

MEETING OF THE PARLIAMENT

Wednesday 13 January 2010

Session 3

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Scottish Parliament

Wednesday 13 January 2010

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Presiding Officer (Alex Fergusson):

Good afternoon. As always on a Wednesday, the first item of business this afternoon is time for reflection. Our time for reflection leader is Father Robert Hendrie of St Luke's church in Banknock.

Father Robert Hendrie (St Luke's Church, Banknock): St Matthew tells us:

"where your treasure is, there will your heart be also."

When I was a child, I thought as a child and spoke as a child, especially at Christmas. I wanted, as a child does—without any qualification—this, that or some other thing. And if I got whatever it was, by now, I wanted something else. Eventually, I put aside childish things, but I did not put away wanting; I just wanted different things, and not only at Christmas. I say that not to beat myself up. There is nothing abnormal about it. We do not differ that much. We are not just rational animals; we are wanting animals. In one way, it is our peculiar glory and the driving force of all human achievement. Still, it is peculiar that we are never satisfied.

What do we want? I want what? Even if we want for nothing, we still want something else. It seems that it is never enough just to be ourselves—something more, we think, might complete us. That is a surprising thing. Now we think of it, we are always surprising ourselves. We are a mystery to ourselves. Nothing that we want seems to be enough. That can be simplified into more of the same. It is better to be realistic about this, as we have to live with it. As the poet asks, why have we immortal longings and all we long for mortal?

The paradox goes to the very roots of our humanity. We are always ambitious for higher things. As a result, it is easy for us to get fixated on something or other that we think will fulfil or content us. We are no longer children, but we still find that, even now, what we thought would satisfy us does not. A better house? More money? A job we have hankered after? More power? A new relationship? More stuff? Whatever. Yet that constant discontent can be seen as our glory. It is the reason for all the great achievements of the human race.

We have to live here and there are things to be done, people to love and serve and ideals to be striven for. We want something greater than we

can imagine because anything that we can imagine is not enough. Ultimately, we want that than which nothing greater can be thought, which is Anselm's pointer towards God. As Augustine puts it:

"You have made us for yourself, O Lord, and our hearts are restless till they rest in you."

Business Motion

14:34

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-5507, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

Motion moved,

That the Parliament agrees the following revision to the programme of business for Wednesday 13 January 2010—

after

2.30 pm Time for Reflection – Father Robert Hendrie, St Luke's Church, Banknock

followed by Parliamentary Bureau Motions

insert

followed by Ministerial Statement: Aberdeen Western Peripheral Route

Motion agreed to.

Aberdeen Western Peripheral Route

The Presiding Officer (Alex Fergusson): The next item of business is a statement by John Swinney on the Aberdeen western peripheral route. The cabinet secretary will take questions at the end of his statement, so there should be no interruptions or interventions during it.

14:35

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): On 21 December I announced my decision to authorise the construction of the Aberdeen western peripheral route. That was a particularly important decision, not just for the benefits that the road will bring to the communities in the north-east of Scotland, but because it takes us another step closer to our aim of completing the strategic road network for the country to an appropriate standard. The lack of a bypass for Aberdeen has been an obvious gap in that network for a long time. I am therefore pleased that we can now move forward with a scheme that will achieve its regional objectives while at the same time allowing us to consolidate the core strategic road network.

The Government is already committing significant funding to major projects, along with the AWPR, such as the M74 extension and the M80 upgrade, and I will announce a decision on improvements to the M8 in due course. That means that we will soon be in a position in which we will mainly upgrade and improve existing roads rather than build new ones—an approach that will fit well with our wider transport policy and environmental objectives.

The AWPR has been a complex scheme and there has been a wide range of issues to consider. There has been significant public interest in the route, with clear arguments on both sides. All statutory orders were published for the scheme, together with a comprehensive environmental statement. More than 9,000 objections were received, of which 179 were from statutory objectors. The objections have been analysed and responded to on an individual basis.

Because of the maintained objections, a public local inquiry was necessary. The Scottish ministers, having taken a policy decision to construct a special road to the west of Aberdeen, and in doing so having accepted the need in principle for the road, asked the inquiry reporters to advise them on the technical aspects of the route choice, including the published environmental statement and comments expressed thereon, and not on the justification for

the principle of the special road scheme in economic, policy or strategy terms.

The inquiry allowed the reasons for the route choice and the design to be fully and properly debated. The affirmative order procedure in the Transport and Works (Scotland) Act 2007 has been assumed to apply to the Aberdeen western peripheral route and a direction to that effect has been issued. The procedure requires that the made orders, which are statutory instruments, cannot come into force unless the Parliament, by resolution, approves them.

Having given careful consideration to the issues and arguments, I agree with the reporters' findings and reasoning and with their recommendation to proceed with the scheme. In arriving at that decision, I took account of six issues that the reporters highlighted as requiring further consideration. Those matters, which were raised by objectors, were: the restricted nature of the inquiry, and whether the scheme is to be treated as a national development by virtue of sections 143 and 143A of the Roads (Scotland) Act 1984; the requirements of the European Union habitats directive and the Conservation (Natural Habitats &c) Regulations 1994, with respect to the River Dee special area of conservation and European protected species; the requirements of the Wildlife and Countryside Act 1981, with respect to national protected species; the Human Rights Act 1998; the Aarhus convention; and junction capacities in the Stonehaven and Charleston areas.

On the first point, I am satisfied that the remit of the inquiry was appropriate. The need for the scheme was well established in principle and justified in policy and strategy terms, and the processes involved were fully open and transparent.

Secondly, I am satisfied that the issues regarding the European Union habitats directive have been addressed by the undertaking of an appropriate assessment that has been endorsed by Scottish Natural Heritage.

Thirdly, on compliance with the Wildlife and Countryside Act 1981 and the requirement that an appropriate obligation be placed on the promoter—in this case, the Scottish ministers—to ensure that the necessary legislative arrangements are in place to address the issue, I consider that the details of the decision letter provide the necessary conditions for ensuring that arrangements can be put in place to protect affected wildlife.

Fourthly, I am satisfied that the compulsory acquisition of land and properties is justified and that a fair balance has been struck between the rights of the individual and the wider public benefits that are provided by the scheme.

Fifthly, I have concluded that, in view of the considerable information that has been provided over a number of years to local residents and other interested parties, involving public consultations and meetings and the availability of documentation, the requirements of the Aarhus convention relating to public involvement in decision making have been met.

Finally, I am satisfied that the traffic modelling approach and growth forecasts that were adopted in designing the scheme were reasonable and appropriate.

With regard to the benefits and justification for the scheme, the AWPR is one of the most important projects in the current trunk roads programme. It incorporates a bypass of the city from Charleston to Blackdog and a fastlink dual carriageway to Stonehaven.

The AWPR project is not simply about building a road. It emerged from a major study into the provision of a modern transport system for Aberdeen that was carried out by the former Grampian Regional Council and the north east of Scotland transport partnership and is supported by the current regional transport strategy. The RTS includes investment in park and ride, rail, bus priority measures and commuter plans. This comprehensive solution to the transport needs of the north-east will deliver considerable benefits in and around Aberdeen. Within that, the AWPR will act both as a bypass for strategic traffic that does not need to access the city centre and as a local distributor providing access to key areas in the conurbation.

The AWPR will provide substantial benefits across the whole of the north-east of Scotland. It will provide a boost to the economy; increase business and tourism opportunities; remove traffic from unsuitable roads; and improve safety. It will also increase opportunities for improvements in public transport facilities; cut congestion and pollution in Aberdeen city centre; and, through the fastlink, address future congestion on the A90 south of Aberdeen.

It is estimated that the AWPR will generate total additional income in the north-east Scotland area of more than £6.33 billion and employment of 14,220 over the 30-year assessment period. In terms of tourism, it is estimated that there will be a 5 per cent increase in sales and a 2.5 per cent reduction in costs five years after the scheme's completion. It is estimated that, over the same timescale, there will be a reduction in costs of greater than 3 per cent in the haulage and distribution sector. In addition, it is estimated that the AWPR will reduce costs in the oil and gas sector by 2 per cent.

It is estimated that, in the year of opening, there will be a net reduction of 83 accidents with the new road in place. The AWPR will also provide better links to existing and proposed park-and-ride facilities, reducing the need for commuter traffic to cross the main conurbation. The space that will be freed up on North Anderson Drive and connecting roads will be available for use by public transport. Although that is a matter for the local authority, the AWPR will be the catalyst.

The journey across the urban area can take an average of one hour at peak periods. It is expected that the AWPR will reduce that by up to half, with traffic levels at Haudagain roundabout and Bridge of Dee cut by up to 20 per cent. All of that is good news for traffic that needs to cross the urban area from the north to the south. Access to the city centre will be greatly improved for residents, shoppers, freight and businesses.

The necessary timescale arrangements are under way to allow the procurement process to commence. The plan is to seek suitably qualified contractors in 2010-11, subject to the completion of the necessary statutory procedures. Assuming that parliamentary approval is given, we will need to review the remaining stages of the project to produce a definitive timetable. My expectation is that construction will start in 2011. The orders will be made tomorrow, 14 January, and laid before Parliament on Monday, 18 January.

Approximately £91 million has been spent so far, and the current estimated cost of the preferred route is between £295 million and £395 million at outturn cost in 2012. That is based on the risks that are currently identified, but we will continue to monitor the position in the light of prevailing tender prices for roads contracts. The cost estimate will be reviewed and updated prior to the commencement of the procurement process. It would not be prudent to re-estimate project costs until the statutory procedures are complete, as the configuration of the road cannot be presumed until then. The final costs will not be known until tenders have been returned and the contract has been completed.

The preferred route demonstrates a very high level of economic justification. It has a high benefit to cost ratio—the benefit being more than four times the cost of building the route.

The Scottish Government is meeting the largest share of the costs, contributing 81 per cent of the total cost of the northern leg and southern leg sections of the project. Aberdeen City Council and Aberdeenshire Council are each contributing 9.5 per cent. The cost and maintenance of the fastlink scheme will be met wholly by the Scottish Government.

The AWPR will be considered for procurement through the non-profit-distributing model, and financial advisers will be appointed shortly to take the procurement process forward.

As I said earlier, the promoters, Transport Scotland, are now finalising the draft Scottish statutory instruments, which will be laid in Parliament during the week beginning 18 January. The instruments will require affirmative resolution to become effective.

I regard this major road scheme to be a significant addition to our strategic road network, with particular benefits to the north-east of Scotland, and it will allow us to bring the country's road infrastructure closer to completion.

The Presiding Officer: The cabinet secretary will now take questions on his statement. We have 20 minutes and not one second longer, after which I must move on. Timing is very tight today, so please keep questions and answers brief.

Charlie Gordon (Glasgow Cathcart) (Lab): I thank the cabinet secretary for the advance copy of his statement. We support the project, the principles of which were first proposed by a Labour-led Scottish Government some seven years ago.

Given that the two local authorities are committed to funding 19 per cent of the costs of the northern and southern legs, and given the cabinet secretary's commitment to a review of cost estimates, which are likely to be well in excess of £400 million, does that 19 per cent contribution apply to outturn costs? Given that no procurement method is yet in place, and that two other major projects that were also supported by the previous Scottish Government, the Edinburgh airport rail link and the Glasgow airport rail link, have since been cancelled by the cabinet secretary, is he serious about letting the main road works contracts for the Aberdeen western peripheral route during this session, or is the statement window dressing for the future United Kingdom and Scottish parliamentary elections?

John Swinney: The local authorities will pay the appropriate share of the costs of the project according to the total cost arrangements that are in place. The councils will pay the share that I outlined in relation to the northern and southern legs of the project. That could not be clearer.

On Mr Gordon's second point, about the procurement process, I said in my statement that the project would be procured using the NPD model. That procurement process is now ready for commencement, and the appropriate decisions will be taken once the project is completed. Obviously, we want to move ahead with the project as quickly as we possibly can, and the Government will take every step to ensure that that is the case.

Alex Johnstone (North East Scotland) (Con):

I welcome today's statement and I say, together with the whole of the north-east, "Not before time."

In considering how the project will be achieved, can the cabinet secretary give some guarantee that the timescale that he has put in place will be kept to? This project, like many others, has been burdened with huge delays. Can he guarantee that the projected costs will quickly be brought to an actual figure? Significant concern has already been expressed by Labour that the eventual figure will be significantly greater than the top of the range that has been stated.

Can the cabinet secretary give me a definitive statement about what was taken into account in consideration of alternative junction structures, particularly at the Stonehaven junction? Were only traffic modelling and growth forecasts taken into account, or were development issues in the area also considered? Given the significant costs that will accrue to the local authority, it is important that we do not undermine the opportunity there.

John Swinney: On Mr Johnstone's first point, all I can say is that the Government has to go through due process in taking forward such a scheme. There were 9,000 objections to the scheme, including 179 statutory objections that were not withdrawn. We had to have a public local inquiry to examine all the issues. No one wants to make more progress on the matter than I do, but we have to allow due process to be undertaken, or the Government will not fulfil its obligations under the law.

On the timescale, as I set out in my statement, we expect construction to start in 2011. That is ministers' priority. I also said in my statement that final costs will not be known until tenders are returned and the contract completed. Obviously, we are working to maximise value for the public purse and to ensure that the project is consistent with that objective.

Mr Johnstone's final point was on the Stonehaven junction. I assure him that the reporter fully assessed the issues in that regard. The decision on any development interest is predominantly for Aberdeenshire Council to take, in the normal manner of planning applications. As I said, the reporter fully examined the issues with regard to junction capacity at Stonehaven.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I thank the minister for giving the Parliament information that was, of course, given to the press on 21 December.

We still do not know how this vital north-east project will be paid for. Does the minister understand that it is surely not right for him to say in his statement that he is still considering how to fund it? The shire and city councils are expected

to pay for 19 per cent of the scheme, during an enforced council tax freeze. How are they supposed to do that? Is it not true that this Government does not have the money and that it is leaving the funding and commencement of the project to the next Administration, after 2011?

The AWPR was never a standalone project; it was always supposed to be part of an integrated transport system for the north-east. The Government has dropped Aberdeen crossrail, which would have provided commuter trains every 15 minutes. Where are the park-and-ride facilities that were supposed to be planned for the AWPR?

My final question is specific to my constituency. Why did the Government ignore plans for an alternative junction at Stonehaven—an option that would save the taxpayer some £5 million in compensation? The Government's plans mean that a supermarket cannot be built where the community wants it to be built. Contrary to what the minister said, the decision is not for Aberdeenshire Council; the council has already made the decision—

The Presiding Officer: I must hurry you, Mr Rumbles.

Mike Rumbles: The taxpayer is out of pocket by £5 million on the junction.

John Swinney: Mr Rumbles's contributions never cease to amaze me. At least Mr Johnstone had the good grace to say that he welcomed the decision as being of benefit to the north-east of Scotland. There was not a word of encouragement, motivation or—

Members: Thanks?

John Swinney: I would not expect thanks from Mr Rumbles—that would be asking far too much. Perhaps someone of a more charitable disposition on the Liberal-Democrat benches might have recognised and welcomed that we are making significant progress and that we took the decision after a prolonged PLI.

I said that the project will go forward through the non-profit distributing model. That is the procurement method that the Government has chosen.

I turn to Mr Rumbles's point on the supermarket and the junction design at Stonehaven. As I explained to Mr Johnstone, the reporter considered fully the issues in relation to the design and layout of the junction, and I have satisfied myself that the reporter's assessment is the appropriate assessment of all the issues.

The Presiding Officer: We come to open questions. I repeat that we have no time to play with; members should keep it brief.

Brian Adam (Aberdeen North) (SNP): I very much welcome the decision that the cabinet secretary made before Christmas, as I welcome today's statement.

