

# **MEETING OF THE PARLIAMENT**

Thursday 26 November 2009

Session 3

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# Scottish Parliament

*Thursday 26 November 2009*

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

## Local Government Finance Settlement

**The Presiding Officer (Alex Fergusson):** Good morning. The first item of business is a statement by John Swinney on the local government finance settlement. The cabinet secretary will take questions at the end of his statement, so there should be no interruptions or interventions.

09:15

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** My statement to Parliament will cover three areas: I will set out the terms of the provisional local government finance settlement for 2010-11, I will confirm the business rate poundage levels for that year and I will announce the outcome of the review that I initiated last year of the distribution methodology for the local government settlement.

The local government finance settlement is an important element of our relationship with local government, which is set out in the concordat. We are now into the third year of the concordat. The key elements of that agreement, including the single outcome agreements that are now in place with every community planning partnership in Scotland, focus the work of national and local government on delivering for all our communities.

As part of the concordat, we are delivering on our commitment to increase year on year local government's share of the Scottish budget, despite the tightest financial settlement since devolution and the further cuts that have been imposed on the Scottish budget by the United Kingdom Government, and against the backdrop of the deepest economic downturn for a generation. I am pleased to be able to report to Parliament that the Convention of Scottish Local Authorities has been consulted on the terms of the settlement and that it agrees that it is a fair settlement for local government in the current extremely difficult circumstances.

The draft 2010-11 budget document that was published on 17 September confirmed our spending plans for the third and final year of the current spending review period, including the headline allocations for local government. Today, I can announce the provisional funding allocations

to individual local authorities for 2010-11. Copies of summary tables that contain the key information in my statement are available at the back of the chamber.

The strength of our partnership with local government has allowed us to work closely with COSLA in moving towards the shared goal of doing all that we can to mitigate the impact of the global recession. The measures that we have jointly taken include capital acceleration, the provision of additional resources to allow councils to freeze their council tax levels, and the removal from many thousands of small businesses of the burden of paying business rates.

The total support for local government in 2010-11 will amount to £12 billion. In total, over the three years of the spending review, we will provide local government with £35 billion. Under the previous Administration, local government's share of the Scottish budget was declining; we have halted that decline. Local government's share of the budget will increase from 33.4 per cent in 2007-08 to more than 34 per cent in 2010-11. The total for next year would have been £174 million higher, had it not been for the cut in funding of around £500 million that has been imposed on the Scottish budget by the UK Government. Local government has worked with us in agreeing to accept its fair share of that reduction.

The total funding package of £12 billion includes revenue and capital funding. Within that total, our support for revenue will amount to £11.1 billion in 2010-11, which represents an increase in funding to local government of £308 million, or 2.9 per cent on 2009-10 levels. Among other things, that revenue funding makes available a further £70 million to enable councils to extend the council tax freeze for a third year, continues the removal of, or reduction in, business rates for the smallest businesses in Scotland and increases from £31 million in 2009-10 to £39.5 million in 2010-11 the provision to sustain the additional 1,000 police officers in our communities, which we promised in the concordat.

There are a few other changes to the local government budget that I can confirm since the draft budget was published. First, the addition to the settlement of about £5 million includes additional funding to support local authorities in improving waste recycling and landfill diversion performance, and to make further progress on the journey towards becoming a zero waste society.

Secondly, we have agreed with COSLA, police authorities and fire and rescue authorities new arrangements for a more transparent funding mechanism for pensions. Although the new arrangements change the way in which pensions are managed and accounted for, there is no change to the benefits that those schemes provide

for police and fire officers. From 2010-11, the financial support for police and fire pensions will be paid directly by the Scottish Government to police and fire authorities. The pension funding will still be part of the overall support that we provide to the local government family, but the new arrangements will transfer the risk arising from the inherent variability of pension costs to the Scottish Government, where it can be better managed, which will provide greater certainty about pension costs, and give authorities a greater incentive to ensure good practice in managing ill health and injury.

The capital funding element for local government amounts to £0.9 billion for 2010-11. That takes account of the earlier acceleration of £100 million of capital expenditure by councils from 2010-11 into 2008-09 and 2009-10. The accelerated funds have enabled local authorities to maintain capital programmes that would otherwise have been at risk, which has helped to offset the downturn in the value of councils' capital receipts from the sale of assets, and has enabled councils to bring forward a wide range of projects, many of which are being delivered by local contractors.

As part of our economic recovery plan, local government also agreed to release from its capital budget, in both 2008-09 and 2009-10, £20 million to support affordable housing. That £40 million is being returned to councils in the 2010-11 capital budget allocation.

As I announced earlier, we have been working with COSLA to prepare a scheme whereby local authorities will be able to apply for consents to borrow to help them to meet the costs of settling equal-pay related back-pay claims. It will allow them to apply for consents to borrow in 2009-10 and 2010-11 in order to enable them to spread the exceptional costs that will be incurred over a number of years. Borrowing is, of course, not a panacea. Councils will still need to meet the cost of such borrowing, but the scheme will help them to manage the impact of that substantial one-off cost. Following consultation with local government, the terms of the scheme have been formally issued, and applications from councils by 30 November have been requested. We will process the applications as quickly as possible.

Councils across Scotland are already wrestling with how they can best protect services in their areas. Some tough choices will have to be made, depending on councils' individual circumstances, but it is clear that the cut that has been imposed by the UK Government is being felt by councils right across Scotland. Had our budget not been cut, council budgets would have been £174 million higher; there is a lot that councils could have done with that extra £174 million. The cut will impact on

different councils in different ways, but we will work with local government to deliver on our shared commitment to protect and improve services, and we will make progress on delivery of the national and local outcomes that are set out in the single outcome agreements.

Members will recall that I initiated a review of the existing needs-based grant distribution mechanism last year. That review, which was undertaken jointly with COSLA, was completed in September this year. Commentary on the issue has suggested that the distribution mechanism is unfair, that it is biased in favour of a few councils, and that there should be a cap on the level of funding that one council receives in comparison with another. Although I am alert to those competing views, I have focused my consideration on the facts and the evidence in the report from the joint officer review group, whose membership included COSLA and a cross-section of local authority directors of finance.

As part of the agreed remit of the joint review group, COSLA invited all 32 local authorities to identify and evidence potential anomalies across the range of indicators that are used in the needs-based distribution methodology. Following consideration of councils' responses, the review group's report concluded that there were no genuine anomalies that needed to be addressed in the medium term for the next settlement. It said that

"the existing indicators were considered to be reasonable and generally a fair indication of need and"

recommended that they should "be retained unchanged."

The report made a number of further recommendations to inform distribution of resources. It said that a more fundamental review of the distribution process will be needed once the way forward is clearer on future local and national taxation systems, single outcome agreements have bedded in and the future impact of the medium to long-term financial situation is clearer. It also said that there should be a business-rates incentivisation scheme and that further work should be carried out to develop options for the implementation of such a scheme from 2011-12.

COSLA set up an all-party distribution task group, which consisted of elected members, to consider the work and final report of the joint officer review group. All the final recommendations in the report were agreed by the distribution task group and were formally accepted at a COSLA leaders meeting on 25 September. Having carefully considered the group's report, and in the light of its findings and the views from COSLA, I confirm that I accept all the recommendations in it. Those recommendations will be implemented in

time to inform the next local government finance settlement, which will cover the period 2011 to 2014. A copy of the full report is available at the back of the chamber and in the Scottish Parliament information centre.

Business rates are a key issue for our business community. As part of our economic strategy, we made a commitment that we would not allow the poundage for business rates to rise above what it is in England during this parliamentary session. I confirm that the rate for 2010-11 will remain in line with that in England—it will be 40.7p for 2010-11. The poundage supplement that is paid by larger businesses will be set at 0.7p, which is, again, in line with that in England. My announcement confirms the lowest national poundage ever set for Scotland. Of course, the fact that we have again matched the English poundage rate means that, following revaluation, we expect that the rates burden on businesses in Scotland will be significantly lower than it would otherwise have been. We have estimated that the benefit to Scottish businesses will be worth some £220 million in total in 2010-11.

The regular five-yearly revaluation of business rates will take place in 2010, and the Scottish assessors will shortly release detailed information about the new rateable values. I confirm that all existing relief schemes, including the small business bonus scheme, will continue in 2010-11. I am considering the impact that the 2010 revaluation will have on rates bills across sectors and relief schemes, and I want to ensure that it will have no unintended consequences for the operation of the reliefs that we provide, and on which many businesses rely. I am specifically considering the proposal for a transitional relief scheme, and am looking in detail at the impact of revaluation across all sectors. In doing so, I will need to take into account the UK Government's pre-budget report and whatever emerges from our own budget process over the coming weeks. I will confirm the outcome of my deliberations as soon as I can, including the thresholds for the various existing rates relief schemes, such as the small business bonus scheme.

However, I reassure members that the revaluation is not about raising tax revenue, but about achieving a fair distribution of the tax burden. The overall result will be that we will not raise a penny more in income in 2010-11; indeed, we will raise less. As I have already said, businesses in Scotland will see a saving that will be worth almost £220 million in total as a result of our policy to match the poundage rate in England.

In conclusion, the provisional allocations that I have announced to Parliament continue our commitment to further increase the share of the Government's overall budget that goes to local

government. We will work together to continue our focus on sustainable economic growth through targeting our investment to support households and business communities throughout the whole of Scotland.

The budget allocations include a further £70 million to enable local authorities again to freeze council tax. I hope that all local authorities will take up that offer and deliver a much-needed boost for hard-pressed families in these tough times.

I recognise that councils face a number of competing pressures on their budgets for 2010-11, which is why, through our partnership, we will work with local authority leaders to deliver on our shared commitments. The dialogue with our partners will continue as we look ahead to the challenges for 2011-12 and beyond.

In line with our economic strategy, I am delighted to have confirmed that, for 2010-11, the Scottish Government has again delivered on our commitment to businesses that we would not allow the business rate poundage to rise above that in England during this parliamentary session. Today marks the start of the normal consultation period with local government on the provisional allocations. I will bring the final figures to Parliament as part of the local government finance order early in the new year.

**The Presiding Officer:** The cabinet secretary will now take questions on the issues that were raised in his statement. We have until exactly 10 o'clock for questions. We must then move on to the next item of business.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** I thank the cabinet secretary for providing an advance copy of his statement and I welcome his decision to pay the financial support for police and fire officer pensions directly from the Scottish Government. We look forward to seeing more details about that.

I had hoped that the cabinet secretary would have surprised us and shown that he had been listening to individual local authorities, voluntary sector bodies and service users, but he has, regrettably, confirmed what we all know: that he proposes to deliver a bad deal to local government. His failure to take us any further forward on transitional relief and tax incremental finance will also perplex the business community.

Mr Swinney's statement clearly reinforces the fact that he intends to be responsible for an assault on local government finances at a time when his own budget is growing by £600 million. No amount of bluster and assertion can disguise that. The statement underlines the reality that, during a time of recession, when local authorities should be getting their fair share of increased

Scottish Government resources in order to protect local services, Mr Swinney has decided to pick their pockets.

In the face of increasing reports about the scale of local council cutbacks and public anxiety about the extent of impending service cuts, does the cabinet secretary genuinely believe that local authorities have been provided with the resources that they need to meet the Scottish Government's manifesto commitments? Does he seriously continue to expect that all local authorities will be able to deliver his commitment on a council tax freeze next year when they are faced with having to cut services because they have been underfunded by the Scottish Government? Faced with COSLA's "fury"—I am quoting COSLA—at his proposals for funding teacher retirements, and the widely held view among local councillors that the real problem for local government is the Scottish Government, does he believe that the concordat has been exposed for the con that it is and that his statement marks the beginning of the end of the concordat as it currently exists?

**John Swinney:** First, I welcome Michael McMahon to his new post, in which he will speak on behalf of the Labour Party on local government issues. I look forward to having as fruitful a relationship with him as I always had with his predecessor, and to my encounters with him. I also welcome his comments on police pensions. The move to remove uncertainty for local authorities is sensible.

I was, however, a bit surprised by the sudden deterioration in the tone of Michael McMahon's remarks on what the statement represents as a deal for local government. The Scottish Government is delivering an increase in the share of the Scottish budget that goes to local government. I had thought that the Labour Party would welcome that—although perhaps I should not have thought that because, of course, the Labour Party presided over a falling share of the Scottish budget going to local government. We all know that that is the case. That share went down from 2003-04 until the Scottish National Party Government came to office. In the first settlement that I presided over, the share of the budget that went to local government started to go back up again. Therefore, Mr McMahon does not have a leg to stand on in making the accusation that he has made.

The second point that Mr McMahon raised was about whether the deal is good or bad for local government. I was interested in a press statement that he released—it could have been his inaugural press statement—around 1 November. In that statement, which appeared in *The Sunday Times*, he said that

"The SNP Government is ripping off"—

where have we heard that before?—

"local councils by £270 million."

Mr McMahon's acid test will be whether he lodges an amendment to the budget bill that would give £270 million more to local government in Scotland. If we see such an amendment from Mr McMahon, we will consider it. Of course, he will also have to say which health board and what other services he would take the money from.

The Government has changed the relationship between local government and national Government. We co-operate with local government on shared objectives, and will continue that work. As I said in my statement, we have put in place the resources to fully fund a council tax freeze. I encourage local authorities to decide to do exactly that.

**Derek Brownlee (South of Scotland) (Con):** I, too, thank the cabinet secretary for advance sight of his statement. The Conservatives certainly welcome the council tax freeze, even if nobody else in Parliament seems to.

In his statement, the cabinet secretary referred to

"a more fundamental review of the distribution"

funding formula

"once the way forward is clearer on future local and national taxation systems, single outcome agreements have bedded in and future impact of the medium-term to long-term financial situation is clearer."

Will that be in this century or the next? Is it surprising that the review identified no major anomalies in the distribution funding formula, when it did not specifically examine deprivation, rurality and three other major indicators? Is the cabinet secretary surprised that COSLA has concluded that no change is appropriate?

I welcome what the cabinet secretary said on business rates incentives, and I hope that he closely examines the proposals that the Conservative party made earlier this year. On the vexed issue of transitional relief for business rates, will he ensure that whatever his decision, he will minimise the distortion in the business community? Will he ensure that Scotland's business rates system is competitive with that in England?

The most important issue is the timescale. It is understandable that the cabinet secretary is waiting to see what horrors come out of the pre-budget report. However, to wait until the end of the Scottish Government's budget process, as he suggested we do, would mean that we may not have any clarity on the issue until the end of January, or even early February. It is important,



whatever decision is taken, that businesses have clarity sooner rather than later. I ask the cabinet secretary to confirm the precise timescale, and to specify whether or not we will have to wait until February next year for an answer.

**John Swinney:** I am surprised by Mr Brownlee's comments on the funding distribution review. The key elements of the joint review were to

"review the validity of the existing"

needs-based "indicators and" distribution

"methodology to ensure that the whole process"

is as "equitable" as possible. I do not see how one could read those words and not believe that there had been a comprehensive assessment of the appropriateness of the distribution methodology.

I understand Mr Brownlee's point about business rates. As I said in my statement, the Government estimates that the benefit to Scottish businesses from the decisions that we have taken on the business rate poundage is of the order of £220 million in 2010-11. I think that that will be warmly welcomed by the business community, and it confirms our manifesto commitment that we would not set a business rate poundage that is higher than that in England. That was not, of course, the record of our predecessors.

We will ensure that decisions are taken as swiftly as possible in relation to the application of revaluation and any questions of transitional relief. I said in my statement that I want to consider all the complexities of those questions in the context of the pre-budget report and the arrangements around our budget in Parliament. I will reach a conclusion as soon as I possibly can.

The decisions do not necessarily have to wait until February: I want to be in a position to take decisions earlier, but I must retain flexibility to consider all the different factors that relate to transitional relief.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I thank the cabinet secretary for the advance copy of his statement.

Why has the Government not published a floor for those councils that are receiving a low percentage increase from the previous year? In his 2007-08 statement, the cabinet secretary indicated that floors would exist for 2010-11, including a 2.5 per cent minimum uplift. Does that exist for this year? There was no mention of it in either his statement or the documentation that he provided.

Last year, the cabinet secretary's statement said that he was taking into consideration all aspects of accelerated capital, and he gave a percentage difference of capital uplift. Why is there no mention

of capital uplift in his statement today? The figures that he has provided show a 10 per cent cut in year-on-year terms, which is the biggest cut since before devolution.

The Government estimates that its decisions on business rates will mean a £220 million benefit for businesses. Is that lost revenue for authorities? On what basis did the cabinet secretary come to the figure of £220 million? No other information has been published today. If he has calculated the benefit, he must have all the data from the assessors at his disposal. Why, then, has he not published a transition scheme or even proposals for one today? The UK Government announced proposals in July for a transition scheme. Why on earth is the Scottish Government only now considering a scheme that businesses need to know about in order to plan ahead for the next financial year?

**John Swinney:** In the spending review, we set a floor for the local authority settlement, which has remained unchanged during the current spending review period. The floor was agreed with COSLA as part of the arrangements around the settlement. It is clear that capital acceleration has an impact on the capital budgets; we cannot accelerate capital expenditure and then have to claw it back without seeing a difference in the numbers—that is rather elementary arithmetic.

Mr Purvis asked about the basis for the calculation of the figure of £220 million that I gave in my statement. If the Government had set business rates on the same basis as England, the poundage would have been approximately 44.3p. However, we did not do that, so we are delivering a major boost to businesses to the tune of £220 million.

Mr Purvis asked finally about transitional relief and made a comparison with the situation in England. There is, of course, a fundamental difference, in that there is a statutory obligation in England to have a transitional relief scheme, whereas that is not the case in Scotland. I want to ensure that we examine all the issues around the revaluation to ensure that, in the context of the current economic climate, we take decisions that properly apply changes in relation to the revaluation of business rates in a fair and effective manner that is not detrimental to the development of the Scottish economy.

**The Presiding Officer:** We move to open questions. A considerable number of members wish to ask questions and, if we are to fit them all in, questions and answers must be as brief as possible.

**John Wilson (Central Scotland) (SNP):** I welcome the cabinet secretary's statement. Has he held any discussions with COSLA on the

efficiency savings targets? Will the Government continue the established principle of allowing local authorities to retain the money that is identified from efficiency savings, rather than return to the previous Labour-Liberal Democrat Administration's practice of top-slicing that money from local authorities' budgets?

**John Swinney:** The Government took a decision in the spending review to enable local authorities, for the first time, to retain their efficiency savings, and I am glad that we did so. Local authorities have delivered on—and even exceeded—the expectations in efficiency savings, and I welcome their commitment to that. We certainly have no plans to change the arrangements whereby local authorities retain the efficiency savings that they realise.

**Pauline McNeill (Glasgow Kelvin) (Lab):** Glasgow City Council's capital budget has been halved, from £206 million to £103 million. That is a greater reduction than there has been in any other local authority's budget. Will the cabinet secretary explain why there is such an acute reduction in Glasgow's finances? The Government already stands accused of ripping off Glasgow; is this budget further evidence of that? Why is the city with the highest levels of deprivation taking the largest hit with regard to the reduction in its capital budget?

**John Swinney:** The level of funding for citizens in Glasgow puts the council, along with Argyll and Bute Council as the other mainland authority, at the very top of the list of local authorities that get the largest support per capita for local authority services in Scotland. It is clear that there is an impact on the capital budgets because of changes in relation to the acceleration of capital expenditure; I made that point in my answer to Mr Purvis. If we accelerate capital expenditure, we have to claw it back.

The other factor is that local authority capital budgets have had to take some proportion of the reductions in budgets that have been applied by the United Kingdom Government that Pauline McNeill supports. It demonstrates the hard impact of the UK Government's budget decisions on the budgets of individual organisations throughout Scotland.

**Alasdair Allan (Western Isles) (SNP):** What principle lies behind the revaluation of business rates? How many businesses are expected to benefit from that? Can the cabinet secretary tell us more about the contribution that it might make to Scotland's wider economy?

**John Swinney:** The detailed information on the number of businesses that are affected is still being worked on to ensure that I have the most accurate picture of the impact of the business

rates revaluation. The principle of the revaluation is to take account of the value of individual business premises and the change in circumstances that can take place over a five-year period, such as enhancements and developments that might surround such premises. That is at the core of the independent valuation that our valuation personnel undertake. The Government will consider that carefully as we look at the application of any review of relief schemes that are in place, the thresholds that apply or any wider transitional relief scheme.

**Tom McCabe (Hamilton South) (Lab):** The cabinet secretary has committed to a proportionate share of reductions across all portfolios. However, as the £128 million end-year flexibility has been allocated to the national health service capital budget, local government takes almost half of all reductions. Will the cabinet secretary rectify that situation and prevent local government from carrying the can for other Government spending decisions? Will he dispense with the illusion that he is on the side of local government, when he gives with one hand and takes back with the other?

**John Swinney:** All I can say to Mr McCabe is to quote from Councillor Graeme Morrice, COSLA's finance spokesperson, who I am sure Mr McCabe would agree speaks on behalf of local government. On the budget settlement that I announced on 17 September, Councillor Morrice said:

"We see from today's announcement that our partnership with the Scottish Government has secured that position and a fair settlement for local government under difficult circumstances has been achieved."

Those are not my words; they are the words of COSLA's finance spokesperson. They stand as testament to the fact that the Government has delivered on its commitment to put in place a rising share of the budget for local government in Scotland. That is what we said we would do and that is what we have delivered. We have countered the declining share that was presided over by my predecessors from the Labour Party.

**David McLetchie (Edinburgh Pentlands) (Con):** The cabinet secretary has previously refused to be drawn on whether there should be a local government pay freeze, saying that that is a matter for councils to negotiate with the unions. However, does he believe in the concept of a payroll freeze, so that any increases that are negotiated have to be accommodated within a fixed budget for pay? Given that pay is far and away the biggest component of local authority spending, has his settlement been predicated on that, or on any other, pay assumption?

**John Swinney:** Pay will clearly be a significant issue for all areas of the public sector in the

forthcoming years. I have made it clear that pay settlements must be affordable in the difficult climate in the period ahead, and we will ensure that that will be the case in the pay remits for which ministers are responsible. For local government, negotiations take place between local authorities and the trade unions, and it is entirely up to those parties to have those discussions. The Government has no role in the negotiations, other than when it is part of the pay negotiation machinery—for example, on teachers' pay.

On public sector employment, I have made it clear to members, including in committee to Mr McLetchie, that I expect employment in the public sector to fall in the coming years. That is an inevitable consequence of the tightening financial climate in which we operate. However, in taking forward that reality, the Government will work to protect the delivery of front-line services, which is an essential part of what our local authorities do throughout Scotland.

**Alison McInnes (North East Scotland) (LD):** Several councils will feel let down by the cabinet secretary's refusal to modernise an outdated allocation system. To compound that by refusing to countenance the distribution of previously ring-fenced money via the supposedly fair distribution formula is a further insult. Does the cabinet secretary accept my view that it is absurd on the one hand to agree that the preferred option for distributing any new funding should be the agreed distribution formula, while on the other hand to say that the preferred system should not be used in the future to allocate existing ring-fenced moneys more fairly? As Aberdeen City Council—

**The Presiding Officer:** I must hurry you, Ms McInnes.

**Alison McInnes:** As Aberdeen City Council and Aberdeenshire Council have been allocated the lowest-ever share of local government resources, which part of the concordat will they be exempted from delivering on?

**John Swinney:** In the distribution review, a process has been gone through to examine the details of the distribution arrangements. I cited for Mr Brownlee the details of the remit, which is available for members to see. The process has involved all local authorities, and they have had the opportunity to submit information. That has been considered by the joint review, and the arrangements have been agreed across the board in local government. I have accepted the recommendation.

I simply point out to Alison McInnes that, as part of the settlement that I have announced today, Aberdeen City Council and Aberdeenshire Council will receive increases in their budgets of 3.41 per cent and 3.44 per cent respectively.

**Bob Doris (Glasgow) (SNP):** It is clear that cuts are on their way to local government in future years—UK cuts with a Labour axeman. We have heard that local authorities are considering a move to shared services and other reforms to deal with those cuts. Does the cabinet secretary agree that local authorities must consider any changes carefully and that the local authority in the city that I represent, Glasgow, and other local authorities should commit to having no compulsory redundancies?

**John Swinney:** Mr Doris raises an important point about the progress that can be made on sharing services as part of managing the financial strain that we will face in the years to come. The local authorities in the Clyde valley area and in the south-east of Scotland—in Edinburgh, the Borders, the Lothians and Fife—have been co-operating on a number of shared services projects. We welcome that co-operation, which is exactly the right course of action. It is not for Government to dictate the details of those shared services, but we encourage an intensification of the pace of activity to ensure that local authorities play their part in addressing the difficult and challenging circumstances that we will face in the public finances while delivering effective services to people in our communities.

**Mary Mulligan (Linlithgow) (Lab):** Despite the £600 million more in the Scottish budget, local government is facing a year of cuts because of the financial settlement. What does the cabinet secretary say to local authorities that are forced to freeze their council tax to ensure that they receive a share of the £70 million that has been allocated for that but which find that they still have to make cuts and outsource essential services?

**John Swinney:** I would refer the local authorities to the comment that I mentioned from Councillor Morrice, with whom Mary Mulligan will be acquainted. He said that local government has achieved

"a fair settlement ... under difficult circumstances".

We all understand that the public finances are in a very different situation from previously. Local government would have been in a worse situation if the Government had not reversed the trend that the previous Administration imposed on it of reducing its share of the Scottish budget. Thank goodness that the Government came into office, changed the trend and gave a better deal to local government in Scotland.

I reiterate that, if Mary Mulligan is concerned about the volume of the local government settlement, she, like Mr McMahon, has an opportunity to change the budget and to allocate—

**Duncan McNeil (Greenock and Inverclyde) (Lab):** It is your budget.

**The Presiding Officer:** Order.

**John Swinney:** Mr McNeil shouts from a sedentary position that it is my budget. I am absolutely crystal clear that it is my budget—

**Duncan McNeil:** You are responsible.

**John Swinney:** I know that I am responsible. We could continue the running commentary, but we would be here until midnight at this pace, because I can keep talking for a long, long time.

If Mary Mulligan and Mr McMahon—I do not know whether Mr McNeil is in the same boat—want to increase the resources that are available to local government, they know what the rules are. They know that they have to lodge an amendment that would take money away from other public services, such as hospitals, to give them to local government. That is the choice. We have made a choice and given local government a larger share of the budget than it received under the previous Administration. That is the settlement that is delivering for local government in Scotland.

**Brian Adam (Aberdeen North) (SNP):** Does the cabinet secretary agree that a 45 per cent difference between the lowest and highest rate support grants for mainland authorities is distinctly anomalous? Does he agree that the more fundamental review of the distribution process that he announced this morning should be open, transparent and independent of COSLA?

**John Swinney:** I understand Mr Adam's point, which he has made to me on many occasions. However, we have to go through a process of examining the evidence, which is what the distribution review has done. It has come to its conclusions, which I have considered. I appreciate that the outcome may not be the one that everyone wanted, but it is an outcome that delivers the appropriate stability for local authority finance in a difficult climate, and that is the basis of the decision that the Government has come to.

**David Whitton (Strathkelvin and Bearsden) (Lab):** Talking of taking money away from local government, why has the cabinet secretary taken £34 million from the capital budgets of local government as its share of the £129 million reduction in the NHS capital budget—a share that is fully covered by end-year flexibility money? On 25 June, the cabinet secretary said that

“the Government will have sufficient resources on deposit at the Treasury to make good that shortfall”.—[*Official Report*, 25 June 2009; c 18948.]

If he could make good that shortfall in June, why is he now ripping local government off by £34 million?

**John Swinney:** I return to the quote from Councillor Morrice, that

“a fair settlement for local government under difficult circumstances has been achieved.”

**David Whitton:** Answer the question.

**John Swinney:** I will come to Mr Whitton's point; I am simply giving him a bit of background to allow him to think carefully about the questions that he asks.

Mr Whitton asked why local government is taking a share of the capital reduction that we can meet from end-year flexibility. Mr Whitton will be aware that local authorities do not contribute to EYF; they may retain in reserve any resources that they do not utilise. It is therefore equitable that the EYF should be available to the areas of the budget that the Government supports. It is the Government's resources—and not the resources that are allocated to individual local authorities—that go into EYF.

**Margo MacDonald (Lothians) (Ind):** I share Derek Brownlee's concerns about the time that it might take to have a final review of the distribution of funding formulae. Taking up the point from the previous question, is there room in the 2010-11 spending plan or in the current end-year flexibility for a little pump priming for exceptional projects of benefit to the whole country, which of course have to be located in one local authority area?

**Bob Doris:** Glasgow? Excellent.

**Margo MacDonald:** I am thinking of another.

**John Swinney:** The point that I make to Margo MacDonald is one that I have made to Parliament on a number of occasions. The public finances will be under acute pressure in the years to come. It will be a real challenge to take on further projects when the Government is having to take difficult decisions about supporting existing projects. Those are difficult challenges to wrestle with. We will consider all of those issues as part of the budget process—they are issues of significance that the Government must address in all that it does.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** Why is the cabinet secretary ripping off Edinburgh with a cash reduction of £36 million? Since he will mention capital in his answer, why is the revenue increase for Edinburgh approximately 1.7 per cent, when he said that the revenue increase for Scotland as a whole is 2.9 per cent?

**John Swinney:** In Edinburgh's case, the figures that have been made available do not take into account Edinburgh's share of the transfer of the management of development funding, which is a housing grant—it also applies to the city of Glasgow, which is relevant to Pauline McNeill's question. For example, last year Glasgow received £83 million of TMDF money. Those allocations,

which are yet to be made, are material to the distribution of resources.

What happens in relation to revenue funding is that the various streams of funding are considered, the floor level of funding is applied, and specific grants are added on top. That is how we arrive at the calculations that are in the settlement, which have all been agreed with local government in Scotland.

## **Criminal Justice and Licensing (Scotland) Bill: Stage 1**

**The Deputy Presiding Officer (Alasdair Morgan):** The next item of business is a debate on motion S3M-5177, in the name of Kenny MacAskill, on the Criminal Justice and Licensing (Scotland) Bill.

10:00

**The Cabinet Secretary for Justice (Kenny MacAskill):** I begin by thanking members of the Justice Committee and their clerking team for their work in preparing the stage 1 report, which was published a couple of weeks ago, on the Criminal Justice and Licensing (Scotland) Bill. The bill includes provisions on more than 80 topics. In the time available this morning, I can cover only some of the key parts of the bill, although I am sure that many parts will get a mention during the debate.

Tackling the scourge of serious organised crime in our communities has been one of the Government's top priorities. That is why the serious organised crime task force was established. We are determined to tackle those who take part in serious organised crime at all levels, from the generals at the top, to their lieutenants, down to the foot soldiers and the fixers who turn a blind eye to the illegal dealings of their clients.

We welcome the committee's strong support for the intentions underlying the serious organised crime provisions in sections 25 to 28. Equally, we recognise the concerns expressed by the committee and others about the definitions contained in some of those sections. Although some consider that the definitions are too wide, by its very nature, serious organised crime is wide ranging and evolving. From trafficking and peddling drugs that bring misery to our communities, to lower-level but high-volume crime, serious organised crime comes in many forms. That is why the definitions may have to be wide ranging.

In his stage 1 evidence, Chief Constable Stephen House of Strathclyde Police said:

"If we tighten ... too much we will miss issues and new crimes. Criminals might even exploit the definition to ensure that activity does not fall within the definition of 'serious organised crime'".—[*Official Report, Justice Committee*, 26 May 2009; c 1906.]

We need to keep one step ahead and be able to anticipate the next form of criminality. However, the definitions need to be appropriate, and we are continuing to consider them with a view to lodging amendments at stage 2.

The scope of the “failure to report” offence in section 28 has caused some concern. Let me be clear: we are not trying to criminalise people who inadvertently discover during the course of their employment that another person may be involved in serious organised crime. Equally, however, we are clear that the offence must capture those people in professional occupations who knowingly contribute to and profit from the ends of serious organised criminals or who are used as fixers. The law should come down hard on them, and that is why section 28 is in the bill.

Following the work of Lord Coulsfield’s independent review, the bill includes provisions that will establish a statutory regime for disclosure of evidence in criminal trials. That statutory regime is crucial, as it will provide certainty for all those involved in the court process about which arrangements should be followed in that important area and will help to uphold justice for all.

We are pleased that the Justice Committee is generally content with the shape and content of the disclosure provisions. However, concerns have been expressed that some provisions are too complex and that others are too detailed. Although we want provisions that provide certainty and clarity for practitioners and accused persons, it is not our intention to impose an unnecessary burden on the police and prosecutors or to create an inflexible system. Disclosure is a simple duty to understand but a complex subject for which to legislate. Attempts to set out the duty in a simple form often miss critical elements. That said, we accept the concerns that the provisions are too complex, and that is why we will seek to amend the bill at stage 2 to simplify the provisions and to ensure that they are both comprehensive and well understood.

The bill takes forward our manifesto commitment to establish a Scottish sentencing council, which will have the power to develop sentencing guidelines to help to improve consistency, transparency and public confidence in sentencing. We are pleased that the committee expressed support for our aim to improve consistency in sentencing and recognised the need to tackle the poor public perception of sentencing. People have the right to understand why a particular sentence has been given in a specific case. We believe that the sentencing guidelines that the sentencing council produces will help to improve public understanding of, and therefore public confidence in, our justice system.

In the evidence that was taken at stage 1, there was much support for the creation of a sentencing council from a number of important criminal justice organisations. We believe that it is important that representatives of broader society sit on the sentencing council and that the council takes into

account the views of others who have a role in the administration of criminal justice. The stage 1 report sets out the concerns from some quarters about the impact of the sentencing council on judicial discretion. We regard the council and its guidelines as a resource for the courts, but we are giving further consideration to the committee’s thoughts on how best to achieve our aims while maintaining the independence of the judiciary.

The bill provides a tough new community payback order sentence as a replacement for a number of existing community penalties. The community payback order will require offenders to repay communities for the damage that is done by offending and will help to tackle reoffending rates with quick justice. The stage 1 report supports the creation of the payback order. We welcome that conclusion, which acknowledges the facts about the effectiveness of community sentences versus short prison terms. It also reflects the public view, given that 84 per cent of people in Scotland think that community sentences are a good idea for minor crimes.

However, the committee expressed some concerns on the matter in its stage 1 report. It asked us to consider whether we have the terminology of “payback” right. The Scottish Prisons Commission was clear—as we are, and as we think the committee is—that payback to communities should be the focus of our community justice system.

**Robert Brown (Glasgow) (LD):** I entirely accept the cabinet secretary’s point, but does he accept that the important rehabilitation element of the community payback order is not entirely captured in its name?

**Kenny MacAskill:** For the first time, we will be able to provide for that in up to 20 per cent of an order. That is a significant indicator that we recognise that, although one aspect of an order has to be for the person to pay back for the harm done, we must also tackle the root problem of their offending, be that literacy problems, drug or alcohol addiction, or any other matter that the sheriff regards as relevant. We believe that we have struck the right balance in ensuring that people atone and are punished for the crimes that they commit; equally, as a society, we seek to assist offenders to tackle their underlying problems.

We see the importance of ensuring that the terms that we use accurately reflect the activity that the new community sentence will involve and that they do not create confusion. We will consider that further before stage 2.

