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Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 24 March 2010

Session 3

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[The Presiding Officer *opened the meeting at 14:00*]

Time for Reflection

The Presiding Officer (Alex Fergusson): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is the Rev Alan Gibson, from the united parish of Carstairs and Carstairs Junction.

The Rev Alan Gibson (United Parish of Carstairs and Carstairs Junction): Presiding Officer, members of Parliament and friends, I spent last weekend walking part of the west highland way with my seven-year-old son, Benjamin. We were full of enthusiasm as we set off on our three-day, 28-mile trek. Five minutes into the journey, Benjamin turned to me and said, "Daddy, are we nearly there yet?" It proved to be a long, long weekend.

The previous week, I listened to Sir Ranulph Fiennes giving an after-dinner speech about his travels: having a heart attack when he was just a few minutes from the top of Everest; plunging into the icy waters during his solo walk to the north pole; and running seven marathons in seven days at the age of 60. It was an inspirational story. Life itself can be a steep journey, with icy blasts, pitfalls and treacherous ravines. I look at my parish in Carstairs. Recently I sat with a young lad who is £16,000 in debt. We run a youth group in which most of the kids come from homes where there is a drug problem. We have a football team in which four lads have been out of work for more than six months. Add to that bereavement and illness, and life is no pleasant meander but a frantic battle up the north face of the Eiger.

The psalmist says:

"I lift up my eyes to the hills. Where does my help come from?"

He answers his own question, saying:

"My help comes from the LORD, the Maker of heaven and earth. He will not let your foot slip. He who watches over you will not slumber."

He was looking to the hills not in awe and wonder but in fear and trepidation. His journey was tough, and the hills presented a real hurdle to him. However, somewhere deep within he knew that there was one who would strengthen him for that journey.

Leading our nation up this treacherous mountain path has never been more difficult. You are more in touch with the realities of recession, the right to die—or live—and the realm of drug culture than I will ever be, so today I offer not patronising words of piety but simply encouragement as you lead and guide us up the mountain.

I invite you to pause with me for a few moments as we reflect again on the words of the psalmist. Lord, we ask for strength as we lift our eyes to the hills. Lord, we ask for wisdom as we lead others up this difficult path. May we be filled with compassion as we seek to understand those who struggle on that journey. Amen.

Scottish Parliamentary Commissions and Commissioners etc Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-5681, in the name of Trish Godman, on the Scottish Parliamentary Commissions and Commissioners etc Bill. We have no flexibility in the debate. We can take a little time, but not a lot, out of the next debate, so I ask members to stick pretty closely to the times that they are given.

14:04

Trish Godman (West Renfrewshire) (Lab): It gives me great pleasure to open this stage 1 debate on the Scottish Parliamentary Commissions and Commissioners etc Bill. I do so from the front bench—I want to put that on the public record because I have never been on the front bench before and I do not think that I will ever be on it again.

Members might remember that, back in November 2008, an ad hoc committee of the Parliament was established to consider and report on the terms and conditions of the office-holders and the structure of the bodies that are supported by the Scottish Parliamentary Corporate Body. In addition, the committee was tasked with considering any proposals to include new functions or arrangements. The Review of SPCB Supported Bodies Committee—which I will refer to as the RSSB committee—published its report on 21 May 2009. The report contained a number of recommendations, some of which required legislation to give effect to them. Members may recall that the Parliament debated and agreed to the RSSB committee's report on its inquiry in June of last year.

As members know, the committee bill process is slightly different from that for other bills: the Parliament scrutinises the committee's report on a proposal and reaches agreement on its findings before moving to a stage 1 debate; unlike with other bills, there is no requirement for a committee to report on the general principles of a committee bill at stage 1.

The parliamentary debate on the committee's report in June 2009 allowed the Parliament to scrutinise the committee's work and recommendations. Today, we have the opportunity to debate the general principles, now that we have the full details of the bill before us. I am pleased that we are debating the general principles of a bill that has been introduced to provide the necessary legislative force to make changes to office-holders' accountability and governance; to establish a new standards body; and to transfer the functions of the Scottish Prisons Complaints Commission to the Scottish Public Services Ombudsman. It is important to note that the bill is not about the functions of the SPCB-supported bodies; the bill fully respects their independence while delivering significant governance powers to the SPCB.

Members will note the level of detail in the bill. I would like to cover the main provisions in a little more detail. To enable the corporate body to undertake its scrutiny role effectively, and in light of the previous Finance Committee's recommendations, the bill provides for the governance arrangements to be brought into line with those in the Scottish Commission for Human Rights Act 2006 and enhances the provisions in that act to provide that proposals covering expenditure, the appointment of staff and the location of offices shall be subject to the approval of the corporate body and requires strategic plans, with costings covering three to four business years, to be laid before Parliament.

The bill also provides for the functions of the Scottish Prisons Complaints Commission to be transferred to the Scottish Public Services Ombudsman and put on a statutory footing and includes some ancillary amendments to the Scottish Public Services Ombudsman Act 2002 to assist with the interpretation of certain provisions.

The bill provides for the establishment of a new standards body, which is to be known as the commission for ethical standards in public life in Scotland. As a result, the posts of Scottish Parliamentary Standards Commissioner and chief investigating officer—which are both part time — will be combined into a single, full-time post and renamed the public standards commissioner for Scotland. The post of Commissioner for Public Appointments in Scotland will be renamed the public appointments commissioner for Scotland. The two new commissioners will be appointed by the corporate body, subject to the agreement of the Parliament, and provided with the property, staff and services that they need to fulfil their functions by the new commission. Their existing functions, staff and liabilities will transfer when that body is established.

No changes to the reporting arrangements for the new commissioners of the standards body are proposed. Investigative reports relating to MSPs will continue to be sent to the Standards, Procedures and Public Appointments Committee, and reports relating to councillors and other elected members will be sent to the Standards Commission for Scotland; the public appointments commissioner will continue to report to the Standards, Procedures and Public Appointments Committee about matters relating to public appointments in Scotland.

The bill will not, initially, result in a startling reduction in overall running costs, largely because of the start-up costs for the new commission for ethical standards in public life in Scotland, but there will be savings in future years compared with the cost of running three separate bodies. The early estimate is of a reduction of between £18,000 and £25,000 in accommodation costs and a further £10,000 saving as a result of the merging of the posts of chief investigating officer and Scottish Parliamentary Standards Commissioner, both of which are part time. Significant savings will arise from the SPSO taking over the prison complaints function—£163,000 in the first full year. In addition, there is potential for future savings once the corporate body receives its new powers, particularly in relation to the sharing of services and premises.

The Finance Committee has considered and reported on the financial memorandum to the bill and is content that the information in it is an accurate reflection of the costs that will arise from the bill. The Subordinate Legislation Committee has considered the delegated powers under schedules 2 and 5 and is content. I thank the members of those committees for their consideration of those matters.

I thanked my fellow members of the RSSB committee during the debate in June last year, but I repeat those thanks at this culmination of a considerable piece of work. My thanks also extend to the clerks and legal advisers who supported the committee and enabled the introduction of the bill.

The package of measures in the bill will not only improve the accountability and governance of corporate body-supported bodies and deliver benefits to the public through better performance and easier access to the services they provide, but, over time, produce savings and thereby reduce public expenditure.