The AWPR is one of two projects to improve access from the north of Aberdeen. In the interests of economy and efficiency, will the cabinet secretary consider adding the Haudagain roundabout scheme to the package when it goes to procurement?

John Swinney: I will certainly give consideration to the point that Mr Adam raises. As the Government has made clear, it has assumed responsibility for the improvements to Haudagain roundabout and has given clear assurances on how that development will be taken forward. I will consider the point as part of the procurement process.

Lewis Macdonald (Aberdeen Central) (Lab): The cabinet secretary said that he intends to deliver the project through the non-profit distributing model. He has been clearer on that in answer to questions than he was in his statement. He also said that he expects that the Scottish Government will bear the cost of maintaining the scheme. How will he achieve that? Will there be two separate contracts—one for construction and one for maintenance—rather than the cost of maintenance being met from the annual payments that are made to the main contractor, as would normally be the case with a non-profit distributing model? What work has been done to establish whether private sector partners are willing to fund a scheme of the size of the AWPR on such a model?

John Swinney: Mr Macdonald raises a specific point about the mechanism of the contract structure. That will be considered properly as part of the procurement process.

On private sector interest, I assure him that there is significant private sector appetite to be involved in other NPD-model projects that have gone to procurement, and I expect that to be the case on the Aberdeen western peripheral route into the bargain.

Nanette Milne (North East Scotland) (Con): I, too, am delighted with the announcement about the road, having been involved in trying to get it for more than 20 years. Does the cabinet secretary have any idea when in 2011 work is to start on it? Does he have any idea whether the north leg or the south leg will be commenced first? Can he give any indication as to when traffic will first be able to use the road?

John Swinney: All those points will be addressed by the design approach that the preferred contractor takes. As I said in my statement, I expect construction to start in 2011.

That timescale is a welcome way of moving ahead timeously with the project now that we have addressed the issues that were raised in the public local inquiry. The priority is now to ensure that we have a construction approach that delivers the project efficiently and timeously as a consequence of construction starting in 2011.

Jim Tolson (Dunfermline West) (LD): Since the cabinet secretary's announcement on 21 December 2009, can he tell me what specific discussions he has had with Aberdeen City Council and Aberdeenshire Council in regard to the AWPR and, specifically, how they are to pay their 19 per cent share of the funding of the AWPR from their frozen council tax budgets?

John Swinney: Mr Tolson never ceases to surprise me in the way he manages to torment the English language.

Aberdeenshire Council and Aberdeen City Council have both had increases in their budgets under this Administration. In fact, both have had increases higher than the average Scottish local authority budget increase. I have been criticised for that in other parts of the country, but that is the outcome that the funding formula delivered. The Government has fully funded the council tax freeze on every occasion.

I have regular dialogue with the councils but I have not discussed with them the issue that Mr Tolson raises. I most recently met Aberdeenshire Council in December. I would be happy to have discussions with both councils, as I do regularly. If any issues about the contribution that they are expected to make and have agreed to make to the project require to be clarified, they can be clarified. Officials from Transport Scotland are in frequent dialogue with their counterparts in Aberdeen City Council and Aberdeenshire Council.

Maureen Watt (North East Scotland) (SNP): Like many people in the north-east, I am delighted that the AWPR is set to proceed and look forward to the economic benefits that it will bring to the region. Like Nanette Milne, in 1996 I thought that we had a done-and-dusted route at a cost three to four times lower than the current estimate.

The Presiding Officer: Ask a question, please.

Maureen Watt: Given that the current economic downturn has affected the construction industry and that plant hire costs are now much lower, does the cabinet secretary believe that the AWPR may benefit from reduced costs, potentially saving the public purse money?

John Swinney: As Maureen Watt correctly says, the AWPR will have significant economic benefits. As I indicated to Mr Johnstone, the Government will look to secure maximum value from the procurement process to ensure that we

deliver the road at the lowest possible cost to the taxpayer. Securing that value will be at the heart of the procurement process.

Richard Baker (North East Scotland) (Lab): Much-needed action to tackle congestion at the Haudagain roundabout in Aberdeen has been linked by the Government to the completion of the peripheral route. How long after the peripheral route has been completed will work begin at the Haudagain? Will it be as soon as the route is finished, which was the previous commitment? Will it be by 2012?

John Swinney: As Mr Baker knows, the Government has made very clear its commitment to take forward the improvements at Haudagain roundabout. It is common sense to link that directly to the approach to the AWPR. We have said that we can start improvements at Haudagain once the proposal is approved by Parliament, which of course has still to happen. We will start the improvements immediately on completion of the AWPR. Obviously, we will deliver the improvements as speedily and efficiently as we can. The Government has given a commitment that the road will be handed over with the improvements to Haudagain roundabout paid for by central Government, which I think provides the necessary reassurance to members of the public and interested parties on this important question.

Patrick Harvie (Glasgow) (Green): I thank the cabinet secretary for what may turn out to be the Government's opening statement in a judicial review of the project. How can he seriously expect any of us to take with any credibility a cost benefit ratio when he has openly admitted in the chamber that he does not know what the final cost will be either to Scotland or to local communities paying their council tax, and when he has made no mention of the carbon cost or the opportunity cost of money that could be spent on public transport? When are we going to see a transport policy that bears the slightest relation to climate change targets or to real people's needs?

John Swinney: Mr Harvie and I consider these points frequently and I know that he has deeply held views on projects such as the AWPR. I will say two things to him on this question, the first of which is a point that I made in my statement: the Government wants to complete the road network so that in the future we are in the position of maintaining an existing road infrastructure rather than developing a new one. Secondly, the Government is taking forward a number of interventions that are essentially designed to support the development of public transport, including improvement of the rail line to Aberdeen and the rail connections from Aberdeen to Inverness, and a number of other developments around the country where we are working

constructively to improve public transport opportunities for members of the public. That is the balance that the Government is trying to strike. I appreciate that Mr Harvie has strongly held views about whether that balance is correct. The Government believes that it is, and we will continue to work to effect that in the priorities that we take forward.

The Presiding Officer: There are two more questions, and we have a minute and a half to get both in with their answers.

Nigel Don (North East Scotland) (SNP): I welcome the AWPR on behalf of the citizens of Aberdeen. I wonder whether I heard the cabinet secretary aright. As I understand it, he suggested that scheduling would depend on what the contractor wanted to do. Will there be input from us and others locally? It seems to me that the ring road should be well ahead of the fastlink, and the faster we can get the bridges into use, the better.

John Swinney: There are obviously a series of issues involved in the operational priorities for taking forward the contract. There will, of course, be a significant amount of consultation on many of those questions.

Nicol Stephen (Aberdeen South) (LD): I thank the minister for his statement. I will ask a question on behalf of my constituents Bob and Roseanne Baxter, who live at 250A North Deeside Road, Milltimber. Their property is required for the route that has now been confirmed by the cabinet secretary. However, they were told back in 2008 that Transport Scotland would not proceed with the compulsory purchase of their property until a decision had been taken. I do not understand why that occurred, because, as the minister well knows, several properties, including the International school of Aberdeen have not only been acquired but, in the case of the school—

The Presiding Officer: I must hurry you.

Nicol Stephen:—been substantially rebuilt in a different location. Will the minister confirm that he will proceed with the compulsory purchase of the property, as is stated in the report, and will he do it on a timescale that conveys a similar urgency as is conveyed by the timescale on which he is laying the orders before Parliament—in other words, immediately and, certainly, as quickly as possible—

The Presiding Officer: Thank you, Mr Stephen; I cannot allow you any more time.

John Swinney: Nicol Stephen will appreciate that I will reserve my right to write to him about that question. I hear the point that he has made on behalf of his constituents. I will ensure that that issue is addressed timeously and will respond to him in writing as soon as I can.

Interpretation and Legislative Reform (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-5428, in the name of Bruce Crawford, on the Interpretation and Legislative Reform (Scotland) Bill.

15:06

The Minister for Parliamentary Business (Bruce Crawford): I take this opportunity to thank the Subordinate Legislation Committee and the Standards, Procedures and Public Appointments Committee, and their officials, for the hard work and considerable thought that they have put into scrutinising the Interpretation and Legislative Reform (Scotland) Bill.

The stage 1 report provided a comprehensive review of the provisions in the bill. The Government welcomes and agrees with many of the comments and recommendations that were made by the Subordinate Legislation Committee. Inevitably, we have yet to find agreement with the committee on some matters that were raised in the report, although I am hopeful that that can be remedied.

The bill deals principally with interpretative and procedural matters, providing the fundamental legislative architecture that is required for a modern Scotland. The bill modernises, where appropriate, the Scottish interpretation code; it streamlines the scrutiny procedures for Scottish statutory instruments, replacing more obscure procedures with one of three standardised procedures; and it updates the provisions for the publication and preservation of SSIs. Broadly speaking, the approach that we have taken is to restate the content of the existing transitional orders on interpretation and special parliamentary procedures. However, after 10 years, we have rightly taken the opportunity, where appropriate, to modernise our interpretation code.

Part 1 contains provisions that will apply only to the interpretation of future acts of the Scottish Parliament. Existing acts of the Scottish Parliament and instruments will continue to be governed by the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999. Westminster legislation will continue to be interpreted in accordance with the Interpretation Act 1978.

I confirm that I agree with the committee's recommendation that it is important to put beyond doubt that acts of sederunt and acts of adjournment fall within the definition of "Scottish instrument". I

shall, therefore, as the report recommends, lodge an amendment clarifying that acts of sederunt and acts of adjournment will fall within that definition.

Part 2 serves as an excellent example of the constructive relationship between the Government and the Parliament. The thrust of the policy for part 2 stems from the Government's support for recommendation 1 of the Subordinate Legislation Committee's report, which said that, subject to some improvements, the current arrangements and procedures for scrutinising SSIs should be retained.

The bill also provides for the minimum period between the laying of negative instruments and their coming into force to be extended from 21 to 28 days. However, the committee's stage 1 report has called for further consideration to be given to the merits of further extending that period to 40 days. The Government has already provided the committee with information on the potential difficulties arising from such a move, particularly the introduction of delay to the smooth passage of the Government's legislative programme. The previous Administration agreed with our position that an increase to 40 days would be inappropriate. In evidence to the Subordinate Legislation Committee in November 2006, the then Minister for Parliamentary Business said that such an increase

"would cause us considerable difficulties in keeping the show on the road"

and would

"create gluts in the system".—[*Official Report, Subordinate Legislation Committee, 21 November 2006; c 2131.*]

She then proposed the compromise of increasing the time period to 28 days. A move to 40 days could prove problematic in respect of a couple of policy areas in particular. Obvious examples would be SSIs implementing European Union obligations or those that update the frameworks for eligibility to legal aid in consequence of Her Majesty's Treasury announcements on the retail prices index. I add that I have yet to see evidence that the current process is causing difficulties. If it is not, why would we want to fix something that is not broken?

The committee also recommends the inclusion in the bill of a maximum time within which the maker of an instrument could revoke it. I appreciate the committee's desire for clarity and certainty, but I reiterate that such a provision could cause practical difficulties. Much will depend on the circumstances of the instrument. It may not be possible to make appropriate arrangements within the given timeframe, especially if it is short.

In addition, I have considerable reservations about the proposition that, on the annulment of an instrument, its maker should make an order

restoring the original position. As the committee recognises, that will not always be possible or desirable—for example, when EU obligations are being implemented, or when a body corporate has been dissolved. As the annulment of an instrument is a rare event that is more likely to be prompted by policy considerations than by technical drafting concerns, I suggest that political, as opposed to technical, solutions are appropriate.

However, on both those issues, I will give further careful consideration to the points that the committee made and will respond to them fully in the Government's response to its report.

The provisions in part 3, on the publication of acts and instruments, raise important issues about the accessibility, publication and preservation of Scottish legislation. I confirm that, as the committee suggests, the Government will lodge amendments that will oblige the keeper of the records of Scotland to preserve all SSIs and the Office of the Queen's Printer for Scotland to provide a printed copy of every SSI to the National Library of Scotland.

The pre-consolidation modification power in part 4 is intended to simplify and speed up the consolidation process. We are of the opinion that the provisions in question would aid the maintenance of Scots law, but the Subordinate Legislation Committee and the Standards, Procedures and Public Appointments Committee still have concerns about them. I will consider those concerns further and will provide my views on them as part of the Government's formal response to the report.

Part 5 sets out the procedure for instruments that by virtue of their parent act are subject to the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999, which made transitional provision for such special procedure until an act of the Scottish Parliament could provide for it. The provisions in the bill replicate those in the transitional special parliamentary procedure order.

The Government notes that the committee has concerns regarding section 55, to which we are giving serious consideration. The issue at stake is technical and complicated. We will provide the committee with the results of our consideration before stage 2.

There are a few more points that I want to deal with at this stage. On the service of documents by electronic means, which is dealt with in section 26, I want to pick up on the concerns that have been expressed by certain sectors of the legal profession, including the Law Society of Scotland, which I know wrote to all MSPs yesterday on the matter. As I promised in oral evidence to the

Subordinate Legislation Committee, the Government will lodge an amendment to clarify that prior written agreement of the parties concerned would be required before documents could be serviced through the use of electronic communications.

I again thank the members of both committees for their work on the bill, which has been a fine example of the Government, the Parliament and civic Scotland working together for the good of Scotland. There are some issues that I have not had time to deal with, but I hope that I will have time to address them in my closing remarks. I look forward to listening to the views and comments of members.

I move,

That the Parliament agrees to the general principles of the Interpretation and Legislative Reform (Scotland) Bill.

15:14

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): As the convener of the Subordinate Legislation Committee, I am very pleased to take part in the debate. Ten years into devolution, the bill ties up the several loose ends that were bequeathed to us, *inter alia*, by the Scotland Act 1998. In the limited time that is available to me, I will comment on several aspects of the committee's report, to which I earnestly refer all members. I, too, thank past and present members of the Subordinate Legislation Committee, the Scottish Government and the minister for their co-operative approach, and all those who gave evidence to the committee either orally or in writing.

On part 1, on interpretation, the committee received representations from witnesses that schedule 1 did not include a range of words and expressions that are defined in section 127 of the Scotland Act 1998. The missing expressions include "reserved matters", "legislative competence" and even, believe it or not, "the Parliament". The committee accepted that what to include in schedule 1 is a matter of judgment, but we have asked the Scottish Government to review the list of words and phrases that are currently included in it with a view to extending the list by amendment at stage 2.

On part 2, we welcomed the provision in section 28 that will extend from 21 to 28 days the minimum period before an instrument that is subject to the negative procedure can come into force. The minister alluded to the fact that the committee also explored whether that period should be extended further to 40 days. In terms of scrutiny, we believe that extending the minimum period before a negative instrument can normally come into force will strengthen the Parliament's

hand. To be fair, some members believed that an extension from 21 to 28 days was sufficient; others were in favour of an extension to 40 days; I am duty bound to say that there was no unanimity on that. However, we noted that the Scottish Government remains opposed to a further increase in the period and to extending the period in which a negative instrument can be annulled by the Parliament. We recognised that the Government has valid concerns about potential delays to the lawmaking process that a further extension would create, but we were not convinced by the worst-case scenario that the minister put forward, as it included the Parliament's summer recess. I expect that we will return to the matter at stage 2—the minister confirmed that we would. I look forward to that.

Also on the negative procedure, we considered that it is desirable to have a high degree of certainty about what should happen following a resolution of the Parliament for the annulment of a negative instrument, and concluded that section 28 is currently lacking in that respect. We believe that an appropriate maximum time within which the Scottish Government must revoke an instrument should be included in the bill.

