain spends were devolved further from the unitary authorities, greater efficiencies could result and additionality could be levered in. I am thinking of landscaping and that sort of initiative. The local authority could say to the community council, "Okay. You can have the landscape budget for your area." Authorities that did that would find that the community council would encourage businesses to chip in extra amounts of funding. Doing that would help the public purse and involve local people and businesses. Getting people to work together would make it work.

I do not advocate a return to 1974, but just as the year of homecoming is about clans, clan chiefs and so forth, we should not forget the history of our burghs in which there is great interest. It is a pity to see the old gold chains in a cabinet in a museum when they could be taken out and used a bit more. If nothing else, doing that would be superb for civic pride and interesting for tourists. I leave the minister with that thought. If he does not have time to comment on the proposal in his summing up, perhaps he will come back to me on it at another time.

17:33

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I welcome the opportunity to make a short speech in this important debate and thank Aileen Campbell for initiating it. I was interested by her comments about the importance of the arts and architecture in the regeneration process. I repeat once again a point that I have

made in the chamber before: these things must not be thought of as add-ons. They are not things that are done when everything else has been done; artists should not be brought in only when a town has empty shops or other places to fill up or thought of as unimportant at other times. I know that that is not what Aileen Campbell meant, but that approach has been taken in the past. Artists and the importance of involving architecture and design at an early stage are important in the regeneration process.

I return to a hobby horse of mine: derelict buildings in our town and village centres. I may be treading on slightly dangerous territory because the members for constituencies that include Ayr and Kilmarnock are not in the chamber, but I know that they share my concern at what is happening to those town centres. My constituents know what is happening: they travel to and use the shopping facilities in those towns. Given that Ayr is on his doorstep, the minister knows what has happened to Ayr town centre, about the loss of a number of big retailers and about the problems of small shopkeepers, who are finding things increasingly difficult. It is not simply a question of what happens to the retail opportunities; it is a question of what happens to the rest of the local area if such facilities are missing.

I want to highlight the difficulties that local authorities are having with absentee landlords and buildings that fall into disrepair. There has been a problem throughout my constituency for a number of years, but it is now becoming acute. In the New Cumnock area, it took us a number of years to get the former Afton Dyers plant demolished. That we achieved that was down to hard work by me, the local community and East Ayrshire Council.

In Catrine, the village centre is completely blighted by a derelict historical property. The local community wants to save it and the Catrine Community Trust is working hard with the local authority to do that, but there simply is not the money to ensure that the building is restored. The most recent correspondence that I have had from East Ayrshire Council identifies how difficult it is to secure funding to bring such buildings back into community use. Will the minister consider making available some rolling funding, for which local community trusts and organisations could apply, so that they can do up their buildings, restore them and bring them back into use? That could generate an income, which could be paid back to the Government or used by the community at a later date.

There are serious problems in another of my local villages, Dailly, where the home of one of my constituents is next door to former commercial premises that have been derelict for a number of years and which are ruined to the extent that there

are trees growing out of the roof. The local authority has so far been unable to force the landowner to do anything about the site, and every time I raise the matter it turns out that the local authority does not have the resources to take action because it might not be able to recoup any outlay.

I ask the minister to follow up the point that I have made to some of his colleagues about the procedures and processes for compulsory purchase, which make it extremely difficult for local authorities to proceed with compulsory purchases unless an end use for the site has been agreed and funding can be made available. The result is that buildings simply deteriorate to the point at which they become unsustainable. I hope that the minister will look into those issues and come back to me in the future, if he cannot do so during the debate.

17:37

**Jamie Hepburn (Central Scotland) (SNP):** I join other members in congratulating my friend Aileen Campbell on securing tonight's debate. Although she of course wanted to focus on the town centres in the region that she represents, I am glad that the motion refers to the importance of town centres and high streets across the country. The economic downturn has affected every sector of our economy, and town centres in all parts of our country have a role to play in helping Scotland to make it through these difficult times and prosper once again.

There is no doubt about the impact that the downturn is having on local communities, but it is important to be clear that although the current economic situation puts into clear focus the challenges that are faced by our high streets, many of us know that, sadly, the struggle to develop and strengthen our town centres has been perennial. Even during the supposed years of plenty, many town centres suffered from underinvestment and neglect.