I move,

That the Parliament agrees to the general principles of the Scottish Parliamentary Commissions and Commissioners etc. Bill.

14:12

The Minister for Parliamentary Business (Bruce Crawford): Like Trish Godman, I am speaking from the front bench. As I took my place, Ross Finnie quipped that it must be my big day because, usually, I just formally move motions. If this is my big day I wish that a lot more of our colleagues were here to share the excitement with us and have the pleasure of speaking in the debate.

I make light, but we are talking about an important bill. It was interesting to hear Trish Godman's summary. She highlighted the strong links between the bill and what the Government is working hard to achieve for Scotland. We have already acted to simplify the public sector landscape and improve approaches to public services in Scotland. Not least of those actions is the Public Services Reform (Scotland) Bill, which, I hope, the Parliament will conclude tomorrow. We are therefore pleased that the RSSB committee has considered improving the landscape and the relationship with parliamentary bodies.

We can be assured that, as Trish Godman said, the bill comes after a great deal of hard work and thorough thought. In 2006, the Finance Committee considered in detail the accountability and governance arrangements for the parliamentary commissioners. The Finance Committee's work informed the independent review that was carried out by Professor Lorne Crerar. When the Parliament debated the Crerar report in 2007—another exciting debate that I took part in—we all endorsed the vision of a risk-based and proportionate approach to scrutiny with the user placed at the centre.

The bill is aligned with Lorne Crerar's direction and the Government's aims. The Government therefore welcomes the bill and will support it as it goes through the Parliament. I am sure that there is a great sigh of relief at that. The bill is to be welcomed as it will contribute to the simplification of the public bodies landscape and make things easier for the public. That is what the process must always be about. The independence and effectiveness of the roles of the parliamentary commissioners will be enhanced significantly. Crucially, the operational independence of all parliamentary commissioners will remain unchanged, although the bill will introduce a more consistent approach to accountability for all the commissions. That will make the relationship more akin to the one that the Government has with our public bodies.

Trish Godman rightly mentioned the changes to the complaints-handling system with regard to prisoners. The provisions on that are part of a wider set of changes to the system of complaints handling for all Scottish public services. That delivers on commitments to take forward recommendations that arose from the post-Crerar report by Douglas Sinclair, which considered complaints handling across public services.

In the debate on the RSSB committee report in June last year, the Government welcomed the proposal that the SPSO should take on the new role of designing and implementing a single set of principles for complaints procedures. It is clear that no other single organisation is as well placed or as well established as the SPSO to take on that role. That is being achieved through the Public

Services Reform (Scotland) Bill, as recommended in the RSSB committee report, and it will lead to a more streamlined and accessible approach to complaints handling across public services.

Trish Godman touched on the financial implications. It is clear that, as with all the actions that we undertake that will impact on public services, we must continue to look for savings and efficiencies to be achieved through the changes that we make. It is clear that the real savings to be achieved through the bill will come from organisations that undertake activities more effectively and efficiently through working together and sharing best practice.

The proposals in the bill will involve some realignment of how resources are split between the Government and the Parliament. The Parliament will need to reassess the level of resource that it requires from the Scottish block each year to resource the functions that its commissions take on from bodies that were previously funded by the Government. That means that there will probably be no overall saving to the Government from the proposals, but we all know that making savings is essential in order to balance the public finances. The reduction in bodies and the potential for the greater streamlining of accommodation and greater opportunities for parliamentary commissioners to share support services and resources provide scope for future efficiencies by the Scottish Parliamentary Corporate Body.

The real benefit of the bill will come from the Parliament's ability to set, for the first time, consistent standards across all our parliamentary bodies. Every part of the public sector must manage its resources responsibly and deliver maximum value for the public purse, and all our public services must, without exception, provide good-quality public services that are valued by their customers. They must also ensure that efficiencies are applied consistently and proactively across the whole public sector and across all corporate or common services.

In conclusion, I repeat the Government's support for the bill, which is a key milestone in a shared journey that started in 2006. Four years on from the original Finance Committee report and nearly three years after the external scrutiny steps that were undertaken by Professor Crerar, the bill is a positive step that I am glad to support.

The Presiding Officer: I call Johann Lamont, to open on behalf of the Scottish Labour Party. She has four minutes.

14:18

Johann Lamont (Glasgow Pollok) (Lab): For once I am not devastated to discover that my time is tight and that I must keep to it. I will have done remarkably well if I manage to speak for four minutes.

On behalf of the Scottish Labour Party, I welcome the opportunity to speak in this debate and to record our support for the general principles of the bill. If I came into the chamber with a spring in my step it was because of the opportunity for a reunion with my good friends on the Review of SPCB Supported Bodies Committee. We may divide on many things, but I think that our shared experience will go with me to the grave.

To be serious, I recognise the role of the clerks and the convener in supporting us and taking us through a difficult process. The process was difficult simply because the language that was used to deal with the important issues was not easy. The bringing together of those things made the process such a challenge.

It is true that most of the debate on the general principles of the bill has been rehearsed and that there has been agreement. I do not think that there will be a dispute about those general principles. The committee had to adjudicate and come to decisions on difficulties, challenges and conflicting views. Not everyone will be happy with those decisions, but they reflected the balance of concerns throughout the Parliament and beyond about what was suggested.

No one can disagree with the aim of increased efficiency, but as I said in the previous debate we must be careful that efficiencies are not made at the cost of the service we wish to deliver and that the service itself, as well as its accessibility and transparency are real, not theoretical. We must also ensure that commissions and commissioners are supported to do their job properly and that their role is understood beyond this debating chamber.

Reflecting again on these issues, I believe that we must remember that these bodies came into existence not out of malice or with some malevolent intent but for a purpose. As a result, it will never be easy to declutter the landscape by trying to get rid of them; people will always want to be reassured that the need for which they exist is still being met. That is particularly true of the commissioner for children and young people. We must also remember that commissioners play a variety of roles. Although they grew up in different ways, they were established for a particular

purpose and we must ensure that, no matter what structure is put in place, that purpose remains.

There is no point in having the kind of one-stop shop that people have suggested and discussed if no one knows where it is, understands its purpose or realises that it exists to help them in their everyday lives. It would be a problem for the bodies that deal with complaints or rights if it turned out that those who understand how to complain or to fight for their rights are able to access support while those who need the confidence to do so are absent from the process. The challenge will always be to ensure that, instead of simply giving people a place to go at the end of the process after things have gone wrong, these bodies reach out into communities to those who deserve support and services that meet their needs.

I support the suggestion in the bill, as recommended by the committee, that the test for any further proposals for commissions or commissioners should be whether the particular function can be done by existing bodies and whether it is possible to do things together or in a different way. Finally, just because there are external champions fighting for children, older people or whatever, that does not mean we should not have champions inside Government—and, indeed, inside Parliament—doing the same. We need to structure the responsibilities of Government in such a way as to ensure that those champions exist.

I thank those who have helped us to get to this stage and am happy to lend our support to the bill's general principles.