Part 4 is on pre-consolidation modifications of enactments. We had a concern. The provisions in part 4 will give the Scottish ministers an order-making power to enable them to make amendments to legislation prior to its being consolidated or codified. We fully support the objective of maintaining and modernising Scots law in order to ensure that it is up to date, accessible and as user friendly as possible; indeed, we have said many times that we want to encourage consolidation of the law. However, we concluded that the proposed order-making power is extremely wide, if not too wide. As an alternative, we were attracted by a suggestion from the Scottish Law Commission that a consolidation procedure should be available to incorporate amendments proposed by the commission that are considered necessary for or that would facilitate proper consolidation of the existing law. It would make clear that such amendments could be subject to expedited procedure but would require matters of policy to be the subject of primary legislation rather than affirmative order. That is also our position on a restatement of the common law or codification.

On balance, therefore, we have recommended that part 4 should be amended to remove the power for the Scottish ministers to make pre-consolidation modifications of enactments by order. As an alternative, we recommend that the Scottish Government explore an enhanced role for the Scottish Law Commission.

I have touched on several issues in the time that is available to me. I expect my committee colleagues to discuss other aspects of our report.

I pay tribute again to the inclusive attitude that the minister and his colleagues in the Scottish Government have shown to us. The bill is an example of how, through working in the interests of good governance in the Parliament and the Government, there can be a meeting of minds. We set out our thoughts in our report and we look forward to engaging again with the Scottish Government at stage 2.

I look forward with great interest to what other members will say. We give a cautious welcome to the bill but, as I have said, we consider that additional work requires to be done to ensure that it is fit for purpose for the years to come.

15:19

Paul Martin (Glasgow Springburn) (Lab):

Since May 2007, I have made a number of front-bench speeches on justice issues on behalf of the Labour Party. I would not call this an exciting comeback to the front benches, but it is important to recognise, as members do, that the bill is fiercely technical. To be serious, it is extremely important. Its proposals have been debated over many years—those debates are available for scrutiny in the *Official Report*.

As a member of the Justice Committee, I remember being concerned about the volume of SSIs, in particular, that were debated at the committee—there always seemed to be concerns about the lack of full and proper scrutiny. I also felt that a large number of SSIs were considered prior to the recess. Today's debate affords us an opportunity to make progress in a practical sense.

However, it is important for us to recognise that the Subordinate Legislation Committee has highlighted a number of important issues. As the minister said, we have regulated those matters under the three transitional orders that were made under the Scotland Act 1998. The minister was right when he told the committee on 3 November that, 10 years on, it is the right time for us to move on.

I note that the Crown will now be bound by the terms of an act of the Scottish Parliament or instruments under such acts, unless it is expressly exempted. I suppose that that move is considered to be part of the modernising agenda. However, it is important to highlight the concerns that have been expressed by the judiciary, advocates and the Scottish Law Commission. On behalf of the Labour Party, I share the Subordinate Legislation Committee's concerns about some of the challenges that may be faced in connection with the future drafting of acts of the Scottish

Parliament and Scottish statutory instruments. A constructive tone from the minister would be welcome, to ensure that further consideration is given to those concerns and to provide reassurances on how they can be addressed.

As the minister indicated, in paragraph 157 of its report the committee welcomed section 28, which will extend from 21 to 28 days the minimum period before an instrument that is subject to the negative procedure can come into force. That move is to be welcomed, but I understand the concerns that the committee expressed on the issue. Although the committee recognised the validity of the minister's concern that extending the period further could lead to delays in the lawmaking process, it made the point that he was painting a worst-case scenario that included the summer recess. It is not unprecedented for politicians in the chamber to paint the worst-case scenario. I do not necessarily criticise the minister for doing so, but it would be welcome for objective consideration to be given to other scenarios. Perhaps the Scottish Parliament information centre could provide that information. Jamie Stone made the point that the hand of the Parliament should be much stronger and that members should be afforded more opportunity to scrutinise instruments.

In the limited time available, I have been able to highlight only a couple of issues. However, I have been afforded the fortunate position of being allocated the closing slot in today's debate, so I will have an opportunity to raise other issues on behalf of the Labour Party, which will be helpful.

15:23

Jackson Carlaw (West of Scotland) (Con):

There are watches to be won in the Parliament, which are to be found in the nuggets that are the appointments in the gift of our political leaders. They manifest themselves in many ways, and none more so than in the committees on which we find ourselves asked to serve. Surely there can be no greater honour than to spend the lifetime of this Parliament in the service of the Subordinate Legislation Committee; Jamie Stone and Ian McKee stand alongside me as witnesses to that fact. So great is the competition to contribute—such is the elbow jostling for the honour—that our Labour colleagues tend to be able to spend but a few months each amid our number.

Week after week, month after month, we toil. Just when the excitement has become all too unbearable, we find that we have been asked to lead the examination of a bill all by ourselves. Given its racy title—the Interpretation and Legislative Reform (Scotland) Bill—who could contain their pride or excitement? Which of us speaking today has not suddenly found themselves an expert on the subject matter in

hand, at least in the minds of their colleagues? How the clerks must laugh.

Scottish Conservatives welcome the bill and will support it at stage 1. I welcome the minister's opening speech. There are detailed issues that arise. It is right for me to say at the outset that, even when the subject matter may be characterised as being as dry as dust, important principles are often at stake. As unlikely as it seems, well-intentioned legislation that is sometimes characterised as being sensible housekeeping can conceal ambitions beyond those that have been generally supposed.

Certainly, the committee had an exceptional series of evidence-taking sessions. Rarely have both the answers to the questions and the questions themselves not always been understood both by those to whom the questions were addressed and by those doing the asking.

For those of us who have enjoyed Hilary Mantel's Booker prize-winning novel, "Wolf Hall"—a magnificent account of the relationship between Henry VIII and Thomas Cromwell—it was a surprise to find so many references back to King Henry as we contemplated the bill. Colleagues from across the chamber will take their own positions on this, but I mention the former monarch of England only because section 20 seeks to redefine the status in law of the present monarch of the United Kingdom in a way that will be different for laws made in this Parliament compared with laws made at Westminster. Although I do not support that provision, I understand the curiously primitive need of some to strain every sinew to diminish the residual role and position of the Crown. However, ministers are also invariably keen to quote the experts, who in this case were surprisingly unequivocal. The Scottish Law Commission, the judges of the Court of Session and the Faculty of Advocates all believe that the proposals might well lead to considerable confusion in law. That was acknowledged even by those who welcome the proposal. I welcome Paul Martin's comments in that regard.

It seems to me that now is not the moment to beat the breast in some great quest for egalitarianism or for ministers to pander to their desire to be able to claim some great advance for democracy; pragmatism must have its place. There seems to me to be no case for creating unnecessary confusion, which is the practical implication of the proposed change in the status of the monarchy. Therefore, we urge the minister to resist those baser instincts and to leave well alone.

In his evidence, the minister fell back on the defence that the sovereign had not yet found the time to phone him up from Balmoral to complain. In practice, I suspect that the sovereign has

probably not found the time to phone him up about anything from anywhere, but what a way to contemplate celebrating Her Majesty's forthcoming diamond jubilee. Are we to inform her of the Scottish National Party's intention—to paraphrase Rodgers and Hammerstein—to “Cut you off at the knees, Your Majesty”? We will lodge amendments at stage 2, on which we hope to enjoy the support of practical-minded unionists and others from across the political parties.

The Subordinate Legislation Committee report details what came to be the most likely area of disagreement. Indeed, on any other day the outcome of the committee's discussion might have been different. I refer to section 28, which will extend the minimum period before an instrument that is subject to the negative procedure can come into force from 21 to 28 days. I, too, have the honour of summing up for my party and I will detail the Conservatives' position on that when I do so.

In conclusion, we will support the bill at stage 1. We look forward to the rest of today's debate and to stage 2.

15:27

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I enjoyed Jackson Carlaw's four minutes in the sun, but the bill is, as has been pointed out, a largely overdue and very technical measure that is designed to update and reform the legislative process for statutory instruments. As such, the bill is largely uncontroversial, so the minister will not be surprised to hear that the Liberal Democrats, too, will support the Government in tonight's vote on the general principles of the bill.

However—there is always a “however”—as today's debate comes just one week after the highly controversial stage 1 debate on the Public Services Reform (Scotland) Bill, through which ministers seem to be determined to take to themselves more powers from our Parliament, the Liberal Democrats approach the Interpretation and Legislative Reform (Scotland) Bill with justified scepticism about part 4, which is entitled “Pre-consolidation modifications of enactments”. That title might seem innocuous enough—although, what a description in a title—but the Liberal Democrats are grateful to the Subordinate Legislation Committee for bringing Parliament's attention to what the Government seeks to do under part 4. For consolidation bills, the Government intends not only to ingather powers that have already been granted by Parliament but to go further than simply restating the law in a more consolidated fashion. Oh, yes. Scottish ministers wish the power to alter the law.

I understand that, as an example of what he wants the power for, Bruce Crawford told the committee that he wants to be able to change the penalties for offences that have already been outlined in existing acts of Parliament and which have been decided by MSPs. In the Liberal Democrats' view, such a power is not only unnecessary but is exactly the sort of thing that should be opposed. Too often, ministers come to Parliament seeking to curtail the powers of Parliament, but twice in two weeks in two bills is too much.

I am not at all keen to see powers being taken from Parliament and handed over to the Government at any time. I warned against that during the Parliament's first two sessions, and I now hear those who were then in opposition and who are now—some might say temporarily—in government, arguing the opposite.

I do not always trust Governments to handle such issues in an entirely unpartisan way. If the minister truly believes that the powers are necessary and would be used in an unpartisan way, he can have no objection to—for instance—giving the role of recommending changes to the law in such circumstances to the Scottish Law Commission, thereby taking the power of initiating the changes out of ministers' hands. There is no question but that part 4 should therefore be amended at stage 2; it would be bad legislation.

I will move on to one other issue of importance in the bill, which is in part 3, entitled “Publication of Acts and Instruments”. I am aware of the importance of our national written records. The national libraries of the four UK nations keep copies of our acts of Parliament and statutory instruments, and should continue to do so. I am aware, however, that there are no national standards for holding digital records, so I was pleased to hear from the minister this afternoon that he will amend the bill to ensure that our written records are properly kept. He has recognised that, at least.

We in the Liberal Democrats will support the bill at stage 1, but our support should not be taken for granted. I have outlined our concerns about part 4, which we believe is anti-parliamentarian. We trust that the minister will lodge amendments at stage 2 to address those concerns and, thereby, much improve the bill.

15:31

Ian McKee (Lothians) (SNP): As a proud member of the Subordinate Legislation Committee, I join other members in thanking the clerks and the legal team for their skilled input to scrutiny of the important bill that is before us today. I also thank the bill team for their efforts.

As we have heard, since the inception of the current Parliament, the publication, interpretation and operation of our acts and the making and publication of subordinate legislation and procedure around orders that are subject to special parliamentary procedures have been regulated by transitional orders that are made by the UK Government under the Scotland Act 1998. Although that system has served us well, 10 years is long enough for us to decide here in Edinburgh how we wish to regulate our procedures, so the legislation is timely.

A speech of four minutes in a debate that is to last for only an hour will obviously not cover many aspects of the bill, so I will limit myself to discussing only a few. I turn to the section entitled “Instruments subject to the negative procedure”, which has been the subject of vigorous debate. The debate is often characterised as being between Government and Parliament, with the Government wanting to advance its legislation with minimum delay while Parliament, on the other hand, desires to subject legislation to detailed scrutiny for as long as possible. Unless the Opposition secretly feels that it will remain in opposition for a long time indeed—some remarks today have betrayed that fear—that aspect is not a party political matter.

Mike Rumbles: Will the member take an intervention?

Ian McKee: I would normally take an intervention, but I have only four minutes.

Any advantage that an Opposition might achieve by altering legislation to slow down the passage of legislation excessively would come back to bite it if and when it was to form a future Government. The public interest is not served if legislation is not subject to appropriate scrutiny, but nor is it served if that scrutiny is so inordinately long that valuable legislation is inappropriately delayed. A balance must be struck.

What must exercise us is how long the period should be before a non-emergency instrument that is subject to negative procedure can come into force. As Bruce Crawford told us earlier, the former Minister for Parliamentary Business, Margaret Curran, told the predecessor Subordinate Legislation Committee in November 2006 that she was happy for the period to be extended from 21 to 28 days, but that proposals to extend it to 48 days

“would create a real difficulty.”—[*Official Report, Subordinate Legislation Committee*, 21 November 2006; c 2131.]

Bruce Crawford, on behalf of the present Government, took exactly the same message to the Subordinate Legislation Committee in November 2009, three years after Margaret

Curran did so. He explained that an instrument that was laid on 29 May would not have been able to come into force until 11 September if the 40-day rule was in effect. I appreciate that that is the worst possible scenario, but worst possible scenarios occur from time to time and we have to plan for them. Mr Crawford’s opinion that a delay of that magnitude is undesirable is not unreasonable.

In its 12th report of 2008, the Subordinate Legislation Committee unanimously agreed

“that to require even the most routine instruments to be laid for 40 days is probably unworkable.”

We went on to recommend an extension to 28 days, but there are still siren voices urging an extension to 40 days.

For my part, I am persuaded by the argument of Margaret Curran and Bruce Crawford and share the view of the other authors of the report—Jamie Stone, Richard Baker, Jackson Carlaw, Helen Eadie, John Park and Gil Paterson—that 28 days is the appropriate period to elapse before a laid instrument that is subject to the negative procedure comes into force, and that a period of 40 days would not only be unnecessarily long but would risk inhibiting the democratic process.

I have another 10 interesting points to make, Presiding Officer, but in view of the time constraints that we face, I will have to leave them for another occasion.

15:35

Helen Eadie (Dunfermline East) (Lab): Given what Jackson Carlaw said, I point him to the fact that I am probably one of the longest serving members of the Subordinate Legislation Committee, at least from the Labour Party and perhaps even among members of other parties. However, I enjoyed his speech immensely, as ever.

I agree with some of the points that Jamie Stone made, particularly those about the way in which the Minister for Parliamentary Business handled the committee’s approach. He has been helpful and constructive. I say, in a non-partisan way, that we welcome the constructive attitude that he has taken to the matter.

In considering the Interpretation and Legislative Reform (Scotland) Bill, we must be mindful of the fact that there were only 17 respondents to the consultation. However, they included academics, legal practitioners and representatives from the Scottish Parliament, the Scottish Law Commission and the Scottish Government. I do not mention the number of responses in order in any way to diminish the importance of the matter; in fact, the bill is highly important, and I sometimes think that

we have not given it the space that it should have had. It is a great pity that we do not have time today to do justice to the many provisions that it contains.

I want to focus on a matter that has been discussed by other members—whether to move to a period of 40 days or 28 days for instruments that are subject to negative procedure. In that regard, I point members to the particularly important evidence that was given by Iain Jamieson. We should all bear in mind his important point that, although a 28-day period will help the subject committees, the whole point of everything that we do is for the procedures to be helpful to the Parliament as a whole. In this case, they should enable the Parliament to consider whether to annul an instrument before it comes into force. I believe—I know that other members support the view—that the example that the minister chose to illustrate his point represents the worst-case scenario because it includes the Parliament's summer recess. The committee considers that if the relevant period were to be extended, the Government could adapt its internal procedures for the making and laying of instruments in order to avoid such a situation occurring in practice.

There is clearly a strong case for extending the period to 40 days—we should do it if we truly believe in scrutiny. As a member of the Parliament for some 10 years, I can probably count on the fingers of both hands the number of times when we have annulled an instrument. I could be wrong about that, but it has not happened often. It is not something to get too worked up about, but it is a fundamental point of principle that we should enable the Parliament—not just the committees—to have a voice in the process. That is the essence of the evidence that we considered.