Towns in the Central Scotland region, which I represent, are no exception. The wasted years of previous Administrations have allowed too many of our urban communities to come under pressure from out-of-town centres and unimaginative and unambitious planning regimes that are more interested in gleaming trophy developments than a genuine urban renaissance. That is why many members and, more important, people in communities across Scotland have been encouraged by the Scottish Government's introduction of the town centre regeneration fund, to which the motion refers. It is particularly welcome during this time of economic difficulty, but I stress that such investment has been badly

needed, regardless of the prevailing economic climate.

A total of £60 million is available through the fund. It has been suggested to me in conversations with interested parties that a total redevelopment of Cumbernauld town centre would cost around £60 million. I strongly encourage the minister to take that into consideration when he comes to disburse the funds, although I appreciate that other members might take a different position.

Should the minister not choose the investment that I have suggested, I hope that he will look favourably on bids from Central Scotland. I understand that North Lanarkshire Council has taken a lead in preparing a bid for towns in its boundaries. The minister represents the same area as I do, so I am sure that he will be equally interested in that bid.

The proposals for the regeneration of Cumbernauld and Kilsyth are especially welcome. Both will help to improve the amenity of the central areas of those towns, making them attractive not only to residents, people passing through or visitors shopping, but to new businesses or enterprises that may choose to locate there. I hope that investment can ensure that the town centres can function properly as civic cores that local communities can be proud of.

The challenges in Cumbernauld are especially well known. Surely the notoriety of the town centre is unsurpassed. In many ways that has resulted in the entire town being pigeonholed in a manner that I do not think it deserves. That pigeonholing fuels views of the town that are invariably born of ignorance. Such views are often held by people who have barely visited Cumbernauld.

Cumbernauld's town centre is compartmentalised and there are various private owners. It has suffered from underinvestment over a significant period of time, which is a real cause for concern. Every day, I see the challenges and opportunities that Cumbernauld faces. There is no doubt in my mind that the town can benefit from the regeneration fund.

I have been in touch not only with the local authority but with the private town centre operators, to encourage them to apply for support. Although the first deadline for applications is already behind us, there is a bid from the local authority and I understand that the second deadline is in August. I hope that, in the time remaining, the different stakeholders can work on some imaginative and ambitious proposals to breathe new life into Cumbernauld town centre, over and above what will be done with the bid from North Lanarkshire Council.

Our town centres deserve support and investment to ensure that they continue to provide

residents, visitors and businesses with an attractive and sustainable focus for social and economic activity. With the right support, a town centre can be the beating heart of any community.

I look forward to hearing what the minister has to say, not only today, in reply to our deliberations, but in the near future once he is ready to announce the result of his own deliberations on the applications to the town centre regeneration fund.

17:42

**David Whitton (Strathkelvin and Bearsden) (Lab):** I, too, congratulate Aileen Campbell on securing this debate—and on having the initiative to bring her own local journalist with her to the press gallery. That will certainly save her the trouble of writing a press release.

I know that, like most MSPs in the chamber, I have a bid for the new town centre regeneration fund in the pipeline. In my case, it centres on the ancient town of Kirkintilloch, where a settlement dates back to Roman times and the fourth century AD. Indeed, the High Street may even have been there since then.

Last month the Minister for Enterprise, Energy and Tourism, Jim Mather, came to Kirkintilloch at my invitation and spoke to a group of local businesspeople and others concerned about the future of the town centre. I confess that I had not seen Mr Mather's mind-mapping expertise before then, but I pay tribute to his computer skills, if not to his typing ability. Be that as it may, a lot of good ideas were generated that evening. I hope to build on that in the weeks and months to come.

The reason I asked Mr Mather to visit Kirkintilloch was that the town had been identified as one of the five Scottish towns that would be hit hardest by the current economic recession. Like many high streets across Scotland, ours was hit hard by the loss of 40 jobs following closure of our local Woolworths store. Aileen Campbell referred to other Woolworths stores closing; the Woolworths in Kirkintilloch was a flagship tenant in the Regent shopping centre. Its closure was quickly followed by that of another occupant of a large unit in the shopping centre and by those of three smaller units situated along the High Street.

I have been working with the local chamber of commerce in getting tradespeople together to discuss what action can be taken to breathe new life into the main High Street. As with other Scottish high streets, there is a mixture of tenancy, ownership and architecture, and I believe that the town centre regeneration fund offers some hope; that is why I was keen to see it included in our budget discussions with the Cabinet Secretary for Finance and Sustainable Growth.

As others have said, £60 million sounds like a lot of money, but in reality there is huge demand that will see a very large pile of applications on the minister's desk. That will give the independent scrutiny panel a huge headache as they try to choose between competing bids.