14:22

Jackson Carlaw (West of Scotland) (Con): Presiding Officer, I hope that you will permit me to begin by saying that Trish Godman's opening speech and the contribution from Labour's front bench are without exception the finest that I have yet witnessed in my time in this Parliament—and I say that with all the sincerity that I know her very good friend Anne Moffat would be able to muster. Paying tribute to Mrs Godman, I believe that she has very helpfully and succinctly laid out the bill's terms and the work of the committee that she convened.

I confirm at the outset that the Scottish Conservatives welcome the bill and support its general principles. It reflects in part the recommendations of the RSSB committee, of which I was pleased to be a member and whose report we debated last June. Other perhaps more controversial matters that we discussed and made recommendations on at the time are being addressed elsewhere, particularly in the Public Services Reform (Scotland) Bill, stage 3 of which will be concluded tomorrow.

The measures before us reflect in all but name the RSSB committee's conclusions. With regard to the variation of the name of the new body—either the commission for ethical standards in public life in Scotland, or CESPLS, or the public life and appointments commission Scotland, or PLACS—I make no complaint. You pays your money, you takes your choice. Essentially, the end result is the same and represents a sensible reform that benefits the public by reducing administration and complexity while improving accountability and governance. The SPCB has a responsibility and a duty to ensure that economies of scale, however modest, are realised and that the examination of the new annual report meets the Parliament's requirements.

We also support the endeavour to harmonise the terms and conditions of members of the Standards Commission for Scotland with the office-holders and members of the other SPCB-supported bodies. The proposals might appear quite dry, minor, even technical but, like other members of the RSSB committee, I continue to believe that such changes will continue to be important to those who currently hold office and might well be influential in attracting talented successors.

We support the changes that are designed to improve the operation of the Scottish Public Services Ombudsman and the intention to transfer to it the functions of the Scottish Prison Complaints Commission. We welcome the fact that that will place the SPCC on a statutory footing for the first time. In particular, we endorse the changes to the SPSO that will offer access to a wider range of outcomes and options for reporting, including the discretion to determine to discontinue an investigation and to decide whether in those circumstances to send a report to ministers or to lay any report before the Parliament.

Having read the *Official Report* of last June's debate on the recommendations of the Review of SPCB Supported Bodies Committee, I would like to return to one theme that recurred in many of the contributions to that debate: the future of Scotland's Commissioner for Children and Young People and of the Scottish Human Rights Commission. During the working life of the committee, sustained representations were made that those functions should not be merged. They were almost always from those who wished to see the commissions remain separate as a matter of principle, not as a matter of practicality. In the event, a merger was not recommended by the committee and is not part of the bill, but it would be wrong to conclude that such an outcome was inevitable, far less that it was enthusiastically

arrived at. In truth, there was considerable discussion as to whether such an amalgamation might not be appropriate as well as, undoubtedly, a collective lack of enthusiasm at the prospect of further future commissioners—for example a victims commissioner or an old people's commissioner—for causes that are often championed as being ideal candidates. The establishment of a new rights commission had some appeal. However, essentially for practical reasons such as the relative age of the newly established Scottish Human Rights Commission, no recommendation was made at that time. It was not an issue of principle. It is important to make that point explicitly, as that may well be unfinished business.

For the moment, I join Trish Godman in thanking the clerks and committee colleagues and I thank her for steering us through our deliberations. I agree that the bill gives effect to sensible proposals that are supported on all sides and that can now be progressed. We will be content to support the bill today.

14:26

Ross Finnie (West of Scotland) (LD): I am pleased to take part in today's debate. That pleasure is only increased by knowing that we are taking part in a debate that is also Bruce Crawford's big day. This is also an important debate, so the bill should not be dismissed simply because its contents include some highly technical matters.

I want, first, to reflect on the structure and history of the Review of SPCB Supported Bodies Committee, which made the recommendations on which the bill is based. It is important to remember that the commissions and commissioners that the bill deals with are bodies that are responsible to the Parliament rather than to the Government. Therefore—if I may add to the historical note that the committee convener, Trish Godman, outlined in her opening remarks—one of the reasons the RSSB committee was established was to reflect the fact that it was not appropriate for the Government to make recommendations on bodies that were instituted to be responsible to the Parliament. It is for the Parliament to give due and careful consideration to the future of such bodies. That is an important point, to which I will return in a moment.

The outcome of the bill, as Jackson Carlaw and others have described, will be to give effect to the principal recommendations of the committee. However, rather than use the two acronyms that Jackson Carlaw helpfully provided—indeed, I shall avoid them for reasons that he might wish to reflect upon when he reads the *Official Report* of today's debate in the morning—I shall continue to refer to the new body as the commission for ethical standards in public life in Scotland. That was an important recommendation from the committee. Equally important, as the committee convener pointed out in her opening speech, is the issue of the accountability and governance arrangements, which the bill will harmonise and simplify across the piece. An even more important point is that the financial accountability of such bodies will be very seriously underpinned.

As Jackson Carlaw said, final decisions on these at times highly complex matters, especially whether further bodies could be merged, rested on arguments that were very finely balanced. I concede that point. The bill does not rule out the possibility that such matters might be returned to. An interesting feature—I also made this point in my speech in last June's debate on the committee's report—is that although our committee was not charged with looking at the functions of the bodies, it was nevertheless impossible for us to consider how to improve the day-to-day running and management of the bodies, or indeed their possible merger, without having regard to whether our proposals would affect the discharge of the functions that had been given to those bodies. That was not a simple matter and, as the committee report shows, the committee was divided on a number of occasions.

My sadness is that this might be the last occasion on which the Parliament will address these issues in the way that it has done hitherto. I have not found any fault with the process. The argument was finely divided, but the committee gave the matter due diligence and produced its report. Unfortunately, the Public Services Reform (Scotland) Bill, if passed, will mean that matters will be dealt with in a very different way—they will be instigated either by the Government or by the Government giving a nudge to the corporate body. That seems to me to interfere with the essential distinction between the rights of the Parliament to consider its own affairs and the actions of the Government. I know that we do not agree with the Government on that matter—I appreciate that there is a fundamental disagreement on it—but I am strongly of the view that part 2 of the Public Services Reform (Scotland) Bill is not consonant with the independent approach of the Parliament. The process did not show that there cannot be due rigour and performance or that the Parliament cannot instigate ideas. There are important distinctions, which ought not to be lost.

Stewart Maxwell (West of Scotland) (SNP): I am interested in the line of argument that you are developing—or appear to be developing—about the difference between the Parliament and the corporate body. It seems to me—you might want to correct me if I am wrong—

The Presiding Officer: I am sorry, Mr Maxwell, but you should speak through the chair, rather than to the member directly.

Stewart Maxwell: I apologise, Presiding Officer. The member seems to be arguing that there is a difference between the Parliament and the corporate body. As far as I can see, the corporate body represents the interests of members of the Parliament. There is a distinction between the corporate body and the Government. I would have thought that the corporate body was the appropriate place for the decisions and actions that we are talking about to be taken.

Ross Finnie: The argument is not one that I am developing today but one that I have developed for some time, in the Review of SPCB Supported Bodies Committee and during the debate on the committee report. The distinction that I am drawing is that the corporate body has an important role, which is laid out in statute, but it is not representative of the Parliament in all matters of policy and so on. It has the serious duty of discharging the management of the Parliament and dealing with other extremely important matters, but it does not have a policy role. The commissioners and their functions are matters of policy. I am certainly not aware of people being put on the corporate body to deal with those matters. We can have a separate debate on that. I understand the point that Stewart Maxwell makes, but I come at it from a different angle.