It is a great pity that we do not have time to concentrate on a variety of other topics. I agree with the points that Mike Rumbles made on consolidation. We received evidence on that, particularly from the Scottish Law Commission, whose view is that consolidation should not be used to promote policy alterations to legislation. I support the view that any consolidation should be based on recommendations by the Scottish Law Commission. In responding for the Scottish Government, Mr Crawford said that he did not believe that it would be acceptable to leave the changes to the commission, but I believe that there is a way round that.

The Parliament should support the view that Mr Layden expressed in evidence, which is that a consolidation committee should be given the Scottish Law Commission's proposals. There would then be a process between the Scottish Law Commission, that committee and the Parliament, as there was in 2003, and the

committee would work out its views. Mr Layden spoke as a draftsman of the previous consolidation bill. He found that process to be perfectly acceptable, as I do. The committee that oversaw the consolidation was very careful in respect of what it accepted as being necessary, because it was conscious that anything more would have to be debated by the Parliament. As that was not going to happen, it took a more restrictive approach. As a result, I am very glad that the Subordinate Legislation Committee has agreed that the Scottish Government should explore the possibility of giving the Scottish Law Commission an enhanced role, or consider what further provision might be necessary to give effect to the committee's recommendations on consolidation.

15:40

Bob Doris (Glasgow) (SNP): I am grateful for the opportunity to speak in this debate. As a member of the Subordinate Legislation Committee during stage 1 and the publication of the stage 1 report, I must pay tribute to my fellow committee members, the committee clerks, the legal team and the Scottish Government bill team for their hard work and co-operation. I have to say that I found the task to be rather dry, unglamorous and challenging, so I must apologise to members on the committee who have been secretly enthralled by the process and those on the legal team who cannot get enough of this bill. To be honest, it is not really for me.

However, dry though the whole matter might have been, the bill is still very important. In a small yet significant way it represents a spreading of the Scottish Parliament's wings away from the three transitional orders that empowered it to make and interpret acts of the Scottish Parliament. As those transitional orders were based on the UK Interpretation Act 1978, it is only right that, after 10 years of devolution, we review the situation and introduce new legislation.

As members have already pointed out, in its stage 1 report the committee could not reach a clear consensus on a number of aspects. One of the key elements of part 2, which seeks to implement the recommendations of the 2007 inquiry into the regulatory framework in Scotland, is the increase from 21 to 28 days in the period after which a negative instrument should come into force. I welcome the Scottish Government's acceptance of that recommendation; however, at committee, some members decided that we should go further than 28 days. Indeed, as we have heard, 40 days was suggested. Like other members, I was somewhat surprised by the proposal, given that the recommendation to

increase the period to 28 days had been made in 2007.

I believe that a 40-day period would completely knock out of kilter the delicate balancing act between the Scottish Government's need to act with purpose and effectiveness and the need for strong parliamentary scrutiny. As Margaret Curran said, it would make it difficult to keep

"the show on the road"—[*Official Report, Subordinate Legislation Committee*, 21 November 2006; c 2131.]

in ensuring effective use of subordinate legislation. Given that there appears to be no real evidence of the benefits of a move to 40 days, I suggest to Parliament that a 28-day period strikes the right balance.

Neither was there consensus in the committee about the period within which a negative instrument can be annulled. When, in response to a wish that was expressed by certain members to extend the period from 40 to 50 days, ministers outlined the kind of parliamentary timetabling problems that such a move might throw up, the same members said that the Government was deliberately picking worst-case scenarios. However, it was that very line of argument from some Opposition members that made me move towards the Government position. Put simply, I would expect any Government of whatever party to take account of worst-case scenarios and to take steps to avoid such situations. For that reason, I am minded to back the Government's current position, although I want to hear what members have to say as we go through the rest of the parliamentary process.

I have also been led to believe that under the previous Executive as well as under this Government, the spread of subordinate legislation has been rather uneven, with a glut of activity after recesses resulting in a pile of SSIs being sent to the Subordinate Legislation Committee. I do not accept that the previous Executive was, or that this Government is, incapable of improving the timetabling of subordinate legislation to avoid such surges of activity, particularly after the summer recess; indeed, the Subordinate Legislation Committee in the second session highlighted the same problem. A move to 50 days would only make matters worse.

Although I have drawn attention to differences within the committee, I have to say that members largely united around the bill's general principles. I will give it a fair wind this afternoon, and hope that Parliament will come together to support it.

15:44

Mike Rumbles: I have a couple of points to make. My SNP friend, Dr Ian McKee, strangely and all too predictably makes the assumption that

the current Government will be in power for some time. A lot of us are doing our utmost to ensure that that does not happen next year. He said that those who criticise the shift of power from Parliament to Government, like me, must think that they will always be in opposition, but I made the very opposite point. I am amazed by the short-sightedness of some MSPs. Governments come and go; that is the point. We should safeguard the proper role of Parliament—not circumvent it.

I hope that, as the responsible minister, Bruce Crawford, will recognise that when he or his ministerial colleagues are in the process of consolidating legislation, it is not and should not be up to him or them to alter the major policy in that legislation without proper parliamentary scrutiny. It is not good enough just to bring an order to Parliament and say, "Take it or leave it". That is completely wrong. It was wrong for the bill that we discussed last week, and it is wrong for the bill that we are discussing today. This Government seems to be going through a trend of wanting to consolidate more power for itself and taking it away from Parliament. That is wrong in principle. We should not be doing it. It is the role of back benchers of any and all parties, including independents, to focus on that and to say that the Government is going too far in one direction.

I hope that members take on board what I have said and that, as the responsible minister, Bruce Crawford will take it on board, have another think and lodge amendments at stage 2 to put the bill right and improve it, because it is a good bill.

15:46

Jackson Carlaw: This has been a short but fairly technical debate. I correct the omission from my earlier speech in overlooking Helen Eadie's contribution to the Subordinate Legislation Committee throughout the current session of Parliament.

It is clear that a considerable amount of work remains to be completed before we understand the final scope and shape of the bill. I congratulate Jamie Stone on his opening speech on behalf of the committee, and endorse his appreciation of the Government's constructive attitude throughout.

In my earlier remarks, I dealt with the Crown's position. As anticipated, others have referred to section 28 of the bill, and some members favour an increase from 21 days to 40 days, rather than 28 days. Scottish Conservatives have a unique perspective on that point. Of Scotland's four major political parties, only we have yet to take charge of the devolved Government of Scotland. In passing, I accept that that is a rather generous tribute to the influence of the Liberal Democrats in the previous parliamentary sessions, but so be it. I wish to

reassure members that it can be only a matter of time before the happy day when Scottish Conservatives lead Scotland's Government again. Some may say that it will take a long time, but I am confident that I shall be here to see it.

Nonetheless, the point is that since the suggestion first emerged in the legacy report of the previous session's Subordinate Legislation Committee—how my friend Murray Tosh used to salivate over procedural complexities—the position of the parties that have been in government has flip-flopped and about-turned sharply, depending on whether they were in or out of office. That is not to denigrate the sincerely-held convictions of some members. Although I sympathise with the sentiment that recommendations should at all times favour the power of Parliament, I am struck that that argument could equally be deployed in support of a suggestion to increase the time not from 21 to 28 or 40 days, but to 50, 60 or even 90 days. It seems to me that we should establish what a fair test is.

I accept that Government has to be challenged, but equally, Government has to be able to progress legislation. Although ministers might construct an overly lurid case example of the delays that might arise if the 40-day suggestion is agreed to, they have a legitimate point. It is the same point that the parties of the previous Administration made when they were in office. For that reason, Scottish Conservatives will support the Government's proposal to settle on 28 days.

Throughout the bill, there are other occasions on which the Government might be thought to be taking upon itself not so much proposals that modernise or tidy up procedure, but that potentially extend the Government's powers. That is not an unexpected crime, but surely it should generally be resisted. No doubt those proposals will be further interrogated at stage 2.

Two issues of clarification arise on the position of the Crown and the compatibility of change with respect to legislation arising in Westminster or Brussels. An unlikely but, in the event, quietly important discussion also elevated the issue of the Office of the Queen's Printer for Scotland beyond a level that an initial reading of the bill might have suggested would be likely.

Dry the bill might be, but after enactment its provisions will, if appropriately amended, modestly improve the Parliament's legislative arrangements. I, too, pay tribute to my colleagues on the committee and to the clerks, who have worked tirelessly. As I said, we will support the Government at decision time, but we serve notice that work remains to be done.

15:50

Paul Martin: I have never been a member of the Subordinate Legislation Committee—

Nigel Don (North East Scotland) (SNP): There is still time.

Paul Martin: Yes, there might be time. Punishment sometimes comes late.

I have taken time to peruse the stage 1 report. I pay tribute to the committee's hard work, particularly that of Helen Eadie, who is a long-serving member. It should be recognised that the committee is not afforded the headline-grabbing opportunities that other committees have but, as we have said on many occasions, its work is crucial to the workings of Parliament. I commend the committee for its work.

I will touch on a couple of issues that have been raised during the debate and during the committee's consideration of the bill at stage 1. Part 3 raises important issues about accessibility, publication and the preservation of acts of the Scottish Parliament and Scottish statutory instruments. In relation to publication and accessibility, the committee acknowledges that legislation is now most readily accessed online and accepts that print copies should no longer be the primary means of making available Scottish legislation. I note that we have made progress. The Scottish Government has given a commitment to make clear the requirement to publish all SSIs online. That must be welcomed, but I agree with the committee that the

"provisions of the Bill as introduced appear to fall short in terms of preservation of Scottish legislation."

The minister commented on that earlier, which is to be welcomed, but further consideration of the provisions is required.

I make those comments as someone who fully supports the digital revolution. I practise what I preach, as I run a paperless constituency office. However, the argument is not about the modernising agenda, but about how we preserve digital material. There is great merit in the committee's point that

"in the absence of an internationally agreed standard for preservation of digital material, there should be a statutory duty on the face of this Bill for the Queen's Printer for Scotland to deposit printed copies of all ASPs ... with the National Library".

I welcome the commitment from the minister to make progress on that. We should pay particular attention to the details and give careful consideration to preservation of digital material for future generations.

In evidence to the committee, issues were raised relating to the implementation of Scottish Law Commission reports. In particular, I refer to

the powerful evidence from Mr Iain Jamieson, particularly his reference to a statement from the chairman of the Scottish Law Commission, who said that there is a

“danger ... that Scots law will fall behind the rest of the world’s legal systems in responding to the challenges of an era marked by rapid technological and economic change.”

We should take such concerns seriously and consider how to make progress.

Given the significant public resource that is invested in the preparation of Scottish Law Commission reports, we believe that it is imperative that a logical approach be taken to ensure that the Government considers them properly. As the committee said, there seems to be merit in the system that has been adopted at Westminster when Law Commission reports are considered.

A wide range of comments have been made. As Bob Doris said, the debate is not the most addictive viewing for people in the public gallery or for our constituents in Glasgow. However, the technical nature of the bill requires us to consider the issues seriously. I hope that in the minister’s closing remarks he will continue the constructive tone that has been set so far and refer to some of the issues that have been raised. I look forward to supporting the bill at stage 1, with the proviso that at stage 2 we will have to consider carefully the issues that have been raised.

The Deputy Presiding Officer (Trish Godman): As there appears to be a bit of competition about who has been on the Subordinate Legislation Committee the longest, I will throw in my tuppenceworth. I was on the committee for four years in the first session of Parliament. I still do not know why I was on it, and I left not knowing very much about it, so I appreciate this debate.

15:55

Bruce Crawford: I am glad that someone so experienced in this matter is in the chair for this debate.

In case I do not get the chance later, I genuinely thank all members in the chamber for their constructive remarks on the bill. I will try to cover as much ground and rattle through as many of the arguments as I can. First, however, I am more than happy to take an intervention from the former Minister for Parliamentary Business, who has been referred to a number of times this afternoon.

Margaret Curran (Glasgow Baillieston) (Lab): I thank the minister very much for taking an intervention—I do not intend to hold him back too much. I cannot pretend that I jumped for joy when Paul Martin told me that I was going to be a

member of the Subordinate Legislation Committee, but I am even more surprised that I have been a star turn in this debate without having said a word, which is quite an achievement for me.

I want to refer briefly to what other members have said, because there is a serious point to make, which Mike Rumbles referred to, about the perspective shifting depending on whether members are in government or opposition. Irrespective of who is in government or opposition, the Parliament has to have consistency. We must give that central point great consideration.

I made many appearances when I was a minister and, given my past, I did not expect my time as the Minister for Parliamentary Business to be the controversial one. It is important that the Subordinate Legislation Committee looks at the serious representations that we have heard from members who have been back benchers and who are on committees, particularly Mike Rumbles and Helen Eadie, who have said that we need to make a change. I say, from a ministerial perspective and given the comments that I have made in the past, that their arguments are substantial and not to be dismissed.

Bruce Crawford: I appreciate and understand the points that Margaret Curran makes, but I refer also to what Jackson Carlaw said in his speech: it is strange how people flip-flop from one side to the other, depending which side of the fence they are on. I am not saying that Margaret Curran was doing that with regard to the issues around part 4 of the bill, to which I know that she was referring.

I will refer in particular to the 28 or 40-day period. We heard from Jamie Stone and Helen Eadie, among others, that they continue to discuss the potential for moving the minimum time before a negative instrument can come into force from 28 to 40 days after it has been laid and that there should be specific provisions for reversing the effect of negative instruments following annulment. The Government remains opposed to both those proposals, but I hope that further discussion during the passage of the bill will serve to deliver an effective outcome. On both counts, I believe that there are persuasive arguments that the current system works well and that we would be ill advised to make changes that would certainly limit existing flexibility and may well have a negative impact. Even after much deliberation today, the perceived practical difficulties that it was feared might arise have not been identified. Indeed, Helen Eadie said that there have not been many annulments of negative instruments.

This Government, like the previous coalition, believes that for the bill to provide that all negative SSIs cannot come into force for a full 40 days after they are laid is unwieldy, disproportionate and impractical. I heard it said that I described the

worst-case scenario. If I remember correctly, it was the scenario painted by the previous coalition. However, I will try to provide a fuller menu of issues that provide a better picture in that regard. In my opening speech, I talked about another two areas in which I thought the issue was important: EU regulations and legal aid changes, which would have an impact. I will work with the committee to try to find a solution that will be acceptable to all.

I turn to the points made by Jamie Stone and Mike Rumbles about the pre-consolidation modification of enactments. A number of members called for the removal of part 4, which provides for the pre-consolidation modification of enactments and the introduction of provisions similar to those in the Law Commission Act 2009. I think that Margaret Curran was alluding to that in particular when she referred to Mike Rumbles. Although the Government agrees with the committee's comments on the role of the Scottish Law Commission in the consolidation of legislation, we are still of the opinion that the proposed power to make pre-consolidation amendments in part 4 would aid the maintenance and modernisation of Scots law. However, I will consider that recommendation further and provide the committee with my views prior to stage 2. I hope that my approach shows that I am trying to look for compromise and to find a good way forward. That is why I will consider further the recommendation that similar provisions to those in the 2009 act be included in the bill.

As for the application of legislation to the Crown, in response to our consultation and to the Subordinate Legislation Committee and the Standards, Procedures and Public Appointments Committee, the judiciary, the Law Society of Scotland, the Scottish Law Commission and the Faculty of Advocates all expressed the concerns that Jackson Carlaw outlined about the Crown's position being reversed and suggested that the Crown's position should remain untouched. However, the majority of consultees agreed that the Crown should be in the same position as the public, unless specifically exempted from being bound by legislation, so we are reflecting the consensus of responses in the consultation process.

One small point that I did not have the chance to mention in my opening speech is that I will lodge a stage 2 amendment on exempting local instruments. People who have read the report will understand what that means.