The committee’s report highlights the need for additional resources to make the community payback order work. We recognise that, and we

have provided significant extra funding for community service both this year and next year, to make the system tougher and tighter. The new funding will also help to provide for the transition to the new regime. As for the calls for the new sentence, when it is in place, to receive more additional funding, we have set out our budget for the next financial year and we have already provided extra resources. We absolutely share the Justice Committee's conclusion that the new sentence must be adequately resourced; that will be our priority.

**James Kelly (Glasgow Rutherglen) (Lab):** On funding, given that there has been no movement in the community justice service line in the budget, what lines will the cabinet secretary cut in order to fund his policy of scrapping short sentences?

**Kenny MacAskill:** We are not creating the problems of cutting budgets. That comes from Westminster, and we have to address the consequences. As Mr Kelly knows, we are sitting down with the Association of Directors of Social Work and the community justice authorities, which are involved in front-line services. They are saying that it will be difficult but that they are satisfied that they will manage. Perhaps he should have more faith in the staff who work in community services and local government, rather than continually disparaging them.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Will the cabinet secretary take an intervention?

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

Alongside the community payback order, the bill proposes the introduction of a statutory presumption against the imposition by the courts of prison sentences of six months or less. We read the stage 1 evidence and the committee's conclusions on that proposal with great care, and we found nothing that explains why some members of the committee oppose it. Many witnesses presented the committee with evidence that demonstrated the limitations of short custodial sentences. All members of the committee accept the evidence, as articulated in the stage 1 report, that

"short prison sentences do not normally achieve much by way of rehabilitation",

that they have

"limited effect as a deterrent",

and that any respite that they provide for victims and communities

"is only for a limited period".

We agree with all that.

The Sheriffs Association gave evidence that short prison sentences are the only appropriate

option in some circumstances, and that, in particular, custody must be an option for breach of a community sentence. We agree, and the bill acknowledges that point and contains safeguards that address it. Let me be clear that courts will still be able to impose sentences of less than six months. There will be no statutory bar to that.

However, the committee's report gives several reasons to support the presumption against short prison sentences. David McKenna, the chief executive of Victim Support Scotland, which speaks up for those who suffer from crime and whose lives are blighted by it, said just last week:

"as an organisation we supported the introduction of robust and timeous community penalties for offenders in non-violent, non-serious cases, so we're a bit disappointed that the committee has taken the decision not to support this proposal within the bill ... Certainly we hope that they can be assured that this will work for Scotland, because I think this is a golden opportunity really to take a radical and new view of how we deal with crime in our communities, making it better for communities but more importantly making it better for victims."

**Richard Baker (North East Scotland) (Lab):** When we talk about timeous community sentences, it is not the case that only a fraction of community sentences start within the seven-day target set by the cabinet secretary? When Victim Support Scotland gave evidence to the committee, it said that there should not be community sentences for, for example, serious offences, violent offences and assaults, yet the cabinet secretary's presumption against custodial sentences will apply to indecent assault, assault, and two thirds of convictions for knife crime.

**Kenny MacAskill:** There are two points there. First, Richard Baker criticises the time lag. That is the current system, which we inherited from him and his predecessors. That is why we are bringing in measures to improve the system and to address questions of timing. If he is critical of the system, that criticism should lie at my predecessor's door.

Secondly, I remind Richard Baker that we are talking about a presumption. In cases in which a sheriff believes that it is appropriate for respite care to be given, that a breach has occurred, or that no other sanction can be applied, we will fully support that sheriff in their decision. Richard Baker should perhaps think about supporting those who speak for and represent victims, who have been speaking out about what will really change things.

Members should remember that the status quo is not working. We inherited the revolving door, and communities are blighted as a result. For that reason we have established a broad coalition, from the former First Minister Henry McLeish, to the Scottish Prisons Commission and people such as David Strang, down to David McKenna. Yet some members of the Justice Committee have been unable to follow where the evidence led.

Members agreed that the priority for prison should be dealing with offenders who commit such serious acts that no other form of punishment will do. Committee members acknowledged that short prison sentences are of limited usefulness, but that specific instances may arise in which a short prison sentence may, nonetheless, be the only option. Committee members followed exactly the same path of reasoning as the Prisons Commission did, and as we have done in making the proposals that are set out in the bill. Therefore, why do some members of the committee and of the Parliament not support the presumption against short prison sentences?

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Will the cabinet secretary take an intervention?

**Kenny MacAskill:** I am sorry; I must make some progress.

No good reason was found to stand against the presumption, and we call on the members concerned to support that important provision.

Sections 58 to 60 make changes to the operation of the system that allows the retention of forensic data in the justice system. The forensic data working group has made good progress with developing a list of relevant sexual and violent offences committed by children that will trigger retention of forensic data under section 59. It is important that we get those provisions right, so careful consideration must be given to them. As requested by the Justice Committee, we aim to provide a draft list of the relevant offences before stage 2. GeneWatch UK submitted stage 1 evidence to the effect that DNA samples should be destroyed once DNA profiles have been obtained. The forensic data working group is considering the issue. In considering the retention and use of forensic samples, we are determined always to strike the correct balance between the rights of individual citizens and the need to keep communities safe.

This is a licensing as well as a criminal justice bill. In it, we are implementing the recommendations of the Civic Government (Scotland) Act 1982 task group and are modifying a number of provisions in the Licensing (Scotland) Act 2005 to reduce costs, shorten process times, remove unintended barriers and close loopholes.

A number of provisions in the bill give rise to a need alter reserved legislation, and we are working with United Kingdom Government departments so that a section 104 order, under the Scotland Act 1998, can be made at the appropriate time.

The Criminal Justice and Licensing (Scotland) Bill is a comprehensive bill that shows this Government's ambition to help make Scotland a

safer and stronger land, and to change the status quo, which is clearly not working.

I move,

That the Parliament agrees to the general principles of the Criminal Justice and Licensing (Scotland) Bill.

**The Deputy Presiding Officer:** I call Bill Aitken to speak on behalf of the Justice Committee.

10:18

**Bill Aitken (Glasgow) (Con):** It is with pleasure, compounded with relief, that I present the Justice Committee's stage 1 report on the Criminal Justice and Licensing (Scotland) Bill. The relief is caused by the fact that a long, complex and convoluted experience is now at an end. My pleasure is formed from my belief that we have produced a fair, balanced and measured report on what is undoubtedly a complex and far-reaching piece of legislation.

It is a measure of that complexity that the committee required 24 meetings to deal with the bill, taking evidence from well over 50 witnesses. They included the Lord Justice General, the Lord Justice Clerk, the Sheriffs Association, senior police officers, voluntary groups, academics, the Law Society of Scotland, the Faculty of Advocates, the Lord Advocate and the Solicitor General. We also heard from local authorities, licensed trade representatives and, of course, the Cabinet Secretary for Justice. I put on record the committee's appreciation for those who gave of their time so willingly and for the innumerable written submissions that we received. All were carefully considered and appreciated.

Before I deal with the content of the committee's report, I also thank the members of the committee. My colleagues applied themselves with typical commitment and professionalism. I thank the clerking team, led by Andrew Mylne and Anne Peat, who kept up with the demands that the committee made of them—and with the frequently unreasonable demands of the convener.

Many of the measures in the bill are non-contentious and represent a valuable contribution to the modernisation of the law. Other aspects are controversial. Perhaps the most difficult issues to deal with were those that caused concerns across party lines, on which I hope there will be some movement before stage 2.

The controversy is largely restricted to part 1 and relates to sentencing. There might be no meetings of mind at the end of the process, but the divisions between us are perhaps less significant than some might think. The committee was lukewarm, it is fair to say, on the proposal that the bill needs to state the purposes of sentencing, as its purposes and principles are well



established, nor does that proposal sit comfortably with the proposal that sentencing guidelines will be issued by the Scottish sentencing council.

It is easy to see the Government's direction of travel in relation to the sentencing council, which has perhaps been formulated in response to a public perception of inconsistency in sentencing. The committee was not convinced that clear, objective evidence exists to substantiate that perception. There is an inevitable tension between such a council and the principle of the separation of powers, and the committee could not form a consensus around how that tension could best be addressed. A majority of members took the view that sentencing guidelines developed by any sentencing council should take effect only after formal endorsement by the appeal court; an alternative suggestion was that, if there is to be such a council, its composition should have a judicial majority. I think it is significant that, when he gave evidence to the committee in Alloa, Henry McLeish downplayed the significance of a sentencing council, stating that he had "no strong views" on how it should operate.

The issue of community payback orders was not particularly controversial, and the committee broadly supports the creation of such orders, which should simplify and strengthen the current range of community sentences. The committee was firmly of the view that the orders must be adequately resourced. We found it difficult to be satisfied as to whether sufficient funds have been or will be made available for them. The level of take-up of the orders will be closely linked to the views of sentencers as to their effectiveness, and their effectiveness will be related to whether there is adequate funding.

The committee was strongly of the view that if CPOs are to gain credibility among the general public, victims of crime and, most important, offenders, there must be immediacy, with the order enforced on the day of sentence or as soon as possible thereafter. Justice delayed is justice denied—and justice that is ineffective.

The issue of short custodial sentences is of course highly controversial, but let me state, in a typically consensual vein, that, as the cabinet secretary said, the committee unanimously accepted that short-term prison sentences do not normally achieve much by way of rehabilitation. The majority view—albeit on the basis of my casting vote—was that the Government's proposals in that regard were totally unacceptable. I might have more to say about that later, but I am constrained by the role in which I am speaking. Significantly, the weight of evidence among academics was in favour of the Government's proposals, whereas members of the judiciary, who actually work in the courts, tended to take the

opposite view. The issue has somewhat further to run.

In relation to the difficulty with the operation of the Custodial Sentences and Weapons (Scotland) Act 2007 regarding monitoring after early release, the proposals in the bill come under the heading of good intentions, although there will clearly be practical difficulties and resource implications. We reckon that the Government has probably got it about right.

Finally on part 1, one would have thought that the view that drink is not a mitigating factor when it comes to sentencing was unanimous. Most members of the committee found it curious that the Government felt a need to codify that principle in statute.

Having dealt with the issues that are probably the most contentious, I turn to the proposals regarding serious and organised crime, on which the committee strongly supports the Government's underlying intentions. Let no one doubt that the police, prosecutors and politicians are determined to do everything possible to hit the drug barons and their criminal associates hard. The bill is extremely well intentioned, but the committee was not certain that some of the detail was right.

There are difficulties, with which the cabinet secretary has dealt to some extent, around the definition of "involvement" and "directing", on which further dialogue is necessary. We are also concerned about other definitions, such as what is meant by "serious and organised crime". We have asked the Scottish Government to re-examine the extent to which it would be possible to tighten the definitions. The committee is keen to play its part in attempting to find a proper way forward.

Another issue of non-political, general concern relates to the age of criminal responsibility. We accept that Scotland is not in line with other jurisdictions, but, at the same time, there has to be some protection against the activities of the very small minority of youngsters who can do pretty serious things. Section 38 was the subject of long and anxious consideration. We have been unable to form a settled view on whether 12 is the appropriate age threshold for someone to be deemed capable of committing a crime or to be liable to prosecution. Before we proceed, we need to get some assurances from the cabinet secretary that there is a sufficient range of disposals in the children's hearings system for children under the age of 12. The committee would welcome further dialogue on that matter.

The retention of samples is a controversial issue. The committee agrees that it is sensible to enable fingerprint and other forensic data to be subject to the same European convention on human rights-compatible retention regime as DNA.

However, we are less certain whether it is appropriate to extend those provisions to those who are offered alternatives to prosecution. Appropriate thought does not appear to have been given to the proportionality of such a measure, bearing in mind the minor offences that are likely to be involved. That requires further examination.

The retention of DNA and other evidence, particularly from children and persons who have not been convicted of significant crimes, raises issues under article 8 of the ECHR. Once the Government has had time to absorb the committee's report, we would expect it to report to us to advise us what progress has been made with the forensic data working group, particularly on whether a draft list of offences is required. I have taken some encouragement from what the cabinet secretary said earlier.

Part 4 relates to evidence. The issue of witness statements and, in particular, the provision that will enable a civilian witness to look at their statement shortly before giving evidence troubled a number of committee members and we could not formulate a consensus on it. The legal profession and the judiciary shared our doubt, so we ask the Government to look at the issue again.

On the requirement for the spouse or civil partner of an accused to give evidence, although the Government's measures are undoubtedly well intentioned, we draw to its attention the evidence that the committee took and ask it to consider whether, in retrospect, what it proposes is the most satisfactory way forward.

There are a number of other sensible measures, such as the proposal to increase the age of jurors to 70. However, the provisions on disclosure in part 6 caused considerable anxiety. The rationale was fully understood, but there were concerns about defence statements being made available to the Crown. The committee was not persuaded that there is merit in the proposal to make defence statements compulsory in solemn cases, as that could prejudice important principles of justice, so perhaps the Government will give its justification further thought. There was a view that the disclosure provisions should be kept as simple as possible, as was highlighted in the excellent report by Lord Coulsfield, who provided valuable evidence.

The bill also deals with licensing, on which there are important provisions. It is unfortunate that the length of the criminal justice aspects of the bill preclude an exhaustive examination today of its licensing aspects, although that can take place in due course. Most of the licensing measures are common sense. However, I draw to the Parliament's attention the committee's concerns under a number of headings, such as the provision of antisocial behaviour reports to licensing boards

and the committee's view that a sledgehammer was being used to crack a nut in respect of the charging of, or potential costs to, non-commercial groups for obtaining licences for charitable events.

Some events that councils require to license will require the council to expend a considerable amount of money in ensuring that everything is in order. The most obvious example is that of a rock concert, which would involve building control, environmental health and other council services. However, small events such as sales of work or flower shows—such events are familiar to many members of the Parliament—do not require the same level of council input. Perhaps the Government could look again at the matter, because, undoubtedly, there is a possibility that the good intentions of very well-intentioned people who work for charities could be frustrated if the costs that are involved become prohibitive. We cannot have charities suffer because of overtight regulation.

Other aspects of licensing are worthy of consideration, such as the definition of "fit and proper person". We are not totally relaxed that the law as it is at present is exactly the way forward, so perhaps some work could be carried out in that respect.

It would be wrong to suggest other than that the criminal justice provisions dominate the bill. Some aspects are good; some are, to my mind, capable of being improved, but the legislative thought process around them is entirely satisfactory and they would receive the approval of the majority of the Parliament; and others, such as the provisions on short periods of imprisonment, are bitterly controversial. In a conciliatory manner, I ask the cabinet secretary to look again at that issue. It may well be that Victim Support Scotland and other bodies took a differing view from half of the committee, but the committee has got it right and is speaking on behalf of the majority of the people of Scotland. As I said, I will have more to say on that later.

I hope that the Parliament will accept that a great deal of time and effort has gone into the preparation of the report, which will provide an informed basis on which the debate that will take place over the next few months can proceed.

10:33

**Richard Baker (North East Scotland) (Lab):** I congratulate the Justice Committee on its stage 1 report on the bill and I congratulate the convener on his self-restraint in presenting it. Given the breadth of the bill, the committee has had a lot of ground to cover. The Scottish National Party's supposed flagship bill on law and order involves many exercises in consolidation and proposals

that are technical in nature. Like others, I will not have time this morning to cover all the issues in the bill.

However, the proposal to legislate for a presumption against custodial sentences of six months or less is significant, because it is unworkable, unfunded and unjust. I am fulsome in my praise for the committee's report, because it was right to reject that proposal. It has often been said that the intention is that minor offenders should not be placed in custody—indeed, the cabinet secretary referred to that this morning. However, it is clear that that presumption will not apply simply to minor offenders but to all sentences of under six months, which would include 40 per cent of those convicted of indecent assault, 85 per cent of those convicted of assault and two thirds of those convicted of knife crime. That sends out entirely the wrong message on this key area of crime. It will not do anything to make our communities safer, which should be the focus of the bill—I am afraid that it is not.

There is a false debate about whether the measure in itself will reduce reoffending. We, too, want to reduce reoffending and we believe that community sentences have an important role to play in that, but reoffending rates are higher for those who are sentenced to prison because—alas—by the time that somebody receives a prison sentence, they have normally already received several other disposals. Almost by definition, a person who is given a prison sentence is a repeat offender. Putting offenders who would otherwise be in custody back in the community will not make communities safer. We should be clear about the consequences that that might have. Scottish Women's Aid has said that the presumption could

"have a negative impact on women, children and young people experiencing domestic abuse."

The cabinet secretary's argument that offenders will be sentenced to robust community payback programmes is fantasy. It is on his watch and not ours that community sentences are—sadly—losing public confidence. He referred to a survey in which 84 per cent of respondents said that they wanted community sentences as alternatives, but the same surveys show that people are losing confidence in such disposals.

**Margo MacDonald (Lothians) (Ind):** Is Richard Baker in favour of the short custodial sentences that are normally imposed on women who fail to pay a fine that is incurred for soliciting? Would he continue such measures?

**Richard Baker:** I certainly take on board Margo MacDonald's point. The Equal Opportunities Committee has reported on a range of issues in relation to women offenders and we will certainly consider that committee's proposals carefully.

I am afraid that the current state of community sentences cannot be ignored. One third are breached and a fraction start on time. Even those who agree with the cabinet secretary's proposal on six-month sentences say that it must be properly funded, yet in the next three years a black hole of some £66 million to provide the additional community sentences would result from the proposal.

We believe in the staff who deliver community sentences—they do a fantastic job—but the cabinet secretary is not resourcing them adequately. He says that he is increasing the available funding, but we know that the community justice budget is at best flatlining—as James Kelly said—and that the cabinet secretary has used unidentified underspend to say that he is supporting the funding in the financial memorandum. His calculations do not add up. That is a recipe for disaster that will push an overstretched community sentencing system to the point of collapse. All those who will be responsible for delivering the greatly increased number of sentences expressed concern to committees about funding. To be frank, the cabinet secretary has done no more than dismiss their concerns.

**Robert Brown:** I will leave aside the resource argument, which we all accept is important. Does Richard Baker accept in principle that a move away from short-term sentences, which do not work and cost huge amounts of money, is desirable? I do not see what option he is presenting.

**Richard Baker:** We oppose the presumption against short-term sentences in principle. We want more community sentences, but the resourcing issue cannot be escaped from—to be fair, Robert Brown does not try to do that. When the financial memorandum is scrutinised—Mr Purvis was good at doing that in committee, along with Labour members—the inescapable point is that the funding simply is not there. Everybody has said that, if the Government believes in the proposal, the investment should come first, but the investment has not been identified, even though the Scottish Government's budget is increasing—of course, the cabinet secretary failed to refer to that.

We believe in robust and effective community sentences. That is why we pioneered drug treatment and testing orders, why we now propose the use of alcohol treatment and testing orders and why we first proposed the community court in Glasgow. In England and the USA, that model provides swift and effective community justice in which we can have confidence. Despite everything that the Government and the cabinet secretary have said about community sentences, the

Scottish Government prevented the pilot community court from proceeding, although the Parliament voted for the pilot. Nothing else demonstrates so well the muddled thinking behind the bill and behind the presumption against short-term sentences.

If we are to look towards more and better community sentences, investment must come first. The cabinet secretary says that we cannot continue to spend money on prisons, but his officials told the Finance Committee that the proposals in the bill would not save a penny in the prison system. Front-loaded funding is needed, but the cabinet secretary is not providing that.

We will not support the failure to act effectively to tackle violent crime. We have proposed and will pursue a policy of mandatory minimum sentencing for knife crime. We still have some 3,500 charges of possession of an offensive weapon each year and higher violent crime rates than England has. That is why it is time to send out the clear message that if someone carries a knife, they will go to jail. Communities want tougher action to improve their safety, but the bill proposes that fewer people should go to jail for carrying a knife and that two thirds of the people who are convicted of such offences should not go to jail. The lack of action on knife crime in the bill is another unacceptable failure.

We support some measures in the bill. We do not oppose the sentencing council per se, but we have listened to the Lord President and others and believe that it should have a judicial majority, that a mechanism for it to report to the Justice Committee should exist and that it should have a narrower remit and reduced costs. The council should not have to take account of the prison population—it should have a clear and unadulterated focus on what is just in sentencing.

We will not oppose the change to the age of prosecution for children, but the Lord Advocate might need to retain the right to pursue a prosecution in exceptional serious circumstances. We will listen to views on that point and consider the detail of changes in the children's hearings system, which we still await.

We do not oppose the rebranding of community sentences, but rebranding is of course useless if the resources are not provided to make the sentences work and we are concerned about the detail of the proposed changes. For example, the Sheriffs Association's submission to the Justice Committee says that, under the proposals, no penalty would in effect be imposed for breaching supervised attendance orders. Normally, the penalty is additional hours, but as the bill sets an upper limit of 300 hours for orders, a subsequent breach would have no effect on those who have

been sentenced to such an order. That requires to be addressed.

Scotland should not be left with weaker laws on DNA retention than the rest of the United Kingdom has. The report of a serious case only yesterday showed that DNA profiles can be an invaluable tool in detecting and preventing crime.

The proposals on tackling serious and organised crime are positive, but I understand from the financial memorandum that they will apply only to some two cases a year.

The reality is that—sadly—the positive proposals in the bill are far outweighed by the negative. Given the committee's rejection of the Government's proposed presumption against short custodial sentences, and to provide the opportunity for amendments to be lodged to make the bill effective in tackling violent crime, we will allow the bill to progress to stage 2. However, the reckless presumption against six-month custodial sentences and the Government's unwillingness to take action on knife crime are lines in the sand. If they are crossed in the final stages, we will not support the bill. Labour will always, always put the safety of our communities first.

10:42

**John Lamont (Roxburgh and Berwickshire) (Con):** The bill is complex and epic in the proportions of what it covers. The Justice Committee is to be congratulated on its efforts to scrutinise the bill. Many provisions are not contentious and will simply tidy existing procedures in the criminal justice system. We welcome most of those.

The journey to reach the stage 1 debate has been interesting. I am sure that we have all read the many consultation papers in anticipation of the Scottish Government's bill. I remember clearly the debate on the Scottish Prisons Commission's report in September last year, when we discussed in depth the recommendations to reduce the average prison population to 5,000 and to scrap sentences of six months or less in favour of community supervision sentences. As members have done today, I expressed then my concern about where that approach to custody would take us. Despite what the cabinet secretary said today, I am disappointed that the Scottish Government has not heeded those concerns and dropped the proposals from the bill.

**Stewart Maxwell (West of Scotland) (SNP):** Will the member take an intervention?

**John Lamont:** I want to make progress.

As I said, we welcome some proposals in the bill. For example, we welcome the moves to crack down on the use in prison of personal

communication devices, such as mobile phones. I recently visited several prisons and I was struck by the problems that communication devices present to our Scottish Prison Service. Prisoners share the hand-held phone device but have their own SIM cards, which makes detection harder. The use of communication devices in prison enables prisoners to continue their criminal activities as before. My colleague Ted Brocklebank will consider that in detail later.

We warmly welcome the extension of the upper age limit for jurors. That will bring the law of Scotland into line with that of the rest of the United Kingdom and will create a bigger pool of jurors on which the Scottish Court Service can draw. I anticipate that David McLetchie, who has campaigned hard on the issue since 2005, will have something to say on the matter in his speech.

I will spend some time focusing on the sentencing provisions in part 1, particularly the creation of community payback orders, and the presumption against short periods of imprisonment or detention. We welcome the creation of CPOs, which will help to simplify the current range of community sentences, but the Government must ensure that CPOs are not only adequately resourced, as the Justice Committee pointed out, but properly enforced.

Last year, 35 per cent of community service orders were not completed successfully and 35 per cent resulted in a breach application. With statistics like that it is not unsurprising that the public do not have much faith in community sentences, let alone the criminal justice system. The Scottish Conservatives are not anti community sentencing. Believe it or not, we do not want to see more people locked up in prison. We want to stop offending and, more particularly, reoffending. We believe that community sentences can play an important part in our sentencing regime. However, if they are to work, they must be rigorously enforced and complied with.

We have called for the creation of a community court in Glasgow. Such a court would ensure that justice was served and was seen to be done, and it would give offenders every opportunity to make positive choices, change their lives for the better and get out of the vicious cycle of persistent offending. It is therefore disappointing that the Scottish National Party Administration has rejected the setting up of a community court in Glasgow.

It should be remembered that imprisonment serves four functions in our society: to protect the public, to deter, to punish, and to rehabilitate. I accept that a sentence of six months or less may not give an offender access to the full range of rehabilitation facilities that someone who is imprisoned for a longer period can access.

However, as important as rehabilitation is—and I believe that all people need to be given an opportunity to make positive changes in their lives—it is not the only purpose of imprisonment. Prison is also to deter people from reoffending; to show them that their behaviour is unacceptable to society and that the consequence of their actions is for them to lose their liberty for a set time as a punishment; and to protect our public and give them respite from a persistent offender or someone who is deemed to be a risk.

**Robert Brown:** If one visits Polmont young offenders institution, one finds that 91 per cent of the young offenders have been there before. That does not say much for the deterrence argument. What is the member's comment on that?

**John Lamont:** We need to understand why they are repeat offenders and why we are not using their time in prison to rehabilitate them more effectively. The argument that short-term sentences are not working is not a reason for abolishing them completely. Those sentences should be more effective as a deterrent.

Short-term sentences offer sheriffs and judges the option of dealing with persistent offenders who continuously breach community service orders by giving them a short, sharp shock to ensure that they do not reoffend. They also provide respite to communities that are blighted by the actions of the accused. Short-term custodial sentences will always be a necessary part of any summary justice system. Judges and sheriffs do not send people to jail lightly.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** It is respite care, now.

**Mike Pringle (Edinburgh South) (LD):** Respite care!

**John Lamont:** I hear members querying my reference to respite. A number of my constituents rely on short-term sentences to provide them with respite from the blight that individuals cause to their communities. Members should not underestimate the effect that short-term sentences can have on our constituents across Scotland.

The licensing parts of the bill also require further consideration, particularly their impact on charitable organisations and community groups. The Justice Committee convener mentioned that point. Recently, like other members, I received an e-mail from the Church of Scotland Guild voicing its concerns about the effect that the bill would have on its events and activities. Many local groups run small fairs, coffee mornings and other events at which they invite local businesses to display goods. They also run rallies and ask local bookshops to provide a bookstall during the event. Although the group does not make a profit on many of these occasions, the new licensing

measures will require the procurement of a licence. Local authorities will have discretion over charging, but there are concerns that groups in different parts of the country may be treated differently—which could lead to inequality and unfairness—and that having to get a licence may mean that they will not put on such events in the future. That would be unfortunate for not only the groups, but the local, mostly independent shops, which may suffer a negative impact.

In addition, the Scottish Sports Association voiced concerns about the impact that the bill would have on its ability to promote sport throughout Scotland. The SSA noted that the bill would make it unviable for sport clubs that work on a not-for-profit basis to continue to promote their activities or raise funds. Many of the funds that clubs receive from the sale of goods to the public are accrued in relatively small amounts. If they are required to obtain a market operators licence for such fundraising activities, it is clear that the situation may become unviable. We should encourage and not punish clubs that are being proactive in the pursuit of additional funds. The SSA also believes that the measure will act as a deterrent to volunteering. Without the work of many thousands of volunteers, many sports clubs would not survive. Those sports clubs provide coaching, competition and youth development opportunities to local communities. We should help to facilitate such community involvement.

In September, the Scottish Government published “On your marks... Get set... Go: A games legacy for Scotland”, in which it stated its ambitions for Scottish sport in the preparation for and years beyond the 2014 Commonwealth games in Glasgow. It speaks of a partnership between the Government and groups such as the SSA in delivering those sporting objectives in the community. How can the Government truly support such statements if it then places additional controls and financial burdens on clubs that are working to promote sport throughout Scotland?

We must recognise the effect that the bill could have on charities and community groups in the hope that we will not hinder their ability to continue to do good work in their local communities.

The Scottish Conservatives will vote for the Criminal Justice and Licensing (Scotland) Bill tonight at decision time, but we look forward to seeing the amendments at stage 2 that I am sure will be lodged and which we hope to support.

10:52

**Robert Brown (Glasgow) (LD):** I commend Bill Aitken, the Justice Committee convener, for his comments on behalf of the committee. I do not

always agree with him, but on this occasion I agreed with pretty much every word that he said.

The Criminal Justice and Licensing (Scotland) Bill is long and complex, with many separate and largely unconnected strands. As we have heard, some of its proposals are highly contentious. It is a tribute to my colleagues on the Justice Committee that we were able to produce a report that was the subject of only one formal vote. I say that given the differences of emphasis or expertise in the committee membership. That consensus gives added power to the broad themes of the stage 1 report. I hope that the Government will listen and respond appropriately—indeed, the cabinet secretary indicated that he will do so.

I will indicate the Liberal Democrat position on some of the central issues. This stage 1 debate is taking place in a different financial climate from that which pertained when the Scottish Prisons Commission reported and the bill was conceived. That must influence our approach. We must ask whether particular proposals are essential or just useful.

I say immediately that the Liberal Democrats are clear in principle that those most important sections that aim to reduce short-term prison sentences and replace them with tough, speedy and effective community sentences are absolutely vital and must be properly resourced. Frankly, aiming to reduce such short-term sentences is a no-brainer. The public is funding prison places at up to about £40,000 a year per prisoner. Some prisons are housing minor criminals in grossly overcrowded conditions from which they routinely leave worse than when they went in, the underlying causes of their offending not having been addressed and the family or employment supports that are key to their rehabilitation having been fractured.

The public are equally entitled to know that the punishment that is meted out by the state is the most effective possible in stopping their local community being troubled by violent disorder, vandalism, the consequences of alcohol or drug addiction, and repeated crimes of dishonesty—all of which cause huge annoyance, worry and fear to law-abiding citizens. The Government must adequately fund community payback orders if the public are to have confidence in such measures. In fairness to the cabinet secretary, he has responded specifically to Liberal Democrat concerns on the issue by providing an initial sum of £2 million and a further £5.5 million over two years to bring existing community sentences up to scratch. Despite what members have said in the debate, I know from my visits to community justice authorities that the money is having an effect: sentences are being speeded up and sharpened up.

However, we all know that the quality of different projects is patchy and that, in moving to the new form of community orders, it is a fundamental challenge to ensure that they are started immediately, managed and supervised with both skill and authority, and allowed not just to produce visible payback to the local community, which is hugely important, but to turn around the offender. As the Justice Committee said, the presumption against short-term sentences will lead to basic costs increasing by 10 or 20 per cent, according to the Government's estimates—about which there are issues. There will also be additional costs for the Scottish Court Service and for the voluntary sector bodies that will be involved in delivering the new CPOs. The conditional requirements that will often accompany the orders may require drug or alcohol addiction treatment, mental health treatment or literacy support, all of which cost money.

**James Kelly:** Does Robert Brown accept the evidence of Government officials to the Finance Committee that releasing prisoners on short-term sentences will not save any money from prison budgets?

**Robert Brown:** I do. There will be longer-term savings, if we get CPOs right, but achieving short to medium-term savings will be a challenge. That is why bridging finance is an important issue in this area, as in so many others. Community justice authorities gave evidence that the unit cost figures that were used to calculate the costs of community orders may not be adequate. Liberal Democrats are clear that current resource levels will be inadequate and that the Government will need to find additional resources if the new CPOs and, more particularly, the presumption against short-term prison sentences are to be more than tokenistic and are to make the substantial difference to crime levels that we believe they are capable of making.

Liberal Democrats offer a partial way forward—to apply the presumption only to sentences of under three months, at least in the first instance, which would reduce the organisational and financial pressure. However, there is a difference in a broad sense between the pattern of crimes attracting sentences of less than three months, which looks more like that of those attracting community sentences at present, and the pattern of crimes attracting sentences of three to six months, which tend to look more like more serious crimes. As other members have said, why, for goodness' sake, does the SNP not rethink its lamentable and short-sighted decision to abandon the Glasgow community court project—one of a growing number of projects that have not been properly assessed but have been binned by ministers who are too often hung up on administering the smack of firm but, in this

instance, inadequate Government decision making?

I will say a word about the opposition on this general issue from Labour and the Tories. With respect, I say to Richard Baker that resource is a smokescreen for Labour—as he indicated in his response to my intervention, they are against the changes in principle. They operate on the principle that no press release should go out and no new policy should be announced that does not say that they want tough penalties or tough action, which implies that the only respectable sentence for any crime is to lock up the culprit and throw away the key. That used to be the preserve of Tory conferences, which rapturously received demands for the restoration of the death penalty or bringing back the birch. Since 1997, however, new Labour has positioned itself in such a way that no one can outdo it on being tough on crime. I say to Richard Baker and the Labour Party that the difference is that they know that short-term sentences do not work but are desperate to give the impression of ceaseless activity in fighting crime, to ensure favourable headlines in the tabloids—not least those owned by Rupert Murdoch, new Labour's erstwhile but, it turns out, fair-weather friend. Richard Baker knows that demands for tough action on crime are a political spin-doctor's invention and substantially irrelevant to the real issues that we face in fighting crime.

**Richard Baker:** Mr Brown's accusation that we are seeking support from Rupert Murdoch is behind the times and gives the lie to the outrageous politicking of his statement, which is entirely wrong. Does he accept not only that we pioneered community sentences when we were in government with the Liberal Democrats but that we have looked for further alternatives to custody during this session, including alcohol treatment and testing orders, which we have pressed for in the context of the bill? The member's statement was extremely unfair and misrepresented our position.

**Robert Brown:** I pay tribute to Richard Baker for some of the policies that he mentions, but I am making a general point about positioning, right down from the Labour Government in London to Labour members in the chamber.

It is no coincidence that about 80 per cent of the young children of five or six who come before the children's panel as being in need of care and protection are back before the panel or the court at the age of 16, 17, or 18 for offending. One third of those entering prison are assessed as having an alcohol problem on admission, and 50 per cent as having a drug problem. If they do not have a drug problem when they go in, they are pretty likely to have one when they come out. Sadly, no less than 70 per cent have some form of mental health

problem, with huge proportions having literacy or numeracy challenges. I mentioned the Polmont young offenders institution to John Lamont. I do not know what sort of percentage he requires to be persuaded on these matters, but 91 per cent seems pretty high to me.

I want to take a sideways glance at the issue of women in prison. Staff at Cornton Vale tell me that their main job is to try to rebuild shattered and fragile lives, to make up for the devastating fact that women are taken away from their children and homes and that their self-respect is at rock bottom, their mental health fragile and the likelihood of a suicide bid high. To all intents and purposes, those women are there mostly for their protection rather than for that of the public. It is not obvious that we are too soft on their crimes—in fact, it is totally clear that society has failed those women, that life has been extraordinarily tough for them and that there is a high chance that their children will be among the next generation of offenders.

**Bill Aitken:** Will the member give way?

**Robert Brown:** I cannot at this point—I am heading towards the end of my speech.

In my view, the £1 million annual running costs of the proposed Scottish sentencing council are not justified in the present climate. It could be a useful body; however, if the cabinet secretary goes ahead with the proposal, he should for goodness' sake pay heed to the judiciary's justified concerns and square the circle by having the council's proposals, influential as they will be, endorsed or amended by the appeal court, to ensure that there is separation of powers.

I conclude with a brief word about children. We need to sort out the age of criminal responsibility, in line with the report of the United Nations Committee on the Rights of the Child. We must also look at DNA issues, in the way that the Justice Committee recommended. The children's hearings system was not set up to deal with legal issues of that kind, and it is almost impossible to define the cut-off point between serious and not serious crimes. The number of cases would be modest, and many would go to the sheriff anyway for a finding on the referral. Such cases should be referred or should go to the sheriff.