The Presiding Officer: You should conclude now.

Ross Finnie: Yes, I am aware of that, Presiding Officer. The Liberal Democrats wholly support the Scottish Parliamentary Commissions and Commissioners etc Bill and we certainly hope that it will pass with the Government's blessing, which it has just given, with due speed and in its present form.

14:33

Jamie Hepburn (Central Scotland) (SNP): It is with considerable delight that I rise to speak in this debate. Unlike every other speaker thus far, I do so from the back benches, to which I am well accustomed. In the debate on the committee report on 18 June 2009, I, and other members, said that the matters that we were discussing would have to be considered further at a later date—and here we are doing so today. I suggested at the time that fresh faces would be required, but it is clear that the various party whips disagreed, because many of the members who spoke in that debate, including me, find themselves doing so again today.

I served as the deputy convener of the committee and, like other members, I thank colleagues on the committee, the clerks and the witnesses for making the inquiry process good, thorough and rigorous. The work continues; it is in the good hands of the committee convener, who is gracing the front bench today, instead of sitting in her usual spot in front of us. We are now considering the bill. It is clear that the bill and the committee process build on work that went before. The committee considered a number of previous inquiries and reports, such as the Audit Scotland report "Scottish Parliamentary Corporate Body Ombudsman/Commissioners Shared Services", the previous Finance Committee's inquiry into accountability and governance, the Crerar report, the Sinclair report and the Scottish Commission for Public Audit's "Review of the corporate governance of Audit Scotland"—all very catchy titles. It is clear that the process has not taken place in isolation and that it continues work that has been done before.

It is important to make it clear that, although the committee and the bill propose some structural changes, there will be no significant changes to the service that the proposed new bodies will offer, notwithstanding the merger of the Scottish Prison Complaints Commission into the Scottish Public Services Ombudsman's role. It is clear that, under the proposals, there will be no dilution or diminution of the service that the bodies offer.

However, some sensible changes are proposed. They include harmonisation of the terms and conditions of the various office-holders. It was clear to the committee that, because the commissioners were created in legislation one by one, there were significant differences in their terms and conditions. The committee did not think that that made sense, so terms and conditions will be harmonised. That is a sensible position.

Office-holders' work should also be subject to greater and more rigorous scrutiny—without interference—by committees of the Parliament. The Parliament pays for that work, so it is right that the Parliament should scrutinise it. It is worth reflecting on the circumstances in which we are debating the bill. Tomorrow we will debate the Public Services Reform (Scotland) Bill, so there is a wider context to the provisions of this committee bill; other work is being done on the landscape of public bodies. We welcome the fact that, as Bruce Crawford indicated, the Government will co-operate with the committee on the bill.

I intended to say a little about cost savings, but I am swiftly running out of time.

The Presiding Officer: You may continue.

Jamie Hepburn: Members will be delighted to hear that I have additional time.

The main thrust of the committee's review was not to achieve financial savings, but we should

reflect on the fact that there will be savings. It is anticipated that the early transfer of prison complaints to the ombudsman will produce savings of around £37,000 in the financial year 2010-11, £163,000 in 2011-12 and £174,000 annually thereafter. In addition, it is anticipated that there will be on-going savings of approximately £10,000 per annum when administrative support for the public standards commissioner for Scotland is provided by the staff of the new commission for ethical standards in public life in Scotland and the part-time posts of the Scottish Parliamentary Standards Commissioner and the chief investigating officer are merged into one full-time post. Those savings may seem small within the overall landscape of public spending in Scotland, but they are welcome nonetheless in an era when every penny counts.

There has been a good start to the bill process at stage 1. I look forward to the continuation of that process and to concluding the committee's work, but I suggest that fresh faces will be required at the stage 3 debate. I hope that I will be listened to this time.

14:38

Paul Martin (Glasgow Springburn) (Lab): I extend to Bruce Crawford best wishes for the rest of his big day. May there be many more, at least until 2011; I hope that there will not be many more after that.

It is clear to me, having read the many reports that have been part of the process, that we are developing this legislation for the right reasons and in the best interests of our constituents who use the commissioner services that we are debating today. The bill is an example of the Parliament revisiting legislation that has been passed previously; perhaps we do not do that enough. Today I am taking the opportunity to interrogate such legislation.

In a recent debate on the subject, my colleague Johann Lamont stated:

"I am entirely sceptical towards most things about life, I was equally sceptical about the role of commissioners, and I was open minded about the options that were identified by the corporate body".

I reassure Johann Lamont that she is in good company, as being sceptical is the norm in the Parliament.

On a serious note, there is no room for complacency. We should make no apologies for seeking to improve the role of our commissioners in our local communities. Given the current economic climate, it is important that we recognise that the SPCB-supported bodies are responsible for expending £7.5 million a year, so we should take every step possible to improve the governance arrangements. The bill provides the foundations for us to improve the arrangements and is a step in the right direction.

The bill will allow the SPCB to direct the public bodies or office-holders to share premises, staff, services or other resources. That will allow the SPCB to rationalise the number of premises that the bodies use. There are opportunities to identify ways in which services such as human resources, payroll and finance can be shared. The approach will provide many opportunities to make best use of resources and to consider ways in which we can improve service delivery to members of the public.

During the debate and other recent debates on the issue, many colleagues have recognised the need for commissioners to be operationally independent. However, several colleagues have made the fair point that that should be balanced by ensuring that the Parliament's interests are considered. As members have said, we cannot be seen to be writing a blank cheque. The bill will provide the opportunity for scrutiny. As many members have alluded to, the process of holding commissions and commissioners to account will not dilute their independence. The opportunity for parliamentary committees to play a more prominent role in that is an important step. The process will provide a public record of the commissioners' role in our communities. There will be opportunities for commissioners to be held to account in a useful and constructive way that will allow them to provide more information.

This stage 1 debate is not a headline-grabbing debate such as the budget debate that is taking place in another place. However, it is a useful contribution to the discussion that has taken place for several years on the role of commissioners. The bill provides a useful foundation to allow us to make our commissioners more effective and accountable.

14:43

Hugh O'Donnell (Central Scotland) (LD): Having listened to the speeches from members of the committee that investigated the matter, I find that their excitement and enthusiasm for the process make me regret that I did not volunteer for the role.

Ross Finnie: Hear, hear.

Bruce Crawford: Hugh O'Donnell now has that role.

Hugh O'Donnell: I might live to regret that enthusiasm.

In all seriousness, we are fortunate that the structure of our commissioners and commissions means that they are accountable to the Parliament

and not to the Government, which is just as it should be. Like my Liberal Democrat colleague Ross Finnie, I am pleased that the independence of the roles will be retained, particularly in relation to standards, as we all know that there are serious questions about standards in the public sphere these days. The clear separation of functions should be welcomed.

Paul Martin commented on the understanding that constituents might have. I was elected in 2007, but I have been involved with the Parliament since its inception in 1999 and I have always been struck by the plethora of places to which members can direct constituents for expert advice. The situation is more than confusing and it can become a hurdle.