I thank all members for acknowledging the Government's approach—I certainly acknowledge the approach that the Subordinate Legislation Committee has taken. I will always try to find a way to reach agreement, if agreement can be

achieved. However, with the proposed change from 28 to 40 days, we are in danger of having change for change's sake and of fixing something that ain't broke, so I will continue to resist that. I hope that members understand that I have already proposed several amendments in response to the Subordinate Legislation Committee's report.

Finally, I say to Mike Rumbles that if he is doing his utmost to ensure that the Government is in a position of responsibility for as little time as possible, I encourage him to try even harder, because I guess that that approach will ensure that we are in government for even longer.

Community Prisons

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a Public Petitions Committee debate on petition PE1150, on community prisons. Time is relatively tight, so I would appreciate adherence to time limits.

16:02

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am pleased to open this Public Petitions Committee debate on our consideration of PE1150, which urges the Scottish Government to consider whether large prisons that are remote from prisoners' families offer the best way of rehabilitating offenders or whether, as an alternative, localised community prisons should be supported much more strongly to maintain genuinely easy access to family links and other community virtues.

I am sure that MSPs will focus on individual cases that they wish to raise with the cabinet secretary. I shall talk more generally and outline the committee's consideration so far of the petition. I shall also ask specific questions for the cabinet secretary to answer in his opening or closing speech. The committee's convener will close for the committee.

Members will notice that we have not lodged a motion. We want this afternoon's discussion to feed into our consideration of the issues that the petition raises. We have not undertaken an inquiry in the traditional sense, so we have not produced a report. However, we have considered the petition on eight occasions, which go back to June 2008. We have heard oral evidence three times—first from the petitioner, then from the Cabinet Secretary for Justice in February 2009, and then from representatives of Grampian Police and Families Outside, whom we met at Fraserburgh academy in March 2009. We have received 14 written submissions from bodies that include the Scottish Prison Service, Scotland's Commissioner for Children and Young People and Sacro.

I will make a few general points before putting some specific questions to the cabinet secretary. I draw attention to the term "community prison", to which the petition refers. I am aware that that expression has no recognised definition, but for the purposes of the debate we are talking about prisons that are community facing. One aspect of their community-facing purpose is that, as the Scottish Prison Service has confirmed, prisoners are, where possible, placed in the establishment that is closest to their families and local communities. However, that is not always possible. I note from its written evidence that the Scottish Prison Service is committed to delivering

increasingly community-facing prisons, and I am sure that we all welcome such a commitment.

My first question to the cabinet secretary is to ask him to demonstrate to the Parliament and the Public Petitions Committee how the Scottish Prison Service is delivering on that commitment. He may wish to outline any statistical evidence that he has to show the number of prisoners who are at prisons that are close to their families and local communities. He may also wish to outline any research that supports the existence of such a policy and that shows that it is bringing benefits.

The problems that families experience in maintaining contact with someone in prison as a result of travel and transport difficulties were highlighted by Families Outside. Its "Do Not Pass Go... Travel Links to Scottish Prisons" research from 2007 set out a number of strategic and operational recommendations.

My second question for the cabinet secretary is: what actions has the Scottish Government taken in response to that report? I appreciate that some of the issues might fall within the portfolio of the Minister for Transport, Infrastructure and Climate Change—for example, the proposal that accessibility to prisons should be added to the national transport strategy—but it would be useful to hear what work the Government has done on improving travel and transport arrangements to prisons for families and others.

Thirdly, will the cabinet secretary set out what evidence the Scottish Government has on the impact that the location and ease of travel to a prison have on the maintenance of family ties and on a prisoner's resettlement on release?

The fourth question is when in the continuing development of its policy on prisons—in particular on their community-facing aspects—Government representatives last met bodies such as Families Outside and Scotland's Commissioner for Children and Young People to discuss the issue and what suggestions made by them were taken forward for implementation.

The final issue to put to the cabinet secretary was raised by Sacro in its written evidence. It feels that there are inefficiencies and inconsistencies in the continuity between prisons and community interventions. Sacro drew attention to the need for community-facing prisons to work closely with a range of community services. What will happen to prisoners when they are released into the community? There should be better community involvement by prisons themselves and, ultimately, a reduction in prisoner numbers.

I look forward to hearing the cabinet secretary's responses to the issues that I have raised.

16:08

The Cabinet Secretary for Justice (Kenny MacAskill): I am pleased to have this opportunity to respond to the petition about the development of HM Prison Grampian. We will be more than happy to communicate with the Public Petitions Committee and indeed with its deputy convener on the specific questions that he has asked.

Community-facing prisons, which give the Scottish Prison Service the chance to work closely with local partners to deliver a joined-up sentence management regime, form a key element of our policy. That is the direction of travel that is being initiated by this Government. We are committed to public prisons, not to those that are run and operated for private profit. We are committed to moving towards community-facing prisons, and that is what we are now embarking on with HMP Grampian. I hope that the whole Parliament will unite in supporting that desire to have public community-facing prisons.

We must accept that the Government is currently investing significant amounts of money to deal with the inadequate prison estate that we inherited.

Lewis Macdonald (Aberdeen Central) (Lab): Can the minister explain how the promotion of community-facing prisons is best achieved by the closure of Aberdeen prison? Does he not believe that the best way for a prison to face the community is for it to be located in the community from which most of the prisoners come?

Kenny MacAskill: We could have a prison in every community of a certain size, but we could do so only at the expense of other things. We have been debating and discussing the Aberdeen western peripheral bypass—you pay your money and you make your choice. Mr Macdonald could tell John Swinney that he wants not a western peripheral route but a prison, but he would then have to explain that to the people. The same argument applies to every community the length and breadth of Scotland: do people want new prisons or do they want houses, homes and hospitals?

Having inherited a prison estate that was unfit for purpose, we are doing what is necessary and appropriate to rebuild it. We made a commitment to keep a prison in the north-east of Scotland and we are delivering that. We said that the new prison would provide around 500 prisoner places and would be an innovative model—a community-facing prison that meets the entire prison needs for the north-east.

Managing offenders who are sentenced to prison is a challenging undertaking, but our Scottish Prison Service does that with professionalism and dedication. Working with

prisoners to help them to address their risks and needs and to stop them re-offending can mean, at times, having to locate them for at least part of their sentence some distance from home. That may be because of a need for security or to give the prisoner access to services and programmes that will reduce their risk and/or the prospect of re-offending. That is effective offender management practice: we have dangerous people and not all of them can be housed in community-facing prisons.

A modern prison service must always be able to manage prisoners flexibly so that it can deal swiftly and appropriately with changes in prisoner numbers; provide the most effective means of maintaining security and good order; and, most important, offer the right supports and interventions to protect the public and reduce re-offending.

Creating community-facing prisons enables prisoners from the local area to serve their sentences, if at all possible, near the communities from which they come. At the moment, about 400 male prisoners from the Grampian area are in our prisons across Scotland with only about 130 of them in HMP Aberdeen—a prison that is years beyond its sell-by date, which makes it unfit for purpose and with no space for redevelopment. Also, around 50 women prisoners from the Grampian area are serving their sentences in the central belt.

The proposed new HMP Grampian will allow prisoners from the Grampian area to serve their sentences closer to their families, the communities from which they come and the services that they need to access for their return into the community. I am delighted that our proposals enjoy considerable support from Aberdeenshire Council and others in the community. The Scottish Prison Service will work closely with the northern community justice authority to build community links and maximise the benefits that proximity to family can offer in rehabilitating offenders.

I accept that some prisoners who serve sentences in HMP Aberdeen will be slightly further from home. However, in the future, many more prisoners will be much closer to their communities and families than is the case at the moment. It is also definitely the case that they will be held in far more acceptable conditions. At the moment, only about one third of prisoners who come from the Grampian area serve their sentences in HMP Aberdeen. HMP Grampian will maximise the opportunity for partnership working between the Scottish Prison Service, community justice authority and partner agencies in local authorities. We all should welcome that.

I believe that the new prison will give a better service than is the case at the moment and, perhaps most important, maximise efforts to

ensure the successful reintegration of offenders into the communities from which they come and help to break the cycle of crime and re-offending that blights many communities, whether in the city of Aberdeen and small communities in the north-east or anywhere else in Scotland.

16:14

Richard Baker (North East Scotland) (Lab): I congratulate the Public Petitions Committee, David Wemyss and the prison visiting committee of Craiginches on their tenacity in bringing the issue before the Parliament.

At the heart of the petition is the important principle that prisons need to be truly community facing if they are to give offenders the best chance of rehabilitation. The chance of that happening is increased the nearer offenders are located to the support agencies that can help them and, crucially, their families. On this side, we believe that we should not abandon the idea that prison is a place not only of incarceration but where prisoners confront their offending and are supported in turning around their lives.

Those important principles are thrown into stark relief by the plans for the prison estate in the north-east. I refer to the closure of Craiginches prison and the building of the new HMP Grampian at Peterhead. Those plans will take prisoners further from their families, and the transport links between Aberdeen and Peterhead make that problematic. HMP Grampian will not be community facing for Aberdeen. It is telling that two important cross-party bodies—the prison visiting committee and the Public Petitions Committee—have advanced the concerns.

Kenny MacAskill: Will Richard Baker give way?

Richard Baker: I do not think that I will have time, although I will if I have time later.

There is anxiety about the proposal across the parties. I disagree with the cabinet secretary on major aspects of justice policy, but I do not doubt his desire for more offenders to turn their lives around. That is why I simply cannot understand his making the proposal and I hope that he will reconsider it.

The previous Executive radically improved the overall prison estate. Dr McLellan recognised that but the cabinet secretary never does. I do not contest the fact that there is great need for improvements at Craiginches prison for it to be fit for purpose but, while HMP Grampian is awaited, no investment is being provided to improve Craiginches. In any case, the argument is simply that there should be a community prison in Aberdeen and alternative options nearer the city have not been examined properly.

Maureen Watt (North East Scotland) (SNP): Will Richard Baker give way on that point?

Richard Baker: I am sorry, but I have only four minutes.

The cabinet secretary will talk about planning issues and say that our arguments would result in delay in improving the local prison estate but, given the lack of clarity that the Parliament has been given on the plans for progressing HMP Grampian, I am in no way convinced that the decision cannot be revisited.

There are many other concerns, not least those that Grampian Police has expressed on prisoner transport and community safety, but I have time to close on only one. HMP Peterhead is currently a specialist unit for the treatment of sex offenders. That is not an uncontentious issue locally, but powerful arguments have been made for having a specialist unit that deals with the particularly difficult challenge of treating sex offenders.

The new HMP Grampian will not be such a specialist centre; sex offenders and their treatment will be dispersed throughout the prison estate. There are arguments for making such a change, but others have expressed concerns about the plans. I have had the opportunity to discuss the issue with Professor Alec Spencer, who is a former governor of Peterhead and wrote a report on the matter for the previous Executive. I am in no way persuaded that closing the specialist unit at Peterhead is the right way to deal with sex offenders in our prison estate. Expertise has been built up there over the years, and closing the unit is more likely to be another weakness in the plans for our prisons in the north-east and, potentially, Scotland. The change needs far fuller debate.

In my view and the view of the vast majority of people who have taken an interest in the issue, the case that has been made for community prisons—in particular, for a genuine community prison in Aberdeen—is beyond doubt. That is not what the current plans represent. I hope that the cabinet secretary will accept that case, which has been made across the Parliament today.

16:18

Nanette Milne (North East Scotland) (Con): The petition that we are discussing has arisen out of the real and on-going concern of the Aberdeen prison visiting committee, backed by the Association of Visiting Committees for Scottish Penal Establishments, that the Government's proposals to replace Craiginches prison with a new, large, so-called community-facing prison within the grounds of HMP Peterhead will have an adverse impact on the significant number of Aberdeen residents—estimated at around 80 per cent of the inmates at Craiginches—who are

remanded or serving their sentences within the boundaries of their local community.

Modern research points clearly to the positive—indeed, essential—contribution that regular and frequent contact with family members can make to the successful rehabilitation of offenders. The visiting committee fears that moving the prison to a site that is some 35 miles from Aberdeen and accessible only by car or an infrequent bus service will result in less family contact for many prisoners, whose relatives—particularly those with young children—will find the journey tedious, difficult and expensive.

The petitioners' concerns were clearly understood by Andrew McLellan who, just before he stood down as Her Majesty's chief inspector of prisons for Scotland last summer, stressed the importance of family contact to the rehabilitation process and expressed his fear that forcing visitors to embark on a 70-mile round-trip to a new superjail in Peterhead would have a detrimental impact.

The Public Petitions Committee has discussed the petition at length since it was lodged in May 2008 and has taken evidence from a number of sources, including the cabinet secretary. To my mind, there is little doubt that, in an ideal world, a prison facility would be retained in Aberdeen.

What is proposed is a compromise that is based on financial expediency. Of course, money is very tight and will continue to be so for the foreseeable future. Craiginches prison, built in the Victorian era, is overcrowded and unfit for modern purpose, and it would be expensive to upgrade it. It is on a site that is likely to be of significant interest to developers, so it could be a potential nest egg for a cash-strapped Government. Land is, of course, expensive in Aberdeen, which makes a new build there less attractive in financially hard times, whereas there is ample ground in Peterhead for rebuilding alongside the existing prison, which is already in the ownership of the Scottish Prison Service.

It is therefore hardly surprising that the decision was made to site the new prison in Peterhead. However, it is disingenuous to claim that HMP Grampian will be a community-facing prison for Aberdeen. Certainly, female prisoners from the Aberdeen area who are currently housed in Cornton Vale and young offenders in Glenochil or Polmont will be nearer to their relatives than at present, but, with Craiginches prisoners significantly further from their relatives, few HMP Grampian inmates will be ideally placed to have regular family contact, given the public transport provision between Aberdeen and Peterhead.

Although I do, of course, acknowledge the financial pressures on Government, it seems to

me a retrograde step for rehabilitation to remove an existing facility from one of Scotland's major cities and to replace it with a large institution some 35 miles away. I therefore hope that the cabinet secretary will consider very carefully the results of modern academic research and the concerns that Andrew McLellan and others have expressed. If, after due consideration of all that, he decides to press ahead with his current plans, I hope that he will be honest enough to state clearly and openly that that is far from an ideal solution for the prison population in Scotland, but rather a compromise that is based purely on financial constraints—and, indeed, that it is a regressive rather than a progressive step towards successful prisoner rehabilitation, and should be seen as such.

16:21

Nicol Stephen (Aberdeen South) (LD): Since the announcement in 2007 of the decision to build a new super-prison at Peterhead, there has been no adequate response by the Scottish National Party Government to the associated closure and removal of all prison places in Aberdeen. Scotland's third city, with a population of more than 200,000 people, will now have no remand cells or community prison cells and no prison of any shape, kind or nature. That flies in the face of every aspect of modern prison policy. The decision is wrong and misguided.

Rehabilitation is supposed to be a central principle of the Government's justice policy, but the decision to remove prison places from Aberdeen will reduce the amount of rehabilitation and increase reoffending. In short, crime in the city of Aberdeen will go up. There will be increased crime because of a decision by the SNP Government that runs totally counter to modern prison policy. It is obvious to the experts involved that the decision was taken for pork-barrel, party-political reasons at the expense of the city of Aberdeen.

Kenny MacAskill: Will the member explain why, when he was Deputy First Minister, the last prison to be signed off was Low Moss, which was not to be community facing but privately owned? Does he now accept that the change of position by the Government such that the prison should be publicly owned is, in fact, beneficial?

Nicol Stephen: We are talking about the location and accessibility of prison facilities, and the cabinet secretary is completely ducking the issue by raising the red herring of Low Moss. It is simply inexplicable that a city of Aberdeen's scale and importance will be left with no community prison.