This is an important bill, but a great deal of work remains to be done to get it right. We expect to see our concerns addressed as the bill proceeds. For many people, failure creates despondency, aggression and more failure. The high challenge for the bill is to help to break the cycle of failure, to support the work of the violence reduction unit, early intervention and diversion from crime, and to build a system in which reoffending rates are not 91 per cent in Polmont or 75 per cent in prisons generally and the current 42 per cent for

community sentences is bettered by as much as possible. That is the prize. If we succeed, our country and society will be much the better for it. Alas, we cannot say that for the position advanced by Labour and the Tories in the teeth of the majority of evidence that witnesses gave to the Justice Committee. They have generations of abysmal failure of so-called tough policies on crime to explain away. Liberal Democrats members will support the bill at stage 1 tonight.

11:03

**Stewart Maxwell (West of Scotland) (SNP):** I add my thanks to the many witnesses who provided evidence and to the committee clerking team for all its hard work.

I start with two proposals in the bill that have received particular attention. The first is the presumption against short custodial sentences—the one issue on which the committee could not agree a position. Four members voted in favour and four against. The vote displays why that proposal will feature heavily at stage 2 and, no doubt, at stage 3.

In my view, the arguments in favour of the proposal are overwhelming, whereas the arguments against do not stack up. Beyond a shadow of a doubt, the current policy has failed. It has been tried for years and has had little or no impact on turning people away from a life of crime. In fact, many people argue—in my view, cogently—that the exact opposite is the case and that short custodial sentences are a door into, rather than out of, a life of crime.

Despite some people's attempts to cloud the issue, the bill proposes not the abolition of short custodial sentences but a presumption against them, with the judiciary retaining the freedom to impose such sentences where they are necessary and appropriate. Inevitably, it will be for the chamber to take a view on the matter at stage 3, as the 50:50 split in the committee reflects the diverse views that are held across the chamber.

I turn to the proposal for a sentencing council. I believe that we need a body to provide the courts with guidelines on sentencing and that the current arrangement is no longer the best way of dealing with the matter. As Robert Brown mentioned, there was a difference of opinion in the committee on judicial independence in the context of a sentencing council. I do not believe that we would be going far enough if we set up a sentencing council whose recommendations must then be approved by the court. That would not move us on particularly far. If there have to be changes to the bill, we should look at the make-up of the council and discuss whether there is a case for it to have a judicial majority.



**James Kelly:** On the £1 million funding for the sentencing council, does the member agree that, in these difficult economic times, some of that money would be better used to fund community payback orders?

**Stewart Maxwell:** James Kelly lays a false choice before the chamber. Of course it is important that we achieve value for money from our investment in this area—the committee made that point in its report—but it is not a straight choice between the two options as he suggests.

A judicial majority on the sentencing council might strike the right balance between maintaining judicial independence and providing us with a body that will introduce robust guidelines on sentencing.

I turn now to DNA retention and the committee's conclusions at paragraph 372 of the report. A trend in recent years has been the increasing use of non-court disposals or direct measures such as fiscal fines. However, one of the unintended consequences of that trend has been that if two people commit an identical offence, receive an identical charge and both have their fingerprints and DNA taken, they can end up with two different outcomes. The person who chooses to go to court and is found guilty of the offence has their DNA and fingerprints retained, but the person who accepts the offer of a direct measure does not have their DNA and fingerprints retained. There is no justification for the difference and, as I have indicated to the cabinet secretary and the committee, I intend to lodge an amendment to close what I believe is an anomaly in the current rules.

One of the other issues that caused debate in the committee was the age of prosecution versus the age of criminal responsibility, as other members mentioned. The bill seeks to raise the age of prosecution to 12 from the current age of eight, while retaining the age of criminal responsibility at eight. That means that children between the ages of eight and 12 could no longer be prosecuted through the criminal courts. Although the change is long overdue, I do not support the proposals from some outside the chamber to raise the age of prosecution to 13, 14, 15 or even 16, neither do I support the idea that we should change the age of criminal responsibility. There are cases of children below the age of 12 who are clearly capable of understanding the difference between right and wrong and who have committed crimes for which they must take responsibility. Therefore, I am content to support the position that is outlined in the bill.

I will mention briefly two other matters in the report. The first is serious organised crime. I realise that some people are concerned about

some aspects of that area of the bill, in particular section 28, on failure to report serious organised crime. We must take a robust line on the matter as any gaps that we leave will be exploited by the very people with whom we are trying to deal. That is what happens at the moment. I recommend that members read the evidence on the matter that was provided to the committee by the Lord Advocate and the Solicitor General.

My final point relates to the proposal to allow non-invasive post mortems, to which paragraphs 645 to 651 refer. Although it is not a part of the current bill, I raised the matter with the cabinet secretary and the committee and asked questions of the Lord Advocate when she gave oral evidence. We also received written evidence about it from the Scottish Council of Jewish Communities. Therefore I ask that, if possible, we get a definitive response in the summing-up today to the questions raised about the possible use of non-invasive post mortems in Scotland and, in particular, to the question whether a change in legislation is required.

I ask all members to support the bill at decision time.

**The Deputy Presiding Officer (Trish Godman):** Before I call Bill Butler, I remind members that speeches should last five minutes rather than five and a half minutes.

11:09

**Bill Butler (Glasgow Anniesland) (Lab):** As deputy convener of the Justice Committee, I place on record my sincere thanks to the committee's clerking teams past and present, the Scottish Parliament information centre and the many witnesses who gave invaluable evidence to the committee.

There is no insurmountable difference between Labour and the Government on several measures in the bill that merit support, such as those on serious organised crime, voluntary intoxication by alcohol, people trafficking and the upper age limit for jurors. However, given the voluminous nature of the bill, I will confine my comments to some of the more controversial aspects of part 1 where no agreement has been found.

One of the most worrying aspects of this putative act is the Government's proposal to introduce a presumption against six-month sentences other than in exceptional circumstances. The production of a coherent penal policy that leads to a safer and stronger Scotland is the aim of all members across the chamber; it is certainly central to the creation of a rational system of criminal justice.

A sensible and resilient penal policy must be capable of delivering several objectives: an improvement in public safety; the delivery of condign punishment when necessary; the protection of victims' and communities' interests; and a contribution to reducing reoffending and promoting rehabilitation. Those are desirable outcomes, but determining how we achieve all or any of them is where this serious debate must focus. I say to Robert Brown that these are complex and difficult areas of policy to which no easy answers or soundbite solutions exist. One of the most difficult questions is not only how we strike a rational balance between custodial and community sentences but how we develop consensus on the symmetry between punishment and rehabilitation that is acceptable to people in our communities and recognised by them as being workable.

I remain profoundly dissuaded of the Government's policy to end six-month or shorter sentences other than in exceptional circumstances. Such a legislative change would send out entirely the wrong message to the public.

**Stewart Maxwell:** Will the member give way?

**Bill Butler:** No, thank you.

Pace the cabinet secretary, sentences of less than six months are not imposed on fine defaulters alone but cover, for example, those who push class A drugs in our most vulnerable neighbourhoods, some of which I represent. Such sentences cover housebreakers who leave behind a trail of damage and heartache and common fraudsters who prey on the old and weak in our communities. Such sentences also cover thugs who employ physical violence that can leave innocent passers-by hospitalised and, in some cases, permanently disfigured. Such a policy would be a serious misjudgement. Although it would not forbid sheriffs from imposing such sentences, it would unnecessarily restrict the scope within which the judiciary may act in cases where the safety of the public—our constituents—is paramount. I sincerely hope that the Government will think again before stage 3 about this controversial and ill-judged provision.

The other side of the equation is community disposals. If such disposals are to gain the confidence of the Scottish public, they must be visible, have immediacy and be resourced properly. I remain troubled as to whether community payback orders will be funded adequately. I have no problem with the principle of CPOs because, as my colleague Richard Baker said, they are a rebranding of the alternatives to custody that were introduced by the previous Labour-led Executive in coalition with the Liberal Democrats. Mine is a genuine worry about the

£66 million black hole that is echoed by the Finance Committee, which notes that it has not

"received any evidence to allow it to understand whether the estimated update of CPOs, of between 10 and 20 per cent, is accurate or whether this figure is likely to increase year-on-year, along with the cost implications."

I hope that the Government can provide comfort on that concern before stage 3 because it is not a cover; it is a serious concern and worry that we have on the Labour side of the chamber.

Labour will support the bill at stage 1 but, unless the Government thinks again about the matters that I mentioned, among others, we on these benches will not vote for the bill at stage 3. I hope that the Government has the wisdom to retreat and preserve the parts of the bill that are worth preserving.

11:14

**Aileen Campbell (South of Scotland) (SNP):**

The Criminal Justice and Licensing (Scotland) Bill gives the Parliament an opportunity to take Scotland closer to being the safer, fairer country that we all want to live in. I welcome the wide-ranging consultation by the Scottish Government on the various aspects of the bill and the thorough scrutiny that was carried out by the Justice Committee. I made submissions to both the Government and the committee on aspects related to the legislation and will return to that shortly.

I endorse the general principles of the bill, as well as the wide range of specific measures that will help to tackle so much of the crime and its consequences that blight too many of our communities.

I am particularly interested in how the bill will affect the youngest members of our society. The Government is right to use the bill to reinforce the importance of ensuring that younger children who offend will continue to be dealt with in the hearings system and will be held, when that is necessary, in secure accommodation and not in adult courts or prisons. The approach is important, because it protects the rights of young people and meets their needs appropriately. It also has the effect of minimising contact with adult criminals and thereby reducing the risk of reoffending.

However, it is not just young offenders who are affected by the justice system. The children of adults who commit offences are also affected by sentencing decisions. Scotland's Commissioner for Children and Young People published the report "Not Seen. Not Heard. Not Guilty: the Rights and Status of the Children of Prisoners in Scotland" in February 2008, and in June that year the Education, Lifelong Learning and Culture Committee discussed issues that were raised in the report with the then commissioner, Kathleen

Marshall. In the report, the children of offenders were described as

“the innocent victims of their parent’s offending”.

That sums up the situation in which so many of those children find themselves.

In 2002, a report by the Scottish Prison Service, “Making a Difference”, revealed that about 13,500 children in Scotland had a parent in prison. Families Outside, a Scottish charity that works with families who are affected by imprisonment, points out that, given the rise in the prison population since 2002, the current number is likely to be significantly higher. Kathleen Marshall said:

“At least as many children are affected by the imprisonment of a parent as are looked-after children in Scotland”.—[*Official Report, Education, Lifelong Learning and Culture Committee*, 25 June 2008; c 1257.]

Each case gives rise to costs of alternative care arrangements, problems for the parent when they try to get their children back after serving a custodial sentence and wider societal costs of depriving a child of a parent. Children who have a parent or primary carer in prison often exhibit regressive behaviour, such as bed wetting, or display emotional and behavioural problems. Families Outside noted that even having a parent who is remanded in custody can have a disproportionate and negative impact on a child.

The SCCYP has highlighted a ruling by the Constitutional Court in South Africa, which introduced child impact assessments, to be carried out by lower courts at the point of sentencing. Earlier this year, I was privileged to hear more about the system when I attended a moving lecture by one of the members of the court, Justice Albie Sachs. I congratulate Tam Baillie, the current children’s commissioner, on organising the lecture, which made a powerful impression on everyone who attended. Justice Sachs quoted from the judgment that he had given in the case of *S v M*, in which a woman who would otherwise have been jailed was kept out of jail because of consideration of the rights of her three sons. He said:

“Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinct personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them ... the sins and traumas of fathers and mothers should not be visited on their children.”

The Cabinet Secretary for Justice is familiar with the issue, because he kindly met me and other interested parties to discuss it. Other members will be aware of the issue, thanks to the helpful briefings that Action for Children and others provided in advance of the debate.

I make it clear that I am not advocating that convicted criminals who are also primary care

givers should not be properly punished. Any person who poses a threat to the public should be incarcerated, whether or not they have children. Nor am I suggesting that it is always in a child’s best interests not to lock up their parent or carer. In my submission to the Justice Committee, I argued that imprisoning low-level offenders who have children has a wider social impact as families are broken up. If we punish such offenders in the community, justice will be served and Scottish society will not have to deal with the long-term social consequences of family breakdown. I hope that the approach will also break the cycle whereby the children of prisoners are more likely to offend.

The presumption against short-term sentences will help to achieve that outcome to some extent, but there might also be a role for the Scottish sentencing council, which the bill will establish. In my submission to the Government’s consultation on the sentencing council, I suggested that, when the council is established, it might review the effectiveness of social inquiry reports, which can be carried out as part of the sentencing process, and consider whether a specific family impact assessment should be carried out whenever an offender has caring responsibilities for children or other dependants. I hope that the cabinet secretary and the Government will consider my suggestion as the bill continues through the parliamentary process.

I hope that there will be support for the bill in the Parliament and I look forward to supporting it at decision time.

11:19

**Cathie Craigie (Cumbernauld and Kilsyth (Lab)):** Like other members, I pay tribute to the people who assisted the Justice Committee in preparing its report—I am a member of the committee, so I will take the credit that is going.

It is important that I say at the outset that although I agree with aspects of the bill, a number of areas cause me great concern. I have time to highlight only a few areas. To enshrine in law a presumption against short sentences is wrong and would send the wrong message. In the view of many of my constituents and many other people throughout Scotland, the Cabinet Secretary for Justice is not taking his position seriously. In the words of someone to whom I spoke at the weekend, he is “having a laugh” at the expense of communities throughout the country.

This is a serious matter and, if the Government will not take it seriously, the Parliament must do so. If the cabinet secretary thinks that scrapping sentences of six months or less will send the message that the SNP minority Government wants

to tackle criminality and protect the public, and if the Government believes, as it seems to do, that people who are convicted of serious crimes should avoid a prison sentence, the Government is way out of touch with the Scottish public. The cabinet secretary quoted all sorts of organisations and academics in his speech, but I can quote the Mrs Smiths who live round the corner, who think that if someone has committed a serious crime, a custodial sentence is necessary.

Short custodial sentences work—there are examples of that in my constituency. If the cabinet secretary really believes that prison is a skoosh, he should bring to the Parliament measures to address the issue, rather than a stunt that will reduce prisoner numbers by leaving dangerous criminals on our streets.

**Margo MacDonald:** Will the member give way?

**Cathie Craigie:** No, I am sorry. I do not have time.

The sentence should fit the crime. If a judge or sheriff considers that a prison sentence of six months or less is appropriate, the sentence should take place and the judge's time and court time should not be further taken up by report writing to explain the decision.

The Liberal Democrats should come off the fence. If they do not think that short sentences work, why are they prepared to compromise with the Government and talk about minimum sentences of three months? They should get their act together, stop judging other members and make a decision.

**Jeremy Purvis:** Will the member give way?

**Cathie Craigie:** I am sorry, but I do not have time.

On the Scottish sentencing council, I am not convinced that the bill will change anything. There is a perception of inconsistency in sentencing. The committee was disappointed that it could gather no hard evidence on the issue, but what did come to light was the difficulty of gathering measurable evidence. Dr Cyrus Tata, from the centre for sentencing research at the University of Strathclyde, cautioned us against drawing direct inferences from bald statistics that do not take account of possible differences in the cases that come before different courts. He cited a range of studies that provide evidence of inconsistency as well as consistency and said:

"The overall picture is rather like a bell curve, with a lot of consistency and some variation."—[*Official Report, Justice Committee*, 2 June 2009; c 2012.]

The bill would require the sentencing council to include in its sentencing guidelines

"an assessment of the likely effect of the guidelines on ... the number of persons detained in prisons or other institutions".

That is unbelievable. Are we saying that sentences and punishment in Glasgow, for example, should be decided not on the basis of whether they fit the crime but on the basis of whether Barlinnie prison happens to have a space? I do not have time to say more, but I ask the cabinet secretary to listen to the warning bells that Dr Tata sounded in that regard.

On licensing, the proposals in section 125 would have serious financial and administrative consequences for charitable and voluntary organisations. The policy memorandum to the bill is silent on the matter. There is not a word on why the Government thinks that change is necessary, and questioning of the cabinet secretary brought the committee no information on why section 125 is necessary. If section 125 is not amended, it will have a disastrous effect on the ability of charities and community groups to engage with and serve the public through fundraising events such as gala days. The cabinet secretary is unwilling to take responsibility for the change that he promotes but passes the buck to local authorities, leaving a real chance of differences being created all over the country. It is not acceptable to leave that hanging in the balance. We must make changes to the section and I inform the Parliament that I intend to introduce amendments to protect the status quo.

11:25

**David McLetchie (Edinburgh Pentlands)**  
(Con): As my colleague John Lamont already indicated, there is much in the bill to criticise. I will not waste the opportunity to do so later, but I will start on a more positive note by considering section 68, which deals with the upper age limit for jurors. I welcome the proposal to increase that limit from 65 to 70 years of age. It is a measure for which I have campaigned since July 2005 when the matter was first raised with me by my constituent Mrs Campbell, who wrote:

"Dear Mr McLetchie

I wonder if you might be interested in ... progressing in the Scottish Parliament, a 'niggle' that arrived in the post this morning! I received a notice for potential jury service"

in Edinburgh sheriff court

"but unfortunately as now aged 67, I am 'too long in the tooth' ... but as I am now retired, I have at last the time and interest and maybe even some experience of 'life' to be able to serve if selected ... why cannot jury service age be raised to at least 70?"

I took the matter up with Cathy Jamieson and then her successor, Mr MacAskill. Although it has taken more than four years, I am very pleased that the change will be enacted with, I hope, all-party support—even though, ironically, it will come too

late to give Mrs Campbell an opportunity to serve. The age limit of 65 is long out of date and fails to represent the demography of Scottish society. Indeed, it is only one of many examples of age discrimination that still exist in our law.

Raising the age limit in Scotland to 70 will bring us into line with the rest of the United Kingdom and correct the long-standing and glaring anomaly in our justice system that judges can serve on the bench until they are 73 years of age, but a person who is over 65 cannot serve on a jury. Increasing the upper age limit for jurors will also increase the pool from which people are selected for jury duty by a further 200,000. That is important at a time when the court service finds it increasingly difficult to maintain a sufficient juror pool to fill our 15-member juries in Scotland.

I point out that it would be possible to have no upper age limit at all—as is the case in many jurisdictions—and move to a system in which anyone over 65 could serve but could choose not to do so. That is the system that is advocated by Help the Aged and Age Concern. Perhaps we may have an opportunity to debate the issue at stages 2 and 3.

Section 17 provides for the highly controversial presumption against short sentences. Like other members, I was sorry and angry to learn earlier this week that the number of incidents of domestic violence recorded by the police had risen by 8 per cent in the past year to 53,681. It is surely a particular concern that there was a 39 per cent increase in the number of incidents in which the victim had previously been abused. Last week, my colleague Bill Aitken discovered from a parliamentary answer that a mere 12 per cent of the 5,029 people who were convicted of domestic violence in 2007-08 received a custodial sentence, 19 per cent received a community sentence, 39 per cent were fined and 29 per cent were admonished. So much for zero tolerance; it is more like zero sentencing.

If there was ever an argument for short-term sentences, those figures surely provide it. A sentence of six months—or even three—can be long enough to give the victim of domestic violence a welcome respite and the opportunity to make a break from the past and create a new home and life for her and her family if that is her wish. Richard Baker was right to draw our attention to the comments of Scottish Women's Aid on the proposed presumption because this week's figures show that many women are trapped in a vicious cycle of abuse and are given no assistance by a criminal justice system that puts their abusers back in their homes.

**Margo MacDonald:** Will the member give way?

**David McLetchie:** I am sorry, but I must finish this point.

I am afraid that the SNP's proposed presumption against short sentences would make the situation worse not better. There are many instances in which a short spell in custody serves as a respite to a community, person and family. When judges and sheriffs sentence convicted criminals, they take into account the wider picture. They do not send offenders to prison just because they can do so; they send them to prison because it is just to do so. Justice is in the title of the bill, but I am far from convinced that it is in all the content.

11:30

**Angela Constance (Livingston) (SNP):** If we are passionate about reducing crime and making communities safer, we need to cast a cool eye over the evidence and dispassionately decide what will work and what measures will bring about lasting change in our communities instead of resorting to populist, primitive, Old Testament views of justice. Justice requires proportionate punishment, but punishment alone does not work. By necessity, we need to focus on the control, change and care of offenders. The bill is an attempt to strike the correct balance.

In many regards, the tide has begun to turn, with more police, recorded crime being down by 11 per cent over the past two years, cashback for communities—or, as one of my constituents describes it, cashback from crooks—and the fact that we now have a serious organised crime task force. However, if we are to secure real and lasting changes, we need to make some bold decisions.

It is time to show some leadership and courage. Often, in such debates within and outwith the Parliament, there is much talk about who is tough and who is soft in the rather macho world of politics, but I put it to members that the soft ones are those who take the easy and lazy option: those who opt for political expedience and pander to the right-wing reactionaries as opposed to taking tough decisions and showing leadership in tackling real concerns.

One of the things that the McLeish commission demonstrated is that political factors often have more influence on high imprisonment rates than crime does. I would think that that would be a good, solid reason for a sentencing council. I would also think that a sentencing council would have a valid role in, and be a sensible vehicle for, introducing some good, robust guidelines on knife crime and domestic violence.

Women offenders have already been mentioned. Why is it that, since 1997, the female

prisoner population has risen by 90 per cent? Have women all of a sudden become more bad? I diplomatically suggest that it may have something more to do with how the judiciary views women and women who offend. Therefore, society needs to have some say in how sentencing is operated.

**Bill Aitken:** Is Angela Constance aware that the percentage of convicted women offenders who are given custodial sentences is completely out of sync with that for male offenders? Women do not get sent to prison for serious crime to the extent that men do.

**Angela Constance:** Mr Aitken knows that I am no fan of benevolent paternalism in that many of the issues that women offenders face are exactly the same as many of those that the poor young white men in our prisons face, whether mental health or illiteracy. I am no statistician, but I would be interested to know whether Conservative members support the Equal Opportunities Committee's work on women offenders, led by Margaret Mitchell. Perhaps the Conservative party could address that in its closing speech.

I support the Scottish Prisons Commission's view that prison should be used wisely and sparingly. We have a misplaced confidence in prison. As Stewart Maxwell said, it is counterproductive and, as Robert Brown said, it disnae act as much of a deterrent. I commend the Government and the cabinet secretary for showing leadership in the bill and not being feart to lead the way and lead the debate.

I want to raise three issues, but I suspect that I will have time to raise only one of them, which is the proposal to raise the age of prosecution instead of raising the age of criminal responsibility. In my view, that just does not go far enough and is therefore not in keeping with the bill's ambition. While unruly certificates will be gone and children will be remanded in local authority care in secure units and not prisons, I note the Commissioner for Children and Young People in Scotland's concern that the proposal may not meet our international obligations. I agree with my colleague Aileen Campbell that children are not mini-adults.

**The Deputy Presiding Officer:** You should finish now, Ms Constance.

**Angela Constance:** I will finish on that point.

**The Deputy Presiding Officer:** I call Rhoda Grant. You have a very tight five minutes.

11:35

**Rhoda Grant (Highlands and Islands) (Lab):** I will address the changes to non-harassment orders in section 15 of the bill, which I do not think anyone has dealt with yet. I very much welcome section 15, but I feel that it does not go far

enough. Many victims of abuse would benefit from a non-harassment order, but we can see from the financial memorandum that that disposal is seldom used. In 2006, 24 non-harassment orders were granted; in 2007, the figure was 23; and in 2008, there was a slight rise to 29. Contrast that with the figure that David McLetchie quoted of 53,681 cases of domestic abuse reported to the police—that shows a lamentable level of intervention by our courts.

When I visited Australia and New Zealand in October, I met people and agencies that are involved in combating domestic abuse. I was impressed by the seamless support that they give. I was especially surprised to see how much it was driven by the police and the justice department. In Australia, the police have powers to put in place a 24-hour injunction without the support or agreement of the victim. The injunction is formalised in court, and justice officials support the victim through the process and ensure that the court hearing occurs prior to the injunction being spent.

There is also real recognition of the damage that is done to a child who is brought up witnessing domestic abuse. Children, too, have access to the injunctions in their own right and can seek them with the support of children's services. However, children's services can apply for an injunction on the child's behalf without their agreement. The abuser can then be removed from the home and resources can be put in place to support the children and the non-abusive parent.

The victim does not need to take any action and is not responsible for their own protection: the state is. That protects them from retribution, but it also takes into account the distinct nature of domestic abuse. It is the only crime I know of where the victim can be complicit in covering up the crime. That is because, by the time a recognised offence takes place, the victim has been undermined to the extent that they almost accept what is happening to them. The abuser ensures that the victim's confidence and self-esteem is slowly undermined; only then does the physical abuse start.

In this country, we prosecute only the physical abuse; there is no offence that covers the mental abuse. That means that, when the relationship becomes violent, the victims often blame themselves. In many circumstances, they also feel unable to exist outside the relationship, so they tend to become the best witness for the defence. That is why Women's Aid puts so much emphasis on building a victim's confidence and self-esteem. Only after that has happened are they able to take steps to protect themselves and their children. We put the onus on victims to protect themselves; that

does not happen with any other crime of assault, far less with crimes against property.

The bill amends the Criminal Procedure (Scotland) Act 1995 to enable the Crown Office and Procurator Fiscal Service to apply for a non-harassment order against a person who has been convicted of crimes involving harassment. The order is not a conviction in itself, but it guards against future harassment. A breach of the order is a criminal offence, which can be punished by up to five years in prison. An order can be applied for where there is evidence of a course of conduct, involving convictions for harassment. It cannot therefore be applied for unless there has been at least one previous conviction for harassment and the current incident before the court has also led to a conviction.

My reading of section 15 is that the amendment of the 1995 act lowers the barrier from "harassment" to "misconduct towards the victim". However, it is not clear from the bill or the explanatory notes what offence would encompass "misconduct towards the victim" and whether it would be prosecuted or lead to a conviction. However, it is clear from the guidance that a previous conviction is still required, albeit for a lesser charge. The change also makes it easier for evidence of previous convictions to be presented to the court, but that does not remove the need for a previous conviction. It removes the requirement for a course of conduct amounting to harassment, but leaves the requirement for a course of conduct regarding "misconduct towards the victim", which will have to lead to a criminal conviction. It is ludicrous that, in this most difficult of crimes to prosecute, a course of conduct is required. If an offence has been committed, a non-harassment order should be granted; one offence is one too many and any future recurrence should be prevented.

I ask the Government to lodge amendments at stage 2 that would give greater protection.

**The Presiding Officer (Alex Fergusson):** You must close, please.

**Rhoda Grant:** The state needs to protect all victims of crime.

**The Presiding Officer:** I am grateful to members for ensuring that we finished that session on time. The debate will continue this afternoon.

## Question Time

### SCOTTISH EXECUTIVE

#### General Questions

11:40

**The Presiding Officer (Alex Fergusson):** I repeat last week's message from the Presiding Officers: in order to get more members involved in question time sessions, brevity is the watchword.

#### ScotRail Services (Stranraer)

**1. Alasdair Morgan (South of Scotland) (SNP):** I will try to comply, Presiding Officer. *[Laughter.]*

To ask the Scottish Government what discussions it has had with ScotRail regarding rail services to and from Stranraer. (S3O-8627)

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** Transport Scotland is part of the Scottish Government and meets regularly with Network Rail and ScotRail in the normal course of business to discuss a range of matters, including development of rail services.

**Alasdair Morgan:** I am relieved to hear that. The minister will be aware that rail fares to Stranraer are disproportionately more expensive than fares to other stations on the line closer to Glasgow. A 60 per cent increase in mileage compared with the Girvan journey costs more than 100 per cent more in rail fares. Does the minister agree that that very much discourages rail passenger traffic to Stranraer? Will he undertake to raise those issues with Transport Scotland and ScotRail the next time he meets them?

**Stewart Stevenson:** It is the case, of course, that there are different rail fares and different rates per track kilometre across Scotland. Some of the differences are sufficiently large to merit further investigation. Some 58,000 people travel to Stranraer each year, particularly to connect with ferry services. The service is therefore an integral part of our overall transport infrastructure. I will certainly pursue that with the rail company and Transport Scotland.

#### Planning (Economic Growth)

**2. Brian Adam (Aberdeen North) (SNP):** To ask the Scottish Government what measures it has taken to enhance economic growth through planning procedures. (S3O-8607)

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** The economic recovery plan update that was published

last month set out the steps that we are taking to ensure that the planning system continues to contribute to increasing sustainable economic growth. We continue to work with planning authorities, agencies, the development industry and others to ensure that commitments made to support planning reform are delivered.

**Brian Adam:** I am aware that the average time that is taken to deal with planning applications has been significantly reduced. What further measures can the cabinet secretary take to reduce that even more?

**John Swinney:** The Government shares a clear recognition with our partners in local authorities and the agencies that act on the Government's behalf of the importance of considering planning issues in a timeous fashion. I was very pleased to report that we are now at a position where 80 per cent of written planning appeals submitted to Scottish ministers have been dealt with within 12 weeks. That compares with 27 per cent in 2008-09 and 6 per cent in 2007-08. We are therefore able to see clear improvements in the timetable for considering such matters.

I will obviously continue to explore the issue with local authorities. On Monday, I met the heads of all the planning departments of Scottish local authorities and our agencies to identify further measures that we can take to ensure that the planning system delivers efficiently for the economic recovery.

#### **Chartered Institute of Environmental Health**

**3. Stewart Maxwell (West of Scotland) (SNP):** In relation to this question, I point members to my entry in the register of members' interests.

To ask the Scottish Government what its position is on the council of the Chartered Institute of Environmental Health's decision to establish an administrative region in Scotland. (S3O-8622)

**The Minister for Public Health and Sport (Shona Robison):** While it is an operational decision for the council of the Chartered Institute of Environmental Health to establish an administrative region in Scotland, the Scottish Government continues to work closely on a number of key issues with the Royal Environmental Health Institute of Scotland as an acknowledged representative body for environmental health in Scotland.

**Stewart Maxwell:** The minister will no doubt be interested to learn that the Royal Environmental Health Institute of Scotland's annual general meeting last week produced near-unanimous support for a resolution expressing disappointment and concern that the Chartered Institute of Environmental Health, which covers England, Wales and Northern Ireland, has decided to set up

an administrative region in Scotland. Does she agree with REHIS that the CEIH has engaged in an unnecessary and provocative act in formally establishing itself in Scotland? Does she agree that the motivation for such a move has little to do with member support but is instead a clear attempt by the CEIH to usurp REHIS, which is the Scottish body for environmental health?

**Shona Robison:** As I said, the matter is an operational decision for the Chartered Institute of Environmental Health. It would not be appropriate for me to speculate on the motivation for opening such a branch in Scotland. As I said, the Scottish Government works closely with the Royal Environmental Health Institute of Scotland as the acknowledged representative body for environmental health in Scotland on the delivery of important environmental health policies and parliamentary consultations. I do not expect that position to change.

**The Presiding Officer:** Question 4 is from Cathy Peattie, who appears not to be in the chamber. Members will be aware of my disapproval of that, not least because Dr Ian McKee has an extremely good supplementary question, which I am now unable to get him to ask.

#### **Public Transport (Forth Estuary)**

**5. Jim Tolson (Dunfermline West) (LD):** To ask the Scottish Executive what work has been carried out by Transport Scotland on its public transport strategy in and around the Forth. (S3O-8647)

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** The strategic transport projects review recommendations that were announced on 10 December 2008 included a number of interventions relating to public transport enhancements in and around the Forth. Since then, the Scottish Government has engaged with interested stakeholders on the development of a public transport strategy to consider opportunities for taking forward those interventions in support of the Forth replacement crossing.

**Jim Tolson:** The minister stated in his letter to me dated 24 September that

"Transport Scotland is currently developing a strategy for public transport in and around the Forth",

which I understand will include looking at the proposed park-and-choose schemes at Halbeath and Rosyth. When will the results of that study be made available?

**Stewart Stevenson:** Intervention 8 in the STPR refers to park-and-choose facilities at Halbeath and at Pitreavie near Rosyth. I recently met Councillor Russell Imrie and colleagues from the



south east of Scotland transport partnership to discuss a wide range of issues relating to public transport interventions around the Forth replacement crossing. We will continue to work with SEStran and others to ensure that such interventions complement the Forth replacement crossing project, the bill for which was recently published.

### **Bus Services**

**6. Karen Whitefield (Airdrie and Shotts) (Lab):** To ask the Scottish Executive what steps it is taking to maintain and improve bus services in the light of recent decisions by bus companies to withdraw commercial services from many communities. (S3O-8605)

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** The Scottish Government is committed to promoting the use of bus services in Scotland. We are taking forward a number of initiatives with local government partners and bus operators to maintain and improve bus services.

**Karen Whitefield:** I am grateful to the minister for the Government's commitment to bus services in Scotland. Is he aware that a recent package of bus service cuts by a major commercial bus operator in the Strathclyde Partnership for Transport area resulted in the need for a subsidy to maintain minimum socially necessary services that was equivalent to 6 per cent of SPT's annual subsidy budget? What steps will the Scottish Government take to ensure that bus services are maintained? Specifically, what assistance can the minister give to Strathclyde Partnership for Transport?

**Stewart Stevenson:** Despite the £500 million cut in the funding available to Scotland—which, as the cabinet secretary said in his statement this morning, would have meant a £170 million cut for local authorities—funding for local authorities will rise by 2.9 per cent compared with last year. It is of course for local authorities to determine how they spend their money, but in the light of that significant increase and the higher proportion of the Scottish Government's overall budget that is now available to them, I hope that local authorities will take the appropriate action.

**Christine Grahame (South of Scotland) (SNP):** Is the minister aware that some bus operators are cutting services in the Borders and Penicuik because of loss of revenue due to the Edinburgh tram works? Does he share my concern that Borders buses are excluded from Edinburgh bus station on the same basis, with the result that passengers and drivers are literally left out in the cold at Waterloo Place, where they lack security and facilities? Does he agree that that should not continue?

**Stewart Stevenson:** I was not aware until now that such bus services are excluded from Edinburgh bus station. I plan to meet the leader of the City of Edinburgh Council in the very near future to discuss a range of issues of mutual interest. I will also seek to raise that issue at that time.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** In view of the apparent inability of commercial operators to provide stable bus networks in my constituency—and, given Ms Grahame's question, in regions throughout Scotland—will the Scottish Government consider granting powers to public transport authorities to resume directly operated bus services?

**Stewart Stevenson:** An interesting power that has not yet been exercised—which Glasgow City Council is pursuing—is statutory bus partnerships. In support of that, we have recently published guidance and advice that will be helpful to authorities that wish to take that route, which is available. The appointment of a senior bus development officer is already making a difference to the capability to support bus services across Scotland. I think that, in the first instance, those two ways forward are likely to deliver early and most useful successes.