I hope that the bill will clarify the position, but it is incumbent on all elected members of the Scottish Parliament to ensure that we have a firm grasp of where to direct people when they have a complaint to make. I think that the proposed legislative framework will facilitate that. I think that it was Johann Lamont who said that the purpose of the commissions must remain the same. It is important that people understand their purpose and what they can and cannot do. We all have a duty to ensure that they do.

On the downside, I have expressed no more than a passing concern about the merging of the existing commissions from a human resources point of view. We do not want to lose the expertise that they have built up over the years. It is critical that, when the mergers and relocations take place—if that is what happens—we do not lose the extremely valuable expertise that the current commissions have in their fields.

I am not sure that I can say much more to make my speech as exciting as those that have already been made. Consequently, I reiterate the Liberal Democrats' support for the general principles of the bill.

14:46

Jackson Carlaw: As someone who heard the budget statement that was made elsewhere, I can reassure Paul Martin that this afternoon's debate has been every bit as exciting and racy as anything that emerged in that.

I have just two points to make. I want to build on the point that I developed earlier about the possibility of Scotland's Commissioner for Children and Young People and the Scottish Human Rights Commission merging. Rereading the *Official Report* of the debate that we had when the ad hoc committee's report was published, I was struck by what Des McNulty said about economies of scale. He argued that such a merger might prove to be sensible or even necessary in the light of the financial pressures that we would inevitably face in the immediate future. We cannot remain indifferent to those pressures.

In the view of Scottish Conservatives and of the committee, there are examples of good working practice by the existing commissions, certainly in the case of the Commissioner for Children and Young People but, in themselves, those are not prima facie justifications for the existence of separate commissions. Therefore, those who are pleased that no merged rights commission proposal has been made at this time should understand that, for some of us at least, that is not a matter of principle but one of practical politics, given that the Scottish Human Rights Commission is at an early stage of its life. It is my view that a combined rights commission is a possible option in the near to medium term and that, arguably, it could be desirable.

Beyond that, I feel that I ought to demand an explanation of the minister when he sums up. Ross Finnie was obviously slightly discomfited by the acronyms to which I drew members' attention. The committee is entitled to know why the Government chose to spurn, to toss aside and to deride the committee's recommendation to create a public life and appointments commission Scotland, or PLACS, in favour of the CESPLS option. Why was the minister attracted to CESPLS rather than PLACS? I leave that thought ringing in his mind. Given that I, together with the other speakers in the debate, to whom I pay tribute, have milked the subject dry, I will rest.

14:48

Johann Lamont: It may say something about my very sad life that I have enjoyed this afternoon's debate. In relation to what Jamie Hepburn said about fresh faces, I am always reluctant to admit my age but, sadly, my face confesses it for me. I can attribute this particularly unfresh face to the work of the committee only in small part; it is probably mostly the result of a life too much of which has been spent having arguments about politics.

The issue of acronyms and what we call things is important. For the life of me, I found it extremely difficult to keep in my head what the proposals were and to understand them. It was like reading Tolstoy and always having to go to the back of the book to find out who everyone was. There is a serious point at stake. If we do not understand the system and do not get it, how on earth do we imagine that anyone who wants to use the services in question will have any confidence that they know where to go? There is a general point about setting up bodies and then not willing the means to ensure that they make sense to those for whom they are supposed to address problems.

The proposal for an annual report is important and, in that respect, I urge committees to have a proactive relationship with commissioners and commissions. Although the debate over independence and accountability is difficult—after all, people sometimes claim independence when they are asked to justify what they are doing—the balance can be managed if the committees themselves play an active role.

I repeat that these bodies must not only serve the individuals who go to them but teach general lessons about our standards in public life and the quality of services that are delivered. If that does not happen and we continue only to address individual complaints without recognising patterns of disadvantage or inequality where people are unable to be proactive on their own account, we will be serving those people badly.

On whether Scotland's Commissioner for Children and Young People and the Scottish Human Rights Commission should be brought together in future, Jackson Carlaw was entirely right to point out that the current situation might not be for ever. The members of the committee came to the same conclusion for different reasons, with some saying, "Maybe, but not yet," and others highlighting the reason why they were separate. However, the people in those roles will have to make the case either for staying as they are now or for change. If they are doing their jobs as they are at the moment and if they are not duplicating each other's work, they will survive. After all, the test will be whether they are working, which brings us back to the issue of accountability.

In response to Ross Finnie's concerns about the future and Stewart Maxwell's comments, I have to say that I find it interesting that the SPCB gave committee members the task of testing their thoughts against the SPCB's own plan. In the end, we did not agree with it and the concern is that, in future, such scrutiny might not happen. Although the SPCB served a very important role, the Parliament did not entirely agree with it, and that should be reflected in tomorrow's stage 3 proceedings on the Public Services Reform (Scotland) Bill.

Given that we need to put in place a process that reflects on what we have already done, we would be well advised not to paint ourselves into any corners or to entrench our positions simply because we said something in the past, even though, in the real world, it no longer makes any sense. Instead of recognising that it was appropriate for the Parliament to reflect on what it had done, on the fact that the commissioners and commissions had grown up in a higgledy-piggledy way and on how we might rationalise things, some people characterised the committee's work as a way of getting rid of troublesome bodies We were not threatening functions, particularly those of the children's commissioner, that we had agreed were important. In public life in general, people must have more confidence in the fact that, when we say we want to revisit past decisions, we are not trying to silence anyone but are thinking about how we can do things better.

Again, I thank the clerks, who will certainly play an important role going forward. Jamie Hepburn talked about fresh faces; some of us thought we would get off for good behaviour after serving on the RSSB committee, but we were obviously misguided. We should all thank Trish Godman for taking on the role of taking the bill to its conclusion in the Parliament.

14:53

Bruce Crawford: This interesting debate has highlighted areas of agreement as well as providing food for thought about future options and actions. I have to say that Jackson Carlaw got me good and proper when he asked whether the proposed body would be called CESPLS or PLACS. My nice and dutiful officials tried to help me, as they do on such occasions, by sending me a note that says, "Not a decision ministers took." This is a committee bill, and the RSSB committee recommended the name of the body. By the time I had got through CESPLS, PLACS, CPSO, RSSB and the PSR bill, I was not sure whether I was talking about CESPLS and PLACS or cesspits and plooks.

Ross Finnie: No, no. Draw a line, please, minister.

Bruce Crawford: I will not take that analogy any further, because I see Ross Finnie quavering.

Of course, I am talking not about the organisations themselves but about the language that we are using. Johann Lamont put the question very well: if we in the chamber find the language difficult, how can it possibly be clear for the people of Scotland?

Margo MacDonald (Lothians) (Ind): Will the minister give way?

Bruce Crawford: This could be interesting.

Margo MacDonald: I am sorry that I missed the excitement of the debate. I want to say something that is tangential to what the minister is saying. In addressing the initials to signify a body, will he also consider the names that are given to what we used to call white papers and green papers in another place? Those papers said on their front—on the tin—what we were getting; they did not have imaginative literary names such as "A Curriculum for Excellence".

The Deputy Presiding Officer (Alasdair Morgan): That question was so tangential that I ask Bruce Crawford just to get on with the debate.