I commend the work of the Aberdeen prison visiting committee and the Public Petitions

Committee on the issue. The cabinet secretary should be aware that there was cross-party support in the Public Petitions Committee for the view that the proposed move would represent the wrong choice for the city of Aberdeen and Scotland. That view was based on strong submissions from prison reform experts, many of whom have been quoted in this debate.

Families Outside is the only charity in Scotland that is dedicated exclusively to working with and supporting the families of offenders. Representing that organisation before the Public Petitions Committee, Susan Cross stated that

“maintaining family ties can reduce the risk of reoffending by up to six times. About 50 per cent of prisoners lose contact with their families during their time in prison, usually because of the cost and distance of visiting, both of which are obstacles to the contact that can help to reduce reoffending.”—[*Official Report, Public Petitions Committee*, 30 March 2009; c 1664.]

Her evidence has been endorsed, as we have heard, by Alec Spencer, professor of criminology at the University of Stirling, and Dr Andrew McLellan, who have been well quoted. Dr McLellan says that the plans will have a detrimental impact on the prison service in Scotland and that forcing visitors to embark on the 70-mile trip to the new super-prison that is planned in Peterhead is wrong.

Travel will be a major issue not only for the families and children but for social workers, support staff and public agencies. Let the Cabinet Secretary for Justice be in no doubt that there will be big challenges for the police and the court system if there are, as is currently planned, no remand cells for the city of Aberdeen. I challenge Mr MacAskill to make the return journey from Aberdeen to Peterhead prison by public transport so that he can understand the distances involved, the time that the journey takes, the inconvenience that it causes and the scale of the challenge that he is quite deliberately creating for families and the support services.

It is time for a change of heart and for this Government to deliver on its commitment to a modern justice system. The Government's decision seems doubly counterproductive and doubly ill-considered. I plead with the Cabinet Secretary for Justice to review the decision and ensure that Aberdeen continues to have prison facilities.

16:26

Maureen Watt (North East Scotland) (SNP): Since we are discussing Craiginches and Peterhead prisons, I want to take this opportunity to express my regret at the recent untimely death of Bill Rattray, a former governor of both establishments.

I take part in this Public Petitions Committee debate as someone who was a member of the Craiginches prison visiting committee from 1994 to 2006, during which time I visited the prison at least every two months and visited other prisons in Scotland, including Peterhead. Nobody could argue that Craiginches and Peterhead are fit for purpose, and they have not been so for many decades. I cannot put a figure on the number of times our visiting committee lobbied ministers on the urgent need for a new kitchen in Craiginches, to no avail. More important, we lobbied for a new visiting room and better facilities for partners and children, as the available facilities were and are woefully inadequate—indeed, I remember taking in toys for the amusement of the children who were visiting the prison. Apart from the fact that we were fobbed off with a few tables and chairs, nothing happened to the visitors room.

Obviously, the SPS, under successive Governments, was told that there should be no investment in Craiginches prison, because it would be window dressing and a waste of taxpayers' money in a prison that was well past its sell-by date. Richard Baker knows perfectly well why there has been no investment in Craiginches prison. I agree with others who have quoted Andrew McLellan's observation that good family contact is important for reducing reoffending. However, good family contact was not possible in Aberdeen prison.

As John Farquhar Munro said, there is no definition of a community prison. Aberdeen currently has a prison in its community, but in no way can it be described as a community prison. As far as I am aware, it has never housed convicted young offenders, and for the past few years it has not housed female offenders—I and others vigorously fought against that situation arising, but female prisoners were moved to Cornton Vale anyway.

As the minister indicated, the majority of prisoners from the north-east—56 per cent—are housed in the prison estate outside the Aberdeen postcode area. The decision to establish a new prison in Peterhead will create in the north-east a prison that can house long-term offenders, short-term offenders, sex offenders, women offenders and young offenders, and that can begin to reflect the north-east's community and become a north-east community prison that can begin to work on restorative justice—an issue that is dear to my heart and to Robin Harper's. Following the establishment of the prison, we can begin to work with families in the interests of reducing recidivism. Of course, we will never have a prison that can house 100 per cent of prisoners from the north-east, because of prisoner safety and gang culture issues.

Removing the uncertainty surrounding the prison estate in the north-east is welcomed by staff and their families. There is a high turnover of SPS staff in the north-east. Burn-out is a major issue, especially in the sex offender unit, but the fact that staff will have the opportunity to move within Peterhead prison and work with different groups will reduce the turnover.

Having had a prison in its midst, the community in Peterhead must be unique in accepting a replacement. Those who object to the siting of a prison for the north-east in Peterhead have not suggested in which other community a new prison might be sited.

The Deputy Presiding Officer: The member should wind up.

Maureen Watt: I welcome the decision on the new prison. Let us look at the opportunities, not the threats.

16:30

Lewis Macdonald (Aberdeen Central) (Lab): The case for community-facing prisons could be made anywhere, not just in Aberdeen, but it is in Aberdeen that the conflict between the aspiration and the reality of Scottish Government policy is at its most acute. Only in Aberdeen is there a proposal—which was made by ministers in 2007—to close down a community-facing prison. Only in Aberdeen, Scotland's third city—which is home to most of those who are detained in the local prison—do ministers intend to respond to the problems of overcrowding and dilapidated facilities by doing away with the local prison altogether and, sadly, replacing it with a new prison in a quite different town.

As many will remember, there was a campaign in Peterhead against proposals to close Peterhead jail, which, as SNP members will recall, produced a manifesto commitment

“to the long-term future of Peterhead Prison including the rebuilding of the prison”

and to protect and enhance the

“resource it provides in dealing with sex offenders in Scotland.”

Of course, it was only because of that specialised work that Peterhead still had a prison at all, which is interesting in the context of the proposal to end that work, of which Richard Baker reminded us. Before the 2007 election, no one bothered to tell people in Aberdeen that the plan was to keep Peterhead prison open at the expense of the prison in Aberdeen.

Even after the election, ministers made no effort to consult informed local opinion in the city before announcing their intention to close its jail. Had

they consulted people, they might have reached a quite different conclusion. For example, any of the four ward councillors could have told them that 20 per cent of the prisoners at Craiginchies have home addresses within walking distance of the prison. Ministers might have been given the estimate by a senior member of the Aberdeen City Council administration that the holding of prisoners more than 30 miles beyond the city limits would result in the council's social work budget incurring £2 million in additional costs. They might have heard the police's concerns about the extra costs and the risks involved in holding remand prisoners so far away from the courts that must consider their cases. They might have heard the concerns of Families Outside about the impact on family cohesion and the prospects for rehabilitation of holding offenders in a place that is an hour by public transport from where their families live.

Thankfully, the Public Petitions Committee has heard a good deal of such evidence, and its members deserve credit for asking questions and pursuing the issue. Equally, Aberdeen prison visiting committee deserves credit for lodging the petition. Sadly, ministers have not listened—at least, not yet.

It was revealing that the constituency member for Banff and Buchan, the Minister for Transport, Infrastructure and Climate Change, told the local press and the prison governor of plans to build a new prison in Peterhead and to close Aberdeen prison a full week before the decision was announced by the justice secretary or the SPS.

Last year, Kenny MacAskill appeared before the Public Petitions Committee to defend his decision. I agree with him that

“we must do what we can to ensure that relationships can be continued and that families ... can visit. The maintenance of such relationships is beneficial to rehabilitation.”—[*Official Report, Public Petitions Committee*, 10 February 2009; c 1470.]

If the justice secretary must do what he can, he should start with the simplest step. Before he thinks about new community prisons, he should agree to keep the ones that we have. He should act on the welcome proposition that a replacement jail for Craiginchies can be designed to accommodate adult males, women and young offenders, but he should abandon the proposition that that should be accompanied by the closure of Aberdeen prison, because there is no need to do that. Instead, the minister should engage in meaningful efforts to replace the existing buildings at Craiginchies with the modern, fit-for-purpose prison that the city of Aberdeen is entitled to expect.

16:34

Nicol Stephen: I will be brief.

The situation is clear. As a result of the decision, rehabilitation for prisoners from the city of Aberdeen, recidivism, reoffending and crime in the city of Aberdeen will be worse. People will have to travel further, journey times will be longer, and prisoner transport will become more complex and costly. There will be a huge impact on the police and the court system.

I say to the cabinet secretary that by all means he should build a super-prison at Peterhead and bring to it long-term prisoners who previously resided in the city of Aberdeen or the north-east of Scotland. That would be fine. However, that super-prison should be built a bit smaller and at a lower cost, and resources should be diverted to ensure that there is still a community prison with remand cells in Aberdeen. There is cross-party support for that view in the chamber; stronger than that, there is widespread support for it in the justice community among experts on the Scottish prison and justice system. To do otherwise would be perverse. The city of Aberdeen, which is the third largest city in Scotland, deserves to continue to have a community prison.

16:36

John Lamont (Roxburgh and Berwickshire) (Con): A mix of opinions has been expressed in the debate. I suppose that the real point underlying the issue is how we balance public money spending restrictions with our wish to create an ideal. Such difficult questions undoubtedly will continue to arise with increasing pressures on the public purse.

There has been some investment in recent years in our prison estate—in HMP Addiewell, HMP Bishopbriggs and new developments at the HMP Edinburgh site—but many of our prisons have not been fit for purpose for some time. Aberdeen prison is one such establishment. The Scottish Government must find the best and most cost-effective way of improving and potentially expanding the prison estate without compromising safety, security and rehabilitation.

Contrary to popular belief, the Conservatives do not believe in locking up criminals and throwing away the key. In an ideal world, prisons would not be needed, as there would be no crime, but we are discovering that ideals are not and cannot always be met. As long as there is crime, there will be a need for the disposal of custodial sentences—even sentences of six months or less, I say to the cabinet secretary. We must ensure that, once people have been sentenced to such punishments, everything is done to attempt to rehabilitate them and give them positive options and choices in life.

The creation of HMP Grampian at Peterhead may not be ideal. Several MSPs across the chamber have highlighted many problems that the move is likely to result in, and we share many of the concerns that have been expressed. The Scottish Government will need to demonstrate how it plans to address those concerns.

Evidence to the Public Petitions Committee on the petition stated that approximately 80 per cent of those who are serving custodial sentences in HMP Aberdeen are from the Aberdeen area. The cabinet secretary has pointed out that only around 50 per cent of those from the Aberdeen area who are serving a custodial sentence currently do so at HMP Aberdeen. A 70-mile round trip to visit a partner or parent is not an easy journey, especially where public transport links are not great. I know from the prison visits that I have made throughout the country and from talking to prison governors and staff that sometimes the only thing that can pull a person out of the vicious circle of reoffending and a life of crime is their family, particularly their children.

We recognise all the issues and problems that are raised with relocating the prison at Peterhead. However, the planned prison will allow better access visits for female prisoners and young offenders who are currently held in Cornton Vale, Polmont and Glenochil. The new arrangements will be considerably more convenient for their families. However, I look for an assurance from the Scottish Government that the specialists who are required to deal with such offenders will still be available at HMP Grampian.

There cannot be a prison in every town and every city, and there will always be difficulties in ensuring that every prisoner's needs are met. It is a question of striking the right balance. I have great sympathy for those who will find it difficult to visit a relative in HMP Grampian and for prisoners who will not have as much access to their families as others, but there is no ideal solution. I fear that the Peterhead solution is perhaps as good as we will get.

16:39

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to sum up the debate. I congratulate the petitioner, David Wemyss, on his work in bringing the petition to the Public Petitions Committee and then to the Parliament this afternoon. I commend the committee for the work that it has done to assess the issue and the way in which that was outlined by the committee's deputy convener, John Farquhar Munro.

The petition raises a number of serious issues relating to community prisons. Imprisonment has a number of purposes, including punishment for a

crime and the hope that we will be able to ensure that those who are in prisons do not reoffend. Nanette Milne and other members quoted Andrew McLellan, the former chief inspector of prisons, who in his annual report for 2006-07 cited important research showing that good family contact was important and contributed towards a reduction in reoffending. The Public Petitions Committee took on board that important finding.

A number of problems are associated with the decision to close Craiginches and, in effect, to move the prison to HMP Peterhead. As other members have said, the decision will move prisoners away from their families. As Nicol Stephen outlined, there is a real problem with transport links on the 35-mile journey—a 70-mile round trip—from Peterhead to Aberdeen. That makes it more difficult for families to visit prisoners and, therefore, for prisoners to retain the contact and reassurance that it is hoped will contribute towards reducing reoffending.

As Richard Baker indicated, there must be serious concerns about the fact that the sex offender unit will no longer be centralised and sex offenders will be dispersed throughout Scotland. Recently there have been a number of alarming sex offender cases, which have brought to the fore concerns among the public. In the treatment of sex offenders, the public are looking for them to be kept in one central location, in so far as that is possible, so that specialised treatment can be provided in such cases.

Nicol Stephen made the alarming point that politics are in play in the decision. The prison has been moved to be sited in the Westminster constituency of the First Minister and the Scottish Parliament constituency of the Minister for Transport, Infrastructure and Climate Change. As Lewis Macdonald said, in this case we should take into account not politics but the views of local people. From the views that members have expressed in this afternoon's debate and the local views that were communicated to the committee, it is clear that there is a strong view in the Aberdeen community that a community-facing prison should have been retained in the area.

John Farquhar Munro made some good points about community-facing prisons. In all honesty, the cabinet secretary did not make a robust case for his view that Peterhead would be a community-facing prison.

This has been a good debate, in which many strong points have been made, especially by local members. I urge the cabinet secretary to put politics aside in this case, to consider carefully the views that have been expressed here and by the Public Petitions Committee, and to ensure that, in the delivery of justice in the Aberdeen area, the views of local people and local prisoners' families are strongly taken into account.

16:44

Kenny MacAskill: Two clear themes have run through the debate: community prisons and the cash to pay for them. The chamber is united in seeing community prisons as a good thing. I welcome the comments of both Nanette Milne and John Lamont on how such prisons can work towards reintegrating people—that is their whole ethos.

However, there has been a great deal of cant and hypocrisy from those members whose parties were in the Executive for eight years. When they were in charge, they had an opportunity to deliver community-facing prisons. If we tally up the number of such prisons that were delivered by the Liberal-Labour Scottish Executive between 1999 and 2007—if Mr Stephen wants to interject to tell me the number, I will happily give way—we see that the number was zero.

Dr Richard Simpson (Mid Scotland and Fife) (Lab) rose—

Kenny MacAskill: Dr Simpson, not one community-facing prison was delivered by the Labour-Liberal Executive.

Dr Simpson: Will the minister give way?

Kenny MacAskill: Not at the moment.

The first community-facing prison will be HMP Grampian. That is the direction of travel that has been set out by the Government—

Dr Simpson: Will the minister give way?

Nicol Stephen: Will the minister give way?

Kenny MacAskill: Not at the moment.

HMP Grampian will be followed by HMP Highland, which will replace HMP Inverness, and HMP Inverclyde, which will replace HMP Greenock. We will deliver community-facing prisons; in eight years, the previous Executive delivered none.

I give way to the member.

The Deputy Presiding Officer: Who are you giving way to?

Kenny MacAskill: I give way to Nicol Stephen.

Nicol Stephen: The point that the cabinet secretary has completely failed to address in his rant is that the super-jail that is being built at Peterhead is specifically not a community-facing prison for all the reasons that members from across the parties have highlighted this afternoon. Will the cabinet secretary please focus on the points that have been made in the debate rather than on the eight years when he was in opposition?

Kenny MacAskill: Those were the eight years in which the previous Executive failed to deliver one community-facing prison. The member cannot have it both ways.

Dr Simpson: Will the minister give way?

Kenny MacAskill: Sorry, but Mr Simpson did not speak in the debate.