### **Direct Payments (City of Edinburgh Council)**

**7. George Foulkes (Lothians) (Lab):** To ask the Scottish Executive whether it agrees with the City of Edinburgh Council's proposal to cut its direct payments rate to a single level per client group irrespective of individual need. (S3O-8577)

**The Minister for Public Health and Sport (Shona Robison):** The Social Work (Scotland) Act 1968 requires local authorities to ensure that the direct payment is sufficient to enable the recipient to secure support of an appropriate standard. It is for councils to ensure that a person's needs are being met. A direct payment rate should be sufficient to purchase a service of an equivalent standard to a council-provided service. In line with our guidance, it is for local authorities to determine the direct payment rate. That ensures that local authorities can take into account local conditions and workforce considerations.

I understand that the City of Edinburgh Council will discuss the rates of direct payments at its finance and resources committee meeting next week, on 3 December.

**George Foulkes:** Is the minister aware that, under the Scottish National Party and Liberal Democrat-controlled council in Edinburgh, at least 440 people have chosen to apply for direct payments to buy care of their own choice rather than to accept the new care that is being forced on

them by the council? Those are some of the most vulnerable people in our community, including people with learning difficulties and physical and mental health problems. Is she aware that, although local authorities have had to recognise that adults have a right to choose their care home placement, that does not apply to care in the community? Surely the minister must accept that she must intervene to ensure that services in our capital city are provided properly, paid for properly and properly protected.

**Shona Robison:** The City of Edinburgh Council's performance to date has been very positive. Currently, its number of direct payment recipients is above average and its spend is more than in any other part of Scotland. Its average value of packages is also among the highest. As I said, the City of Edinburgh Council will discuss the matter next week, but the council has decided in the meantime to carry on processing direct payments. I hope that, when the rates of payment are discussed next week, a resolution can be found that ensures that individuals can choose to access the appropriate support that they require.

In addition, I have asked my officials to have a meeting with Glasgow City Council, which I understand is operating a waiting list for direct payments. I would certainly not approve of that.

#### **Public Transport (Scottish Borders)**

**8. John Lamont (Roxburgh and Berwickshire) (Con):** To ask the Scottish Executive what it is doing to support public transport in the Scottish Borders. (S3O-8555)

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** The Scottish Government encourages all local authorities to promote public transport. Scottish Government funding for bus services across Scotland is considerable. This year, that included more than £63 million for bus service operators grant and £182 million for concessionary travel. We are also providing record levels of funding to local authorities. The latest figures show that councils spent some £51 million supporting local bus services in 2007-08. That substantial outlay is intended to help the industry to drive down fare costs and to deliver other benefits.

We are also committed to developing rail services, including the £235 million to £295 million Borders rail project, which will improve public transport provision for a range of communities.

**John Lamont:** As we have already heard, in my constituency in the Scottish Borders dozens of local bus routes will be lost to remote and rural communities unless financial support continues to be provided to the bus companies concerned. Although the minister says that considerable

funding is available, the council has made it clear that it does not receive sufficient funding from the Scottish Government to help support the services in question. Does the minister acknowledge the importance of those routes? What support, in addition to that which he has already outlined, will he provide to Scottish Borders Council?

**Stewart Stevenson:** The Scottish Borders Council, like councils across Scotland, has seen an above-inflation increase in funding; across Scotland, the average increase is 2.9 per cent. We are providing the funds for councils to support bus services across Scotland. It is their responsibility to do so, and they are best placed to understand local needs and to provide a local response.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Given that we are talking about a Borders community, there is a clear comparison between the fragile nature of the sustainability of the services in rural parts of the Scottish Borders and the situation immediately south of the border in England. Can the minister confirm that the pence-per-mile support that the Scottish Government provides for such services is identical to the level of support that is received by local authorities immediately south of the border?

**Stewart Stevenson:** The key fact that I draw the member's attention to is that, per capita, the average support that is given to bus services in Scotland is substantially higher than the average support that is given to bus services in England. I think that we give terrific support to Scottish bus services.

#### **Broadband-enabling Technology**

**9. Ted Brocklebank (Mid Scotland and Fife) (Con):** To ask the Scottish Executive whether the trial of broadband-enabling technology will be expanded across Scotland. (S3O-8564)

**The Minister for Enterprise, Energy and Tourism (Jim Mather):** The Scottish Government is not aware of any plans by BT to expand its trial of broadband-enabling technology to other parts of Scotland. *[Interruption.]*

**The Presiding Officer:** Can we have a bit less chatter in the chamber, please?

**Ted Brocklebank:** The minister may recall that I wrote to him recently on behalf of a constituent who lives some 3 miles from St Andrews, who could not obtain quality broadband-enabling technology. Is it not a ridiculous state of affairs that despite living in such close proximity to a centre of technological excellence such as the University of St Andrews, subscribers can obtain neither quality broadband nor even an indication about when it might become available?

**Jim Mather:** I understand the member's point, but I think that things are moving in a positive direction. Broadband-enabling technology will provide broadband services up to 12km from the exchange. The trials in Scotland in Dingwall and Inverness have been sufficiently successful for BT to push ahead with the technology in eight other locations across the UK. I am confident that such provision, which is entirely BT led, will go on to deliver the goods for Ted Brocklebank and his constituents.

that I understand that Cathy Peattie is ill. I am truly sorry to hear that, but it should not be beyond the wit of business managers to inform the Presiding Officer's office when such a situation occurs so that I do not give undue reprimands in the chamber.

### **Influenza A(H1N1) (Children)**

**10. Jackie Baillie (Dumbarton) (Lab):** To ask the Scottish Executive whether it will now vaccinate all children against the influenza A(H1N1) virus as a priority. (S3O-8566)

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I announced on 19 November that the vaccination programme would be extended to offer vaccination to all children between the ages of six months and five years. The discussions that will take place over the coming weeks about future phases of the vaccination programme will take into account the latest scientific advice, epidemiology, evidence and modelling predictions about the development of the pandemic.

**Jackie Baillie:** I very much welcome the announcement that vaccinations will now be available to children between the ages of six months and five years. I would be grateful if the cabinet secretary could indicate when that programme will start and if she would explain why the vaccine will not be made available to siblings in the family.

**Nicola Sturgeon:** As I said last week, the next phase of the vaccination programme will start during December, once general practitioners have offered vaccination to those in the priority groups.

My response to the second part of Jackie Baillie's question is that Labour seems to be making a habit of ignoring expert evidence and advice on public health issues. When it comes to the health, wellbeing and safety of our children, we will continue to follow the advice and the evidence of the experts. That is what we have done all along in the vaccination programme, which has served Scotland very well, and it is what we will continue to do.

**George Foulkes (Lothians) (Lab):** Are there any differences between the vaccination programme in Scotland and that in England?

**Nicola Sturgeon:** No.

**George Foulkes:** Thank you.

**The Presiding Officer:** We have finished slightly early, so I will take the opportunity to say

## First Minister's Question Time

12:00

**The Presiding Officer (Alex Fergusson):** The next item of business is First Minister's questions; perhaps I should say questions to the First Minister.

### Engagements

**1. Iain Gray (East Lothian) (Lab):** To ask the First Minister what engagements he has planned for the rest of the day. (S3F-2038)

**The First Minister (Alex Salmond):** I have engagements to take forward the Government's programme for Scotland.

**Iain Gray:** In his manifesto, the First Minister promised to maintain teacher numbers at Labour's record level of 53,000. What is he saying now? Is he going to keep that promise?

**The First Minister:** The Scottish Government is investing in local authorities throughout Scotland to reduce class sizes. As Iain Gray knows, class sizes in Scotland are at a record low. I make no bones about the fact that we have been disappointed by the response of certain local authorities in Scotland—it is only some—in sustaining teacher numbers. It is of considerable interest to people throughout Scotland that Glasgow City Council, for example, is responsible thus far for a quarter of the fall in teacher numbers in Scotland over the past year.

**Iain Gray:** We have become used to the “a big boy did it and ran away” defence on teacher numbers, but the truth is that Alex Salmond made a promise, and the Scottish National Party has cut teacher numbers by 1,000. When the SNP sneaks out the latest figures tomorrow, the situation is expected to be even worse. Yesterday, Fiona Hyslop came up with a cunning plan—to get rid of 500 more teachers. With teacher numbers dropping, why is Alex Salmond planning to get rid of even more teachers?

**The First Minister:** Yesterday, Fiona Hyslop came up with a plan to give young teachers a chance of a job in Scotland, which Iain Gray supports. I hope that he joins me in calling on local authorities such as Glasgow City Council to put teachers in their schools and to put the future of our young children before their fascination with prestige projects. [*Interruption.*]

**The Presiding Officer:** Order.

**Iain Gray:** I have the figures for 12 SNP-led councils in Scotland, 11 of which have reduced their teacher numbers. Perhaps Alex Salmond will

ensure that they put teacher numbers ahead of vanity projects.

I want our young teachers to be given opportunities, but I do not want opportunities to be created by taking 500 of the most experienced teachers out of our schools. That will cost £10 million. Will that £10 million come out of the funding for Alex Salmond's vanity projects, such as his £12 million referendum? No, it will come from councils' school building budgets. Brilliant. If teachers are got rid of, schools will not be needed. No wonder councils have “reacted with fury”, to use their words. It is a panic measure. Councils and parents know that we need schools and teachers. When will the First Minister realise that it is Fiona Hyslop, not teachers, who should retire early?

**The First Minister:** Perhaps Iain Gray should listen to the general secretary of the National Association of Schoolmasters Union of Women Teachers, Chris Keates, who has described Fiona Hyslop's plan to give young teachers a chance in Scotland as “extremely good news”. We know that the number of teacher retirements in Scotland is not running at the level that the past and the current Administrations expected. Many people believe that the fact that people are not retiring from their jobs has something to do with the Labour Party's recession.

I have been considering a few vanity projects that we could cut in Scotland. We could cut the vanity project of our share of expenditure—£9 million every year—on the House of Lords. I see a look of anxiety crossing the face of Lord George Foulkes. I am not saying that that expenditure is all due to him; it is due to a few others as well. Cutting that expenditure would mean 250 new police officers in addition to the record numbers that we have, 290 new teachers or 320 new nurses each and every year. While we are at it, we could get rid of the Scotland Office and save £8 million a year.

**Iain Gray:** I have indeed looked at third-party comment on the proposal to get rid of the most experienced teachers from our schools. A “panic measure”, a “desperate attempt”, a “shambles” and a “disgrace”: outrage has been blasted right, left and centre, and it is no wonder. Let us look at the record. More than 500 primary schools are crumbling, 70 schools are beyond repair, there are 1,000 fewer teachers—[*Interruption.*]

**The Presiding Officer:** Order.

**Iain Gray:** There are 1,000 fewer teachers, and probationer teachers are on the dole. Teacher training has been cut, and the new curriculum is in chaos. The broken promises on class sizes, physical education, nursery teachers and school meals have been condemned by the Convention

of Scottish Local Authorities, and by headteachers, teachers and parents the length and breadth of this country. Is Alex Salmond the last man in Scotland who thinks that Fiona Hyslop is up to the job?

**The First Minister:** I recall that many Labour senior spokesmen in Scotland do not seem to regard free school meals as a priority. In fact, if I remember correctly, Councillor Steven Purcell suggested that school meals should be cut—taken out of the mouths of children in Scotland—to pay for the Glasgow airport rail link project.

In Scotland, 100,000 pupils have been taken out of inadequate accommodation by this Government. The Labour Party has changed its position from saying that there is no school building programme to having to admit that the programme far exceeds that of the previous Administration.

With regard to Iain Gray's questions and responses, and the subjects on offer, I find it interesting that on this day of shame for the Labour Party in Scotland, putting party-political advantage before the public health of Scotland featured in Iain Gray's questions. [*Interruption.*]

**The Presiding Officer:** Order.

#### **Secretary of State for Scotland (Meetings)**

**2. Annabel Goldie (West of Scotland) (Con):** I am sorry, Presiding Officer, but it really is a case of pot, kettle and black.

To ask the First Minister when he will next meet the Secretary of State for Scotland. (S3F-2039)

**The First Minister (Alex Salmond):** I have no plans to meet the Secretary of State for Scotland in the near future, although I watched his statement in the House of Commons yesterday.

**Annabel Goldie:** It is now clear that another of the First Minister's flagship policies—the minimum pricing of alcohol—is going to hit the buffers, because the Labour Party has finally seen the light, or found a backbone; whatever it is necessary for it to do to follow the Conservative lead. [*Interruption.*]

**The Presiding Officer:** Order.

**Annabel Goldie:** As it is now clear that the First Minister will not succeed with his policy of the minimum pricing of alcohol, I ask him to reconsider another area of policy—his determination to provide universal free prescriptions. We know that the Liberal Democrats, once again following my party's lead in opposing the measure, have joined our ranks in opposition to that policy. No doubt Labour will follow shortly.

Does the First Minister agree that at this time of crisis in our public finances, when delivering essential public services is proving hugely challenging, giving people like him and me free prescriptions is morally repugnant and politically irresponsible?

**The First Minister:** I will deal first with the first part of Annabel Goldie's question, on the minimum pricing of alcohol. Annabel Goldie should not be proud or pleased that the Labour Party is ganging up with the Conservatives on the issue of minimum pricing, because the weight of evidence indicates that the minimum pricing of alcohol would save lives in Scotland.

I note that the Labour Party is ganging up with the Conservatives to oppose minimum pricing just as the Conservatives have stopped ganging up with the Labour Party as far as the Calman commission is concerned—kicking it into the long grass, as the Liberals put it. The Conservatives, of course, are the long grass into which the Calman commission is being kicked.

Annabel Goldie's constant refrain that free prescriptions and having a national health service that is free at the point of need are of no interest to people in Scotland is deeply and profoundly mistaken. She should tell that to people with long-term conditions who have, through the years, suffered enormously from having to buy their prescriptions.

Those of us who believe in a health service in Scotland that is free at the point of need, with issues decided on the basis of need and clinical availability and not on the ability to pay, believe that the free prescription policy is necessary and represents the best principles of the national health service.

**Annabel Goldie:** Many of the people in the category to which the First Minister referred already get their prescriptions free.

Last week, I raised with the First Minister the deeply disturbing issue of child malnutrition. As I said last week, one of the most important interventions for children who are at risk would be to improve the provision of health visitors. Is not supporting vulnerable children far more important than subsidising free prescriptions for me and the First Minister? I know that the First Minister and I do not agree on universal free prescriptions but, if he loses the vote for that policy in the Parliament, will he commit to using the money that is saved to improve the provision of health visitors throughout Scotland?

**The First Minister:** As I said to Annabel Goldie last week, I am interested in and concerned about the position and numbers of health visitors in Scotland, and that will be an abiding concern.

However, Annabel Goldie indicates that the issue of free prescriptions is the only thing that divides us in our beliefs about the national health service. I remind her of two things. First, there has been fundamental doubt over the years, not about the Tories' commitment to free prescriptions at the point of need, but about their commitment to free health care at the point of need. That is exactly why the Conservatives had to say that the health service was safe in their hands, because people throughout the country believed it to be unsafe in their hands. We have just passed last year's anniversary year of the national health service, the original concept of which was of a service for all that was free at the point of need. The free prescription policy lives up to that principle and will deliver it in practice.

Secondly, Annabel Goldie says blithely that many people with long-term conditions have access to free prescriptions, but many do not—that is exactly the problem. People who do not have access to free prescriptions will be extremely interested and concerned that the Tory party is reverting to type as far as our national health service is concerned.

### **Cabinet (Meetings)**

**3. Tavish Scott (Shetland) (LD):** To ask the First Minister what issues will be discussed at the next meeting of the Cabinet. (S3F-2040)

**The First Minister (Alex Salmond):** Issues of relevance and concern to the people of Scotland.

**Tavish Scott:** The First Minister has made it clear that the Scottish budget faces a tough settlement and that every penny counts. Are any Scottish Government quangos or agencies sitting on reserves of unused cash?

**The First Minister:** There are a great number fewer quangos and agencies in Scotland thanks to the Government's action. Of course, it might be that we started from a very high level of quangos and agencies, as that was the legacy of the Liberal-Labour Administration in Scotland. Thankfully, the Government has cut it.

**Tavish Scott:** That was not an answer to the question that I asked. A report from the Auditor General for Scotland, which cannot come as a surprise to Mr Salmond, confirms that the Registers of Scotland quango has accumulated reserves of £122 million. Section 4 of the Government Trading Funds Act 1973 says that the money can be paid to the consolidated fund if ministers and the Treasury agree. There are no other positive plans to use the reserves. Scotland is in recession now and business needs help to get through it. Small businesses cannot get the funds that they need from their banks, so why cannot the money be used to help thousands of

them? Otherwise, we will have £122 million of good money in the wrong place in tough times. Will the First Minister ask for that transfer to happen?

**The First Minister:** Oh yes, I will certainly ask for the transfer to happen, and I will inform Tavish Scott why it has not happened to date. The Treasury's position is that, if we get transfers into the consolidated fund, the amount comes off the departmental expenditure limit. Tavish Scott should know that, because previously we have discussed the money under the fossil fuel levy, to which exactly the same principle applies. That amounts to £165 million. I therefore hold out hope that Tavish Scott will unite with me, in a new consensus in politics, and see the eminent common sense of having control of our finances, so that we do not have to go cap in hand to the Treasury to get back our own money.

**Johann Lamont (Glasgow Pollok) (Lab):** I am sure that the First Minister will share my concern about the 8 per cent increase in the incidence of domestic abuse reported by the police in the past year. Over many years, women's organisations have demanded that men who abuse their partners and terrorise their families should face the full force of the law. Does the First Minister think that it is acceptable that only about 10 per cent of men who are found guilty of domestic abuse go to jail? Will he reflect on his plans to scrap six-month sentences, given the concerns of many who are involved in supporting victims of domestic abuse that his actions will result in fewer of those men being jailed and women and children being put at greater risk?

**The First Minister:** I am concerned about the issue. Indeed, I had discussions on exactly that point in Airdrie yesterday. On Johann Lamont's position on short jail sentences, the proposition is clear: people who commit serious offences should not receive short jail sentences; they should be given long jail sentences. We must face the inevitable conclusion, as some in her party do, and as the evidence shows, that short jail sentences do not work to change offending behaviour. Let us treat domestic violence as a serious issue in the criminal law, and let us not pretend that a short jail sentence is adequate to reflect the seriousness of the issue or will solve the problems in this or any other respect.

**Anne McLaughlin (Glasgow) (SNP):** Is the First Minister aware that two of my constituents, Florence Mhango and her 10-year-old daughter Precious, from Cranhill in Glasgow are currently being detained at Yarl's Wood detention centre? In the past hour, I have received news that they will shortly be joined by a family of five Glasgow children who were taken to Dungavel yesterday

after school—five Muslim children, innocent of any crime, but spending Eid in prison.

What progress has the Scottish Government made with the alternatives to detention pilots? Will the Scottish Government continue to support the consensus throughout Scotland that the detention of such children is morally wrong?

**The First Minister:** I am aware of the circumstances in the first of the cases that Anne McLaughlin mentions. We have made continual representations to the United Kingdom Government on the detention of children. Michael Russell, the Minister for Culture, External Affairs and the Constitution, wrote to Phil Woolas on Friday last week, specifically on the first case that Anne McLaughlin mentioned.

As Anne McLaughlin indicated, the Scottish Government remains fundamentally opposed to dawn raids and to the detention of children in Dungavel. We have made it clear that asylum seekers and refugees must be treated fairly and humanely, and that while they are in Scotland they must be supported.

The Scottish Government has been actively exploring alternatives to detention, which is why we are supporting a three-year pilot in Glasgow that is aimed at reducing the number of children who are held in Dungavel and encouraging and assisting families' voluntary return.

I am not aware of the second case that Anne McLaughlin mentioned, but we will investigate it today and I shall write to her.

### Air-gun Incidents

**4. Angela Constance (Livingston) (SNP):** To ask the First Minister what efforts the Scottish Government is making to reduce the number of air-gun incidents. (S3F-2054)

**The First Minister (Alex Salmond):** The Scottish Government is committed to tackling air-gun crime, which continues to be responsible for far too many offences in Scotland. We welcome the United Kingdom Government's recognition that legislative responsibility in that area should be devolved to this Parliament—something that we have been demanding for years. In fact, the Cabinet Secretary for Justice has written to the Home Secretary no less than seven times and has met the Home Secretary twice since July 2007 in an attempt to secure agreement from the UK Government to devolve legislative responsibility for air weapons.

As Angela Constance knows, a draft order was lodged on 25 June that would have the effect of devolving responsibility for air weapons. We want the UK Government to agree to take action on that as soon as possible.

**Angela Constance:** The First Minister will be well aware of the white paper that was published yesterday by the UK Government in which it refuses to introduce legislation to transfer life-saving powers on air-guns prior to the next general election, and of the response of the Conservatives, who have indicated that, if elected, they will delay legislation. Will the First Minister therefore set out what action he is taking to introduce legislation immediately? Will the Scottish Government consult on how control over air-guns could be applied in Scotland?

**The First Minister:** I indicate to Angela Constance that I wrote to the Prime Minister yesterday to seek to secure agreement for the early devolution of responsibility for air weapons and several of the other Calman commission proposals. In fact, I have the orders right here. I indicated to the Prime Minister that there is a meeting of the Privy Council in February and another in March. If the political will exists and there is consensus throughout Parliament, not just on air-guns but on drink-driving limits and speed limits in Scotland, those measures could be implemented before the general election. If that were to happen, any suggestion of Conservative party backsliding or kicking into the long grass would be obviated by the action of the Scottish Parliament and the Westminster Parliament. I note with great satisfaction that Alistair Carmichael, the Liberal spokesman for constitutional affairs, has indicated his agreement that the recommendations should be implemented as soon as possible.

I say to Angela Constance, on the important subject of air weapons and indeed the other matters, why do we not just get on with the job and stop delaying things further?

**Robert Brown (Glasgow) (LD):** In terms of getting on with the job, the First Minister will know that people who carry or use an air-gun, particularly in an urban area, already do so at their peril, because of the existing laws against possession of offensive weapons, reckless actions that endanger life, and breach of the peace, among other offences. What action is his Government taking to ensure that existing laws are known about and rigorously enforced? Does he agree that, whatever the issues in countryside areas, there can be little justification for the use of air-guns in our cities?

**The First Minister:** Indeed, and there has been significant action through the violence reduction unit and other initiatives, including summits held by the Cabinet Secretary for Justice on the issue of air-guns. The summits indicated that legislative competence is required to do the job properly and protect the Scottish public from the menace of air-guns. That was the conclusion of the groups that represent victims throughout Scottish society, and

I thought that it was also the united conclusion of the Parliament. It is certainly the conclusion of Alistair Carmichael, the Liberal spokesman at Westminster.

Given the unanimity in the Parliament, among victims' groups, in the police service and elsewhere, why do we not all agree to get on with getting the legislative competence so that we can do the job properly and protect Scottish society?

**Margaret Curran (Glasgow Baillieston) (Lab):** Does the First Minister recall the terrible incident of the death of Andrew Morton, whose family were my constituents? I genuinely ask the First Minister to agree that this is not the day to play politics with the issue, but instead—[*Interruption.*] Genuinely, First Minister, this was a terrible incident, and the family have suffered terribly. Today, I ask the First Minister to join me in congratulating and paying tribute to the Morton family, because it is their pressure that has made all the political parties in Scotland find a way forward.

**The First Minister:** I gladly pay tribute to the Morton family and the other families who have campaigned on the issue. Surely the thing that we should do is unite as a Parliament to get the legislative power within our competence as quickly as possible to respond to the crying needs of the Morton family and other families in Scotland.

**Bill Aitken (Glasgow) (Con):** The First Minister must appreciate that, irrespective of the proposed transfer of powers, the law is in place to enable us to deal with offences of this type. Does he not recognise that his justice secretary's proposal to create a presumption against sentences of less than six months will allow many of those who commit offences under the existing legislation to escape what should be a custodial sentence for a very serious matter?

**The First Minister:** Bill Aitken, above all, should believe that people who commit serious offences should not be given short jail sentences. I thought that we had a consensus on the matter. The Calman commission said that air-gun legislation required to be devolved so that we could have a comprehensive legal framework to make society safer in Scotland. If the present legal framework was appropriate, no doubt Calman and the rest of us would not have called for competence to be devolved.

I do not think that the necessary action that we are continuing to take to protect Scottish society should preclude us from getting the legislative competence to do the job properly. Until now, I thought that the Conservatives were backsliding only on Calman's financial proposals. Their justice spokesman has now opened up the possibility that they are backsliding on the range of Calman's proposals.

## Flooding

**5. Elaine Murray (Dumfries) (Lab):** To ask the First Minister what steps the Scottish Government will take to support those homes and businesses affected by flooding over the last two weeks. (S3F-2053)

**The First Minister (Alex Salmond):** I thank the member for raising an issue that is, of course, at the forefront of our minds while Scotland is affected by severe weather for the third time in as many months. The recent flooding had a particularly bad impact on Whitesands in her constituency, as well as serious impacts across much of southern and central Scotland. The Minister for Environment is currently visiting Whitesands to see for herself the impact of the flooding.

The Scottish Government has provided record levels of funding for flood prevention schemes since 2007. The Flood Risk Management (Scotland) Act 2009—which, if I remember correctly, the Parliament passed unanimously—comes into force today and will make a significant contribution, for example by streamlining decision making for flood prevention schemes and by placing new duties on local authorities to reduce overall flooding risk.

We have been in touch with Dumfries and Galloway Council about assistance under the Bellwin scheme, and the council has indicated that it will let us know by the end of the week whether it will be making an application.

I take this opportunity to update Parliament on the general situation. As of this morning, 13 flood watches and eight flood warnings are in force. The forecast is improving as we move towards the weekend, but we shall continue to monitor the situation.

**Elaine Murray:** I am glad to hear that the Scottish Government continues to spend the funding that was allocated by the previous Executive for flood prevention. I am aware that the Minister for Environment is in my constituency: I was advised of that by the leader of the Labour group on Dumfries and Galloway Council—I am a little surprised not to have received the normal courtesy of notification of a ministerial visit to my constituency.

The United Kingdom Government and the Northwest Regional Development Agency are making £2 million available to help communities in Cumbria that were affected by last week's flooding. The Department for Transport will provide emergency funding to help to repair bridges and roads. Apart from reannouncing the passage of the Flood Risk Management (Scotland) Act 2009, what is the Scottish Government actually going to do to help those of



my constituents who are suffering the effects of flooding today? The UK Government has announced funding; the Scottish Government has reannounced the passing of an act—which, incidentally, was significantly improved through Labour Party amendments.

**The First Minister:** When Elaine Murray's constituency—like others, including mine—is affected by something such as flooding, it is best to rise above party politicking, in my view.

As I should have said, the Scottish Government, as well as operating widely in the south-west of Scotland, is also providing mutual aid to Cumbria County Council in the form of bridge inspection and engineers for the massive task that it faces. I assure Elaine Murray that Amey has sufficient resources to fulfil all obligations regarding bridges in the south-west of Scotland.

The current funding for flood prevention schemes is now running at about £42 million per annum, which is about eight times what it was between 1999 and 2007.

**George Foulkes (Lothians) (Lab):** Leave the party politics out of it.

**The Presiding Officer:** Order. Be quiet please, Lord Foulkes.

**The First Minister:** I am answering Elaine Murray's point. I also draw her attention to what I said about the Bellwin scheme and the discussions that are taking place with Dumfries and Galloway Council. Following a question from Mike Rumbles two weeks ago, I looked closely at the provisions of the Bellwin scheme. Under the latest revision, the scheme provides 100 per cent assistance for exceptional expenditure by local authorities above a level of 0.2 per cent of their funding base. In Scotland, local authorities are now allowed to accumulate incidents over the year, as opposed to dealing only with one-off incidents. Both those changes are important. If more changes are necessary to help local authorities, we will see if we can make them. I note that the changes that were made for Scotland in the most recent review of the scheme have been introduced in England only now, in response to the serious concerns about the extent of the flooding in Cumbria.

I hope that, as was the case with the Flood Risk Management (Scotland) Bill, all parties and all members rise to the challenge that weather conditions pose. Let us accept that all members, whether constituency members, the First Minister or anybody else, have an equal concern to do everything that they can to help people in their extremity.

## European Union Agriculture and Fisheries Council

**6. Liam McArthur (Orkney) (LD):** To ask the First Minister what the implications are for the Scottish fishing fleet of the agreement reached by the EU agriculture and fisheries council on 21 November 2009. (S3F-2050)

**The First Minister (Alex Salmond):** Some particularly damaging measures were thrown out in favour of rules that are rather better for the Scottish fishing fleet. However, we are extremely concerned about one particular aspect of the council's decisions last week: the measures imposing severe restrictions on white-fish vessels operating on the west coast. Those restrictions were adopted as an emergency measure last year, but they are to be extended for another 18 months.

The fisheries secretary, Richard Lochhead, worked with the industry on the basis that the measures would expire next month. The extension of what were supposed to be emergency measures is bitterly disappointing and is a significant breach of faith by the European Commission.

The decision was reached very late last Friday night, which is an indication of some of the other faults of the common fisheries policy. It will have a significant impact on the livelihoods of a number of fishermen, which, again, underscores why the common fisheries policy is totally unfit for purpose.

**Liam McArthur:** The decision to extend those draconian and unworkable catch composition rules on the west coast not just for another year but for 18 months is potentially disastrous for many in the Scottish fleet. I acknowledge the fisheries secretary's efforts—and those of the United Kingdom minister—to resist the readoption of the measures last week, but he signed up to them last December.

In light of the failure to prevent their extension, will the First Minister outline what legal avenues are being pursued, even at this stage, to bring forward alternative proposals for the west coast fishery? Will he clarify what assistance can be made available to the fishermen who are most directly affected, given the fisheries secretary's statement to the Rural Affairs and Environment Committee earlier this month that

“we can use European fisheries fund money for tie-up schemes”?—[*Official Report, Rural Affairs and Environment Committee*, 11 November 2009; c 2108.]

**The First Minister:** The fisheries secretary is meeting the fishing industry to discuss measures to alleviate the situation. I am not minimising the impact of the continuation of the emergency measures, which will badly affect about 15 white-fish vessels, three of which are in Orkney. I know

about the effect, because some of the 15 vessels are based in my constituency. However, the other, more successful, part of the discussions last Friday will benefit 378 prawn fishing vessels. Nonetheless, the impact on the 15 white-fish vessels of the continuation of the emergency measures will be extremely severe.

The fisheries secretary is meeting the fishing organisations. The final council meeting is on 14 and 15 December. It is right to point out that, for the first time in living memory, Scottish ministers, UK ministers and the Irish Government united to vote against the Commission's proposals. Nonetheless, Liam McArthur should understand and indicate that this period of confusion and unfairness—even if it is applied to a limited number of boats, which is totally unjustifiable—exemplifies exactly what is wrong with the common fisheries policy, which is why so many of us have been struggling for so long to get rid of the underlying policy that visits so much injustice on the Scottish fishing industry.

12:32

*Meeting suspended until 14:15.*

14:15

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Europe, External Affairs and Culture

##### Creative Scotland (Job Losses)

**1. Margaret Smith (Edinburgh West) (LD):** To ask the Scottish Executive what steps have been taken by the Minister for Culture, External Affairs and the Constitution to help those people losing their jobs as a result of the establishment of creative Scotland to find alternative employment. (S3O-8644)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** The proposed business structure for creative Scotland was announced in October. Working with the Scottish Arts Council and Scottish Screen, Creative Scotland 2009 Ltd is continuing discussions with staff and the trade unions about the transfer of staff, the post-filling process and how best to support those people who do not have a post in the new structure.

A redeployment unit has been established in the Scottish Government to help surplus staff in the public sector, including those in creative Scotland, to find alternative employment elsewhere in Scotland's public sector. The Scottish Government is providing on-going support to Scottish Screen and the Scottish Arts Council.

As a Government, we remain committed to our policy of no compulsory redundancies. The commitment applies to all permanent staff in the Scottish Government core, the agencies, the non-ministerial departments and the non-departmental public bodies. I expect the organisations involved, when they redeploy staff, to follow best human resources practice in finding suitable alternatives to compulsory redundancy.

**Margaret Smith:** I welcome the minister's commitment that there will be no compulsory redundancies, and the information that he has given us. He will be aware that 33 of the existing 146 full-time jobs will be lost. Although I appreciate that he might not know exactly which posts might be at risk, I ask him to do all that he can to maintain expertise in creative Scotland. In particular, I ask him to ensure that the organisation retains a knowledge base on broadcasting, given the significant concerns that he knows exist—not only in Parliament, but across Scotland—about its future.

**Michael Russell:** I acknowledge that point, which is a good one. It is a difficult time for many of the staff, but the organisation is committed to retaining expertise, and I am extremely enthusiastic about the new structure that has been devised by Creative Scotland 2009. It manages to blend a deep level of expertise with the flexibility that the organisation will need to respond to modern challenges in the broadcasting sphere and across the rest of the creative industries and the arts. We are mindful of those issues, and I am grateful to Margaret Smith for raising them.

**Ted Brocklebank (Mid Scotland and Fife) (Con):** I am grateful that the minister has repeated his assurance that the policy of no compulsory redundancies will be adhered to in the setting up of creative Scotland. I seek a similar assurance that staff who will be asked to take on new responsibilities will be given timeous notice, as well as full and adequate training, before they take up their new duties.

**Michael Russell:** It will clearly be in the interests of the new organisation, and of all of us who are concerned for culture in Scotland, to ensure that the people in the new posts are well trained, have experience, can operate in a flexible manner and are focused on the task in hand. I am certain that we will achieve all those things, and I am grateful for the support of members across the Parliament for the process of developing and building the new creative Scotland.

### National Conversation

**2. Aileen Campbell (South of Scotland) (SNP):** To ask the Scottish Government what the next steps will be for the national conversation. (S3O-8609)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** The Scottish Government will publish a white paper on 30 November and introduce a referendum bill in 2010.

**Aileen Campbell:** I welcome the Scottish Government's willingness to take forward the national conversation, and the fact that it has a preferred timescale for letting the people of Scotland decide their future.

Does the minister share my disappointment that, perhaps not surprisingly, the Secretary of State for Scotland and the United Kingdom leader of the Opposition have, in effect, kicked the Calman proposals into the long grass? There is no guarantee that they will ever be implemented, despite the fact that parliamentary procedures exist to implement them now.

**Michael Russell:** I agree with Aileen Campbell. [Laughter.] I know that that comes as a surprise to

Mr McLetchie and his colleagues—Mr McLetchie always laughs loudest when he is surprised.

As Aileen Campbell pointed out, it is perfectly possible to implement the parts of the Calman proposals on which there is agreement. Until this morning, we thought that there was agreement on most parts of the proposals; unfortunately, the Conservative party keeps reneging on whatever its commitment was. That is not new for the Conservative party—it did the same on its commitment to Scottish change in the 50s, the 60s, the 70s, the 80s and the 90s. It is now reneging on Calman. The proposals on which there is agreement can be implemented swiftly and the timetable that we published yesterday is entirely clear. Given the really important issues that we are dealing with, such as speed limits and air-guns, I ask members to consider seriously whether it would be better if we just did it, and did it now, instead of playing about as the Secretary of State for Scotland does and, alas, as the entire Tory party also wishes to do.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Given that support for independence continues to languish lowly in the opinion polls without showing any sign of increasing, surely it is time the Government dropped the national conversation nonsense and spent the money on something more useful?

**Michael Russell:** I have been at many of the national conversation events and I have not found there to be any languishing at all. Quite the reverse is true.