Bruce Crawford: That is a pity. I thought that I had quite a good answer to that question.

I will return to important aspects of the bill. As I said last June when we debated the Review of SPCB Supported Bodies Committee's report, the Scottish Government welcomes the moves in respect of parliamentary commissioners. They not only mirror the work of the Scottish Government in respect of its public bodies but demonstrate that the Parliament is adopting the five Crerar principles of transparency, accountability, independence, proportionality and user focus in connection with its bodies. If I have time, I might talk about user focus later.

It is, of course, ultimately for the Parliament to take a view on the distinctiveness of commissioners' roles and performances. However, the work to date and today's debate quite properly reflect the fact that it is not just down to either the Government or the Parliament to act unilaterally to consider that topic. We all have a role to play, including the commissioners.

Johann Lamont and Hugh O'Donnell spoke about efficiency not always being at the cost of a service and about not wanting the commissioners' experience to be lost. Those are important points. The commissioners undertake various roles, and they are there for a reason. I think that Johann Lamont also suggested that the work of future commissioners could be examined within the context of the structure at the time.

Jackson Carlaw rightly said that, in the committee's discussion, there was a finely balanced argument about Scotland's Commissioner for Children and Young People and the Scottish Human Rights Commission. He also discussed where the challenges lie in deciding whether the two offices should be merged in future. Ross Finnie agreed that the arguments were fine and that the matter is not simple. I think that we all agree with that.

I must disagree with Ross Finnie on one point. I do not want to rehearse the debate before tomorrow, but he made a point about what the Public Services Reform (Scotland) Bill does and does not do. Of course, that is a matter for tomorrow's debate, but I assure members that the Government is aware of the sensitivity about the Parliament's role in making final decisions on the future of commissions and commissioners. That is why we lodged an amendment to ensure that there are specific protections to ensure that the Parliament will have the final say on proposals for change. The Parliament—not just the corporate body—will always have the final say. That was the intent of the amendment that we lodged.

Presiding Officer, I cannot remember how much time you said I have.

The Deputy Presiding Officer: You can go on for a couple of minutes.

Bruce Crawford: I can probably achieve that.

It is clear that the bill provides the SPCB with a set of tools that can be used to ensure continuous improvement across all the bodies that it supports and is responsible for on our behalf. That distinction recognises that it is the Parliament that assigns resources and monitors the performance of parliamentary commissioners, and that is how things should be.

I said that I would like to touch on the issue of user focus if I got the chance to do so. As I said earlier, the Government welcomes the changes that are proposed in the bill to take forward Professor Crerar's recommendations. Making those changes will deliver on our shared commitment to improve accountability and transparency. Indeed, the only Crerar scrutiny principle that we could do more to promote in general is public focus. Members will be aware that stage 3 of the Government's Public Services Reform (Scotland) Bill is tomorrow. That bill contains provisions for duties of co-operation and user focus for the Government's scrutiny bodies. There may also be areas in which the Parliament might consider further improvements for commissioners and commissions at some point.

Today is not the only time that we will discuss the relationship between the Parliament and the work of the parliamentary commissioners. We should discuss their work regularly and that process will clearly be enhanced by the provisions in the bill. I repeat what I said in my opening speech: the Government agrees with and supports the principles of the Scottish Parliamentary Commissions and Commissioners etc Bill. That was two minutes exactly.

15:00

Trish Godman: We have had a relatively short but consensual debate. Having sat in the Presiding Officer's chair for more than six years, I can say that we have had more laughs than usual today, even though we would not have thought that that would happen in this debate.

I thank everyone who has taken part in the debate and has shown interest in the bill, which is important not just for the SPCB and the office-holders affected but for the wider Parliament and, dare I say it, Scotland as a whole.

Today we have heard a little about the Crerar report, the Sinclair report and the Public Services Reform (Scotland) Bill. We have also heard about the input of the Finance Committee in the previous session and the input of Audit Scotland. There have been so many reports but all with one purpose: to improve our public services for the benefit of the public who engage with them.

However, improving services does not always mean reducing, diluting or streamlining them. In producing its report, the committee had to sift through a lot of evidence that contained competing and, in some cases, diametrically opposed suggestions about what to do, as well as constantly having to guard against any drift into independence—with a small "i".

I believe that the committee has met the many challenges and tests posed in the reports that I mentioned, which is reflected in the bill before us today. Nobody has suggested that the bill interferes in any way with the independence of the bodies—not even the office-holders themselves, who would not be shy in telling us if they had thought so. We pass that test.

We also pass the Finance Committee and Audit Scotland tests as we provide the corporate body with all the governance powers suggested, and a few more. We pass the Government test as we contribute to the reduction in public bodies by reducing their number by two or perhaps three: the SPSO has absorbed what was the Scottish Prison Complaints Commission, and the new commission for ethical standards in public life in Scotland will combine three existing posts into a single body, albeit with two commissioners.

The bill does not produce major cost savings—at least not initially. Creating the commission for ethical standards in public life in Scotland from three existing bodies comes at a cost, although everybody concerned is working hard to keep the transitional and set-up costs modest. However, as the Government has said, we need to invest to save. Even on a monetary assessment, the bill passes the test from the outset. That is particularly helped by the ombudsman's agreement to absorb the work of the prisons commission within existing resources. That work should be bedded in quickly and will produce initial savings, with more significant ones of £163,000 in 2011-12 and in future financial years.

Other savings may well emerge in future years, given that the corporate body's greater powers over governance should enable consideration of greater sharing of, in particular, some back-office services and perhaps accommodation. The key is to make changes without affecting functions and, in particular, to allow the office-holders to continue to deliver value for the public. After all, that is one of the reasons why each and every one of them was created in the first place, as others have said. The bill passes the financial test and it should also meet the Crerar value test.

The functions of the office-holders affected by the bill are important. They were each created to undertake important functions, whether to investigate complaints, to promote and safeguard rights or to ensure that the Government, public bodies and elected representatives abide by the rules. They are a barometer for us in the Parliament to show how well our public services are operating. They report to us annually and many appear frequently before committees of the Parliament. They all work with us closely. We can best ensure in partnership that the respective visions of each body are realised.

The bill will give the corporate body enhanced governance powers and will place responsibilities on each of the bodies to ensure that resources are used economically, efficiently and effectively. I hope and expect that only a light touch will be necessary, as each body should be clear about what is expected of it and that value for money must form part of its criteria. It is right that, as a Parliament—as committees and as individual MSPs—we monitor the performance of such bodies. Our job is to support them in their endeavours, so they should have nothing to fear and everything to gain from the bill.

In summary, the bill will increase the governance powers available to the corporate body; make those governance powers consistent across all the corporate body-sponsored bodies; merge the posts of Scottish Parliamentary Standards Commissioner and chief investigating officer; create a new commission that will include that new merged post as well as the post of public appointments commissioner; transfer responsibility for prison complaints to the Scottish Public Services Ombudsman; and transfer sponsorship of the Standards Commission for Scotland to the corporate body.

On the discussion about initials, let me say that CESPLS will do exactly what it says on the tin, which is what Margo MacDonald wanted. Indeed, given that Jackson Carlaw has used the word "racy" twice, both in last June's debate and in today's debate, I advise him of my colleague Johann Lamont's comment that he should get a life.