I can tell my good friend Mr Neil that the Kirkintilloch bid will focus on infrastructure spending and access. In particular, we hope to secure funding to contribute to Kirkintilloch town hall, the restoration of which is long overdue—Mr Neil's fellow minister, Mike Russell, will see that when he visits Kirkintilloch during the summer recess. An unsightly, fire-damaged building and other privately owned but neglected shop units have also been targeted—my colleagues Mary Mulligan and Cathy Jamieson referred to that.

A key component of the fund is the offering of match funding, and I understand that East Dunbartonshire Council has set aside money for that. I should also say, in passing, that the council is supporting a bid for Milngavie town centre, which my colleague Des McNulty is supporting.

As Mr Doris knows, Kirkintilloch is the canal capital of Scotland. The canal runs from Maryhill, in his area, right through to the east coast. We have a new marina that has been developed recently and a new health centre. What we need now is a new shopping choice. I hope that we will not be disappointed when we submit our bid.

I hope that the minister can tell us when he expects to make some of the announcements. Along with Mary Mulligan, I ask him whether the fund will be available again next year.

17:45

**Patricia Ferguson (Glasgow Maryhill) (Lab):** I, too, congratulate Aileen Campbell on securing this important and highly topical debate. In the course of the debate, we have learned much about the economy and geography of Scotland. It is my intention that colleagues should be more familiar with my constituency, in the north of Glasgow, before I close.

The motion rightly recognises the importance of town centres to the social and economic life of our communities. Although the term "town centre" is normally used in the context of a small town, it is necessary to acknowledge the importance of urban town centres to the life of urban communities and estates, many of which serve a substantial number of people. I am delighted that the minister recognised that when he laid out the guidance for the town centre regeneration fund. The importance of town centres in urban areas has been demonstrated by the fact that many hundreds of people in Maryhill and Possilpark have signed up to my petition and support the

claims that are being made for each of those areas.

Maryhill has a town centre that formally runs from Queen Margaret Drive to the aqueduct—an ancient historic monument—on Maryhill Road. It has the traditional layout of tenement properties with shops on the ground floor, but it also has a shopping mall that is owned by Tesco and which has, frankly, seen better days. Almost five years ago, Tesco announced that it would carry out a complete renovation of the mall, but that work has still not begun. Indeed, only last week, in response to my latest letter to the company, Tesco wrote to me, making it clear that there is no start date for the project, never mind a completion date.

Although Tesco's attitude is disappointing, it is pleasing that work continues apace to rejuvenate the canal side in Maryhill to return it to its rightful position as the Venice of the north. It is important to ensure that the work that is undertaken there is, as Cathy Jamieson rightly said, done in a co-ordinated way that respects the history of that important industrial area and recognises the significance of the architecture and design. In passing, I thank my constituent, Mr Doris, for adding his voice to mine in making the case for Maryhill.

Possilpark is an area of great contrast. Millions of pounds have been spent on new housing and a new campus school in the area, which have greatly improved the living conditions for many of the people of the area, as well as their opportunities. However, the main street—the part that is seen by those passing through—has changed very little since its most depressed period in the 1980s. I know that Mrs Neil, if not Mr Neil, is familiar with that part of Glasgow and regards it with some affection.

I therefore welcome the co-operation of North Glasgow Housing Association, Glasgow North Regeneration Agency and the chairs of the community planning partnership and the community health project, who have worked with me to prepare a case for Possilpark to put to Glasgow City Council. The council has indicated that it is likely to look favourably on the possibility of a bid on behalf of Possilpark being made in the autumn. I thank the *Evening Times* for promoting the case for Glasgow's town centres in its usual campaigning fashion.

I know that the minister cannot comment on individual bids to the fund and that he has, quite correctly, established a process that keeps the decisions regarding funding at arm's length. Nevertheless, I am confident that the cases for Maryhill and Possilpark will be successful. Each case stands on its merits, and I look forward very much to being able to advise my constituents in

Maryhill and Possilpark of a successful outcome to their campaigns for those areas.

I have previously urged the minister to continue the fund into future years, and I do so again tonight. As we have heard, there are many town centres that could benefit from such funding, and I look forward to making the case in future years for funding for other areas in my constituency.