I will follow Mr Fraser's logic to its extreme. Given that support for independence hovers between 30 and 40 per cent, and support for the Conservative party in Scotland languishes at somewhere around 15 per cent, is not it about time the Scottish Conservative party dissolved itself and put us all out of our misery?

**The Deputy Presiding Officer (Trish Godman):** In line with the other Presiding Officers, I would like questions that are to the point and, perhaps, answers that are, too.

### European Single Currency

**3. Nanette Milne (North East Scotland) (Con):** To ask the Scottish Executive what discussions ministers have had regarding the impact on Scotland of the United Kingdom joining the European single currency. (S3O-8558)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** Scottish ministers discuss all matters that may influence the future prosperity of the Scottish economy, including issues such as the impact of the UK joining the euro.

**Nanette Milne:** On what economic conditions do Scottish National Party ministers plan to judge any decision to join the euro?

**Michael Russell:** A number of economic tests would require to be applied, and the willing assent of the Scottish people would be required. Those two things should not be seen separately. There are strong arguments that the euro in Scotland would be useful to Scottish business. Ultimately the Scottish people will take the decision. It would be best taken when Scotland is independent, so I look forward to being able to take the decision reasonably soon.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Is it the SNP's policy that, on achieving independence, it will support monetary union within the United Kingdom?

**Michael Russell:** We are in a monetary union within the United Kingdom, and neither I nor any of my colleagues intend to relieve ourselves of the money that we possess within that monetary union, so Jeremy Purvis can take it that we have to support a monetary union within the UK.

**Ian McKee (Lothians) (SNP):** What impact would joining the single currency have on Scottish business?

**Michael Russell:** This is a proper subject for debate, and people hold strong positions on either side of the argument. It has been argued that adopting the euro would reduce the cost to Scottish companies of trading across the euro area, an economy that is five times the size of that of the UK. Almost all the European Union states are committed to membership of the euro, including the fast-growing accession states such as Poland and the Baltic neighbours. The advantage of trading in euros would therefore grow in time. The euro would also bring exchange rate stability.

There is a range of arguments in favour but, as I say, the proper way to reach the decision is to judge the matter economically and democratically.

#### **Independence Referendum (Costs)**

**4. David McLetchie (Edinburgh Pentlands) (Con):** To ask the Scottish Executive what its latest estimate is of the cost to the public purse of holding a referendum on independence. (S3O-8557)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** The detailed costs of the referendum will be set out in the financial memorandum accompanying the referendum bill, which we will introduce early next year.

**David McLetchie:** I thank the minister for his non-answer. His colleague, Mr David Kerr, the

Scottish National Party candidate in the recent Glasgow North East by-election, was not so coy. He blithely told us that it would cost £9 million. Perhaps that is why he lost, and not for the first time.

Is the minister aware that support for independence has fallen since he launched his national conversation, and that the more he talks about it, the less people like it?

**The Deputy Presiding Officer:** Mr McLetchie, the more you talk, the slower the question comes. Can we have a question please?

**David McLetchie:** Yes; this is about the relevance of a referendum and the costs of independence. It is nowhere near the top of the list of priorities of people in Scotland. Will the minister abandon his plan, focus on his real job and find some creative and cultural ways of spending the money instead?

**Michael Russell:** My real job is to serve the people of Scotland, and to help them to understand the reality of their situation. In those circumstances, I can think of nothing better to do than to tell the truth about the difficulties that the union presents to Scotland, and the opportunities that independence will present to Scotland. I am pleased to undertake that task.

I speak affectionately of Mr McLetchie, whom I have known for a very long time, including at university. He was, at that time, a man who knew the cost of everything but the value of nothing. Unfortunately, he remains a man who knows the cost of everything but the value of nothing. I suggest—this is not a question, Deputy Presiding Officer; it is merely a suggestion—that he look for areas in which unnecessary expenditure could be curbed. I would start with the cost of 59 MPs. If we were to cut them out, we would save a substantial amount of money. That is something that people could do by voting yes in a referendum.

#### **Treaty of Lisbon**

**5. Mary Scanlon (Highlands and Islands) (Con):** To ask the Scottish Executive what the implications for Scotland are of the ratification of the Lisbon treaty. (S3O-8556)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** The Lisbon treaty will have a significant effect on Scotland. There will be new areas of European Union competence and practice relevant to Scotland's devolved responsibilities, affecting how the EU operates in the areas of energy, agriculture, fisheries and justice, among others. The treaty also includes a protocol on subsidiarity that will give the Scottish Parliament the opportunity to influence Commission legislative proposals.

**Mary Scanlon:** There are many concerns in Scotland over reform of the common fisheries policy and the new regulations on aquaculture that are currently before the EU Committee on Fisheries. Will those matters fall under the new rules of the Lisbon treaty or will they be dealt with by consultative powers that were in force when the proposals were introduced earlier this year?

**Michael Russell:** Once the Lisbon treaty is in force, everything will need to be negotiated by co-decision between the council and the European Parliament, except fishing opportunities. I appreciate that Mary Scanlon is asking where matters that are in progress will fall. I believe that, if they are completed, the regulations will be completed under the present powers. However, I am happy to write to her to clarify that important point.

Fishing opportunities, which will not be decided by co-decision, include the setting of total allowable catches, quotas and effort. Those matters will be agreed at a much-diluted December fisheries council, when there will be no scope to introduce complex technical provisions. In the longer term, that may well prove to be beneficial, although in the short term there is considerable anger at what is presently taking place.

**The Deputy Presiding Officer:** Question 6 was not lodged.

### Scotland-Cuba Relations

**7. Elaine Smith (Coatbridge and Chryston) (Lab):** To ask the Scottish Executive whether it will send a delegation to Cuba to build on Scotland-Cuba relations and Scottish interests in the region. (S3O-8603)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** The Scottish Government currently has no plans to send a delegation to Cuba, but I am open to discussions with both Elaine Smith and the Cuban Government about how relations between our countries might be developed. I have agreed to meet the Cuban ambassador on his visit to Scotland next month.

**Elaine Smith:** Does the minister know that an early-day motion at Westminster referring to the wish you were here postcard campaign and calling for a British ministerial visit to Cuba has attracted support from more than a third of MPs from across the political parties? Is he aware that the Cuban Government has already this year welcomed foreign ministerial visits from European Union countries such as Ireland and Spain? Does he agree that an official Scottish Government visit would not only be good for Scotland-Cuba relations in devolved areas such as education,

health and sport, but could lead the way for the rest of the United Kingdom? Perhaps he could discuss that with the Cuban ambassador on his visit on 9 December.

**Michael Russell:** In my discussions with the Cuban ambassador, I shall focus on matters that relate to the bilateral interests that exist between the two nations. Any decision that the Westminster Government makes is for the Westminster Government. It is my view that, in the light of positive developments around human rights and political freedom issues in Cuba, we should talk about the ways in which we can build and develop a relationship of confidence between Scotland and Cuba.

### Independence Referendum (Costs)

**8. Pauline McNeill (Glasgow Kelvin) (Lab):** To ask the Scottish Executive what the costs of the proposed referendum on independence will be and from what budget they will be met. (S3O-8595)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** As I said just a moment ago to Mr McLetchie, the detailed costs of the referendum will be set out in the financial memorandum accompanying the proposed referendum bill, which we will introduce early in the new year. It is appropriate for the Scottish Government to make provision for the referendum in the budget once the Parliament has approved the bill.

**Pauline McNeill:** I am sure that all parties look forward to scrutinising the details of the financial memorandum.

In a written parliamentary question, George Foulkes asked the minister to list the 14 work streams in the national conversation. On 6 October, the minister replied:

"This work is carried out across directorates as part of officials' normal duties".—[*Official Report, Written Answers*, 6 October 2009; S3W-27034.]

A leaked memorandum—

**The Deputy Presiding Officer:** Ms McNeill, is there a question?

**Pauline McNeill:** Deputy Presiding Officer, I am just giving the background to the question.

**The Deputy Presiding Officer:** I need the question, please.

**Pauline McNeill:** As the minister will be aware, the leaked minute said that the 14 work streams are led by directors. What is he holding back? There is a contradiction in the two positions. Why will he not tell us what the work streams are? Will he tell me what they are? If he cannot tell me

today, I would like a note on that as soon as possible.

**Michael Russell:** I am not a believer in conspiracy theories, unlike the questioner. The reality is that there are proper processes for making freedom of information requests and for answering parliamentary questions, which are all being answered with transparency and honesty. The white paper that will be published on Monday will indicate the way in which the work has been undertaken. The member would have learned—

**Pauline McNeill:** I am a parliamentarian asking a question.

**Michael Russell:** If the member would pause for a moment, she might learn something from this answer. She would have learned a great deal about the process had she attended a single one of the national conversation meetings or taken part in any of the processes of the national conversation. It is somewhat perverse to attempt to criticise that process without having taken part in it. It strikes me as being a sign of a closed mind. The national conversation has been for open minds—it could even have opened her mind.

#### **Traditional Arts (Economic Contribution)**

**9. Willie Coffey (Kilmarnock and Loudoun) (SNP):** To ask the Scottish Government what role Scotland's traditional arts play in the country's economy. (S3O-8610)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** From festivals to ceilidhs, traditional arts activities the length and breadth of the country play not only a vital economic role, but a valuable cultural one. I am sure that that will be evident this weekend as we all celebrate St Andrew's day.

**Willie Coffey:** This weekend in Kilmarnock, a feast of traditional music and other activities will mark the end of the year of homecoming. As the minister knows well, the Gaelic language is a vital part of Scotland's heritage and its development offers real opportunities for young people throughout Scotland. Will the minister consider what more the Scottish Government could do to support East Ayrshire Council and Kilmarnock College to secure and enhance Gaelic learning in Kilmarnock and Loudoun?

**Michael Russell:** I am certainly happy to do so. As I have said several times in the chamber, and as I will repeat when I give the Sabhal Mòr Ostaig lecture on 7 December, there is a real need to create a new generation of Gaelic speakers in Scotland, which needs to be done in every part of Scotland. If enthusiasm and commitment exist in Kilmarnock, I will certainly encourage them. In bringing to an end the year of homecoming, which

was highly successful, as we now know from the published figures—

**David McLetchie (Edinburgh Pentlands) (Con):** It should be self-evident.

**Michael Russell:** In bringing the year to an end, we will also look forward, in order to ensure that the tourism and cultural activities continue unabated. I hope that even those well-known killjoys, such as the member who is commenting from a sedentary position, will trip the light fantastic, sing and dance this weekend to celebrate the great success of the Scottish year of homecoming.

#### **Gaelic-medium Secondary Education**

**10. Dave Thompson (Highlands and Islands) (SNP):** To ask the Scottish Government what progress is being made on the provision of Gaelic-medium education at secondary level. (S3O-8630)

**The Minister for Culture, External Affairs and the Constitution (Michael Russell):** A number of initiatives are in place to make progress with the provision of Gaelic-medium education at secondary level, including increased funding and resources, continuous professional development for teachers, public body Gaelic language plans, teacher recruitment and the Bòrd na Gàidhlig education working groups that are considering various aspects of GME provision at secondary level.

**Dave Thompson:** I am sure that the minister is aware of the recent Scottish Qualifications Authority study in Highland Council that indicates that students who go through Gaelic-medium education perform better in core subjects than students who have only English. In the light of those findings, does the minister agree that Gaelic-medium education must be a priority for the Government, to ensure not only that we remain connected to our heritage, but that we provide our children with the best possible education?

**Michael Russell:** Gaelic-medium education has been remarkably successful and it is one part of a range of provision. To return to the creation of a new generation of Gaelic speakers, there is no doubt that, although Gaelic-medium education has continued to sustain the language, the total number of speakers has not risen in the way that the previous Government and the present one hoped when the plans were set. We must therefore focus as strongly as we can on increasing that number. That will be the focus of Government policy as we proceed.

## Education and Lifelong Learning

### New and Refurbished Schools

#### 1. Paul Martin (Glasgow Springburn) (Lab):

To ask the Scottish Executive how many of the 236 new or refurbished schools mentioned in its press release of 8 October 2009 as completed were commissioned under the previous Administration. (S3O-8592)

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** Given normal lead-in times for major capital projects, it is not unexpected that planning and construction began on a good number of the 236 schools prior to May 2007. The same situation was faced by the first Scottish Executive Administration: of the school projects completed during the first Administration's term of office, over half were pre-devolution projects. Responsibility for funding those projects fell largely on the first Executive Administration, just as responsibility for paying for most of the 236 projects has fallen on this Government.

Well over 250 school renewal or refurbishment projects will be completed over the four years of this session of Parliament as a result of the more than £2 billion of investment in schools that is currently under way. That is significantly more than were completed over the previous Administration's last four years. Just this morning, I announced another 21 school projects that will benefit from this Government's new £1.25 billion school building programme.

**Paul Martin:** I thought that the Parliament's standing orders required ministers to answer the questions that are asked. My very clear question was about the number of new and refurbished schools that have been delivered by this Government.

Will the minister clarify that All Saints secondary school, Smithycroft secondary school, Springburn academy, St Roch's secondary school, Whitehill secondary school and, for that matter, Wallacewell primary school, all of which are in my constituency, were either rebuilt or refurbished by the previous Labour-led Government? How many schools in my constituency have been rebuilt by the current Scottish National Party Government?

**Fiona Hyslop:** Since May 2007, 236 schools have been completed. I must caution the member on this matter: I think that the public want schools to be built with public money and despair when they hear the Labour Party's quibbling over which of them are Labour schools and which are SNP schools. This Government is making a £2 billion investment in school refurbishment, which is helping construction and is improving the terms and conditions of our pupils and teachers.

The Labour Party has made much of this issue by putting out research suggesting that many of these schools were somehow set before May 2007, publishing league tables and so on. However, I point out that in Labour's list of schools that it says were built or, indeed, started before 2007, four of the nine that it says were started in May 2007 are actually the Falkirk schools that were built under the non-profit-distributing model, the consent for which was signed off by me as minister. Indeed, it was one of the first things that I did when I came into office. That is a classic example of this Administration not only matching brick for brick previous Administrations' policies but actually funding those policies. In fact, not only are we funding them, but we are supplementing that funding. In the coming financial year, for example, we have found £40 million to plug the black hole left by the previous Administration.

**The Deputy Presiding Officer:** Perhaps I should explain that members are asking questions of the minister. I ask the minister to be careful to answer those questions, where possible, and not to give statements.

**Margaret Smith (Edinburgh West) (LD):** When will the first school funded by the Scottish Futures Trust be opened?

**Fiona Hyslop:** We anticipate that the Scottish Futures Trust's support for the £1.25 billion school building programme will ensure that the first school will be delivered by 2011.

### School Transport (Statutory Right)

**2. Tom McCabe (Hamilton South) (Lab):** To ask the Scottish Executive, in light of the stringent economic times, whether the statutory right to school transport will be retained. (S3O-8589)

**The Minister for Children and Early Years (Adam Ingram):** There are no plans to alter the responsibility of local authorities to provide school transport according to existing legislation and Government guidance.

**Tom McCabe:** I welcome that assurance. Will the Scottish Government remind all local authorities that, as they consider Scottish Government-imposed cuts, they have a statutory obligation to provide school transport?

**Adam Ingram:** I am unaware of any Scottish Government-imposed cuts, but I am certainly aware of Westminster-imposed cuts. I am also aware that in South Lanarkshire a reduction in school transport provision is being proposed. However, the details of travel arrangements are for education authorities to determine in the light of local circumstances.

### Newly Qualified Teachers (Permanent Posts)

**3. John Scott (Ayr) (Con):** To ask the Scottish Executive what action it is taking to help ensure that permanent posts are available for newly qualified teachers. (S3O-8554)

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** The local government settlement is resourced at a level to maintain teacher numbers and posts. Yesterday, I announced a scheme to enable councils to fund early retirement schemes for up to 500 teachers in order to support new employment opportunities for others. That follows on from the reduced intakes to initial teacher education courses in both 2009 and 2010, which will reduce the number of probationers who require employment in the succeeding year and increase the job opportunities for other unemployed teachers.

**John Scott:** As the cabinet secretary has her roots in Ayr, she will know that, according to figures in *The Times Educational Supplement* two months ago, as few as four out of 65 probationer teachers in my council area of South Ayrshire had found full-time posts at that time. Giving councils the ability to borrow to fund early retirement might help some of those probationer teachers into permanent posts—I sincerely hope that it will—but what additional steps does the cabinet secretary believe might be taken to remove the rigidities in the labour market for teachers to further help newly qualified teachers who seek full-time employment?

**Fiona Hyslop:** The Scottish Government established the teacher employment working group, and 14 or 15 recommendations have been taken forward that will help to relieve the situation. In addition to maintaining resources in the local government settlement to maintain teacher numbers, I provided an additional £9 million for 300 teachers in 2007, and only this year the Scottish Government funded another 100 teachers to support the curriculum for excellence.

The scheme that I announced yesterday will enable local government to achieve savings and new and existing teachers who are looking for employment to secure posts. We believe that that represents an innovative way forward. A number of councils have come forward and expressed interest in looking into the scheme further. We seek to ensure that we provide opportunities for new teachers, existing teachers and particularly the post-probationers to whom the member refers, so that they can get not just into employment but into permanent employment.

**Des McNulty (Clydebank and Milngavie) (Lab):** On the scheme that the cabinet secretary announced yesterday, is it not the case that most authorities will have to undertake a trawl to

prepare a list of teachers who are seeking early retirement? As there is a 12-week period between the processing of an application and the release of a teacher's pension, is the earliest that the scheme could take effect March next year? If teachers are released in March next year, how will the cabinet secretary's proposal affect pupil learning in a highers class, for example? Surely it is not in pupils' best interests for their teacher to be replaced in the middle of an academic year unless there are special circumstances.

**Fiona Hyslop:** The member might be aware that teachers retire during the academic year all the time. The focus on replacing teachers is particularly important in the primary sector, because that is the area where we want to see reduced class sizes. There is clear provision in the local government settlement for those opportunities to be provided now.

It is deeply regrettable that, last year, four local authorities were responsible for more than 50 per cent of the reduction in teacher numbers. If councils took up their responsibilities as employers not just by supporting existing teachers but by looking after the probationers that they have had and ensuring that there are employment opportunities for them, we would not find ourselves in the situation that we are in today.

### East Ayrshire Council (Meetings)

**4. Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** To ask the Scottish Executive when the Cabinet Secretary for Education and Lifelong Learning last met East Ayrshire Council and what matters were discussed. (S3O-8583)

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** I met representatives of East Ayrshire Council on 1 May 2008 as part of a programme of visits by ministers to all local authorities to discuss a range of education issues. Those visits focused on our shared agenda of improving outcomes for all Scotland's children and young people.

I also met the leader and the deputy chief executive of the council on Tuesday this week when I opened the customer service centre at Kilmarnock College, which was funded from the accelerated capital that the Scottish Government provided.

**Cathy Jamieson:** During her discussions with the leader and the deputy chief executive of the council, did the cabinet secretary have the opportunity to hear about the position of Crossroads primary school, which is not in my constituency but which serves a number of families who live there? Is she aware that the pupils of that school are currently housed at



Bellfield primary school some miles away? Is she aware that parents are extremely concerned about the projected costs of rebuilding the school and fear that, despite the recent legislation that the Parliament passed with the intention of protecting small rural schools, their small rural school will be closed by default if East Ayrshire Council does not have the resources to rebuild it?

Will the cabinet secretary take up the issue, speak to her colleagues in East Ayrshire Council, and see what the Scottish Government can do to help ensure that those pupils continue to be educated in a rural school?

**Fiona Hyslop:** Responsibility for the school estate lies with East Ayrshire Council. I have received representations from parents of pupils at Crossroads primary school. As the member will appreciate, under the terms of either the existing legislation or future legislation, I need to be careful what I say about any individual school. However, I will certainly ensure that my officials respond both to the parents who have contacted us and to East Ayrshire Council. We will alert the council to the concerns that the member has raised.

#### **Colleges (Bursary, Hardship and Child Care Funds)**

**5. Angela Constance (Livingston) (SNP):** To ask the Scottish Executive how it will ensure that colleges receive sufficient bursary, hardship and child care funds. (S3O-8611)

**The Minister for Schools and Skills (Keith Brown):** Further education bursary, discretionary and child care funds are reviewed annually by the Scottish Further and Higher Education Funding Council through an in-year redistribution process, which considers both pressures on and savings in college student support funds. The process is supported by Scotland's Colleges.

The Scottish funding council is aware of the issues, having already increased this year's student support budget by 9.3 per cent and having also brought forward this year's in-year redistribution process, which will be concluded shortly. The Government met representatives of the Scottish funding council yesterday on the issue and is considering solutions. An announcement will be made in due course.

**Angela Constance:** I am sure that the minister is aware of the two excellent colleges in my constituency, Oatridge College and West Lothian College, which are awaiting the outcome of their requests to the Scottish funding council for bursary funds for the next year. As overall funding for the college sector has increased by £45 million, can the minister give any indication of how much of that 6.9 per cent increase will actually go towards

funding college bursaries? Can he give us any further clarity as to when we will know?

**Keith Brown:** The member is correct to draw attention to the increase in resources for colleges. I also highlight the £28 million that has been made available to the Scottish Government through consequentials, which has all gone to colleges this year. The exact proportion of the funding that is allocated to discretionary and hardship funds will be for the colleges themselves to decide, but that will be based on the decision of the Scottish funding council. As for when the announcement will be made, it is imminent—it will be made very soon.

**Claire Baker (Mid Scotland and Fife) (Lab):** Adam Smith College, in my region, is experiencing the same financial strain on bursaries, hardship and child care funds as other colleges across the country. It appears that more colleges are claiming money than are putting money back in to be redistributed. Can the minister confirm whether extra money will be allocated to meet the needs of colleges such as Adam Smith, in my region and throughout Scotland?

**Keith Brown:** I repeat that additional money is being made available to colleges this year, including the £45 million that I mentioned. The proportion of the Scottish budget that is now going to colleges is higher than it was under the previous Administration. The Scottish funding council has already provided an additional £6.7 million this academic year to help colleges respond to an increased demand for FE student support. That brings the SFC's investment in FE bursaries, child care and discretionary funding to a record £79 million—a 9.3 per cent increase on 2008-09.

**The Deputy Presiding Officer:** Question 6 was not lodged.

#### **Schools (Health Promotion and Nutrition) (Scotland) Act 2007**

**7. Patrick Harvie (Glasgow) (Green):** To ask the Scottish Executive whether it plans to assess the impact of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007. (S3O-8648)

**The Minister for Children and Early Years (Adam Ingram):** We are closely monitoring the progress of implementation of the provisions of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 through the programme of school inspection that is carried out by health and nutrition inspectors.

**Patrick Harvie:** When the Parliament passed the Schools (Health Promotion and Nutrition) (Scotland) Bill, there was a general acknowledgement that we would need to pay close attention to the impact on the uptake of school meals, which could not necessarily be

predicted. Witnesses provided evidence that the benefits would be realised only if the bill's provisions were allied to a more creative approach to procurement, which is more a matter of will than of legislation. Colleagues on the Public Petitions Committee have heard that there could be unintended consequences for schools that are trying to achieve fair trade status.

Is it not reasonable to bring forward—

**The Deputy Presiding Officer:** A question, Mr Harvie.

**Patrick Harvie:** Is it not appropriate to hold a brief review of the legislation, to ensure that we are achieving the benefits without bringing about unintended consequences?

**Adam Ingram:** In relation to fair trade and sustainability, the current guidance is still valid, but we are examining the whole issue of local suppliers and how best to assist with procurement. We have asked procurement officials to gather evidence, and we are seeking to produce a revised version of the guidance early next year.

**Ken Macintosh (Eastwood) (Lab):** As the minister will know, the 2007 act encourages the uptake of school meals, including free school meals. Will he reassure me that reports in the media earlier this week that the Government is considering extending free school meals to all primary school children are mistaken? Does he agree that it should not be a priority to extend free school meals to those who can well afford them at a time when our teachers and support staff are being laid off?

**Adam Ingram:** There is no intention by the Scottish Government to extend eligibility for free school meals beyond pupils in primary 1 to primary 3. As the member well knows, our aim is to try to effect a culture change, as it were, to encourage healthy eating habits among our youngest children. That remains the Government's purpose.

### Adopt an Apprentice Scheme

**8. Gil Paterson (West of Scotland) (SNP):** To ask the Scottish Government how many businesses have applied to the adopt an apprentice scheme. (S3O-8628)

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** There are 192 employers that have had applications approved for funding through the adopt an apprentice scheme.

**Gil Paterson:** As our economy begins to progress out of the recession, how is the Government highlighting that important scheme within the business community, and is that having an impact?

**Fiona Hyslop:** We are already working with the Scottish Chambers of Commerce and the Federation of Small Businesses in Scotland to ensure that details of not just the adopt an apprentice scheme but the range of measures under the ScotAction programme are communicated to local employers. The uptake of the adopt an apprentice scheme has been recognised by a number of sector skills councils. ConstructionSkills, which is a United Kingdom-wide organisation, has indicated that there is a higher percentage—43 per cent—of redundant apprentices in construction in Scotland than in any other part of the UK. Chris Horton, who is the chair of the national skills academy for process industries, has urged UK ministers to follow Scotland's lead and apply innovative thinking to come up with a similar scheme.

We have one of the best provisions in the UK, but there are still a lot of challenges. We are contacting individual apprentices who have been made redundant. We have a clearing house through Skills Development Scotland to help identify those apprentices and to get them into alternative employment or training.

I urge all members in the chamber to advertise the ScotAction plan. We will provide the details to all MSPs to ensure that they can also communicate the plan, along with the FSB and the Scottish Chambers of Commerce.

### Further Education (Bursaries)

**9. Lewis Macdonald (Aberdeen Central) (Lab):** To ask the Scottish Executive whether it intends to review the bursaries available to further education students. (S3O-8590)

**The Minister for Schools and Skills (Keith Brown):** Demand for student support is difficult to predict. In order for the Scottish Further and Higher Education Funding Council to match its funding as closely as possible to demand, it reviews student support each year through an in-year redistribution process.

The Scottish funding council asked colleges to report on their respective positions on further education student support in the current academic year by 30 October 2009. It is currently assessing the returns and will make clear its plans in December.

**Lewis Macdonald:** Does the minister recognise that the impact of increased demand for further education places is greatest on the largest colleges, such as Aberdeen College, which is in my constituency? Will he undertake to ensure that any additional funding that the funding council allocates for bursaries is allocated on a proportionate basis, so that the assistance goes where it is needed most?

**Keith Brown:** The decision on the distribution of funding is for the Scottish funding council to take. The funding that was allocated—the £28 million that I mentioned in an earlier answer—was given to the funding council, and it was asked to target that funding at the areas hardest hit by the recession and at young people. It did that successfully. The funding did not go to every college—that much is true. Sometimes, it will be more appropriate to ensure that things are done on the basis of the old formula. However, such decisions will be taken as circumstances arise.

There is no question of any discrimination against any particular college. All colleges' needs are taken into account. As I said earlier, we are providing an extra £45 million this year, and we are allocating a larger proportion of the Scottish budget to colleges this year than was allocated under the previous Administration.

#### **Gaelic-medium Education (Glasgow)**

**10. Bill Kidd (Glasgow) (SNP):** To ask the Scottish Government what discussions the Cabinet Secretary for Education and Lifelong Learning has had with the Minister for Culture, External Affairs and the Constitution regarding the expansion of Gaelic-medium education throughout Glasgow. (S3O-8619)

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** Regular discussions take place between me and the Minister for Culture, External Affairs and the Constitution both about the wider direction of Gaelic policy and about the progress of GME in Scotland more widely and within Glasgow.

**Bill Kidd:** Will consideration be given to bringing the provision of Gaelic education within the Cabinet Secretary for Education and Lifelong Learning's responsibilities, to integrate the Gaelic language further in mainstream schooling?

**Fiona Hyslop:** Yes. Policy responsibility for Gaelic education lies with education and lifelong learning divisions. Wider Gaelic duties—including the budget for Gaelic and Gaelic-medium education—remain the responsibility of the Gaelic unit in the culture, external affairs and tourism directorate. The working relationships are good. We continue to work with officials and authorities to make progress on Gaelic education in mainstream schooling.

## **Aberdeen Royal Infirmary Health Care Environment Inspectorate Report**

**The Presiding Officer (Alex Fergusson):** The next item of business is a statement by Nicola Sturgeon on the Aberdeen royal infirmary health care environment inspectorate report. The cabinet secretary will take questions at the end of her statement, so there should be no interruptions or interventions.

14:56

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I welcome the opportunity to address the health care environment inspectorate's report following its announced inspection of Aberdeen royal infirmary on 13 October 2009.

There is no doubt whatever that the report makes difficult reading, but it vindicates absolutely the Government's decision to establish a tough and independent health inspectorate. When we debated hospital infections just last week, some members claimed that the inspectorate would not be tough enough. The report proves them wrong.

The inspectorate was established to provide rigorous and uncompromising scrutiny, to focus its attention on areas that need improvement, to agree action plans with NHS boards and to ensure that improvements happen. On the evidence so far, that is exactly what it is doing. The result will be higher standards in our hospitals and greater confidence among patients and the public in hospital cleanliness and in the quality and safety of the services that are delivered.

To that extent, I consider the health care environment inspectorate's establishment to be one of the most important steps that the Government has taken to drive up standards and drive down infection rates in our hospitals. The inspectorate's work will allow me and future health secretaries to stand in the Parliament and say not just that we are taking action that we hope will lead to higher standards but that those higher standards have been achieved.

I turn to the report on Aberdeen royal infirmary. The report's findings are unacceptable. Serious shortcomings have been identified, which are of the utmost concern to me and to the public. The key findings include a lack of awareness and communication of infection control policies at ward level; shortcomings in cleanliness, hand hygiene and facilities; a lack of risk assessment; a discrepancy between what the senior management believe is happening and what is actually happening at ward level; poor

communication of health care associated infection issues and policies; and a lack of strategic responsibility for HAI education and training.

In the interests of balance, it is important to point out that some positive comments were made, such as the comments from patients on the hospital's cleanliness and from inspectors on antimicrobial prescribing—the inspection team was encouraged by the on-going work on that in the hospital.

NHS Grampian has accepted all the report's recommendations and is working to implement them urgently. The board has put in place an improvement plan to ensure implementation of all the recommendations. NHS Grampian has not only accepted all the recommendations and taken early actions to make improvements but made several changes at senior management level to ensure that the right leadership is in place to drive sustainable change. A director of acute services and a senior nurse have been appointed to focus immediately on the report's recommendations.

It is important to point out that the health care environment inspectorate undertook an unannounced follow-up inspection of Aberdeen royal infirmary on 16 November 2009, when the inspectorate found evidence that NHS Grampian had taken a great deal of action and that significant improvements had already been delivered. That is good news for patients and the wider public, and it is an illustration of the willingness of the NHS to learn, and to learn quickly, from this process. It provides the first hard evidence that the new inspection regime is working.

As I have already made clear, inspection was never going to be an easy or a comfortable process. We now have a patient's-eye view of what is happening in our hospitals on any given day, as well as a thorough review of the policies, practices and governance arrangements that NHS boards have in place.

Although the report focused on NHS Grampian and Aberdeen royal infirmary, I have instructed all NHS boards to give full and urgent consideration to all the issues and not to wait until they themselves are inspected. The findings raise substantive issues on which all NHS boards must reflect and take immediate action where required. The issues should be considered in the context of the range of strategic actions that are already in place to tackle health care associated infections and to improve the nature and quality of the care that is provided to patients.

One prominent feature that has emerged from the inspections to date is the importance of actions at the strategic and corporate level being linked to what is happening at operational level, in terms of

both effective day-to-day management and clinical leadership, to ensure the delivery of high-quality care to patients. That means that priority must be given to the regular examination and discussion of the issues at board level; a careful examination of internal practices to reduce at all times the risk of outbreaks of health care associated infections; clear plans to ensure that actions at strategic level deliver improvements at operational level; and the use of all available tools to lead those improvements, including ensuring implementation of existing guidance, care governance and patient safety walk-rounds.

At national level, work will be continued to determine read-across from the health care environment inspectorate's reports to the progress that is being made by NHS boards against the HAI national action plan. I am convinced that the current policy framework for the prevention of health care associated infections across Scotland is appropriate and comprehensive—that is evidenced by the fact that rates of infection are falling—but we must continually up the pace on implementation.

Following publication of the report into the Aberdeen royal infirmary, the importance of addressing all these issues and making immediate improvements in the health care environment were underlined directly with NHS board chief executives on 18 November 2009 and NHS board chairs on 23 November 2009. On 23 November 2009, Dr Kevin Woods, the director general for health, wrote to all NHS board chairs and chief executives to underline that they must take all necessary steps to address the issues that have been raised in the health care environment inspectorate reports that have been published so far and to ensure that everything possible is being done to protect patients from the risk of health care associated infections. That means action in the boardroom, strong clinical leadership, knowing the local patch and delivering high-quality front-line care.

In our debate last week on *Clostridium difficile*, I said that I imagined that the inspectorate's reports would be used to attack the Government. So be it: a health secretary who was worried about that would not have set up the inspectorate in the first place. I set it up because my priority—and I know that it is a priority that is shared by members across the chamber—is to see improving care for patients, regardless of how uncomfortable it might be on occasions to find out where improvements are necessary. We established the health care environment inspectorate to root out problems—problems that matter to patients and front-line staff—and to ensure that action is taken. That is exactly what the inspectorate is doing.

The inspectorate has already secured improvements in the NHS. I welcome that, and I believe that members throughout the chamber will also welcome that. The public and NHS staff will welcome it, too, when they see that our determination is making things better for them and—crucially—when they see the continuation in that downward trend in hospital infections that we have already delivered.

**The Presiding Officer:** The cabinet secretary will take questions on issues that were raised in her statement. We have until exactly 25 past 3, and not one second longer. I ask members to keep questions and answers as brief as possible.

**Jackie Baillie (Dumbarton) (Lab):** I thank the cabinet secretary for providing me with an advance copy of her statement. It may come as a surprise to her, but I regret the fact that we are considering the inspectorate's report on Aberdeen royal infirmary, because it demonstrates graphically that lessons have not been learned. There is no doubt about the seriousness of the inspectorate's findings. Equally, I am sure that the cabinet secretary will acknowledge that the Vale of Leven families affected by C diff pressed her to establish the inspectorate. I know that they welcome the rigour that was applied to the inspection.

The cabinet secretary may recall her written response to me that identified Aberdeen royal infirmary as having the highest incidence of C diff of any hospital in Scotland—438 cases in one year. I have no doubt that the failings identified in the inspection contributed to that figure.

Does the cabinet secretary agree that no fault lies at the door of the hard-working domestic and nursing staff and that, rather, they need to have adequate time, resources and equipment to do their jobs? The cabinet secretary may be aware that there was a lack of clarity, which was never resolved, about whether senior charge nurses had authority over domestic staff in NHS Grampian. She may also be aware that senior charge nurses asked for more sinks to be installed but that that was not done until after the inspection; I am sure that she shares my disappointment at that. Finally, will she put senior charge nurses in Scotland in the driving seat and give them direct responsibility for the management of cleaning on their wards and a small budget to enable the changes at ward level, such as the installation of sinks, that we know can make a difference?

**Nicola Sturgeon:** We all regret that we are debating this report today, for no other reason than that we should not have to do so. Standards at Aberdeen royal infirmary should not have been such as to give rise to the report; no one will disagree with that. I hope that Jackie Baillie will

accept from my statement that, like her, I do not question or doubt the seriousness of the matter.