I ask all members to support the motion agreeing to the general principles of the bill at decision time later today. I commend the motion in my name.

Double Jeopardy

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-6033, in the name of Kenny MacAskill, on double jeopardy. Amendment S3M-6033.1, in the name of Bill Aitken, has been withdrawn. Copies of a revised section A of today's *Business Bulletin* that reflect that change have been e-mailed to members and are also available at the back of the chamber.

15:07

The Cabinet Secretary for Justice (Kenny MacAskill): I am aware that the Tory amendment has been withdrawn: I pay tribute to Bill Aitken—and to his colleague John Scott, who is not in the chamber—for their forbearance and for the support that they have shown. I think that we are all united in the attempt to resolve matters while retaining the fundamental ethos that has served Scots law well. I assure them that we wish to act as speedily as possible. Our desire has been simply to ensure that we do what we do correctly and appropriately.

A rule against double jeopardy is an essential feature of a fair society: the state should never have unfettered freedom repeatedly to prosecute individuals for the same act. We should aspire to a system in which criminal proceedings are final and in which accused persons are spared the anxiety and humiliation of repeated trials.

That does not, however, mean that we should leave the law on double jeopardy alone—times change and the society in which we live evolves. Although the ancient principle against repeated trials should remain, we must reflect on the fact that it is the product of a different time, in which the protections that were available for accused persons were rudimentary by today's standards. The rule against double jeopardy is a blunt weapon, which was devised to protect individuals against persecution by a medieval state. It is only prudent that a modern society take stock and consider areas where old laws need to be updated to reflect changes, whether in society or—as I will comment on in a moment—in science.

My clear view is that the double jeopardy rule is in need of reform. It needs to take account of the checks and balances of a modern justice system and of advances in forensic science. An absolute bar against a second trial can bring the law into disrepute when an acquitted person makes a clear confession or compelling new evidence emerges. We have many important checks in our justice system, as is right and correct, and I am satisfied that there would be no unfairness in creating exceptions to the rule for very serious cases in which particular and stringent tests were met.

If the proposals are enacted, it will be for prosecutors and the police to examine the merits of cases and for the High Court of Justiciary to listen to the arguments and decide whether a retrial should be permitted. In individual cases, those are rightly decisions for the independent parts of our criminal justice system.

We have debated the issue previously in the Parliament; I recall many compelling arguments in favour of change from members of all parties. I am pleased to be able to return to the Parliament having published on Monday a consultation paper on the subject. The consultation, which will run until 14 June, seeks views on various aspects of reform of the rule on double jeopardy.

I do not expect reform of the rule on double jeopardy to have an impact in many cases, which is as it should be. The reform is focused on the rarest but most serious cases—on some of the worst and most sickening injustices that are possible under the existing law. It is about pursuing the perpetrators of serious offences when there are compelling signs that they have gotten away with it. In such cases justice is, of course, of the greatest importance for victims and their families, but there is also a vital public interest in terms of ensuring that confidence is maintained in the criminal justice system. People simply do not understand why compelling new information or a post-trial confession cannot justify a new prosecution for a heinous crime.

Our criminal justice system is not simply a contest between the Crown and the accused's agents, with the court as final arbiter—it is not a game between my learned friends. It is about delivering justice for victims, families and communities and it is about achieving fairness for victims and society, as well as for the accused. That is what we must seek to deliver and why we need to effect change. To do otherwise would invite manifest injustice.

The consultation paper builds on the Scottish Law Commission's recent "Report on Double Jeopardy". I am grateful to the commission for its work on the issue and on the related issue of creating a Crown right of appeal against decisions, such as that there is no case to answer. That reform features in the Criminal Justice and Licensing (Scotland) Bill, which is currently before the Justice Committee. The commission's work stemmed from a reference that I made in 2007 and, as I am a long-standing advocate of reform, it is gratifying for me to see progress.

I accept the Scottish Law Commission's proposals on restating in statute the rule on double jeopardy and on allowing a new trial when an

acquitted person subsequently confesses or when the original case was marred by corruption or intimidation. Those reforms are sensible and long overdue. No one should be able to mock our system by boasting with impunity about their guilt, and nor should those who corrupt a trial with threats or intimidation expect to be free from the prospect of retrial.

The more difficult question is about situations in which compelling new evidence emerges after a trial. The most commonly cited example of that is to do with DNA material, but new evidence can come in other ways, such as through a previously untraced witness or a technological innovation such as improvements in photo imaging. The benefits of such material are clear: it can create a compelling case for a new trial. I understand the frustration that many people feel when new evidence emerges but cannot be used. On the other hand, there are reasonable arguments against a new-evidence exception. It is certainly true that the law should be clear and that acquittals should generally be certain and final, that there are limitations to technology, and that there might be a risk of prejudicial publicity at a second trial.

Understandably, the Scottish Law Commission found the arguments difficult to reconcile. It did not recommend either way on whether to have an exception to double jeopardy when new evidence arises. Personally, I am strongly inclined to favour a new-evidence exception, and I also think that it should apply retrospectively. However, the issue is complex and important and it is one on which I would like the opinion of consultees. It is important to take time to listen to views and to get the reform right. However, there must be a clear direction of travel, which is what the Government is setting out.

The consultation paper is focused on the arguments for, and the format of, any new-evidence exception. The principal issues on which views are sought include which offences should be covered by such an exception and whether it should be retrospective.

Robert Brown (Glasgow) (LD): I was interested to hear that instead of following the Scottish Law Commission's recommendation that the new-evidence rule be restricted to murder and rape the Government has to decided to apply it to a range of other offences. Will the cabinet secretary enlighten us as to why the Government has felt it appropriate to move in that direction?

Kenny MacAskill: We will consult on the matter but we are aware that, south of the border, the rule applies to numerous offences apart from murder and rape. I am happy to listen to the views of consultees and, indeed, to Mr Brown on the issue, although it seems to me that if, for example, manifest injustice were to come up in terms of a war crimes trial, it would be wrong not to pursue it. If a major paedophile trial, such as with operation algebra, were to gang agley, it would be wrong if we did not remedy that manifest injustice. I am not prejudging the consultation, but I must repeat that the possible offences that can be prosecuted in this way south of the border are serious and significant and go beyond the murder and rape offences to which the Scottish Law Commission has referred. I certainly think that many members of the public would be gobsmacked if justice could not be served with regard to terrorism, war crimes or paedophile offences.

Margo MacDonald (Lothians) (Ind): Before the cabinet secretary moves off the point about new evidence, does the proposal have implications for the publicity surrounding any potential second trial?

Kenny MacAskill: Of course it does. As I said earlier, that is one of the arguments against the measure and one of the reasons why it is felt that it will be used very sparingly. Ultimately, the police and the prosecution service will have to decide whether there is any new evidence or a clear admission of manifest injustice. Equally, the High Court will have to decide whether a trial can proceed. Such a decision will not be at the whim of a procurator fiscal; the High Court's approval will have to be sought and granted. The court could well be persuaded that clear and compelling new evidence existed, but might equally decide that the publicity would be so prejudicial that it would be inappropriate to go ahead with the trial. What we as a Parliament are seeking—and what we as the Government are trying to drive forward—is the opportunity to consider ways of remedying such injustice. Ultimately, it will be for the Crown to consider whether the case should be brought and for the High Court to give its approval.