17:50

#### **The Minister for Housing and Communities**

**(Alex Neil):** I join other members in congratulating Aileen Campbell on securing the debate, which has been a good, non-partisan debate because we all recognise the importance of town centres not only to our future economy but to our future social development. I must say that, since it was announced that I have responsibility for the town centre regeneration fund, I have had no problem making new friends across the chamber.

I should also say to Aileen Campbell that I have been to Irvine in California, and I thoroughly recommend a visit, particularly to John Wayne airport, which is a particularly attractive international destination.

Before I deal with some of the specific points that were raised—I will deal with as many as I can—I should address what is almost a philosophical point about the role of our town centres in the 21<sup>st</sup> century. With the growth of internet shopping and out-of-town shopping, we can no longer rely on the retail sector for the creation of the buzz that our town centres have had historically. We need to think about our town centres holistically. I live in Ayr, and I am keen on trying to encourage more people to live in the town centre. In the 21<sup>st</sup> century, that has to be part of any strategy to regenerate our town centres and make them more dynamic.

A lot of points have been raised about the town centre regeneration fund. Karen Gillon made a reasonable point about the tight timetable. To be quite blunt, we had no choice about that because the £60 million of capital spending must be spent this financial year. We are operating within that constraint, and I recognise that there are many interesting and worthwhile projects that will not be the subject of an application this year but which, if we had had more notice of the fund, might have been.

On whether we will continue with the town centre regeneration fund, clearly we want to evaluate the benefit and success of the fund before making any decisions in the long term. Of course, we also have to find out what money will be available between this priority and many of the Government's other priorities. In September, when Mr Swinney announces next year's budget, we will

know whether we are in a position to roll forward the concept of the town centre regeneration fund.

Mary Mulligan asked about the criteria. We published the criteria about five or six weeks ago on our website. We have tried not to be overly prescriptive because we wanted the applications to reflect the needs and priorities of the communities that are being served, and we felt that, if we were overly prescriptive, that might cut out worthwhile projects that would be beneficial to the towns that would be the subject of those applications, as well as to Scotland more generally.

That said, the key criterion is additionality—without funding from the fund, the project would not go ahead or would not go ahead in this timescale or on the scale that is being proposed. Other criteria are leverage, which David Whitton mentioned, and partnership, which is extremely important within the public sector and between the public, private and third sectors. In that regard, community councils, which Jamie Stone spoke about, are relevant. We know that community councils have been consulted in relation to some bids and that at least one bid features a community council as a partner.

The other key criteria relate to the economic and social impacts of the money that is spent. For example, one part of the country considered bidding for money to make some retail properties more disabled friendly and compliant with the disability discrimination legislation. I would welcome projects that fulfil that need, as well as those that address environmental impacts.

I am glad to say that we have the advisory committee in place. It is chaired by Alan Wilson, the retired chief executive of the Scottish Council for Development and Industry. The private sector is represented by Liz Cameron from the Scottish Chambers of Commerce and the local government sector is represented by the chief executive of the Convention of Scottish Local Authorities, Rory Mair.

I was asked when we hope to take decisions. As members know, the deadline for receipt of the first tranche of applications was last Friday, 5 June. We have a team of about 21 people working on the applications, and we will not have all the envelopes opened and the bids on the system until tomorrow. I hope to update the Parliament through the Local Government and Communities Committee, which I will attend next week, on the number of applications that have been received and their total value.

I hope to be able to make the main announcements about the first tranche towards the end of July and to complete those announcements in early August, before the

deadline for the second batch of applications, which is 21 August. However, I can make an announcement tonight about the outcome of one bid, and that is the one from Jamie Hepburn for £60 million for Cumbernauld. [*Laughter.*] I can confirm that Cumbernauld will not receive £60 million from the town centre regeneration fund, although the application is, no doubt, a worthy one.

We are cognisant of the need for the town centre regeneration fund to get a reasonable spread of investment across the country and across different sizes of towns. We deliberately set out to try to ensure that not all the money is allocated to small towns, to mid-range towns, or to large towns. Instead, we hope to get a cross-section. One reason why we decided to have two tranches is that, if there is any unevenness as a result of the applications in the first tranche, we will try to use the second tranche to ensure that there is a more even spread. We are also keen to ensure that there is a reasonable spread of town centres within cities.

The Presiding Officer is looking at me and is obviously about to tell me that my time is up. I will be happy to answer any more detailed questions that members may have at the Local Government and Communities Committee next week.

We can all take credit for the establishment of the fund, which will make a substantive contribution to addressing many of the problems that members outlined.

*Meeting closed at 17:58.*





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