Lessons are being learned. Some of those lessons are difficult and, unfortunately, take time to implement properly in an organisation the size of the NHS. One key lesson that has been learned is that we must establish a system of robust, independent inspections of our hospitals.

Jackie Baillie was right to highlight the contribution of the families of the people who died of C difficile at the Vale of Leven. At one of my meetings with them, they made the point that, although many of the measures that we were discussing sounded good, they as patients needed to have confidence that those measures were being implemented. That was one of many things that were said to me in the wake of the Vale of Leven outbreak that struck me forcefully and powerfully. It is why I took the decision to set up the inspectorate.

Some people said that the inspectorate would not be tough and would not do the job that it was required to do; I hope that, having read the report, they will reflect on their position and accept that, for the first time ever in Scotland, we have in place a tough, independent inspection regime that can shine a light on areas of weakness and ensure that improvements happen. That should give all of us confidence.

I agree that no blame attaches to members of staff. I never blame staff for what goes wrong in the NHS. We all have a duty to support staff in the crucial job that they do and, in the main, staff in the NHS do that job exceptionally well. We should support them not just morally but in practical ways. That is what the Government is doing.

I will make two points in response to Jackie Baillie's questions about charge nurses. First, the senior charge nurse review is precisely about giving charge nurses leadership and responsibility at ward level. I am sure that Jackie Baillie has read the HAI action plan, one of the actions in which is the devolving of budgets to the front line so that quick improvements can be made when front-line clinical staff think that they are necessary. Those actions are in place and are the right actions. Secondly, I refer the member to part 4 of the NHS Grampian improvement plan in response to the inspectorate's report, which contains a range of extremely important recommendations to empower charge nurses to lead in the ward.

**Mary Scanlon (Highlands and Islands) (Con):** Does the cabinet secretary agree that patients are not interested in whether cleaning contracts are in-house or private and that they just want high standards of infection control? The question is pertinent because Aberdeen royal infirmary had an

in-house contract that did not meet the quality mark.

Does the cabinet secretary acknowledge the disappointment in the report findings and the need for Government to instruct NHS boards to look at internal communication, practices, plans and implementation of existing guidance, all of which they should have been doing already? Are NHS targets and financial challenges potentially compromising infection control? After every infection outbreak and report, we are given assurances that action will be taken. How can we be assured that the action outlined today will be sustained in the long term?

**Nicola Sturgeon:** Since previous outbreaks, action has been taken. As I said to Jackie Baillie, one of the most important actions taken following the Vale of Leven outbreak was the establishment of the health care environment inspectorate. It is because we established the inspectorate that we have the report that we are talking about today. We know the problems that were identified at Aberdeen royal infirmary, and action is being taken to put them right.

In direct answer to Mary Scanlon's question, I give the assurance that all hospitals will be inspected on an on-going basis, with both announced and unannounced inspections. For the first time, we will know whether there are problems such as those in Aberdeen because the independent inspectorate will go into hospitals, root out those problems and ensure that they are addressed. Above all else, that is what will give confidence to people—not just those in the chamber but throughout Scotland.

Patients say to me regularly that they believe that the contracting out of cleaning services over the years has undermined standards and that it is better to have cleaners and domestic staff within the NHS family. In and of itself, that does not deliver the standards that we need to see, which is why we have cleaning standards that have been monitored by self-assessment and are now monitored by the independent inspectorate. I agree absolutely with Mary Scanlon that standards are extremely important. At the heart of the report is the point that existing guidance was not being implemented properly, and that is what must be addressed.

The NHS north and south of the border faces financial challenges, but this year the NHS has more money than it had last year, and next year it will have more money than it has this year. Financial challenges are not an excuse for not meeting the highest standards of hygiene and cleanliness. I make no apology for setting ambitious targets to reduce health care associated infections in our hospitals.

**Ross Finnie (West of Scotland) (LD):** The cabinet secretary outlined several major problems; I want to focus on one major contributory factor, which is the management of NHS Grampian and the Aberdeen royal infirmary. She mentioned in her statement the discrepancy between what senior management believed was happening and what was actually happening. That is a management function—they are not there to run the hospital day to day; they are there to set the strategy and make sure that it is carried out.

The management knew that, in March and April 2008, there was a serious spike in the figures for C diff. How could any senior management worth their salt reach a position of receiving such an inspection report having known about that earlier C diff outbreak? The cabinet secretary said in her statement that in future strong clinical leadership will be required in the boardroom. I ask her how we can have any confidence in that boardroom given its present composition. I invite her to admit that the senior management, both at board and hospital levels, have failed and that there must be changes to restore public confidence.

**Nicola Sturgeon:** I agree absolutely that senior management have to take responsibility for ensuring that what requires to be done is done and that that must feed from board level right down to the wards.

The senior management at NHS Grampian now have an absolute responsibility to implement urgently all the recommendations in the report. They will be monitored and inspected against the recommendations, and they have already been subject to a further unannounced inspection from which there is evidence of improvement. The health care environment inspectorate will continue to monitor the implementation of the recommendations.

I do not entirely disagree with Ross Finnie's general point. If the health care environment inspectorate inspects a hospital but improvements are not made, ultimately I have the power to make changes in the boardroom and to give instructions to NHS boards. If as the process evolves we do not see the changes that it is intended to drive, I do not rule out taking such steps in any health board area.

**The Presiding Officer:** Eight members want to ask a question, but we have less than 10 minutes. Members probably get the message.

**Nigel Don (North East Scotland) (SNP):** In the light of what Ross Finnie said, would the cabinet secretary care to give us some of the counterbalancing aspects of NHS Grampian's overall performance?

**Nicola Sturgeon:** The report was comprehensively bad in the context of what NHS

Grampian was being inspected against. I mentioned that positive comments were made in the report: the inspectorate commended the board on its antimicrobial prescribing policies and some patients had commented positively on the cleanliness of the hospital. However, those comments rather fade against the criticisms that were made. It is right that we and NHS Grampian focus on the criticisms and it is right that the board is focusing on putting right those problems. That is what the board is required to do, what it will be monitored and inspected against, and what it will be judged on.

**Lewis Macdonald (Aberdeen Central) (Lab):**

As the constituency member, I emphasise the dedication of all grades of staff at Aberdeen royal infirmary to the care and safety of patients. Will the cabinet secretary ensure that staff have the time that they need to do their jobs and that NHS Grampian has the resources that it needs to protect patients from health care acquired infections?

**Nicola Sturgeon:** I acknowledge Lewis Macdonald's interest as member for the constituency that includes Aberdeen royal infirmary. His points are absolutely valid. As I said to Mary Scanlon, we live in a time of tight public resources—that applies to the NHS and all parts of the public sector, not just in Scotland—but I repeat that NHS Grampian's budget went up this year and is going up next year. NHS Grampian has the resources to ensure that the problems are rectified. As I said, no health board should ever use resources as an excuse for not ensuring the highest standards.

Time for staff is fundamental, and many of the report's recommendations to do with, for example, senior charge nurses are about ensuring that there is a clinical focus at the front line that allows staff to do their jobs properly. A positive step that has been taken is the appointment of a senior nurse and a director of acute services, to ensure that changes happen and have the desired effect.

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

During my 20 years working at ARI, ward sisters had tight control over their wards, including over domestic and cleaning staff. I note what the cabinet secretary said in response to Jackie Baillie about senior charge nurses being given a leadership role at ward level, but do charge nurses have the authority to ensure that their wards are properly cleaned?

Did the cabinet secretary have any indication that there were still problems with cleanliness at ward level at the time of the recent annual review of NHS Grampian?

**Nicola Sturgeon:** If I had had any indication of the kind of criticisms that are in the inspectorate's

report, action would have been taken. Now that we know, through the inspectorate that we set up, that problems exist, action will be taken.

Nanette Milne is right to say that it is not enough to ask senior charge nurses to have the ability to lead—although I am not suggesting that that is all we do. They must have the ability to challenge and to enforce standards in wards. I am sure that, like Jackie Baillie, Nanette Milne will be interested in the ARI improvement action plan, section 4 of which details improvements that NHS Grampian has been asked to make in relation to charge nurses. In recommendation 4.8, the board is asked to ensure that charge nurses have a process in place to challenge people, to ensure that the highest standards are maintained in their wards. That is exactly the intention that is behind the senior charge nurse review, and we must ensure that the process works, not just in ARI but in all hospitals.

**Nicol Stephen (Aberdeen South) (LD):**

I acknowledge the importance of inspections and I thank Nicola Sturgeon for her statement. I well remember the early inspections by Her Majesty's Inspectorate of Education that led to negative reports on individual education authorities when I was an education minister, and I recall getting directly involved in urgent follow-up action.

What action has the cabinet secretary personally taken since the publication of the report? Has she met the chair and chief executive of NHS Grampian formally to discuss the damning recommendations? Has she written to communicate her dismay at the report's findings? Has she commissioned a detailed action plan for recovery with appropriate follow-up monitoring and inspection? Will she agree to visit the hospital in due course to emphasise her concern? In short, will she guarantee—as I think she did in her reply to Ross Finnie—to do everything necessary within her significant powers to ensure that the failings are never repeated at Aberdeen royal infirmary or any other Scottish hospital?

**Nicola Sturgeon:** I recognise Nicol Stephen's local interest. I saw the chair of NHS Grampian on Monday this week—the day that the report was published. I detailed in my statement the letter that has gone not only to NHS Grampian but to all the chairs and chief executives of NHS boards to draw their attention to the recommendations in the report. I stressed strongly to NHS boards that, although they will all be inspected, they should not sit back and wait to be inspected but examine other reports to ensure that any lessons that they can learn from them are learned.

I have in my hand the detailed action plan for improvement that has been agreed between the inspectorate and NHS Grampian. It is on the NHS Grampian website, and the board will provide

updates on the implementation of the recommendations. It will be closely monitored by the inspectorate, my department and me, because I am determined to see the problems that are identified in the report resolved and rectified for all time.

**Brian Adam (Aberdeen North) (SNP):** As the work of the health care environment inspectorate is now in full swing, will the cabinet secretary give us a picture of general trends throughout the country that are now being acted on? Will she also reassure us and, especially, patients in the north-east that the environment in Aberdeen royal infirmary is safe and relatively risk free now?

**Nicola Sturgeon:** On the second part of Brian Adam's question, I refer to the follow-up inspection of Aberdeen royal infirmary. Patients and the public are right to be concerned at what they have read or seen reported about the inspectorate's findings, but they should also be assured about the follow-up inspection and the fact that improvements are already being made.

The first part of Brian Adam's question concerned trends throughout the country. The health care environment inspectorate will inspect every acute hospital, and all acute hospitals will receive at least one announced and one unannounced inspection in every three-year period. That will allow us to shine a light on any problems that are identified.

However, as I said in response to Nicol Stephen and others, all health boards must ensure that they analyse fully all the inspectorate's reports—not only those for their own hospitals or boards—and learn any lessons from them. I hope that, if that happens, the reports that we receive from the inspectorate from now on will show a very different picture.

**Richard Baker (North East Scotland) (Lab):** Why do lessons appear not to have been learned in NHS Grampian not only from experiences in other health boards but from its own experiences in Woodend hospital and Dr Gray's hospital? What continuing contact will the cabinet secretary have with NHS Grampian to ensure that the necessary changes are put in place, and how will the public be informed of that progress?

**Nicola Sturgeon:** I possibly partially answered Richard Baker's questions in my response to Nicol Stephen. I will not defend anything about the report. It is comprehensively bad from NHS Grampian's point of view, and the board requires to address that comprehensively.

As I said to Nicol Stephen, the improvement action plan is in place. In the health care environment inspectorate's opinion, some of the recommendations have been implemented already, which was reflected in the inspectorate's

unannounced follow-up visit. We will continue to monitor the improvements that are made as a result of the action plan. The plan is published on the NHS Grampian website, and information on progress against it will also be published there. I assure Richard Baker that it will continue to be the subject of close discussion among me, my officials and NHS Grampian for some time to come.

**The Presiding Officer:** I am afraid that I must draw that item of business to a conclusion. I apologise to the two doctors for being unable to call them, but we must now move to the next item of business.



*Resumed debate.*

## **Criminal Justice and Licensing (Scotland) Bill: Stage 1**

**The Presiding Officer:** The next item of business is the continuation of this morning's debate on motion S3M-5177, in the name of Kenny MacAskill, on stage 1 of the Criminal Justice and Licensing (Scotland) Bill. We continue with speeches of no more than five minutes.

15:25

**Nigel Don (North East Scotland) (SNP):** Here comes the Criminal Justice and Licensing (Scotland) Bill, stage 1, part 2. I shall watch the clock and try to avoid all the areas of contention that were well covered this morning, because I want to cover one or two other areas. However, I cannot help reflecting that we had one or two interesting comments this morning. The most interesting one that I recall from before lunch was the accusation that the Liberals are sitting on the fence. First, to be fair to them, I do not think that that is true. Secondly, my observation on the Liberals' policy is that they are very good at finding the gaps in the fence and have never found any need to sit on it.

Let me look first—

**Jeremy Purvis:** I hope that Nigel Don was not expecting me to intervene there.

**Nigel Don:** No.

Let me look first at the sentencing council. The issue of consistency, or the perception of consistency, has been raised in that regard. The sentencing council is a good idea because it could lead on sentencing policy as things develop. For example, I am conscious, as other members will be, of the internet's effect on our world, and I am not entirely convinced that common law will necessarily be up to the mark on internet offences. The sentencing council may well provide a useful way of sorting out how offences that arise in that environment should reasonably be addressed, rather than waiting for the bench to find its way there. The sentencing council will also have a value in relation to knife crime. I suspect, too, that a sentencing council would have been useful in the discussion on drink driving.

I flag up an issue that Rhoda Grant introduced this morning in relation to non-harassment orders, which are in section 15. I simply note, with pleasure, that the process is being changed so that an order can be granted after what is in effect a single event, rather than a stream of events being required. That is a significant step forward.

I turn now to the issue of disclosure, because there is a major issue that will affect much of what will be put in place on disclosure. Lord Coulsfield, who provided an extensive report on disclosure, expressed concerns to us about how the bill deals with the subject. It seems to me—I think that this was the Justice Committee's general view—that, when we deal with a subject such as disclosure, we should set out the principles. If there are more than a couple of principles, there should clearly be a hierarchy so that we know what the overriding one is and what the subsidiaries are. Below that, there will necessarily be a set of rules, which I suspect will primarily lay out duties and responsibilities; it is clear that those should be in the statute. Below that, there will be a set of procedures and processes, and things that might go into a code of practice. I think that that is the way in which we are encouraging the Government to go. I take it from the cabinet secretary's comments this morning that the Government has already got its mind round that issue, but I think that that is the structure to which it should work.

I note in passing that this is a huge bill, which will require a significant amount of time at stage 2. I hope that it is being timetabled appropriately. Further, who knows how long it might take at stage 3?

I draw members' attention to the large number of areas where the Justice Committee was not sure what the answer was. There is a surprisingly long list: section 62, on witness statements; section 63, on spouse compellability; section 132, on antisocial behaviour reports; section 94, on defence statements; section 82, on compensation for miscarriages of justice; and section 38, on the prosecution of children, which was referred to this morning. I highlight those merely to make the point that, although there is a lot of good stuff in the bill and a lot of good thinking has undoubtedly been done—I do not criticise those who drew up the bill—there is a huge amount of discussion, rationalisation and reconsideration yet to come. I want to ensure that we have time and space to ensure that that happens properly.

Finally, on the bill's proposed modifications to the Custodial Sentences and Weapons (Scotland) Act 2007, I merely repeat the Justice Committee convener's remarks from this morning—

**The Presiding Officer:** You must close now.

**Nigel Don:** Again, the provisions involve an area of huge confusion, but we think that the Government has got them about right.

15:30

**Duncan McNeil (Greenock and Inverclyde) (Lab):** In the short time available, I intend to focus on the many concerns that we have in Inverclyde,

which is a community whose experience has not always been a happy one. In recent years, the sad deaths of Damian Muir and Darren Pyper, who were killed by knives, shocked a community that had become sick of the endless cycle of violence.

We have worked as a community to try to break that cycle and to bring our experiences and influence to the Parliament. We have welcomed the changes over recent years whereby sentencing powers have been increased, although we have been disappointed that those powers have not been used to the full. Over the years, we have engaged with a wide range of groups and initiatives. We have met the violence reduction unit. We have joined with the medics against violence. We have supported the Inverclyde initiative in its aim of educating young people about the consequences of violence. We have rallied and marched with the friends and fellow pupils of tragic schoolboy Darren Pyper to create awareness of the dangers of knives. We raised a petition with John Muir, Damian's father, and presented it to the Parliament to engage with the democratic process. We held a summit in the Parliament and another in our town hall—organised by the local paper, the *Greenock Telegraph*—to give voice to the community's concerns. In the time since, John Muir has tirelessly campaigned across Scotland. His campaign has struck a chord everywhere that it has gone.

Having engaged in that parliamentary process, we saw the Criminal Justice and Licensing (Scotland) Bill as an opportunity to introduce the tougher sentences and to fund the interventionist measures that people wanted. Today, they will have heard that their calls for tougher sentences are to be ignored in the bill and that funding for preventive measures are not in place. They will have heard that these violent people will be less likely to go to jail and their communities and neighbourhoods will not be safer as a result. To hear their concerns dismissed will greatly disappoint them. To hear the cabinet secretary describe short-term prison sentences as respite care will give no confidence to my community.

Rhoda Grant and David McLetchie outlined the detrimental impact that could result from the bill's measures on domestic violence. A look at last week's report by the Scottish Children's Reporter Administration shows that nine children under the age of two—they were babies—died in recent years in incidents in which domestic violence and aggression were background factors. That is much more than just a debating point. Such an additional significant risk to the lives of our women and children must be measured against a proposal that the cabinet secretary hopes—only hopes—will reduce reoffending.

I believe that the bill is an opportunity for this Parliament of the Scottish people, which was set up to bring solutions to Scottish problems, to send a clear message to people who carry and use knives. My community does not have to look far for experiences in which knives have caused misery and heartbreak, as has happened across Scotland. Just a fortnight ago, we were told of an appalling murder whereby a young man, who was a visitor to this country, with a pregnant wife at home in India, was randomly murdered in the street. We heard of the sickening racial motive, but it is important to remember that the presence of a knife in that situation escalated that from a nasty confrontation to a vicious murder.

The people of my community—and people all over Scotland who supported John Muir's campaign—have made it clear that they think that people who carry knives should go to jail. They have made it clear that they think that violent criminals should go to jail. The strong argument for mandatory minimum sentences for those who carry and use knives is a democratic one. Instead of dismissing their arguments, ignoring their experiences and writing off their demands as populist rants, it is time that this Parliament and this Government listened to people and acted on their concerns.

Although I will support the principles of the bill at stage 1 today, I will not hesitate to vote against the bill at stage 3 if it does not address the concerns of my community.

15:35

**Mike Pringle (Edinburgh South) (LD):** I congratulate the Justice Committee and, in particular, the committee clerks on an excellent report.

The Liberal Democrats believe that we need to change the mindset of our criminal justice system so that the goal of reducing reoffending is a key objective in the effort to cut crime in Scotland. It is clear that, wherever and whoever we are, that must be our aim. As well as having one of the highest rates of imprisonment in the European Union, Scotland has a persistently high rate of reoffending. The extent of the revolving-door syndrome in Scotland's prisons shows that, for many people, prison does not work as a deterrent. It is clear that a radical overhaul of Scotland's sentencing system is required.

Prison is, of course, the most appropriate place for serious and violent offenders, and prison sentences must be available not only as a method of punishment for serious crimes but as a way of protecting the public from dangerous individuals. However, Liberal Democrats believe that imprisoning offenders for a very short period of

time provides little or no benefit in challenging the underlying causes of offending.

**Karen Gillon (Clydesdale) (Lab):** Will the member take an intervention?

**Mike Pringle:** No, I do not have time.

We believe that short prison sentences of less than three months should be replaced with tough community sentences that require offenders to work to pay something back to the communities that they have harmed.

Many witnesses were generally supportive of the establishment of sentencing guidelines, but there was a considerable amount of disagreement on whether a Scottish sentencing council, in the form that is laid out in the bill, is needed. We think that the proposed establishment of a sentencing council misses the point. Liberal Democrats do not support a proposal for what we think would, in effect, be no more than an additional quango to have influence over the highly respected and independent judicial system. The cabinet secretary was right when he said that the sentencing council had to provide for broader representation of Scottish society, but we think that if the proposal is to go ahead, the argument by witnesses that there should be a judicial majority on it is correct.

The Liberal Democrats are broadly supportive of the new proposal for community payback orders, but I suggest that the £1.1 million that it is proposed will be spent on setting up the sentencing council would be better spent on CPOs. If CPOs are to work, they will need to be adequately resourced, and the committee was not certain that that would be the case. The cabinet secretary has given some indications in that regard, but I genuinely believe that the amount that is to be provided will not be enough.

I agree with the committee—and will quote from its report, as I could not have put it better myself—when it said that it strongly believed that

“if CPOs are to gain credibility with the public, and with the victims of crime in particular, they must begin (and be seen to begin) very shortly after sentence is declared – either on the day of sentence or (where this is not practicable, as we accept will sometimes be the case) as soon as possible thereafter.”

I can only say that I have always been firmly of that view.

Sections 16 and 17, on short periods of detention and imprisonment, are perhaps the most contentious. Many of the witnesses who gave evidence to the committee expressed support for the proposals on the grounds that short-term prison sentences are generally regarded as being expensive and ineffective, both in protecting communities and in rehabilitating offenders and reducing crime.

We must all agree that Scotland's prisons suffer from chronic overcrowding, which makes them hugely expensive and extremely ineffective at preventing reoffending. I am sure that we all agree that the issue must be addressed, but the question is how we do that. All members of the committee recognise that the priority is to imprison offenders who commit offences that are so serious that no other form of punishment will do or who pose a threat of causing serious harm to the public. Most of those offenders will not, I suggest, be sentenced to less than six months' imprisonment.

**James Kelly:** Will the member take an intervention?

**Mike Pringle:** I am sorry—I will not.

The SNP proposes to end sentences of six months or less, whereas we would like to see a three-month threshold instead. However, it must be accepted that short prison sentences do not achieve very much in the way of rehabilitation, so there needs to be a method of striking a proper balance between the imposition of short custodial sentences and the use of effective community disposals. I will leave that subject for the committee to address at stage 2.

I turn to section 24, “Voluntary intoxication by alcohol: effect in sentencing”. As I might have said in previous justice debates, I was a justice of the peace in Edinburgh. Early on in my time as a JP, I well remember being faced by a defence agent who said that his client could not remember what he had done because he was drunk. I asked the defence agent who had forced his client to become drunk and suggested that he had got himself drunk without any aid from anyone. The defence agent looked somewhat perplexed at the turn of events but then readily agreed that his client had not required assistance from anyone else to get drunk. Very quickly, lawyers in my court stopped justifying their clients' actions by suggesting that being drunk was a mitigating factor in their behaviour.

**The Presiding Officer:** You must close please.

**Mike Pringle:** I agree with the committee report when it says:

“The evidence suggests the principle is already well understood by sentencers, and there may be a risk that a statutory provision will confuse the legal position”.

**The Presiding Officer:** You must close now, Mr Pringle.

**Mike Pringle:** This is a very important bill and I look forward to hearing the Government's response to many of the issues raised by the committee.

15:40

**Ian McKee (Lothians) (SNP):** I will concentrate my contribution to this important stage 1 debate on the presumption against short periods of imprisonment that is encapsulated in sections 16 and 17. I will base my remarks in part on experience gained by working for many years as a general practitioner in a community, several members of which experienced short prison sentences, and observation of how that affected them, those immediately around them, and fellow members of the wider community.

My first point is about the reason why so many of the people whom I observed ended up in prison. In 2008, the commission on English prisons today, chaired by Cherie Booth QC, produced a report entitled "Do Better Do Less", which stated:

"Prisons have become vast warehouses for the dumping of people with problems society has failed to deal with - those with mental health needs, with histories of neglect and abuse, with drug and alcohol addictions."

I cannot go along totally with the image of a warehouse, because many prisoners who are incarcerated for a short period of time are released, reoffend, and return again. The image is more of a revolving door, as described by the cabinet secretary in his opening speech. However, the report is spot on about the type of people who are sent to prison. Although those who are serving long-term sentences could be helped to overcome their problems, that is not the case for those who are serving sentences of less than six months. Therefore, what is the rationale behind sending people to prison for a few months?

**Karen Gillon:** Why are we not making sentences of less than six months in prison work rather than simply trying to get away from such sentences? People need to go to prison to give communities the rest that they need.

**Ian McKee:** We are not using those sentences for any form of rehabilitation because there is not time for it to take place while the person is in prison.

One argument is that society needs protecting from such folk. If they get up to antisocial behaviour when they are out of prison, a sentence inside will protect the law-abiding population for that time at least. That is undoubtedly true, as far as it goes, but the problem with the argument is that, over time, more antisocial behaviour is likely. In the recent Prince's Trust report "Breaking the Cycle of Offending", a youngster is quoted as saying:

"Prison is a place where you learn ... I've learnt more in prison about being a criminal. Prison is a university of crime."

That is borne out by the knowledge that those who serve short custodial sentences are more likely to

reoffend than those who are dealt with in other ways. Although a prison sentence might protect society in the short term, it is a different story over the piece.

I can bear that out from my own work experience. People who are sent to prison for a short time often come out with a much worse and more chaotic drug habit than they had when they went in. Susceptible individuals are exposed to the influence of more hardened rogues and keep up those acquaintances on the outside. Innocence is probably the wrong word to use, but it is no exaggeration to say that any naivety is dispelled for ever by one prison sentence, no matter how short.

Short sentences have a disproportionate effect on the prison service. A recent House of Commons report about the situation in England, which is not so different from the situation in Scotland, observed that all those who are in prison on short sentences at any one time account for only 11 per cent of the prison population, but they count for a much higher percentage of admissions. The considerable amount of time and resource that is required to process each admission could be put to better use in the rehabilitation of more long-term prisoners.

Women are especially vulnerable in that context, and I share the concerns of my colleague Aileen Campbell. The Fawcett Society tells us that, in 2007, 63 per cent of women who were sent to prison had sentences of six months or less, often for such offences as non-payment of television licences or fines. In its recent report, the Equal Opportunities Committee found that, in Cornton Vale prison, most women

"Had experienced some form of abuse; 75% declared a history of physical or sexual abuse ... Had suffered psychological distress; 80% of offenders had some form of mental illness;"

and

"Had serious problems with alcohol and drug misuse: a recent report on Cornton Vale concluded that 98% of inmates had drug addiction problems."

It seems to me, as a former doctor, that those people are crying out for help, not punishment. Putting them in prison, separating them from their children and families, is not the way forward—and I am not talking only about women.

What does that all add up to? Short sentences do not work; in fact, they do harm. Courts must think twice or three times before deciding that prison is the only method of disposal, and we must ensure that effective alternatives are available to courts.

I support the bill.

15:45

**Helen Eadie (Dunfermline East) (Lab):** As ever, we read the reports of the work of other committees and see a great deal of valuable evidence and advice provided by those who know and understand all the technical, professional and legal issues. It is clear to me that crimes of violence against people must be treated severely in sentencing policy in every constituency, whether they are committed by men or women.

My speech today is based on the experiences that I have heard about recently from the people whom I represent in Dunfermline East—the people of Cowdenbeath, Rosyth, Aberdour, Inverkeithing and all the other towns. I have been on the high streets, campaigning with my friends for signatures to a petition that calls for a mandatory jail sentence for anyone who carries a knife. People have queued to sign the petition everywhere I have gone. It is the petition of the Muir family and Duncan McNeil, but my people support it very strongly.

**Bill Wilson (West of Scotland) (SNP):** Will the member take an intervention?

**Helen Eadie:** No. I am sorry, but I have only just started my speech.

Those people support the petition even before I have told them why I was moved to do so. Like Duncan McNeil, I have heard people's views following the tragic stabbing earlier this year of Sean Stark. Having heard a commotion outside, he left the comfort of his flat to see what he could do to restore peace. He was fatally stabbed. The people of Dunfermline East covered that part of the High Street with floral tributes to the young man, who left behind a partner, Melanie, and two little children. Our signatures from Dunfermline East will add to those that have been gathered by the Muir family from Duncan McNeil's constituency. I hope that the petition will grow and grow until, eventually, Alex Salmond and the cabinet secretary will listen to the views of the victims just for once.

Given that two thirds of people who are convicted of knife crime receive either a fine or community service, it is hard to believe that the punishment fits the crime. That sends out completely the wrong message. I make no apology for saying again—because I believe it passionately—that Labour's policy sends out the right message: carry a knife and you go to jail. There really is a need for a mandatory sentence.

**Bill Wilson** *rose—*

**Stewart Maxwell** *rose—*

**Helen Eadie:** Gathering signatures on the street in connection with knife crime was a salutary experience. I ask members to listen to the views of

my constituents. The people whom I represent referred to an atmosphere of fear when they walk down the street. That fear exists when a brawl happens at a pub or a club on a weekend, which is when stabbings are regularly reported. *[Interruption.]*

**The Presiding Officer:** Order.

**Helen Eadie:** It is unacceptable that such a feeling exists in any community in Scotland in 2009. We all have a responsibility to change that.

One petitioner came to me and said, "Look here, in my neck. This is where I was stabbed." The knife had just missed his jugular vein. Last Friday in Rosyth, a woman told me of her son who had been stabbed five times in his head. He lived, but operations and other procedures were required, and the distress that was caused to his family was beyond belief. I spoke with a young friend this morning who told me that she was out with her boyfriend when he said in a light-hearted, joking way to someone in a pub, "You're sitting in my seat." The guy pulled a knife on him. Labour cares very much about the victims, which is why our message is straightforward and to the point: people who carry knives will go to jail.

On a separate point, I am pleased to see that the bill addresses the issue of spousal compellability, the importance of which the cabinet secretary will concede. I have campaigned for that, asking parliamentary questions and writing to him and his predecessors over time. I am, therefore, very pleased to see the provisions included in the bill. I note that a variety of witnesses provided the Parliament with their reservations on the provisions on pages 77 to 79 of the bill. I hear, too, the views of Nigel Don with regard to the committee's uncertainty of opinion on the matter. Nevertheless, I hope that the committee, the cabinet secretary and the Parliament will, at the very least, adopt the Law Society of Scotland's proposal, which I believe is a middle way.

I shall support the representations that have been made to us by a range of organisations, but especially the Scottish Churches Parliamentary Office, on the issues for the many groups and churches that run small fairs and coffee mornings. My colleague Cathie Craigie has already highlighted that and I shall support her in her work as she lodges amendments on the issue. Unintended consequences might come about as a result of legislation that the Parliament puts through. I hope that the legislation that we pass will not impact heavily on people who give of their utmost by volunteering—we have done that before. We should not add to the administration burdens on those people by changing the licensing regime in a way that would impact hugely on them.

Like other members, I will support the bill at stage 1, but I have concerns and I will watch with interest to see what happens. I urge members to move on the spousal compellability issue.

**The Presiding Officer:** Members have the absolute right not to take interventions, but I have a very small amount of time in hand that I am willing to add on for members who wish to take an intervention.

15:51

**Ted Brocklebank (Mid Scotland and Fife) (Con):** As has become apparent from the wise and learned contributions of my colleagues Bill Aitken, John Lamont and David McLetchie this morning and, to be fair, the speeches of other members, the bill is wide ranging and complex. It seeks to implement more than 80 distinct policy proposals across a raft of criminal justice and licensing issues, but I intend to concentrate solely on the provisions that relate to the appalling incidence of hard drugs in prison and the linked problem of illegal mobile phones, which are often used to fuel prison drug trading.

As members will be well aware, the Scottish Conservatives have a zero-tolerance approach to drugs in prison. We urgently need in every jail a proactive rehabilitation programme through which agencies work with addicts, in and out of prison. Inmates who want to get off drugs should be given every help and encouragement to do so. At the same time, robust measures must be applied to anyone who supplies drugs to prisoners. Visiting privileges should be withdrawn and, in persistent cases, criminal charges should be brought. In short, we need a carrot-and-stick approach, to help those who wish to be helped and to deal responsibly with those who break the rules. Serious consideration should be given to using glass screens in prison visits to ensure that no contact occurs between prisoners and their visitors and thus to deny the opportunity for drugs to be passed over.

One of the most serious aspects of the issue is that not only drugs but mobile phones are passed over, which can allow prisoners to communicate directly with suppliers on the outside and to intimidate witnesses. Phones can allow incarcerated gang lords to continue managing their illegal businesses in communities outwith prisons. Members might have noticed that, earlier this week, David Jamieson, the chairman of Wandsworth prison's independent monitoring board, said that, as well as fuelling prison drug trading, mobile phones contribute to bullying and gang activities. We therefore fully support section 29, which deals with articles that are banned in prison, including phones, and introduces more

strenuous sentencing for those who attempt to flout the law in that respect.

**The Minister for Community Safety (Fergus Ewing):** I agree with much of what Ted Brocklebank says about mobile phones, but I assume that he is aware that, on 11 December last year, measures were taken to render illegal the use of mobile phones in Scottish prisons. I know, because I announced them at Saughton.

**Ted Brocklebank:** I am grateful to the minister for reminding us of that, but I was coming to that as part of my speech.

It is estimated that, behind bars, phones can cost £400 each. According to the Wandsworth board chairman, the trade in mobile phones was worth about £9 million in 2008, when 7,000 phones were seized. However, that does not take into account the phones that are not detected and which are still in operation, which is estimated at three times the number of those that were detected and confiscated. Figures for prisons in Scotland are estimated to be at least as bad. Ever-smaller handsets are being smuggled in by visitors, and some are even thrown over prison walls. It is right that those who are found guilty of involvement in dealing with phones, whether they are prison visitors or inmates, should face the new jail sentences of up to two years, fines or both.

It is also right that we go further, particularly with so many illegal phones in prisons going undetected. We agree that technical solutions should be explored to ensure that phones do not work from prison. We require effective signal-blocking technology or mobile phone blockers in prison grounds. As Fergus Ewing has mentioned, as early as next month, under an amendment to existing legislation—I gather that it is the Prisons (Scotland) Act 1989—it should be possible specifically to prohibit personal communication devices such as mobile phones. We commend that course of action, but it does not include the mobile phone-blocking technology that I have highlighted. Of course, there are problems. For example, many prisons, including Saughton, Barlinnie, Porterfield and Perth, are situated in built-up urban areas where blocking might also affect local residents. However, we are optimistic that such difficulties can be resolved and we urge the Government to explore all possibilities.

Only when we cut the lines of communication for the so-called Mr Bigs—who, like captains on the bridges of great ocean-going vessels, lord it in their prison cells, issuing orders to underlings and meting out their own crude punishment—will yet another door slam on the drug tsars who inflict so much damage inside and outside our prisons. The benefits to society will be immense if we can match political will with developing the necessary technology to ban completely mobile messaging to

and from prisons. There will be lower reoffending, less crime and a much safer prison environment, which will be good for addicts, good for families and, given how much crime in Scotland is fuelled by drugs, good for society as a whole.