The charge is that HMP Grampian is not a community-facing prison, but we have just heard criticism from the Labour benches that the prison will no longer house a specialist unit for sex offenders. What then is that prison? HMP Grampian is a community-facing prison that provides us with the opportunity to stop young men being required to go down to Polmont and to stop women offenders being required routinely to go to Cornton Vale. HMP Grampian is a community-facing prison that has been delivered by this Administration, as will be the subsequent prisons that we will deliver. The previous Executive had eight years and failed to deliver any.

That takes us to the question of cash. We welcome and support the fact that we had a great deal of honesty about that from the Conservatives. I would be the first to concede that prisons could be built wherever we wanted if we were prepared to spend the money. However, Labour and Liberal Democrat members did not say from where the cost of such prisons would come. Mr Stephen thinks that we could trim the cost at the edges. Should we cut back on security? Should we perhaps make the prison a bit less secure? Is that really what he wants to suggest for Peterhead? The fact of the matter is that prisons need to be paid for, but neither Labour nor the Liberal Democrats has made any proposals on how they would fund an additional prison in addition to what the Government is spending.

Lewis Macdonald: Will the minister give way?

Kenny MacAskill: No. I do not have enough time.

We are investing £120 million on prison capacity each year. That is an increase of £20 million per year. We are delivering because the previous Executive failed to deliver. We are ensuring that we have a prison estate that is fit for purpose.

As I said, two themes have run through today's debate: community-facing prisons and cost—

Richard Baker: Will the minister give way?

Kenny MacAskill: No; I am in my final minute.

We all accept the need for community-facing prisons. I am glad that those who failed to deliver when they had the opportunity now recognise that. They should be a bit less churlish and more

supportive of what the Government is doing in HMP Grampian.

People must realise that you pay your money and you take your choice. As a Government, our priority is to ensure that we have a prison estate that is fit for purpose so that those who need to be in prison are detained there. It would be useful if the Opposition—in particular, the Labour Party—would support us on tackling the alcohol abuse that fills up our prisons and on dealing with the issue of short-term offenders, who get free bed and board when they should be out there clearing the snow for our old folk.

You pay your money and you take your choice. The priority of this Government, having delivered a prison estate that is fit for purpose, is to invest in new homes, new houses, new schools and new hospitals. The priority for Mr Macdonald, apparently, is to have a new prison. He can have what he wants if he does not want the Aberdeen western peripheral route, new homes and new hospitals. That might be the direction of Labour, but it is not the direction of this Government. That is why we are committed to community prisons. We will fund the prison estate that we can manage, but we are putting in millions.

16:49

Mr Frank McAveety (Glasgow Shettleston) (Lab): I speak in my role as convener of the Public Petitions Committee. I never thought that I would have to say this, but I hope to make a more mellow and gentle contribution than the one that we have heard in the past few minutes.

This afternoon's debate is being held in response to a petition that was submitted. We endeavour through the Public Petitions Committee process, irrespective of the heat and light that have been generated in today's debate, to discover whether we can assist petitioners in progressing the concerns that they have raised in their petition.

The minister has had an opportunity to appear before the committee, and we have received a substantial number of oral and written contributions; my deputy convener, John Farquhar Munro, identified the scale and extent of that evidence in his speech. He also raised a number of questions that have not been fully addressed in the responses that we have heard so far. I hope that the minister takes on board some of those critical questions, which will assist the committee in our deliberations as we address the petitioners' concerns.

It is not for me to go into the ins and outs—the legitimacy or otherwise, the economics or the principles and philosophy—of the Government's decision. However, I will attempt to find a way in

which we can address the petitioners' concerns—although, given what we have heard today, those concerns may be unable to be addressed. The minister was right to identify the principle and the economics as the two strategic issues, and those will always be determining factors for anyone who is in his position.

With regard to the principle, we as a committee are desperately keen to ensure that whatever modelling takes place or configuration is developed during the forthcoming period—not only in Grampian, as it should be part of a national strategy—the petitioners have a sense that we are addressing their concerns. The minister needs to consider holding deliberations or discussions with the Scottish Prison Service and the petitioners to ensure that those concerns are addressed. Those discussions need not concern only the proposals for Grampian—if a new and innovative policy initiative emerges on community-facing prisons, we would like to find out how that can be developed in the most effective way.

My deputy convener did not expand on the final point that he made in his speech, but I can tell members that we want to ensure that there is better community involvement. Those of us who have served on prison visiting committees are aware of the importance of that; I acknowledge Maureen Watt's contribution on that issue. One persistent issue is the quality of experience for families when they visit, and we need to consider opportunities to minimise any disruption. We need to ask whether, when a long-term decision is made that makes a difference in terms of geography and distance, we are working together effectively to address that issue by providing support in terms of transport and so on.

I am conscious that we do not have a lot of time, although we have heard 10 contributions on the issue, which have helped to enlighten us even amid some of the brouhaha that the debate generated in places. The second issue that I want to discuss is the need to address the ways in which Families Outside or other organisations that are working with families can get the support that they require.

The Cabinet Secretary for Justice appeared before our committee and said that he wants to find ways in which community-facing prisons can, as the Government believes they can, provide the right direction of travel—I do not think that anyone disagrees with that. In essence, we are speaking on behalf of the little guys and the little girls who want their voice to be heard when big difficult decisions are made. We want to know whether there is any way in which some shift in perspective can be made to address their concerns. That might not necessarily involve changing the formal decision that the Government has presented to us

in Parliament today, but the petitioners want to ensure that the engagement process does not leave future petitioners feeling equally uncertain. That is the Public Petitions Committee's concern.

Today's debate is quite unusual, as we have never before had a chance to debate a petition in quite this way—it demonstrates the work that has been done by the parliamentary authorities to address that issue.

Dr Simpson: Will the member take an intervention?

Mr McAveety: I see that there is keen encouragement from the Presiding Officer for me to take an intervention; I am happy to do so.

The Deputy Presiding Officer: I am neutral on the issue.

Dr Simpson: I thank Frank McAveety for taking my intervention.

Has the Public Petitions Committee seen any evidence on the additional costs of transportation to the community-facing prison that is now proposed, which is very distant? Those additional costs include transportation not only for the families—although they are very important—but for the social workers and for drug workers, because there are a great many drug problems in prisons.

The member rightly referred to connectivity with the local community. Has the committee seen any evidence on the long-term income and revenue implications for social work, the SPS and the Government of the additional costs, given the long distance that will be involved for all prisoners instead of just a proportion of them?

Mr McAveety: In the evidence that we took and the submissions that we received, representations were made to us about the cost implications. One of the earlier speakers in the debate identified a figure from Aberdeen City Council social work services, and Families Outside raised the economics of the situation. We all know that, if we look at the social profile of those who find themselves in prison, there are often economic circumstances in families that result in the behaviour that is then reflected in prison sentences.

We need to try to address the central concerns. I hope that the minister will take that on board as part of the deliberations. As I said earlier, the matter is not just about the petition and the impact in the north-east of Scotland. If the minister is understood—I think that he is—and he wishes to have the matter as a central policy direction, we need to try to ensure that much of the discussion takes place at a much earlier stage so that we do not end up with the uncertainty that seems to have

been a feature of some of the discussions that we have had.

I am conscious that we have only a limited amount of time left. In a sense, I have addressed the points that I wanted to raise. I hope that the minister will address the points that were raised by John Farquhar Munro and the concerns that I have raised in my speech this afternoon.

Financial Services Bill

16:56

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is consideration of motion S3M-5464, in the name of John Swinney, on the Financial Services Bill, which is United Kingdom legislation.

Motion moved,

That the Parliament agrees that the relevant provisions of the Financial Services Bill, introduced in the House of Commons on 19 November 2009, relating to the enhancement of understanding and knowledge of the public of financial matters and the ability of members of the public to manage their own financial affairs, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.—
[John Swinney.]

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

Business Motions

16:56

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is consideration of business motion S3M-5508, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

The Minister for Parliamentary Business (Bruce Crawford): Presiding Officer, I am glad that the Parliamentary Bureau has agreed a full programme of business for Wednesday 20 January, Thursday 21 January, Wednesday 27 January and Thursday 28 January. I commend the motion to the Parliament and I move,

That the Parliament agrees the following programme of business—

Wednesday 20 January 2010

2.30 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Stage 1 Debate: Budget (Scotland) (No.4) Bill
<i>followed by</i>	Business Motion
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 21 January 2010

9.15 am	Parliamentary Bureau Motions
<i>followed by</i>	Scottish Conservative and Unionist Party Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Justice and Law Officers; Rural Affairs and the Environment
2.55 pm	Scottish Government Debate: Scotland's Water Rescue Review
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Wednesday 27 January 2010

2.30 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Stage 3 Proceedings: Tobacco and Primary Medical Services (Scotland) Bill
<i>followed by</i>	Business Motion
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time

followed by Members' Business

Thursday 28 January 2010

9.15 am	Parliamentary Bureau Motions
<i>followed by</i>	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Finance and Sustainable Growth
2.55 pm	Scottish Government Business
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business.

Motion agreed to.

The Deputy Presiding Officer: The next item of business is consideration of business motion S3M-5509, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 1 of the Alcohol etc (Scotland) Bill.

Bruce Crawford: Presiding Officer, the Parliamentary Bureau discussed the paper on motion S3M-5509 on Tuesday and we agreed that consideration of the Alcohol etc (Scotland) Bill at stage 1 should be completed by 7 May 2010. I commend the motion to the Parliament and I move,

That the Parliament agrees that consideration of the Alcohol etc. (Scotland) Bill at Stage 1 be completed by 7 May 2010.

Motion agreed to,

The Deputy Presiding Officer: The next item of business is consideration of business motion S3M-5510, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 2 consideration of the Home Owner and Debtor Protection (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Home Owner and Debtor Protection (Scotland) Bill at Stage 2 be completed by 29 January 2010.—[Bruce Crawford.]

Motion agreed to.

The Deputy Presiding Officer: The next item of business is consideration of business motion S3M-5511, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 2 consideration of the Public Services Reform (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Public Services Reform (Scotland) Bill at Stage 2 be completed by 12 March 2010.—[Bruce Crawford.]

Motion agreed to.

Decision Time

17:00

The Presiding Officer (Alex Fergusson): There are two questions to be put as a result of today's business. The first question is, that motion S3M-5428, in the name of Bruce Crawford, on the Interpretation and Legislative Reform (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Interpretation and Legislative Reform (Scotland) Bill.

The Presiding Officer: The second question is, that motion S3M-5464, in the name of John Swinney, on the Financial Services Bill, which is UK legislation, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the Financial Services Bill, introduced in the House of Commons on 19 November 2009, relating to the enhancement of understanding and knowledge of the public of financial matters and the ability of members of the public to manage their own financial affairs, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Investment Management Industry

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S3M-5419, in the name of David Whitton, on Scotland's investment management industry. The debate will be concluded without any question being put.

Motion debated,

That the Parliament recognises the heritage, international standing and continuing success of Scotland's investment management industry; is concerned by the serious risk that the industry's capacity to serve its customers by providing a choice of investment opportunities to meet their needs will be impaired by the proposed Alternative Investment Fund Managers Directive, currently before the European Parliament and the Council of Ministers, and hopes that the directive will be amended so that it is proportionate, practicable and sufficiently flexible and can support the continued provision by companies in Scotland, and in particular areas such as Strathkelvin and Bearsden, of a range of investment vehicles, including investment trusts.

17:01

David Whitton (Strathkelvin and Bearsden) (Lab): This is the first occasion on which I have been fortunate to hold a members' business debate, and I am grateful to those who signed my motion and have taken the trouble to attend.

The effects of the global financial recession have been discussed many times in the chamber, but I want to draw attention to a particular piece of proposed European legislation that could seriously impact on a successful part of the Scottish financial sector. I am, of course, fully aware that the regulation of financial services is not within the competence of this place; however, since the Parliament's inception, European Union affairs have been recognised as occupying an important place in our deliberations. It is therefore right that we examine the serious implications of this particular proposal.

My concerns relate to the draft alternative investment fund managers directive—better known, perhaps, as the hedge fund directive—that was published by the European Commission last April. I am not here to defend hedge funds, but it is widely accepted that the process was flawed and the usual consultations bypassed to comply with political urgency. At the time, politicians and Parliaments everywhere were facing demands for immediate action to deal with the global financial crisis. However, the failure to consult and the Commission's adoption almost in its entirety of what was essentially the work of one MEP has left a legacy with which member states and the European Parliament are still wrestling. There have been many protests about the directive's content since its publication and I will attempt to

explain why it is important that we in the Scottish Parliament should also voice our concerns.

Although it has been characterised as introducing the regulation of hedge funds and private equity, the directive goes much further than that. Its definition of an alternative investment fund would capture a very broad range of companies from large multinationals to small employee-owned operations. Moreover, it does not take into account the regulation that is already in place for the diverse range of companies that lie within the new definition.

The directive is important to Scotland because of its potential impact on our fund management industry. Although the reputation of our financial services industry has been hit hard, criticism has focused primarily on the banking sector. However, Scotland's financial industry is about much more than banks. Indeed, with its history of success and innovation, our investment management sector, the part that will be most affected by this directive, is the jewel in the crown of our financial services.

Let me give the chamber a few quick facts. Scotland has an internationally recognised investment management industry, the origins of which date back to the 19th century. We are one of the leading centres in Europe, with around £500 billion of funds under management. Edinburgh is ranked around 11th in the world for asset management in the City of London's global index. Company names such as Baillie Gifford, Aberdeen Asset Management, Martin Currie, and Standard Life Investments might not be familiar to everyone, but they have huge clout in the industry and in Scotland's and the United Kingdom's economy. If someone wants to raise money in the financial market, they come to Scotland to talk to those companies. They are very influential decision makers and they employ many highly experienced, skilled and dedicated specialists who operate on the world stage.

My primary concern—and I know that it is the industry's primary concern—is about how the new directive, if it is approved unamended, would affect customers such as savers, pension holders and investors. For example, if it is not amended, the directive would restrict asset managers who are investing clients' money outside Europe—say in Asia—and we could see EU investors being denied the opportunity to invest in the areas of greatest growth potential around the world. The proposals would also mean a restructuring of many investment vehicles to no real benefit and at increased cost. Indeed, an evaluation commissioned by the European Parliament estimates that the one-off compliance costs would be in the billions of euros and that there would be significant and permanent increases in transaction costs. It even estimates that the EU's gross

domestic product could fall by around 0.1 to 0.2 per cent simply because of the directive.

Much of that would happen because investment would become more difficult and expensive. That makes little sense when economies in Scotland, the UK and the EU are still in the out-patient department, and the investment performance of pension funds and other savings could be hit. According to Scottish Financial Enterprise, the body that represents Scottish financial interests—I am delighted to welcome its chief executive, Owen Kelly, to the chamber this evening—the critical overall weakness of the draft directive is that it tries to cover too broad a range of companies and structures, and takes no account of what is already in place. For example, with investment trusts, which were created here in Scotland and now exist in many other countries, it does not recognise the existence of the public listed company as a possible structure. There is confusion over the directive's possible impact on property funds, lack of clarity on hedge funds, and it overlaps with other EU regulations. That is a serious flaw.

If the directive goes through, there could be an impact on financial sector jobs in Scotland, as it would mean that less capital would be available for investment in growing companies at a critical time. To lose jobs in one of the most successful and highly respected parts of our financial services industry at no benefit to the customer and with no improvement to regulation is just plain daft.

Those concerns are widely shared across the EU. My Labour Party colleague Catherine Stihler MEP, as well as MEPs from many other political groups, have raised serious questions about the draft directive. Even as we are debating the directive, I know that Catherine Stihler and other MEPs are questioning Michel Barnier, the new financial services commissioner in Brussels, and raising the matter with him. Under the Swedish presidency that ended in December, member states failed to reach agreement, although the need for revision is not disputed. The Spanish presidency is now looking for a compromise, and the focus is now the European Parliament.

I urge my fellow MSPs to use their influence with their party colleagues in Europe to encourage a rethink on the directive. The EU needs to look at regulations that already apply, and at alternative investment fund structures individually. It should not attempt to enclose a wide range of operations under a one-size-fits-all banner. It needs to understand the skills and expertise in this sector of the industry, and ensure that its proposals do not have a detrimental impact for companies that are operating in Europe. It also needs to look again at whether its proposals will really mean better regulation and a better deal for customers.

I am aware that Mr Swinney, the Cabinet Secretary for Finance and Sustainable Growth, has been engaged on the issue and has written to the Brussels authorities; I welcome that, as I know the industry does. I hope that Jim Mather, the Minister for Enterprise, Energy and Tourism, will give us an update on progress. A rethink is under way, but the deadline for amendments to the directive is in seven days' time, on 21 January. I know that Catherine Stihler is on the case, but we need to keep an eye on it, and a strong message from the Parliament tonight that we want changes to be made to protect Scotland's asset management sector would add weight to the campaign.

17:09

Nigel Don (North East Scotland) (SNP): I congratulate Dave Whitton on bringing the motion to us and I note its urgency. I pass on the apologies of my colleague Joe FitzPatrick, whom members might have been expecting to speak but who unfortunately had to disappear to his constituency on urgent business. His constituency is in Dundee, which is also part of my region and which is home to one of the United Kingdom's largest generalist investment trusts—the Alliance Trust, which was founded in 1883 and is one of the 10 largest companies based in Scotland, as well as being listed in the FTSE 100. It currently manages more than £2 billion and employs about 300 people. In 1982, my home city of Aberdeen generated the previously mentioned Aberdeen Asset Management, which employs about 1,800 people in 31 offices across 24 countries. I mention those businesses partly to localise them in my region but also to make the point, if it is necessary to do so, that Scotland has major players in international finance.

I will discuss briefly the draft alternative investment fund managers directive, as it is important that we put a little flesh on that. As drafted, it will cover all non-UCITS funds. For those who are not familiar with the issue, UCITS stands for undertakings for collective investment in transferable securities. The draft directive covers investment trusts, private equity funds, hedge funds and property funds. As the previous speaker pointed out, that is a pretty wide-ranging set of institutions with different characteristics. A single draft directive that is designed to cover all those is absolutely bound to fail. It is therefore not surprising that the issue demands our attention.

My friend and colleague Alyn Smith MEP is on the case. He is a member of the European Parliament committee that is considering the fall-out from the financial crisis. His view is that the issues are now being understood and worked on and that the necessary amendments are being

brought forth. I sincerely hope that that proves to be the case. However, it is important that we keep our eye on the ball and that we ensure that our colleagues in Europe do everything that they can to protect what is an extremely important part of the Scottish economy.

17:12

Gavin Brown (Lothians) (Con): I congratulate David Whitton on securing this important and timely debate. I also thank Scottish Financial Enterprise for all its work in getting the matter on the agenda. As we heard from Mr Whitton, we should be proud of our financial services industry. He made the valid point that about 50 per cent of that industry is not banking. We have pensions, insurance, asset servicing and, of course, tonight's topic, which is investment management.

David Whitton set out the figures firmly and starkly—about £500 billion-worth of funds are managed directly here in Scotland, and Edinburgh alone is ranked 15th in the world as a place in which to conduct investment management business. Investment trusts were invented here; they are a Scottish success story and the origins go back all the way to the 19th century.

As has been said, the challenge that we face, and the reason for this urgent debate, is the draft alternative investment fund managers directive. That draft directive was rushed—always a bad start—and was not subject to the usual consultation procedures, which exist for good reasons. It is also based on a report that was prepared by a single member of the European Parliament. When we combine those three factors, we have an extremely blunt instrument.

It has been mentioned that the draft directive is nicknamed “the hedge fund directive”. The nickname says it all. The objective and purpose was to be seen to be doing something about hedge funds. The directive certainly will attack hedge funds, but because of the wide definition that it uses, it also inadvertently captures the investment trust industry and could, as a consequence, cause serious damage to the Scottish economy. Bill Jamieson of *The Scotsman* put it rightly when he said that investment trusts are

“an innocent bystander to the events that rocked the banking system of America and Europe.”

The negatives of the draft directive have been outlined already: the fact that it restricts investment trusts from investing in Asia, where the recovery is gaining momentum, which means that investors would miss out on potential gains there; the sheer cost of restructuring investment vehicles, which David Whitton put at billions of euros, with little benefit for investors, savers or

pension funds; the fact that it duplicates not just one, but several existing sets of regulations; and the fact that it could, in effect, prevent the sector from having any new product launches or expansion. That is bad news for the industry and, most important, for the customers—pension holders, pension funds and individual investors. It restricts choice and access to areas of investment growth.

We welcome the movement from the European Parliament thus far and we welcome the revisions that happened during the Swedish presidency, but we ask that the same direction of travel continue during the Spanish presidency. As other members have, I call on all MEPs across the spectrum to influence a rethink on the draft directive.

The origins of the financial crisis were complex, many and varied, but one of the key factors was a total lack of diligence by banks, regulators, companies and others. It would be doubly awful if a directive with its own total lack of diligence were to inflict yet more pain upon the Scottish economy.

17:16

Sarah Boyack (Edinburgh Central) (Lab): I congratulate David Whitton on securing the debate. *[Interruption.]* I will move, because my microphone is not working—there is a minor gremlin there.

As colleagues have said, this is a hugely important issue, which I remember discussing with Catherine Stihler several months ago—not long after the European elections. She was seized of the importance of getting clear Scottish representation on the issue. As colleagues have said, the draft directive would be seriously damaging to the industry in Scotland.

I know from the briefing that we had from Scottish Financial Enterprise that it is, with the UK financial services industry, deeply critical of the proposals and has alerted representatives to the dangers that are inherent in the proposals.

It is vital that we stand up for our financial services industry which, as colleagues have said, is absolutely crucial to Scotland's economy. As the MSP for Edinburgh Central, I am deeply aware of the importance of the quality and range of jobs in our financial services industry. As we have said in debates about banking, the industry does not just provide the top-line jobs, but supports a raft of other high-quality jobs in the city—such as in the legal services industry, which is related to the financial services industry, and in the hotel and catering sector—that are vital to the strength of the economy as a whole.

Seven of the top 20 Scottish companies are in the financial services sector, so it really is an

important sector that we would lose at our peril. Colleagues have talked about the importance of the industry; it represents 6 per cent of our gross domestic product—a significant proportion of the country's wealth.

We need changes to be made to the proposals. As an Edinburgh MSP, I am acutely aware that Edinburgh is a hugely successful centre. We need to talk up the success that we have had in the city and we need to help to sustain it through whatever measures we can use, for example in respect of education and housing developments.

Major life companies, such as Scottish Widows and Standard Life, are here because they want to be here. They have chosen to be in this city and we have to keep encouraging them to be here. It is not just about the big companies that we all know. In addition to the major life companies are related asset managers and smaller, but successful, specialists who all thrive as part of a constituency here in Edinburgh. We need to ensure that those companies are supported. We must take seriously the real fears that this directive could damage our companies by imposing restrictions on their business.

The global financial services index shows our competitors rushing up that scale and, as other members have commented, it is the countries that, ironically, our companies would be restricted in trading with that are doing well. China, in particular, is doing well and is potentially a major threat. The directive must be changed.

David Whitton outlined very effectively the new barriers—the increased costs and bureaucracy—that would be created. As Gavin Brown observed, there has not even been proper consultation on the draft directive. When we are formulating incredibly complex regulations that aim to regulate an incredibly complex industry, the last thing we want is to get them wrong and to create unintended consequences.

I am worried about the impact of the directive and hope that decent changes will be made to it. It has been an incredibly tough year across Scotland for jobs, particularly in Edinburgh, not just because of the recession but because of the fallout for jobs in the banking sector. Although some of those have been replaced by welcome new jobs, we would let more jobs go at our peril in what has been a thriving sector. The issue is not just the jobs but, crucially, the people who have savings, investments and pensions in those companies. We need to look out for them as well.

For a number of reasons, we need to work together. This is one of those occasions on which there is a strong feeling across the chamber that we are all singing from the same hymn sheet. I hope that we can send a powerful message to

Europe, and I am sure that the minister will have comments to make about what more can be done to lobby. I hope that the cross-party support that exists will send a clear message from Scotland that the directive must be changed. It was drawn up in haste and we will repent it at our leisure. I hope that the strong voice with which we are speaking tonight will have an impact in Brussels.

17:21

Iain Smith (North East Fife) (LD): I add my congratulations to David Whitton on his securing this members' business debate on an extremely important subject. I also thank him for the informed and valuable speech that he made in opening the debate. As has often been said, one of the problems of speaking in members' business debates is that, when there is consensus, members are left with very little to say towards the end of the debate. I am sure that the minister will have plenty to say, but I will try to add a little to what has already been said.

We are all aware of the importance of the investment management sector to the Scottish economy. More than 3,000 people are employed in the sector in Scotland and we manage £468 billion of assets here, of which £251 billion is invested globally in equities and £135 billion is invested in bonds. We have a broad sector with extensive experience in different areas. As several members have said, we invented the investment trust sector.

However, there are other areas where we are also very strong, which may be impacted on by the proposal. It is important to recognise that, although we need regulation—regulation that applies across Europe ensures wider protection than regulation that applies only in the United Kingdom—that regulation must be proportionate and focused on the end user. Part of the problem with the draft directive is that it does not address the impact that the regulation might have on the end user—the person who owns the shares in the investment trust and who relies on them for an income. I am thinking of the consumers, the pensioners and the other people who rely on that income. The directive does not address the implication for the ability of the investment trusts to make money to provide that service to the end consumer. That is where it is signally failing in its responsibility to be proportionate regulation. It is not proportionate; it is overly burdensome, it will add unnecessary costs to the sectors and it will not deliver what is required.

It is valuable that we have cross-party support for what the motion proposes not just in Scotland, but across Europe and in the United Kingdom. I am slightly concerned that the reporter to the European Parliament's Committee on Economic

and Monetary Affairs has come up with a report that takes the legislation backwards slightly from where the Swedish presidency had got it. I hope that that situation will be reversed when the directive goes before the committee. We have good sources not only on the committee: my colleague, George Lyon, is also involved and is working with Sharon Bowles, the chairman of the committee and a Liberal Democrat member of the European Parliament, to ensure that the concerns of the Scottish investment trust industry, as well as those of the wider UK industry, are taken on board in the final debate.

It is important not to lose sight of the need to continue that lobbying. Perhaps the minister can give us some indication of what the Scottish Government has been doing and of how successful it has been to date in its lobbying. What discussions has the Scottish Government been having with the UK Government—including the Treasury—and the Financial Services Authority regarding their lobbying? The Treasury has indicated its concern that the proposed directive goes beyond what is necessary.

Bad examples always make bad laws—that is a well-known adage. In this case, people have been rushing to be seen to be doing something rather than concentrating on getting things right. The failure to consult properly before introducing the directive is unacceptable. Perhaps the proposed directive should be withdrawn and properly consulted on, rather than just amended. We must do all that we can at least to ensure that the directive is amended in the right direction.

Again, I congratulate David Whitton on securing the debate.

17:25

The Minister for Enterprise, Energy and Tourism (Jim Mather): I congratulate David Whitton on his first members' business debate and on his expert assessment of the impact of the proposed alternative investment fund managers directive. It is an important issue. I appreciate the contributions of members from all parts of the chamber, and I am delighted that we have full support from all parties.

The current financial crisis and the many complex issues that led to it have taught us hard lessons about the need to understand and mitigate risk, which we all accept. The Scottish Government is supportive of measures to increase transparency and to avoid difficulties that occur in one country impacting on others. However, at the same time, we must ensure that our industry can remain successful and offer the services and choices that are demanded by consumers.

The assessment that was made during the debate, which started by noting the failure to consult, is that the directive does not recognise the level of current regulation and does not capture the broad range of companies that operate in the sector. Indeed, it would limit the potential that Scotland has to do much more and attract more business from elsewhere, as well as to invest appropriately overseas. In combination with that, there are issues to do with forced restructuring, increased costs and duplication. Iain Smith spoke about proportionality, and we note the impacts on performance for the end-user investor, which provide the case for the eloquent call that has been made for a rethink on the proposed directive—particularly in what is such a significant sector.

David Whitton is right to point out that the sector contains more than just banking. Fund and asset management is very much the jewel in the crown, but it sits alongside life and pensions and our actuarial, legal, accounting, audit, arbitration and mediation capabilities, which make Scotland an excellent location for investment.

Sarah Boyack spoke about the need for us to stand up for this sector of ours, which has a good track record. I was taken with the fact that Aberdeen Asset Management rewarded those who lost out on split capital trusts, thus reinforcing that image. For us, the sector is of enormous significance, and it is a success story, as Gavin Brown said—current and historical. That is because people try hard. The vigilance of and the action taken by Scottish Financial Enterprise are helping with that.

The rush in introducing the proposed legislation without the normal checks and balances, together with the fact that it was sourced from one person, means that it is a blunt instrument, which could strike innocent bystanders here in Scotland. We must therefore be vociferous in our response and our action. That is exactly the case. In October, the Cabinet Secretary for Finance and Sustainable Growth wrote to Commissioner McCreevy supporting the misgivings that had been expressed by SFE and others about the possible damage to investors and pension holders in the EU that would arise if amendments were not made to the draft directive. Mr Swinney stressed that, unless the proposed directive was amended, the interests of those investors and the companies that serve them would be materially damaged, to no evident benefit. I do not want such an own goal to be scored on our watch. Hence, we have already activated our MEPs on the matter, as is evident from other members' speeches.

On 28 October, Mr Swinney met SFE to stress the Scottish Government's support for the industry's efforts in lobbying the EU on the matter.

He also stressed the need to present European legislators with amendments to the draft directive. I am delighted that SFE has done that so professionally. What it has done will help the directive not to place burdensome overheads on our sector, including our AIFs, which patently do not pose a systemic risk or endanger the integrity of markets. Iain Smith was right in his comment on the proportionality principle, particularly given the chemistry of unintended consequences. Proportionality has to be hard-wired into the model.

SFE believes that preserving choice and access to global investment opportunities at an affordable cost to investors while putting in place appropriate and proportionate safeguards is exactly the right thing to do and will lead to a robust and fair investment environment. We all agree. SFE believes that its proposed amendments are consistent with creating and preserving that environment. We all agree with that, too. Equally, SFE believes that it is inappropriate for the European Parliament to frustrate or prohibit investment opportunities in circumstances where there is adequate disclosure of the risks and rewards available. David Whitton outlined that in his speech. Again, we agree.

The key issue, which was voiced right from the start of the financial crisis, is the need not to go overboard with regulation, particularly regulation that acts as a blunt instrument. We need to ensure that we put in place regulation that has the scope and compatibility to maintain economic stability and growth.

David Whitton: As I pointed out, the deadline for amendments is 21 January. Does the cabinet secretary plan to write again to reinforce the point? He wrote in October, but will he do so again to back SFE's amendments?

Jim Mather: It would be seemly for us to write to say that the debate has taken place and that consensus on the matter is total. We will do that. We will say that we have cross-party judgment on the issue and that we back SFE and its amendments to the hilt. SFE and its members have worked diligently to produce a set of amendments to the directive. We are delighted to support the motion. Along with other parties, we want to provide a clear and positive message to the EU on this crucial issue. We will do that in writing.

Meeting closed at 17:32.

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