15:56

**Sandra White (Glasgow) (SNP):** I am pleased to take part in this debate. I thank the cabinet secretary for introducing the bill, which I welcome, and the Justice Committee for taking the time to consider it and put together its stage 1 report and recommendations. I fully support the cabinet secretary's intention to take forward this wide range of criminal justice and licensing measures, which will modernise our laws in a positive way and make our communities safer and healthier.

At this point, I should say that I, too, have visited Cornton Vale, where one lady told me that she felt safer in prison, because outside it she had no recourse against violent partners and their families. I thank Ian McKee and Mike Pringle for their comments on that issue.

Other members have talked about crime and sentencing, but I want to focus on specific aspects of part 2 relating to criminal law. That part of the bill includes provisions to widen the scope of sexual offences prevention orders and to revise the statutory definition of "obscene material", measures that I believe will prove beneficial.

The bill will amend section 51 of the Civic Government (Scotland) Act 1982 to include extreme pornography within the definition of obscene material. Unlike "classified work", as defined in the Video Recordings Act 1984, such obscene material is solely for the purpose of sexual gratification, and includes images that explicitly and realistically depict extreme sexual acts that are a threat to life or would be

"likely to result ... in a person's severe injury";

are forced as in, for example, rape; or feature other depraved activity. As such images frequently show abusive, disrespectful behaviour towards women, we must adopt the new framework in the bill to deal with such material and avoid the harm that it does to our culture, our society and women in general.

However, although the bill seeks to strengthen significantly laws that criminalise the pornographic exploitation of women, section 126 in part 8, which amends provisions in the 1982 act relating to public entertainment licences, falls short of recategorising the licensing of lap dancing clubs by taking them out of the alcohol licensing system. At the moment, such clubs, which represent another form of commercial exploitation that perpetuates the objectification of women as sexual

objects for sexual gratification, are regulated and licensed by our local authorities under an alcohol and entertainment scheme similar to that for recorded music or live entertainment venues. That is not only misleading but leaves authorities without the necessary power to decide where—and indeed whether—lap dancing clubs belong in their community or to refuse a licence.

As adult entertainment venues, lap dancing clubs that are seeking a licence should be subject to more scrutiny than other venues. I know that many councils and communities agree, and I hope that, at stage 2, the necessary amendments are lodged to ensure that local authorities have the power to regulate and recategorise such clubs not as public entertainment venues but under some new licensing category. We need to allow each local authority to regulate lap dancing clubs effectively.

In England and Wales, the Policing and Crime Act 2009 has reclassified lap dancing clubs as sexual entertainment venues, made licences more expensive, required more frequent renewals and taken into account the views of local communities. I welcome the provisions in that act, which demonstrate the need for a progressive stance on the issue in Scotland. It is important that we in Scotland look at the issues of lap dancing clubs and the effect that they have on their local communities. In particular, I have been forceful in trying to ensure that we have better regulation of lap dancing clubs in Glasgow. I hope that, if amendments on the licensing of such venues are forthcoming from wherever at stage 2, the committee and ministers will look on them favourably.

I conclude by expressing again my support for the bill and specifically the strengthening of the law on sexual offences.

16:01

**Johann Lamont (Glasgow Pollok) (Lab):** My comments reflect the concerns of many of my constituents about some aspects of the bill. I regret that, this morning, the cabinet secretary seemed simply to dismiss those concerns rather than take them seriously.

Before I get to the substance of my speech, I will flag up a few issues that I trust will be revisited at stage 2. They include the issues that Sandra White flagged up in relation to trafficked women; prostitution and men who abuse women and prostitute them; and lap dancing. A further question that I hope we will revisit is how we make a connection between communities that suffer under the cosh of serious organised crime and the money that is secured as a consequence of that under the Proceeds of Crime Act 2002. There

should be a direct link, with funding going back to the communities that have suffered the most.

On the broader debate, it seems that nothing is easy. It is unhelpful to try, as I think Dr McKee rather complacently did, to create the impression that somehow only those who are wilfully stupid wish to ignore the policy that the Scottish Government is taking forward. It is most unfortunate to demonise those in our communities who are demanding action and those of us who wish to highlight how victims often feel let down by the system. To do that is to deny a voice to those who, because of their day-to-day experience, feel that the justice system is unfair, irrational and out of touch with the way in which they have to live their lives.

Yes, we have to try to understand what causes people to commit offences, but we also have to stop infantilising people who choose to terrorise their partners, their families and their neighbours. We owe it to the young men who carry a knife, as much as to their potential victims, to do everything in our power to stop them doing that. I have worked with young men who, in later life, ended up either in prison on a murder charge or dead. If we take steps to address the needs of such young men as well as those of their victims, we will be doing something important.

**Robert Brown:** I do not think that anyone would disagree with that. The issue is what makes the difference. What is the tough sentence that turns such people around? That is the nub of the debate, which some people on my side of the chamber would say the Labour Party has not engaged with as it might.

**Johann Lamont:** I recognise that, but I do not think that there is recognition on the other side of the importance of deterring young people who are outside the core group that carry knives, who see that nothing happens to those people and who then carry knives themselves. We owe it to those young people to say, "This is serious," in the same way that we punish people who drink drive to prevent others from doing that.

I am always struck by the degree to which people who come to me to ask for help because of disorder, crime and violence in their communities do so not simply because they want us to put people in jail and throw away the key but out of desperation about their circumstances. It is unjust and contemptuous to sneer at those who want tougher action on knife crime because of their direct experience of those who use violence to silence people, harm them and intimidate them to the point where they phone the police in a whisper. We owe it to those people to empower rather than disempower them and to listen to them. In that context, I urge the minister to reflect further on the action that he is taking and to test it

against people's need to have certainty that their communities will not be more dangerous and that the measures will not put them at further risk.

The scrapping of six-month sentences raises a number of issues. At First Minister's question time, I highlighted the implication of the policy for the victims of domestic abuse and the fears of many people that it might increase risk. Following the First Minister's response, I seek clarification on what the Scottish Government's policy actually is. The First Minister said that serious offences should attract longer sentences. Is it the Government's view that all domestic abuse cases that currently attract sentences of less than six months should attract longer sentences? If that is the case, how would that be enforced?

**Kenny MacAskill:** Will the member give way?

**Johann Lamont:** I am sorry, but I have only a minute left—the minister can answer the point when he sums up.

Would that policy apply to other serious offences?

There is an issue around resources. It is not enough simply to say that the resources are available. We could end up with an experiment with no safety net, the costs of which will be borne by individuals and communities. The obvious fear is not just that there could be an increase in offending behaviour, but that there could be an increased lack of confidence in the justice system's ability to serve people's needs.

At the heart of the matter there is a puzzle. It is illogical to say that the only way to encourage community sentences is to end short sentences now—it could be done the other way round. It is also illogical to say that people can be rehabilitated in their communities working with them only five or 10 hours a week, yet absolutely nothing can be done with them over six months when they are in prison. I have never understood the logic in assuming that the Scottish Prison Service has no responsibility towards those who are in prison serving shorter sentences. I would have more confidence in the minister if we were not hearing that Sacro, Apex Scotland and other organisations that work with prisoners who come out of prison are being told that their funding is being cut.

In those circumstances, the lack of confidence in our communities must be addressed, not dismissed.

16:06

**Margaret Smith (Edinburgh West) (LD):** As one of its former members, I thank the Justice Committee for its report, and I welcome this opportunity to speak in the debate. There are a



number of welcome provisions in the bill, such as the new offences to tackle serious organised crime and the clarification of Scots law on trafficking.

I believe that two aspects of the bill are capable of effecting positive change: the abolition of short prison sentences and the measures on community penalties. Wide-reaching reform in those areas, backed—crucially—by the proper levels of resources, can help to address reoffending and to provide what we all want: a cut in the levels of crime on our streets and in our communities.

Prison is appropriate for some people. Serious and violent offenders cannot and should not be allowed to remain a danger to our communities. However, Scotland's prisons are chronically overcrowded. They are hugely expensive and massively inefficient at dealing with people who receive short-term sentences. Two of the purposes of sentencing are the punishment of offenders and the protection of the public, but they also include the reform and rehabilitation of offenders.

One paragraph of the committee's stage 1 report jumped off the page. Professor McNeill of the Scottish Consortium on Crime and Criminal Justice remarked:

"three things help people to stop offending: getting older and becoming more mature; developing social ties that mean something to them; and changing their view of what they are about as a person. Short periods in prison do not help with any of those three things."—[*Official Report, Justice Committee*, 19 May 2009; c 1893.]

I add, from my experience of talking to people in the Scottish Prison Service over many years, that people who are sent to prison for short periods often lose their families, homes and jobs—the very things that might make them not reoffend in future.

We have heard much about the revolving-door system. The cycle of reoffending is a blight on our communities and our criminal justice system. People offend, they are sentenced to a short stay in prison and, on release, they go on to offend again. More than 95 per cent of people who are currently serving sentences of less than three months have already spent time in custody. On release, 74 per cent of them will go on to offend again within two years. I am disappointed that some members are not prepared to recognise that short-term sentences fail completely in helping to reduce the level of crime. For many people, prison is not working as a deterrent.

Without a fundamental change to how we approach sentencing, we risk creating—or, at this point, reinforcing—a class of Norman Stanley Fletchers, a conveyor belt of offenders who, like the "Porridge" antihero, might be happy to be told that they are someone

"who accepts arrest as an occupational hazard and presumably accepts imprisonment in the same casual manner."

It is surely right to emphasise that prison, for many people, should be viewed as a last resort, and that, for less serious offences, a genuine alternative should be sought. We must have a better option than sending people to prison for a few weeks, during which time there is no opportunity to work with them to address the issues that sent them there in the first place. That matter has been well covered in recent years by Andrew McLellan during his time as Her Majesty's chief inspector of prisons for Scotland and by Henry McLeish and his Scottish Prisons Commission.

I welcome the focus on community sentences and the sensible move to a single community sentence, which will help to improve public understanding. However, it is fundamental that the Government ensures that the proper resources are in place to make that happen and to make it work.

The Justice Committee's point about the timing of community sentences is important. Our communities want to know that action is being taken. There is still a perception that community sentencing is a soft option, but for many people it is not as soft an option as lying on their backside in a prison bed for two or three weeks. We have to ensure that people in our communities see that community sentences mean that rapid action is taken.

Although we agree with the Government's direction of travel on short sentences, we would rather see an end to custodial sentences of three months or less, rather than six months or less. That would remove from the prison estate those whose crimes are least likely to have involved serious or violent offences. It would allow the available resources to be focused on those cases where there is the least chance of rehabilitation in the prison system and on cases where tough community sentences are more likely to bear fruit.

Those who are currently sentenced to short spells in prison are not in the system long enough for staff to obtain the relevant information about them or their needs. As a result, they do not receive the appropriate interventions, whether help for drug or alcohol issues, or further training or education, and they are not helped to tackle the issues that got them there in the first place.

Many of the very short sentences are being served for the same reasons and by the same social groups as they were a century ago—those who are blighted by poverty, those who suffer mental health problems and those with alcohol and drug misuse problems. That is not to take away from their offences; it is simply to say that

we should get smarter and better at dealing with them when they are in any way brought into an interface with the criminal justice system. Those are not small problems—they are some of the biggest in Scotland—but they need to be tackled from the root. In many cases, they cannot be best tackled in our prisons.

I was shocked by some of the statistics. Compared with the general population, people in Scotland's prisons are 13 times more likely to have been unemployed and 13 times more likely to have been in care as children. Seven out of 10 have suffered from at least two mental disorders and two out of 10 males have previously attempted suicide—a figure that increases to more than 37 per cent for women. Some 65 per cent have the numeracy skills of an 11-year-old and eight out of 10 have writing skills at the same level. Those are serious issues, which have to be dealt with seriously.

Getting rid of short-term sentences needs imagination, commitment and resources. I look forward to the challenges being further addressed and debated during the passage of the bill.

16:12

**Bill Wilson (West of Scotland) (SNP):** The bill is excellent, but I should like to take this opportunity to suggest an addition to it, which I hope will receive the cabinet secretary's support.

The inadequacy of the present criminal justice legislation was recently highlighted by Louise Adamson of families against corporate killers, who said:

"An annual work-related death toll in excess of 1600 is tragic testimony to the fact that the current system of fining companies for health and safety offences has not served as strict enough punishment or strong enough deterrent."

Last August, I consulted on a proposal for a member's bill to improve the situation, which, if adopted, would introduce the principle of equity fines into Scots law and allow judges to order independent financial reports on convicted companies. The latter, as an amendment, would enhance the bill.

With the creation of new procurators fiscal who specialise in health and safety offences, the cabinet secretary has shown the Government's commitment to tackling the horrific death toll that I have mentioned. The addition of independent inquiries would further strengthen the law. I hope that that would find support throughout the chamber.

The present low, and therefore non-deterrent, level of fines imposed on most convicted corporations is illustrated by the Health and Safety Executive figures for fines imposed by Scottish

courts between 2001 and 2005. The median fine is the value of fine that half of all fines lie below. The other half lie above—I am sure that members worked that out. The great advantage of the median is that the results are not skewed by a limited number of very high or very low results. For cases resulting in death or injury, the median fine was only £4,000. When there was a fatality, the median fine was £12,500. In half of all cases resulting in a conviction in which a fatality occurred and for which a fine was imposed on the company, the value of the fine was £12,500 or less. That is £12,500 for being convicted of killing a human in the name of profit—and make no mistake, that is precisely what that represents.

Although hard to interpret, as the offences are not detailed, more recent figures on the HSE's website give little cause for comfort. Average penalties per conviction for cases in which the HSE or local authorities took action have declined in the past three years.

The information under the title "Fixing the sentence" on the HSE's website makes interesting reading. It says:

"Sentencing is entirely a matter for the sheriff or judge. The prosecutor is not entitled to make representations on this matter or to remind the court of their sentencing powers. The sheriff or judge should fix a fine which, in his opinion, reflects the circumstances of the offence. In so doing he must take into account all the circumstances of the case, including the financial circumstances of the accused, whether an individual, a partnership, or a company, and whether or not this has the effect of increasing or diminishing the amount of the fine."

That is the crux of the matter.

One reason for the present low fine levels is that judges might underestimate the size of fine that a company can reasonably pay. A significant failing of the present system is the lack of a mechanism for ordering an independent report into a company's financial situation. In a paper that was prepared for the previous Scottish Executive's expert group on corporate homicide, Professor Hazel Croall recognised that situation and suggested

"that courts should routinely receive a form of Corporate Inquiry Report and should, where necessary, have powers to appoint a relevant expert to provide a professional assessment, paid for where appropriate by the company itself."

It is instructive to compare the present law and procedures for companies with those for individuals. When an individual is brought to court for sentencing, social and other background reports are provided as a matter of course. In the case of companies, judges rely on the convicted party's honesty. That is roughly the equivalent of the judge looking the prisoner in the eye, sternly wagging his finger at the convicted felon and saying in a severe—if not downright angry—tone,

"You are a very naughty fellow. Now, before I impose a sentence, could you just tell me what level of fine you can afford to pay?"

I hope that the cabinet secretary agrees that the present situation is unacceptable and that independent inquiries into a convicted company's finances would be a significant and useful addition to Scots law. I hope that the cabinet secretary will lend his support to such an amendment to the bill.

16:17

**Karen Gillon (Clydesdale) (Lab):** I am pleased to participate in this important debate. I support the amendment that Bill Wilson describes. In the previous parliamentary session, I proposed a member's bill with a similar purpose. I would jail individual directors of companies, because that is the only way to focus their minds on the acts of violence that they perpetrate on constituents such as mine.

I will deal with the provision in the bill to remove the exemption for charitable, religious, youth, recreational, community, political or similar organisations from holding a market operator's licence. In the past couple of weeks in my local paper, the *Carlisle Gazette*, I have read about events that the Girls Brigade, the Kirkton players, the New Lanark Football Club, Biggar and district Oxfam and Castlehill Bowling Club were to hold and about the St Athanasius Christmas fayre. All those events are currently exempt from the licensing requirements. I will support Cathie Craigie's amendments to keep the exemption, because such events should remain exempted. If something is not broken, why bother fixing it? Requiring a licence would be a tax on the groups in our communities that try to raise money and support their communities. I hope that the cabinet secretary will take out this silly measure at stage 2 and that common sense will prevail.

The second issue that I want to raise is knife crime. They say that people's life experiences often determine how they react to issues. That is certainly true for me in relation to knife crime. In the early hours of 26 December 1994, there was a knock at my front door in Jedburgh. We had had an enjoyable Christmas day, and I thought that friends might want to continue the festivities. Unfortunately, the knock changed my life and the lives of my close family friends for ever.

John Frater was in the prime of his young life. He had not been in trouble; he was into rugby and was the vice-captain of Jed Thistle. He had spent Christmas day with his family and was walking his girlfriend home when he was murdered—as the result of a single stab wound—by a man who was intent on causing bother. John was simply a young man who was in the wrong place at the wrong

time. He was not carrying a knife or looking for a fight, but he is now dead. His parents have lost their son and will not see him married or be able to look after his children. His death devastated them and affected me greatly. I cannot say without a doubt that tougher action on knife crime would have saved John Frater's life, but it might have given him a better chance. Our attitude to blades needs to change.

John was killed 15 years ago. In those 15 years, his family have gone through terrible pain, as have many, many other families. We have tried convincing and cajoling, we have tried campaign after campaign, and we have tried amnesty after amnesty. However, the truth—and John Muir is testament to that truth—is that despite all of that, far too many young people have died in those 15 years. They have been killed by thoughtless, mindless thugs who carried a knife, intent on its use. We have failed to change that culture.

Someone does not go out with a knife tucked down their sock, slipped into their jacket pocket or somewhere else on their person just because they think it is cool; they do it because they think they are hard. They will use the knife if they are challenged. Like Johann Lamont, I believe that it is time to stop messing about on knife crime: it is time to send out a stronger message. We have tried the fines and the community sentences—they have not worked. Far too many innocent individuals such as John Frater are now dead.

I turn to the proposed abolition of sentences of six months or less. Let there be no mistake about it: I absolutely support the use of community sentences. Such sentences work for many offenders in providing an appropriate punishment and deterrent, but for many others they do not. The cabinet secretary talks about a revolving door, but that is as true for community sentences as it is for short-term prison sentences. As a youth worker, I met many young people who got community sentence after community sentence. They saw them as a soft option. The sentences did not change their behaviour. We need more investment in community sentences, not less.

Various excuses have been made in the debate for why we should get rid of short-term prison sentences. We have heard that there is no opportunity to work with prisoners if they are in prison for only six months. Why not? We have also heard that people cannot be rehabilitated in less than six months. Why not? Why do people lie on their backside for a few weeks in a prison cell? Why have we abdicated to the Scottish Prison Service the duty of care to those who are in our prisons? We should be dealing with the issue, head on. If sheriffs believe that someone needs to be sent to prison, they do so for a reason. We should be rehabilitating prisoners while they are in

prison, not abdicating responsibility. We should not be returning people to their communities where they cause havoc.

The communities that I represent want this Government to defend people properly. Like Duncan McNeil, I reserve my right to vote against the bill at stage 3. I will do that if the Government does not listen to the people of Scotland; if it does not see sense on this important issue.

16:23

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** The fact that we have held a day's debate on an issue of substance is a good advert for the Parliament.

I listened carefully to members of other parties whom I respect, such as Bill Butler and, in particular, Karen Gillon. That said, in my years in the Parliament, I have heard equally passionate speeches from Labour members in particular in favour of electronic tagging and early release into the community. Members spoke about finding alternatives to custody that are better for individuals, ensure that communities are protected and aim to reduce crime. That is as strong a territory for debate as it was in the days when the Labour Party was in office.

Cathie Craigie made a direct attack on me and my Liberal Democrat colleagues in speaking of our approach to the bill. This morning, Robert Brown made clear his position on sentencing, as he did his position on the proposed sentencing council. In debates such as this, Cathie Craigie and her Labour colleagues can so easily slip into believing that they have a monopoly on representing constituents who are affected by crime. They do not, nor do they have a monopoly on knowing what is effective in tackling the issue.

I represent Penicuik in Midlothian. Year after year, Labour has produced leaflets in which it attacks me for being soft on crime. Labour attacked me even when I was a member of the Justice 2 Sub-Committee for its inquiry into child sex offenders and yet, at the same time that I was being attacked, the Labour council in Midlothian was being castigated in official child protection reports. Indeed, the director of social work and the councillor with responsibility for the issue resigned as a result. Now we are being castigated for being soft on crime, at the same time as I have casework in the town on the Labour council's woeful approach to antisocial behaviour, which is only now being corrected. The police have had to chair the relevant body in the council, to ensure that some order is imposed.

Let us not have rhetoric without the belief that action at council, Government and legislative levels must work. Communities do not want simply

more tough talk—they want action on crime. Nor do we want just rhetoric from the Scottish Government on the bill. That is why the Finance Committee unanimously asked serious questions about the assumption that only 20 per cent of sentences will involve a community payback order, rather than custody. The bill team and the Scottish Government provided no convincing reason for including in the financial memorandum options of only 10 and 20 per cent for the likely increase in the number of community sentences. When Robert Brown and the Liberal Democrats raise financial and resource issues, they do so because they want the legislation to work, rather than simply to sit on the statute book, allowing ministers of any Administration to say, "We have legislated, therefore crime is being reduced." That is not sufficient.

**James Kelly:** If, in the member's view, the bill is not properly resourced at stage 3, will he vote against it?

**Jeremy Purvis:** Absolutely. In an intervention during Richard Baker's speech, Robert Brown asked whether the resource issues were the point of principle for the member. I took careful note of Richard Baker's response. He gave the impression of making a reasonable argument that, because resources may not be in place, the bill should not proceed. However, that is a reasonable argument only if one agrees in principle that very short sentences work. They do not. That is the point that Karen Gillon asked us to address. She asked why we cannot reform short sentences so that they can work, but it is in the nature of a short sentence that it cannot work.

**Karen Gillon:** Will the member give way?

**Jeremy Purvis:** I would ordinarily, but I cannot on this occasion.

The Conservatives argued that we have short sentences because they act as a deterrent. It was extremely telling that, when Robert Brown asked how that could be, given that 91 per cent of offenders in Polmont have served sentences there before, they had no answer.

In a reply to a parliamentary question, it was confirmed that 95.6 per cent of those who are currently serving sentences of less than three months have spent previous periods in custody. Short prison sentences are not a deterrent and do not affect reoffending. That is not surprising, given that we know that more than three quarters of young people in custody have a history of regular school truancy and a third have no formal educational qualifications. Parliament has known full well for a number of years that extremely low reading and numeracy levels are the biggest obstacle to successful interventions. Those

arguments were rehearsed in a report by the Parliament on youth offending in 2005.

**Johann Lamont:** Will the member take an intervention?

**Jeremy Purvis:** I do not have time—I am in the last moments of my speech.

It is not enough to talk tough to communities—the issue is now critical, because offenders are the least employable section of the population. In the current economic situation, their prospects of being employable—the biggest factor in reducing reoffending—are near to zero. It is not acceptable for us to stand aside and to leave them on the scrapheap of unproductive, uneconomic and potentially reoffending individuals when we can do something about that. The bill is one part of that action.

16:29

**Bill Aitken:** I agree with Jeremy Purvis that we have had a genuinely good debate today with some passionate contributions. Some excellent points were made, not all of which came from the Opposition benches, and there were some astonishing displays of naivety, most of which came from the Government and Liberal benches.

I will go through some of the contributions in which some interesting points were made. In a worthwhile speech, Stewart Maxwell was correct to raise the clear anomaly that relates to DNA retention. The rest of his speech was less worth while. He spoke about the presumption against short-term prison sentences. There is a presumption against short-term prison sentences already and I assure Stewart Maxwell and his ilk that no judge, sheriff or magistrate sends anyone to prison when there is any alternative.

Robert Brown rightly raised the cost of prison sentences. However, if we reduce substantially the prison population there will be no significant saving. I know that Robert Brown acknowledges that fact. The jails still have to pay the staff and the only saving would be on a few flat-screen televisions in Addiewell.

**Robert Brown:** Does the member acknowledge that if we reduce the prison population, that would free up the prison authorities and give them more resource to deal more effectively with the serious prisoners who are in prison justifiably and who are a bigger danger to the public when they come out if they have not been rehabilitated?

**Bill Aitken:** That is part of a wider argument that I will address.

Not for the first time, Cathie Craigie spoke common sense in an excellent speech. She raised a valid point about charities. As constituency

members in areas that have their problems, she, Karen Gillon and Duncan McNeil underlined the difficulties that arise in many of Scotland's communities. They expressed the fear, which we share, that if the policy to end shorter sentences is imposed on the people of Scotland, things will get very much worse.

In a typically thoughtful speech, Nigel Don dealt with problems that might arise under the Custodial Sentences and Weapons (Scotland) Act 2007. The Government got it just about right in that respect.

Mike Pringle issued the usual mantra about tough community sentences. Whatever community sentences come, we can be assured that they will not be tough, nor will they be carried out. The other evening, I attended a lecture chaired by the cabinet secretary. The new chief inspector of prisons spoke about a conversation that he had had at Polmont, in which he had been told by one of the inmates that he did not like having to get up early to do community service. Nobody asked the prisoner how he had ended up in Polmont, if he did not like doing the community service. He had probably not done that community service, or he had reoffended as a result of it.

Bill Wilson raised a question about health and safety, which is an argument that could take place in another direction. Sandra White spoke about lap-dancing clubs, which is hardly the greatest priority given the amount of violent crime in Scotland.

Ian McKee, a man to whom I always enjoy listening, let me down a bit today. He said that prisons are a university of crime. If that is the case, some of the streets of Glasgow must be where criminals get their doctorates. He pointed out, correctly, the difficulty of drugs in prison. Surely the answer is to try to prevent drugs from getting into prison rather than bemoaning the fact—

**Karen Gillon:** Will the member reflect on the state hospital's success in preventing drugs from entering the hospital? Perhaps the mainstream prison estate can learn lessons from there.

**Bill Aitken:** That might be of interest. I acknowledge that the Government has taken certain steps in that direction, but we are not yet at the stage where that will happen.

Those who advocate the ending of short prison sentences must acknowledge that the presumption is already against such sentences. They must tell us who should not be sent to prison, because all that the policy would do would be to give the green light to the fourth-time drunk and disqualified driver and to provide a get-out-of-jail-free card for the knife carrier, the wife beater and the small-time drug pusher. It would send the

message "Carry on thieving" to the shoplifter who has had 40 or more court appearances. That is the issue that confronts us all. Those are the people who would normally get a sentence of six months or less.

The bill has much to commend it, under many headings. However, part 1 is so fatally flawed that it will be difficult for any right-thinking, sensible person to support it unless it is radically amended.

16:35

**James Kelly (Glasgow Rutherglen) (Lab):** I welcome the opportunity to make the closing speech on behalf of the Labour Party, and I thank the Justice Committee and its clerking team for their extensive and comprehensive report on the bill.

We have had an interesting, high-quality debate. The debate started in daylight, and as darkness falls there is no doubt that gloom will descend on the SNP benches, because the debate has underlined serious flaws in the bill. Chief among those flaws is the policy of scrapping six-month sentences. It is clear to me that that would send the wrong message to Scotland's communities, as Bill Butler put it articulately. The scrapping of six-month sentences would mean that 75 per cent of people who have been found guilty of any crime, 40 per cent of people who have been found guilty of indecent assault and 71 per cent of housebreakers would be released into the community.

Members have quoted the experts and the academics, but the people in whom I put good store are the ones in my constituency: the pensioner who came to my surgery recently, who had had the door of her flat kicked in and her close vandalised; the man who had been attacked with a hammer and was afraid to return to his job on the rigs in case his family was attacked; and the constituent who was nearly beaten to death by a man who had been released from prison only that day. Those are the voices that speak strongly to me.

Mike Pringle and Ian McKee told us that prison does not work, but I do not see the logic of simply releasing people who are guilty of indecent assault, for example, back into the community. *[Interruption.]* That is not a matter about which to chuckle away, as the cabinet secretary has done during a number of serious speeches. This is an important debate.

Richard Baker made serious points about the cost of the policy. The Government's bill team has provided no evidence to explain why the financial memorandum costs the policy on the basis of a 10 or 20 per cent increase in the use of community penalties.

**Jeremy Purvis:** Why is the Labour Party in favour of using electronic tagging as an alternative to custody in many of the instances that we have heard about during the debate?

**James Kelly:** That issue is not in the bill. I am addressing the serious shortfall in resources to implement the SNP's policy of scrapping six-month sentences.

Prison statistics show that 8,200 people are serving sentences of six months or less. The figures in the financial memorandum would account for only 4,000 of those prisoners. In addition, there is nothing in the budget to support the policy. If the vast majority of the 8,200 prisoners were moved on to community sentences, the policy would cost £22 million. In a three-year period, a £66 million black hole would be created. The policy has not been costed properly. It is also important to destroy the myth that releasing prisoners from jail will save money. The Government officials made clear to the Finance Committee that it would save no money at all.

**Robert Brown:** I do not dissent from James Kelly's point but could we have clarity in the debate? The bill does not propose scrapping short-term sentences; it proposes a presumption against them. That is an important difference and we should talk in clear terms about it. At the end of the day, the resource follows from all that.

**James Kelly:** The important point to bear in mind is that, if the bill is passed, a presumption against six-month sentences would be lodged in statute. As a result, we would see the examples that Bill Butler cited earlier of convicted offenders who would currently go to prison being released into the community.

The policy is not properly costed. It is broad-brush accountancy. I just hope that, when John Swinney finalises his budget, he does not look to the Cabinet Secretary for Justice for any advice because numbers are clearly not Mr MacAskill's strong point.

I point out to Jeremy Purvis that the Labour Party supports the principle of community payback orders. In his opening remarks, Bill Aitken made the valid point that it is important for the public to see that community payback orders are immediate. There is work to be done to make them more effective.

There were important contributions on knife crime from Duncan McNeil, Helen Eadie and Karen Gillon, who spoke from experience in their constituencies about its horrendous human impact. There were 3,418 convictions for knife crime in 2007-08 but only 29 per cent of those offenders went to jail. As many Labour members have said, we need to send a strong message that

knife crime is unacceptable and if somebody carries a knife they should go to jail.

**Bill Wilson:** Will the member give way?

**James Kelly:** Not at this point, sorry. I want to make my next point.

Robert Brown criticised Labour's justice policy and said that we were more interested in getting into the pages of *The Sun*. It therefore came as a surprise to me to discover a newspaper clipping from December last year that quotes him widely—in fact, it has his photograph as well.

**Richard Baker:** It is in *The Sun*.

**James Kelly:** Yes, it is. As part of the article, Robert Brown says:

"Carrying knives is always stupid and should normally lead to a prison sentence for those caught with weapons."

Once again, we have a change of Liberal Democrat policy. I only hope that we witness a further change at stage 2.

**Kenny MacAskill:** Is James Kelly saying that there would be no exception to Labour's mandatory sentence for knife crime? If not, will he please define what the exceptions would be?

**James Kelly:** As the cabinet secretary knows, there are already exceptions in law. The Labour position is to support a mandatory minimum sentence for knife crime. That is the strong message that Scotland's communities look for.

There are serious concerns about the costs of the sentencing council—£1.1 million annual running costs and £0.45 million set-up costs. As Professor Fergus McNeill told the Justice Committee, the £1 million annual cost is equivalent to 1,000 community penalties. The costs of the proposal should be closely examined.

Richard Baker covered DNA. The UK Government has indicated that it intends to extend the policy in England and Wales of holding DNA for six years. There are currently no such proposals in Scotland, but I would certainly support the extension of the use of DNA. It is clear that the policy has been effective in ensuring that more people have been caught and more criminals put behind bars in recent years.

Cathie Craigie made an effective speech that highlighted the problems in the bill with exemptions for charity organisations and community groups. We all have experience of those problems in our constituencies. We do not want charities and community groups to be unable to hold local events because they cannot afford to pay for a licence. Further, the administration of licences would be a burden on councils.

Among other issues that were raised in the debate were antisocial behaviour reports, serious and organised crime and witness statements.

The bill's proposals are flawed. They come from a cabinet secretary who told us that prison was "a skoosh". The bill is a criminals' charter, with a £66 million black hole at the centre of its proposals. Labour will not support the bill at stage 3 unless our concerns about short-term sentences and knife crime are addressed. It is time for the cabinet secretary to venture homeward to think again.

16:46

**The Minister for Community Safety (Fergus Ewing):** I thank the Justice Committee for the work that it has undertaken on what is a substantial bill with, as we heard during the wide-ranging debate, a large number of measures, many of which, I think it is reasonable to say, have been welcomed by members across the chamber.

The bill's effect on charities was raised by Karen Gillon and, I think, by John Lamont and Mr Kelly. We will consider extremely carefully the arguments that were presented by members across the chamber. The point of having such debates is so that the Government can pay heed to issues, particularly when they are raised in a non-partisan, non-political way. We will reflect carefully on the arguments and report, as is appropriate, to the Justice Committee.

I will comment first on some of the bill's less controversial measures and move into the shark-infested waters towards the end of my speech. I will move towards a crescendo, as it were.

I think that we all believe that extreme pornography is particularly vile and offensive, and that we will all support the measures that Sandra White talked about. She has rightly campaigned on that subject for many years.

Mr McLetchie rightly mentioned the extreme problem of domestic violence and the continuing stain on our nation of men who batter their wives—and the serious, complex and difficult issue of how, as a society, we deal with that. Of the 5,029 convictions with a domestic abuse aggravation in 2007-08, about 80 per cent involved common assault or breach of the peace, with very few resulting in custody. I am sure that Mr McLetchie will know well that the circumstances of those cases are hugely divergent. Plainly, the courts have taken a very stiff view and imposed serious and long sentences in the relatively small number of cases where a charge of serious assault or attempted murder was brought. However, we will reflect seriously on the detailed arguments that Mr McLetchie and others made.

Bill Wilson talked about his proposals for equity fines and how we deal with crimes that are committed from behind the corporate shield. Karen Gillon has long campaigned on an extremely serious incident that led to deaths in her constituency. I recently spoke on the issue, having had the pleasure of being invited to speak to a Scottish Trades Union Congress audience. I pay tribute to the work that Karen Gillon, Bill Wilson and others do in this field. It is, as they know only too well, a reserved issue, which we would prefer not to be the case. That fact has made consideration of the issue difficult. The cabinet secretary has offered to work with Mr Wilson and other members on proposals to ensure that courts have information about a company's financial position to help determine sentencing. Bill Wilson alluded to one positive development that we should recognise and praise, which is the Crown Office's appointment of a dedicated prosecutor who now leads a group of individuals dealing with health and safety offences. That will make a huge difference in practice to how such cases are pursued.

Reference was also made to various of the slightly more technical aspects of the bill concerning disclosure. My understanding—I am by no means an expert—is that the position on disclosure requires to be clearly stated. The issue is complex, so it is not possible to make the provisions as simple as we might like. Nonetheless, on that matter and on all others on which we are trying to achieve a corpus of law that is clear, coherent and effective, the Government is happy to continue to work with the Justice Committee to achieve the best possible result. The same point applies to defence statements, which several members referred to during the debate.

Ted Brocklebank raised, quite rightly, the issue of mobile phones in prisons. It is certainly the case—I know, because I did it—that the prison rules were changed to make introducing a mobile phone into a prison contrary to the rules. As Ted Brocklebank and other members who have visited prisons will know, prison officers do excellent, painstaking and detailed work day and daily to prevent the importation of drugs into our prisons. When I saw the videos showing drugs being passed from one individual to another I did not notice what was happening in any of those instances, but the prison officers, through their professionalism, detected those incidents and prevented the importation of drugs on those occasions. The ban on the use of mobile phones, coupled with the new offences that will be introduced by the bill, will take the tough action that I believe is supported by members of all parties in the Parliament.

**Ted Brocklebank:** The minister has described heavier sentencing under an amendment to the

prison rules to deal with the trafficking of phones in and out of prison, but I asked about the blocking of mobile telephone signals. Such technology is available, but the minister has not referred to it.

**Fergus Ewing:** I had not finished responding to the specific points that Ted Brocklebank raised. I was about to say—in closing the debate, I have a duty to try my best to respond, in so far as is possible, to members who made specific points or recommendations—that work on a signal blocking device is being progressed by the Scottish Government, together with the SPS, the Ministry of Justice national offender management service and the Home Office scientific development branch to try to identify a viable solution to what Ted Brocklebank conceded is a difficult and complex problem. That is so not least because we do not want to block the mobile phone signals of people who live in Saughton outside the prison walls nor of those who live near our other prisons, which happen to be mostly in residential areas. I am sure that people who live on Inverness's Culduthel Road near Porterfield prison would like to continue to enjoy chatting among themselves of an afternoon about activities in the Scottish Parliament—

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Steady on.

**Fergus Ewing:**—however unlikely that may seem.

We take the matter of mobile phones in prison very seriously, in a way that I think Ted Brocklebank would approve of. We must also think about the safety and security of prison officers, who must be able to continue to use effective methods of communication. We will continue to ensure that they can do precisely that.

The more controversial aspects of the bill have certainly enlivened today's proceedings. Our priority must be to keep the public safe. We must reduce the damage that crime does to victims and communities. That requires us to respond decisively and effectively when confronted by serious, violent crime, but it also requires us to use the best available evidence to work harder and to be smarter in challenging and changing offenders and in tackling the underlying social and cultural factors that so often drive offending and reoffending. I believe that our current uses of imprisonment make that extremely difficult.

"Scotland's prisons hold too many prisoners on short sentences where there is no real expectation of being able to punish, rehabilitate or deter."

Those words are, of course, not mine. Members will have recognised from the unusual succinctness and fluency of that passage that they are the words of Henry McLeish—they come from the foreword to the Scottish Prisons Commission



report of 1 July 2008. That is the approach that we have pursued.

**Johann Lamont:** Will you clarify why you are taking that approach? Why do you presume that nothing can be done with people who are literally a captive audience for six months, but expect it to be possible for those issues to be addressed in the community, even though the organisations that would provide that service are suffering cuts in their funding?

**The Presiding Officer:** I remind members to speak through the chair and not directly to each other—in other words, do not use the word “you”.

**Fergus Ewing:** I can give Johann Lamont the answer that she seeks and can explain exactly why we are taking that approach. We are doing so because we believe that it is the right approach. Unless we take it, we will not tackle the problem of crime and reoffending in this country.

I spell out that we are taking that approach because we learn not, as Mr Kelly said, from academics, but from people who should know—people such as Chief Constable David Strang—that it is the right approach. In his evidence to the Justice Committee, he said:

“We want a shift in the general approach to one that recognises that putting people in prison for a short time and then allowing them out unsupervised simply does not address the crime problems that Scotland faces. In principle, there should be a presumption against short sentences.”—[*Official Report, Justice Committee*, 26 May 2009; c 1931.]

We learn not from academics, but from people such as Professor Alec Spencer, who has been governor at Peterhead, Glenochil and Saughton prisons, occupations that are probably as unacademic in their daily duties as any that I can conceive. What did that non-academic have to say? He said:

“I think that the use of short-term and very short-term sentences is complete eye-wash. It has no effect at all on reducing crime.”

As a man who has governed three prisons, he should know, should he not?

**Bill Aitken:** Will the minister give way?

**Fergus Ewing:** I ask Bill Aitken to let me finish—there is more of that quote, as he will be pleased to hear. Professor Spencer went on to say:

“We know from research from around the world that where prison is used on its own—in general, short-term sentences involve only prison—crime increases by between 1 and 3 per cent.”—[*Official Report, Justice Committee*, 19 May 2009; c 1891.]

**Bill Aitken:** Is that the same Professor Spencer who suggested that a queueing system should be adopted at prisons to restrict prisoner numbers,

which would mean that there would be a queue of offenders all the way down Smithycroft Road in Riddrie waiting to get into Barlinnie? Is that not eye-wash?

**Fergus Ewing:** I am reliably informed that that is a Swedish policy, and it is the Conservative party that has championed various aspects of Swedish penal policy.

While we are at it, and while we have a full chamber, I am sure that members would want to be updated on one of the Conservatives’ policies that they are unusually coy about expounding in detail. They think that we need more prisons and that we should use disused hospitals throughout Scotland to house our prisoners. Members may think that the walls of hospitals are gey thin and that they were designed not to keep people securely in prison but to divide wards in hospitals and are therefore fundamentally unsuitable for conversion into prison use. How is the great disused hospital hunt going? How many such hospitals have the Conservatives found? Where are they? How much will it cost to convert the disused hospitals that Annabel Goldie says exist all over the country to house the thousands upon thousands of additional prisoners who will end up in jail, who might include me?

**The Presiding Officer:** You must conclude, please, minister.

**Fergus Ewing:** I will finish on a consensual note.

**The Presiding Officer:** Quite quickly, please.

**Fergus Ewing:** We all deplore organised crime. I do not think that Mario Puzo—the author of the novel “The Godfather” in 1969—has ever been quoted in the Parliament before. He said:

“A lawyer with his briefcase can steal more than a thousand men with guns.”

We want to ensure that there are no covert consiglieres in Scotland helping organised criminals. We will stamp that out through our measures on organised crime.

I thank members for their generous support.

## **Criminal Justice and Licensing (Scotland) Bill: Financial Resolution**

17:00

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of motion S3M-4544, in the name of John Swinney, on the financial resolution for the Criminal Justice and Licensing (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Justice and Licensing (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b)(i), (ii) or (iii) of the Parliament's Standing Orders arising in consequence of the Act.—[*Fergus Ewing.*]

## **Parliamentary Bureau Motion**

17:00

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of a Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-5284, on the establishment of a committee.

*Motion moved,*

That the Parliament agrees to establish a committee of the Parliament as follows—

Name of Committee: Ure Elder Fund Transfer and Dissolution Bill Committee;

Remit: To consider and report to the Parliament on the Ure Elder Fund Transfer and Dissolution Bill;

Duration: Until the Bill has received Royal Assent, falls or is withdrawn;

Convenership: The Convener will be a member of the Scottish Labour Party and the Deputy Convener will be a member of the Scottish Conservative and Unionist Party;

Membership: Nanette Milne, Shirley-Anne Somerville, David Stewart.—[*Bruce Crawford.*]

## Decision Time

17:00

**The Presiding Officer (Alex Fergusson):** The first question is, that motion S3M-5177, in the name of Kenny MacAskill, on the Criminal Justice and Licensing (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Criminal Justice and Licensing (Scotland) Bill.

**The Presiding Officer:** The next question is, that motion S3M-4544, in the name of John Swinney, on the financial resolution for the Criminal Justice and Licensing (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Justice and Licensing (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b)(i), (ii) or (iii) of the Parliament's Standing Orders arising in consequence of the Act.

**The Presiding Officer:** The final question is, that motion S3M-5284, in the name of Bruce Crawford, on the establishment of a committee, be agreed to.

*Motion agreed to,*

That the Parliament agrees to establish a committee of the Parliament as follows—

Name of Committee: Ure Elder Fund Transfer and Dissolution Bill Committee;

Remit: To consider and report to the Parliament on the Ure Elder Fund Transfer and Dissolution Bill;

Duration: Until the Bill has received Royal Assent, falls or is withdrawn;

Convenership: The Convener will be a member of the Scottish Labour Party and the Deputy Convener will be a member of the Scottish Conservative and Unionist Party;

Membership: Nanette Milne, Shirley-Anne Somerville, David Stewart.

## Votes for Women

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S3M-4644, in the name of Shirley-Anne Somerville, on votes for women. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament welcomes the new exhibition, *Votes for Women: The Women's Suffrage Movement in Edinburgh*, at the Museum of Edinburgh from 31 July 2009 to 9 January 2010; notes that the exhibition uses photos and artefacts to chart the long struggle to win the vote, which was eventually granted to all women in 1928; further notes that at the height of the campaign in October 1909 a grand pageant was held in Edinburgh and to honour its 100 year anniversary and history of women's activism a re-enactment march will take place on 10 October 2009; encourages all women to join in the parade in honour of all suffragettes who fought hard for all sisters to have a free vote; congratulates the Gude Cause, based at the Edinburgh Peace and Justice Centre, for organising the march and complementary events, and further notes that more information can be found at [www.gudecause.org.uk](http://www.gudecause.org.uk).

17:02

**Shirley-Anne Somerville (Lothians) (SNP):** On 10 October this year, members of the Parliament were among hundreds of women, children and men who marked the centenary of the famous women's suffrage march along Princes Street by re-enacting that extraordinary procession. The re-enactment was the climax to a series of events throughout Scotland to commemorate the efforts of all those who were involved in the women's suffrage movement. On a personal note, I was proud to take part in the march with my baby daughter, who was taking part in her first—the first of many, I hope—political outings.

Conscious of their past, alert to existing inequalities, but looking forward to the future, those involved in the original Princes Street march and the 2009 re-enactment themed the marches what women have done, can do and will do. Tonight's debate allows us a similar opportunity to reflect on the seismic changes of the past, to consider the position of women now, and to re-affirm our commitment to completing the work that suffragettes began so long ago.

On what women have done, it is impossible for me, in such a short speech, to come close to doing justice to those whose personal sacrifice and bravery paved the way for women to gain what was rightfully theirs. Few will not have heard of women such as Emmeline Pankhurst, but every town and city had its local heroines as the campaign reached its climax on the eve of world war one.

It would be remiss of me not to take this opportunity to highlight the work of two Edinburgh women—Chrystal Macmillan and Dr Elsie Inglis. Their lives capture perfectly the story of the revolution that was taking place in the lives of women in that era; they also illustrate the personal courage and determination that were the hallmarks of the movement.

Chrystal Macmillan was the first woman to graduate from the University of Edinburgh in the field of science and was deeply involved in the National Union of Women's Suffrage Societies. In the days when persons graduating from the four Scottish universities could elect two members of Parliament each, she spearheaded a local challenge when Edinburgh refused to issue voting papers to female graduates. The Court of Session and Court of Appeal refused her case, and she became the first woman to plead a legal case before the House of Lords. Although her eight-hour submission was, ultimately, rejected, the favourable publicity that it generated did much to highlight the lunacy of the idea that such a formidable lady was unfit to vote.

Elsie Inglis was the first student of the Edinburgh School of Medicine for Women, and she went on to create the new Medical College for Women. Her medical work opened her eyes to the tyranny that men could exercise over their wives and reinforced her feminism. She later became the honorary secretary of the Edinburgh National Society for Women's Suffrage and the Scottish Federation of Women's Suffrage Societies. As the publicity surrounding the movement escalated, in large measure she sacrificed her professional prospects for her work for the franchise.

At the outbreak of the great war, Elsie Inglis offered her services to the War Office, only to be told to go home and sit still. Rather than sit still, she went about the organisation of all-women medical units to assist the allied forces. As well as helping the war effort, those units smashed the stereotype of women medical professionals being restricted to obstetrics and gynaecology. The Serb and French Governments accepted her assistance and, by the end of the war, £500,000 had been raised for the Scottish women's hospitals for foreign service. The money financed the work of more than 1,000 medical women in battle zones across France, Macedonia and Serbia.

Tragically, the doctor herself died the day after her return to Britain, in 1917, and never had the opportunity to vote, which some women gained soon after. However, having played such a brave and effective role in the war, she could not have contributed more to ending the idea that women were not capable of taking part in politics. Perhaps, when we consider the naming of committee rooms in the Scottish Parliament

building, women such as Elsie Inglis will be among the contenders rather than the usual male suspects who are already being touted. In similar vein, I wish every success to the campaign for a statue to that great woman to be erected in Edinburgh, a city that currently has only one statue of a woman—that of Queen Victoria in Leith.

Few, if any, of the suffragettes saw the enfranchising of women as an end in itself, however; rather, they saw votes for women as a means to an end. Elsie Inglis, like many others, had a concern about battered wives that motivated her determination to win the vote. Equality in electoral law was and is not enough in itself; it was simply the beginning, albeit a hugely significant step.

So, where are we now and what work still needs to be done? There is no doubt that we all need to work to increase the number of female representatives in the Parliament. A look around the chamber at decision time reminds us of that. Equality may be one of the founding principles of the Parliament, but until we have equality in representation—and not just for women—we will not live up to that principle.

Much remains to be done beyond the field of political participation—far too much to be covered in such a short speech as this. Nevertheless, I highlight one topical example. Members will be aware that yesterday marked the start of the 16 days of action on violence against women—a series of international initiatives to raise awareness of gender-based violence, to make it clear that such violence is contrary to human rights and to press authorities around the globe to take all necessary steps to end that blight on our communities. I am sure that all of us fully endorse that campaign.

I congratulate the organisers of the gude cause march, which was held in October. Such events remind us of the sacrifices that past generations made so that we could vote and participate in politics and debates such as this. It falls to each of us to renew our commitment to the completion of that work and to tackle the inequalities that still hold back too many women in our society. That would truly be a worthwhile mark of respect for Elsie Inglis and her colleagues in the movement.

17:09

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I congratulate Shirley-Anne Somerville on lodging this important motion. In its timing, it advertised the march in October and the exhibition that is still running in the museum of Edinburgh. Like her, I congratulate gude cause.

I also thank a group from my constituency that was involved in the events at that time and whose

film can still be seen in the museum of Edinburgh. The ways of seeing group—a group of older women based in the Prentice centre in north Edinburgh—made a film that is based on the 100<sup>th</sup> anniversary of the suffragettes and which highlights many features of women's lives over the past 100 years. We can see that progress has been made in some areas—for example, the film says that, even after the war, nurses who got married had to leave their job—but some problems clearly remain. The film highlights the issue of equal pay, which we have debated recently in the Parliament and the Equal Opportunities Committee, and at the end there is a suffragette song, which says:

"Votes for women, it's just a beginning  
You haven't seen anything yet."

That is one of the themes of the debate.

We should remember the great struggles of 100 years ago. I am pleased that Shirley-Anne Somerville mentioned two Edinburgh women, and I certainly endorse her call for either of their names to be used for one of the Parliament's committee rooms. I was thinking about which one it should be, and then thought, "Why should it not be both?" Chrystal Macmillan and Elsie Inglis would be highly appropriate names for two of the committee rooms, and we should certainly remember their contribution. Shirley-Anne Somerville has already covered much of the detail of their lives. Yesterday, we had a debate about Scotland's history, but how many of us learned at school about those women or the many other women who made such an important contribution to Scotland's history?

Let me concentrate on Elsie Inglis for a moment. She did many different things. She was active in the suffrage movement and, from 1900 onwards, she spoke at four suffrage meetings a week, over and above being a doctor and establishing a maternity hospital for poor women in Edinburgh alongside a midwifery resource centre. That hospital developed into the hospital in which I was born. Later on, she also set up Scottish women's hospitals committee, which did such sterling work during the first world war. If I had to pick one of those two women, I would go for an Elsie Inglis room, but I hope that there can also be a Chrystal Macmillan room.

It is highly appropriate that we remember the struggles of those women and many others, but we should also remember that, as the suffragette song that I quoted reminds us, the struggles are not over. There is still much to be done on equal pay, and I am sure that, in the debate next week on violence against women, members will highlight all the work that is needed on that. We clearly do not yet have equality between men and women. A great deal of progress has been made, but there is

a great deal more to do. The Scottish Parliament has made a contribution, and I hope that we will continue to do so. This debate has made a contribution, too.

17:12

**Christine Grahame (South of Scotland) (SNP):** The movement for women's suffrage began as early as 1897 with a lady called Millicent Fawcett, although she was very much a pacifist. In 1903, Emmeline Pankhurst and her daughters Christabel and Sylvia set up the Women's Social and Political Union, which started off as pacifist but, as it was getting nowhere in the face of men in politics, had to develop more direct action, about which many of us have read and know.

As a result, there were disgraceful endeavours to force-feed women in prison. I will quote from someone who was force-fed in a Scottish jail less than 100 years ago. She said:

"The tube filled up all my breathing space, I couldn't breathe. The young man began pouring in the liquid food. I heard the noises I was making of choking and suffocation—uncouth noises human beings are not intended to make and which might be made by a vivisected dog. Still he kept on pouring."

Because there was such a reaction in the press in favour of the women who were going to such extraordinary lengths and suffering to such a degree, the Government introduced legislation that came to be known as the cat and mouse act—the colloquial name for the Prisoners (Temporary Discharge for Ill-Health) Act 1913. When a woman was getting to the stage of starving herself to death, to avoid a political fall-out from her dying in prison, she was discharged so that she could start eating and was then brought back in, just as a cat would play with a mouse. That gives us an idea of the culture in which those very brave women lived.

As a consequence of those women's actions, and to a great extent because of the intervention of world war one, under the Representation of the People Act 1918 women of property of the age of 30 or above were given the right to vote. Without the intervention of the war, which led to the loss of so many men and the need for women to take over their roles, it would have taken even longer. Indeed, women in the United Kingdom did not achieve full equality of suffrage until 1928.

Many people think that the suffragettes were located only in England, but Scotland played a huge role and was at the forefront of the movement. I found out that even Hawick, which I would not have thought was a revolutionary Borders town, was visited by the charismatic Emmeline Pankhurst herself. Indeed, at the climax of that visit, the people of Hawick sang to the strains of "Teribus"—their own little anthem—these words:

"Bravo, bravo lady suffragettes,  
We support you in your fight.  
For your cause is just and honest,  
And the vote is yours by right."

That proves that the movement itself was extraordinarily dispersed.

Today, we sit in a Parliament that, for the UK at least, has decent representation of women: there are 43 women to 86 men; one of the Deputy Presiding Officers is a woman; and we earn our place here. I certainly think that we have changed not only the tenor of Parliament but some of its priorities, and some of the work that it has done—in advance, I should add, of other Parliaments—has had a great deal to do with the presence of women. Just as important, we have worked very hard to make this place child friendly, not just for women but for the men who have to look after young children.

Would I have been a suffragette? I think so. I have been very difficult since I was in my pram—indeed, "difficult" is how my late father would have described me. I have always thought myself at least the equal of any man, and I have never at any stage thought that women should be curtailed by anything other than their own abilities in any activity—and that includes the vote.

Of course, we must think of women elsewhere who are not in our position. Women still cannot vote in Brunei; there is only partial suffrage in Lebanon; and there is no suffrage for women at all in Saudi Arabia or the United Arab Emirates. Where we are is where we would like our sisters across the world to be.

I congratulate Shirley-Anne Somerville on securing this debate, but for many women the fight goes on.

17:17

**Margaret Mitchell (Central Scotland) (Con):** I, too, congratulate Shirley-Anne Somerville on securing this debate, which marks the milestone of the 100<sup>th</sup> anniversary of the women's suffragette movement's grand pageant along Princes Street.

*The Scotsman* reported that perfect weather conditions made for "a fine spectacle" on 10 October 1909, when the hundreds of women took to the streets of Edinburgh to demand the vote:

"Everything was in its favour. Better weather conditions could not have been chosen; the streets were in perfect condition and although the southerly breeze may have troubled standardbearers, it was agreeable to the enormous crowds who came to witness the scene."

Fast-forwarding 100 years to 2009, we find no guarantee of the same fine weather; indeed, this year is apparently set to be the wettest since records began. Undaunted, however, the march organised by gude cause re-enacted the same

procession not just to commemorate the event but to mark what has changed in the past century to improve the position of women in society and to draw attention to what still needs to be done.

As a result, it seems opportune to highlight specific areas in which women still lack parity. Some of these issues, which relate to gender and are intrinsically about fairness, have been tackled by the Parliament's Equal Opportunities Committee. Malcolm Chisholm has already referred to equal pay and, in the past two years, the committee has considered in its budget scrutiny the issue of equal pay in local government and the national health service, which primarily affects female workers. The committee's report highlighted the extremely high cost of resolving the local government equal pay dispute, and members found it gratifying that the Local Government and Communities Committee decided to carry out further work on the issue.

The committee's recently completed report on women offenders in the criminal justice system highlights some disturbing evidence on, for example, harsher sentencing; the disproportionate effect that prison has on women rather than men with regard to loss of tenancy; and the adverse impact on children when a mother has to serve her sentence in a location not easily accessible for family visits. It is to be hoped that, when the report is debated in the new year, progress can be made to address those issues.

In the grand scheme of things, 100 years is a comparatively short period of time. There is no doubt that the democratic right of women to vote would not have been achieved so soon without the courage and determination of the women—and, it has to be remembered, some men—who formed, campaigned in or supported the suffragette movement. Equally, however, some of the issues that are highlighted in today's debate are a timely reminder that, for many women, there is still some way to go before equality is achieved.

17:20

**Johann Lamont (Glasgow Pollok) (Lab):** I congratulate Shirley-Anne Somerville on securing this important debate.

I had the good fortune to participate in the gude cause march in October, which was a powerful reminder of the struggle that had to take place to secure the vote. It brought together a wonderful alliance of women from all political parties and none, older women, younger women and women with children, all of whom came together to celebrate the fact that, in the past, our sisters fought for us to have the right to vote. It was a timely reminder, too, of what a powerful force we can be if we are united in identifying issues for

women. I particularly congratulate all those who made the day such a great success. It was colourful and entertaining. Clearly, such events do not happen by accident, so we should place on the record our thanks to the organisers.

Reflecting on and reading about the campaign for votes for women brought back to me the extent to which it was a struggle. There was nothing inevitable about women securing the vote. There was, of course, individual political action and there were individual decisions by women—and notably some men, too—to be involved in campaigning and take up the cause of votes for women, but underneath that is a powerful message about the strength of solidarity and sisterhood that it took to secure that change. It is important to recognise and understand the degree of resistance to giving women votes and the measures that people were prepared to take to resist it. We heard some of those described earlier.

Of course, that reflects the broader battle for suffrage in general and people's rights to vote and to shape their own lives. That is why I, for one, do not regard the Parliament as a reconvened Parliament. The difference between the old Parliament and the new Parliament is a reflection of the struggle for radical change. Those who were involved in that struggle said that, in our world, people have rights and entitlements and that democracy and the rights of women must be at the centre of that.

There is also an important message about the whole issue of equality. No step in securing political change was ever made easy for women or other disadvantaged groups. Power was never given away lightly. It is important to recognise that and to be strong in our determination to secure equality. We should think about the importance of women's votes. I think that I, too, would have been a suffragette. We need to say to women, "Use your vote," and encourage them to understand what a battle it was to get the vote and the importance of using it in women's interests.

We have to address the issue of women's representation. We started on a high note in the Parliament, but it is slipping. Across the Parliament, all parties need to look at their levels of representation and ask whether they pass the test. We have to look at positive action and resist the temptation to accept, as some would have us believe, that the preponderance of men at every level of government and in every place of power is somehow a reflection of their ability. What it reflects is positive discrimination in favour of them in the past. We need to resist that—and that also applies to public bodies.

In reflecting on the changing role of women over the years and their securing the vote, we must also recognise that we still have a long way to go.

Women are still more likely to be low paid. They are still suffering from violence, and they still disproportionately carry out carers' roles. The test for us is to ensure that the Parliament, which made its name on the level of women's representation, remains open to women and to women's priorities.

We have redefined what is political. In renaming our committee rooms, perhaps we should not look only at the powerful women in our history, who often go unrecognised. Perhaps one of the committee rooms should be named to reflect what did bring change and votes for women: sisterhood, solidarity and courage. Those seem like three pretty good names to reflect the power of women to secure the vote and use it in the interests of women and a more decent society.

17:25

**Linda Fabiani (Central Scotland) (SNP):** I, too, congratulate Shirley-Anne Somerville on securing the debate. Understandably, it has been very much centred on Edinburgh and the Lothians. I thought that I would redress the balance a wee bit and talk about what was done in Glasgow and the west of Scotland.

The first women's suffrage society in Glasgow was formed in 1870. Then there was the Glasgow and West of Scotland Association for Women's Suffrage. As Christine Grahame said, that association soon became the Women's Social and Political Union and the breakaway, non-violent Women's Freedom League.

There was peaceful revolt, and some quite noisy revolt in Glasgow. The Glasgow suffragettes went down to London and took part in window-smashing raids in 1912. Dorothea Chalmers Smith was imprisoned for housebreaking with intent to set fire in Park Gardens in 1913. That took place in the culture of society in relation to women that some members have mentioned.

As we know, history always favours the victors. There is an awful lot of history in Scotland, the UK and Europe where the part played by women is not mentioned. Women were very active in all sorts of campaigns to make society a bit better. Looking back at the trades movement, for example, we can see the roots of the women's suffrage movement. Elspeth King wrote some really interesting stuff about the subject. She wrote:

"The weaving trade ... was totally female in Scotland",

unlike in the north of England, where it consisted of men, women and children. Wages were consequently lower in Scotland.

The first women's strike took place as early as 1768, in Paisley. It was reported:

"a female combination ... has been entered into by the young women of this place ... who refuse to work, unless on higher wages."

And quite right, too. It was a woman weaver, I think in 1832, who called for the vote, and that takes me back to the radical uprising in 1820. We rightly talk about the men who suffered at that time, but there were women who were part of that movement, too, as can be seen in the progress that was made.

I know that there are women in the chamber who have read Marion Reid's book, "A Plea for Women". That book was way ahead of its time, and it is a reference that we should all look at often. It was first published in the mid-19<sup>th</sup> century. Marion Reid spoke about the roles of men and women in society. I love the quote:

"the effects on men of an artificially inflated sense of their prerogatives are just as unfortunate as those of constant depreciation on women."

She was not just shouting about giving women rights; she recognised that those are human rights that have an effect on everyone in society. That is how it is: it is a human right to be treated the same as anyone else. As Johann Lamont said, with all this talk about positive discrimination, it is as if women are trying to get something very special that nobody else has. When one part of society holds the power, it is only right that society considers how to rebalance that power. Women do not hold the power in our society today.

I will end with a poem from another Glasgow woman, Marion Bernstein, written in 1876. She wrote:

"I dreamt that the nineteenth century  
Had entirely passed away  
And had given place to a more advanced  
And very much brighter day  
  
For women's rights were established quite  
And man could the fact discern  
That he'd long be teaching his grandmamma  
What she didn't require to learn  
  
There were female chiefs in the Cabinet  
(Much better than males I'm sure!)  
And the Commons were three-parts feminine  
While the Lords were seen no more!"

Although the intervening century and a quarter has thankfully seen our focus shift away from Westminster towards Holyrood, it is disappointing that, in the 21<sup>st</sup> century, we still have not got as far as Marion Bernstein hoped for by the end of the 19<sup>th</sup> century. I hope that, as our Parliament develops, we will no longer need to measure the progress of women towards equality but will be able to take it as a given.

17:30

**Sarah Boyack (Edinburgh Central) (Lab):** I add my congratulations to Shirley-Anne Somerville on securing the debate, which is timely and has allowed members from throughout the chamber to make good speeches about the background to women's suffrage.

I particularly thank those who made the 2009 gude cause a fantastic celebration. It was a brilliant success. We had great weather, which we could not have predicted. The march itself was the culmination of a year's activities. There were a huge number of really good events run by local groups throughout Scotland, such as the quilting workshop, the banner-making workshop and the political discussions that sprang from the gude cause. I would heartily recommend the not-to-be-missed gude cause songbook, which includes fantastic songs by women from Scotland and abroad. We had the opportunity to celebrate the contribution that was made by the early pioneers of women's suffrage and equality. As Johann Lamont said, the gude cause event was an opportunity for us to celebrate sisterhood and solidarity. The way that it was organised epitomised that.

I thank the organisers of the Edinburgh Peace and Justice Resource Centre, particularly Janet Fenton and Helen Kay, for holding together a huge range of projects with no money to speak of, as far as I can make out. Their imagination and determination really made the difference.

Even in our own festival of politics, we ensured that women were firmly on the agenda this year with some fantastic discussions and celebrations. There was a focus on the poor number of women elected to the United Kingdom Parliament throughout the 20<sup>th</sup> century and the change that we were able to introduce in the Scottish Parliament, to which groundbreaking numbers of women were elected. We also discussed the fact that the numbers have tailed off since 1999. There was a huge flush of enthusiasm at the start and, although we have managed to keep our 50:50 in the Labour Party, it is time for us to look at how we move forward.

There is a role for women outwith the Parliament as well as in our parties to lobby hard so that the 2011 manifestos reflect women throughout the country. We all have our take on how to achieve women's rights and equality, but I hope that it will take centre stage in all our manifestos.

My party has had strong representation of women in here in the past three sessions of Parliament, but we have also changed our party structures to ensure that they are 50:50. It is not just about women's representation in the Parliament but about their representation in the



whole of Scottish public life. Public bodies, trade unions, businesses and the professions all need to have women at their heart, not just doing the hard work and the fundraising but playing leading roles, too.

When we set up the Scottish Parliament, women came from all the parties, the trade unions, the churches and civic society to work together for change. As we look to the next session of the Scottish Parliament, we need to reclaim women's right to be in the Parliament and to look at the women's claim of right that we had for the first session and think about it for the future.

Now is a good time for us to look at the gains that we have made and to set an agenda for the unfinished business that some of us have talked about today. We have made massive progress. When we in the Labour Party set out our priorities for the first session of Parliament, we were clear that we wanted to ensure that our policies made a difference to women's lives. Those included domestic violence legislation; free nursery provision for three and four-year-olds to give all our children a decent start in life and to give women the chance to play a full part in society by being able to work and be carers; and policies targeted at pensioners, because we knew that women live longer and that many women who have taken time out to bring up their children or to be carers have traditionally worked in lower-paid sectors and do not have access to decent pensions.

A huge inequality runs throughout our world. We need to ensure that what we do in the Parliament will redress the balance. My fear is that we are stepping backwards. It is not just about the numbers of us in here but about the policies. It is about ensuring that women do not lose out in a time of recession. We want to ensure that the gains that we have made are not rolled back. Some of our most vulnerable groups have begun to lose out as a result of the cuts that we see across councils. I hope that we will not let that happen and that we will move to ensure that we make more gains for women's equality. There is a huge amount still to do.

If our committee rooms are to be named, let us not name just one after a woman. As Shirley-Anne Somerville and Malcolm Chisholm said, we should go not just for the name of one woman such as Elsie Inglis or Chrystal Macmillan but for naming at least three rooms after women. We must recognise women's role in history and our contribution to our country.

17:35

**The Minister for Parliamentary Business (Bruce Crawford):** I, too, congratulate Shirley-

Anne Somerville on bringing the debate to the chamber. I thank members for their interesting speeches.

As members have said, this centenary year of the great procession and the women's demonstration of 1909 gives us a wonderful opportunity to celebrate and commemorate women of the suffrage movement. We had the centenary procession in Edinburgh in October, in which some members here participated, as did other politicians from across the parties, members of women's organisations, trade unionists and many others. Complementary local events have been held throughout Scotland, such as the suffrage exhibition that is being held in the museum of Edinburgh. We have today held a timely debate, to which I am delighted to respond. Like other members, I thank gude cause for helping us and giving us the opportunity to reflect and celebrate.

Scotland's first suffrage groups appeared in the late 1860s. They demanded the vote for women as a basic human right and as a means of improving women's lives in the workplace, at home, in the courts of law and in education. They demanded justice and equality for all women and used peaceful tactics to try to win support. They sent petitions to Parliament, wrote letters to MPs, distributed leaflets and organised meetings. However, 30 years of peaceful campaigning produced only minor change so, in the 1900s, more militant campaigners—whom we know as the suffragettes—began to emerge.

We have heard about people from Edinburgh and Glasgow, so I will choose another city: Dundee. Two Scottish suffragettes—Ethel Moorhead and Lila Clunas—are celebrated in two of the 25 bronze plaques on the Dundee women's trail, which is a city-centre walk that Linda Fabiani opened last year. Ethel Moorhead was an artist and was known locally as the "most turbulent" of Dundee's suffragettes. She was force-fed in Calton jail—the situations that Christine Grahame described in that regard were telling—and she had a string of convictions, but her first recorded act of dissent was in 1911, when she threw an egg at Winston Churchill. It is ironic that St Andrew's house stands on the former site of Calton jail and is where all four female Scottish ministers have their offices, as did the female ministers in the previous Scottish Executive.

Lila Clunas was an elementary schoolteacher who ensured that working-class women were involved in the fight for the right to vote. She was imprisoned in London and went on hunger strike after an unlawful incident at 10 Downing Street. After world war two, that remarkable woman was elected to the council in Dundee, where she served until she was 88.

As a result of the pressure and agitation from the suffragists and suffragettes, Parliament passed the Representation of the People Act 1918, which gave all women over 30 full voting rights. However, that was less than full democracy. Women continued—rightly—to campaign until 1928, when full voting rights were finally granted to all women over 21, as others have said.

Democracy had finally triumphed and the suffrage campaigners had won their argument. Without the suffragists, how long would it have taken to move on from an age in which women could not own property, hold public positions or vote? Without the suffragists, the Duchess of Atholl might never have become the first Scottish female MP. As a Conservative and Unionist Party member, she represented Kinross and Western Perthshire—my home area—from 1923 to 1938, although I was not there at that time. She was the first female minister in the Westminster Parliament.

The suffrage movement made a lasting contribution to Scottish democracy and society. It led the way in women making their voice heard, campaigning for an end to all discrimination and prejudice, and striving to achieve equality with men in all aspects of their lives. It is not easy to find proper recognition of the women who were and are part of shaping Scotland—those who made the country what it is today and what it can be in the future. By awarding proper recognition to women, we promote pride in communities and in Scotland and create role models for the rest of us, most importantly our young people.

This Government is committed to proper recognition for women in today's society. I spoke earlier about the Dundee women's trail. This year, the Government has demonstrated our commitment in other areas, too. Examples include ministers' involvement in the *Evening Times* Scotswoman of the year awards in January, international women's day events in March, the Scottish Trades Union Congress women's conference in November and, of course, the centenary suffrage procession in October.

The Government is committed to encouraging more women to become involved in political decision making. It is funding the Scottish Women's Convention to the tune of £521,000 over a three-year period. The convention organises a large international women's day event in March each year. The theme for next year is the importance of the involvement of women in all aspects of the political process, from voting to becoming an MSP. In addition, the Government is providing £245,000 over a three-year period to Engender, which is an information and research networking organisation for women that provides

opportunities for women to engage in focused debate on issues of concern and enables them to influence policy decisions.

We have heard in the debate about the rigours and hardships that the women's suffrage movement endured in the early 1900s. That reminds us of the significance of the right to vote. Voting is the single most important action that anyone can take to ensure that their voice is heard. By voting, we directly elect the people who make the decisions that affect us and our families every day, locally and nationally. We all—the men and women in civic society, political parties, trade unions and local authorities—need to focus on the reasons for the low turnouts at elections and do more to make people want to turn out to vote. We owe it to the memory of the women of suffrage to do all that we can to strengthen democracy.

*Meeting closed at 17:42.*

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