I return to the consultation. We will also seek views on what test should be applied in assessing new evidence: whether evidence that was available but was not used should count as new; whether a disputed judicial ruling that stopped a case should be open to review; and whether to include evidence that was not admissible at the first trial, but which would be at a second. I look forward to consultees' views on those important points and I assure Bill Aitken again that I intend to follow the consultation with legislation at the earliest opportunity.

I am pleased that there seems to be a great deal of cross-party support for reform of the law and I welcome the supportive comments that have been made recently by the Opposition spokesmen. I have discussed with Mr Aitken and Mr Brown their stage 2 amendments to the

Criminal Justice and Licensing (Scotland) Bill and understand what they are seeking to achieve.

We are seeking to remedy an anachronism. It must be accepted that the measure should be used very sparingly, but we have to ensure that justice is served in the 21st century, in which our society, forensic science and a variety of other matters have changed. As Mr Brown and Margo MacDonald have suggested, the measure must be balanced with ensuring the rights of the accused. However, as I said earlier, the law is not a game and justice has to be served. This is not about arbitrating between my learned friends for the prosecution and my learned friends for the defence. Justice dictates that if a manifest injustice emerges, either through new evidence or a confession, a new trial should be possible, even though—as I made clear to Ms MacDonald—the ultimate decision is for the High Court.

I move,

That the Parliament agrees that, although double jeopardy must continue to provide an important safeguard, it needs to be reformed to fit with a fair and modern criminal justice system; agrees that persons who confess after an acquittal or who undermine trials by threats or corruption should be retried; supports reform to allow a second trial in very serious cases where important new evidence emerges and for this to apply retrospectively, and welcomes the Scottish Government's consultation on this issue.

15:19

Mike Pringle (Edinburgh South) (LD): The rule against double jeopardy is a fundamental principle of Scots law that provides essential protection of the individual's rights against the state through the promotion of finality in criminal litigation and the avoidance of unnecessary distress to the accused through repetition of the criminal process.

However, that is not to say that the rule should necessarily be regarded as being universally suitable for a modern justice system that has, since the rule's inception, changed beyond recognition. Liberal Democrats therefore support the Scottish Law Commission's recommendation that the rule against double jeopardy be clarified and laid out in statute as part of a fair and modern criminal justice system. We also welcome this week's commitment by the Scottish Government to examine through a full consultation this fundamental, yet extremely complex, issue.

We support setting out exceptions to the rule against double jeopardy in cases where the original trial was tainted, for example through jury tampering, where the acquitted individual has since confessed to the crime and—in cases of murder or rape—where important new evidence, such as DNA evidence, emerges.

Stewart Maxwell (West of Scotland) (SNP): I have in front of me the list of qualifying offences in England and Wales. Will the Liberal Democrat member explain why his amendment does not include sexual offences against children, serious drug offences, genocide, crimes against humanity and war crimes?

Mike Pringle: The Liberal Democrats believe that the exception should be used only in exceptional circumstances. The list that the member has just mentioned would extend to a broad spectrum of criminal offences. The exception should apply only where the evidence was not, and could not, with the exercise of reasonable diligence, have been available at the original trial.

I echo the thoughts of the Cabinet Secretary for Justice, who states in the foreword to the consultation that any reform of double jeopardy may affect

"only a handful of cases",

but that it is vital to ensure

"public confidence in the justice system".

However, in protecting that integrity, we must ensure that cases are re-examined only when that is in the interests of justice, as determined by the High Court. I agree with the cabinet secretary that the High Court must make the final decision.

Cases that might lead to a new trial will, by their nature, be extremely high profile. We have already seen a clear example of that in the World's End case. In 2007, Angus Sinclair was cleared of committing what had become known as the World's End murders after his trial collapsed when the judge ruled that the Crown had insufficient evidence to put the case before a jury. Following the collapse of the trial, there was a lot of speculation that the prosecutor had failed to lead potentially significant DNA evidence. All that took place in the full glare of the media spotlight.

It is therefore vital to ensure that the proceedings at any trial are not prejudiced by publicity. The SLC report addressed that by recommending that the court be given powers to order limited publication of reports and a complete ban on press reporting, which is—I believe—worth considering.

As I am sure everyone in the chamber realises, any reform of such a complex and fundamental principle of the justice system will not be without its pitfalls. Perhaps the most notable issue to be considered in the consultation is the on-going debate regarding the exception on new evidence and the various surrounding issues that would govern when such an exception should be applicable. That split the commission in the SLC report.

Although reforms in England and Wales might be a useful starting point in examining the various arguments that surround the issue, it is important that they are not necessarily seen as being a preconceived goal, given the significant differences between Scots and English law. The Criminal Justice Act 2003, which changed the law in England and Wales, provides for a wider scope as to what constitutes new evidence than the SLC recommends. We must ensure that Scottish legislation does not simply follow suit, but does what is appropriate in a Scottish context.

Although the SLC recommended that the exception on any new evidence apply only to murder and rape—as the minister has outlined today—the Scottish Government believes that there is a strong argument for some other serious offences to be included. That point is crucial: extremely strong justification for their inclusion will be required. It is not easy to see why other crimes merit a departure from the current double jeopardy rule, particularly given that there are calls to limit the broad range of offences to which the rule on double jeopardy no longer applies in England.

The other main issue is retrospection, on which we agree with the cabinet secretary. In essence, the issue is whether a defender who was tried under the law as it stands could be retried on the basis of reformed legislation. It is important to note that that would have no bearing on the legality of the alleged offence itself, only on the number of times that an individual can be tried, but the debate is nonetheless difficult.

It is notable that the SLC report was against retrospection, having identified a possible problem regarding the compatibility of a retrospective exception on the basis of new evidence with the right to a private and family life under article 8.1 of the European convention on human rights. However, given that the commission made no recommendation regarding a new-evidence exception, and recommended that any exception should not apply retrospectively, it did not seek to reach a conclusion about whether there would be merit in an article 8 challenge to such retrospective application.

We believe that it might be somewhat arbitrary if acquittals that occurred before a certain date were final while those that occurred afterwards could be looked at again in the event of new evidence having emerged. The concern regarding the accused's confidence in the finality of the first verdict is linked closely with the scope of the exception. Therefore, if a new-evidence exception is to be applied retrospectively, it is even more important that it would apply only in the most serious cases.

I welcome today's part of the on-going debate and look forward to the results of the consultation.

I move amendment S3M-6033.2, to insert after "retrospectively":

"; considers that any new evidence exception should be strictly limited and should apply only to cases of murder or rape; recognises that, in all cases, the High Court should approve applications for a retrial only where it is in the interests of justice to do so,".

15:26

Richard Baker (North East Scotland) (Lab): I hope that this debate will be the start of a process in the Parliament that will result in significant modernisation of the law on double jeopardy. I am confident that such a move will receive broad support throughout the chamber. I very much agree with what the cabinet secretary said in his opening remarks. There may well be debate about the detail and parameters of the change, but it is right that we seek to forge a consensus for change on this important matter of justice. Although this reform of the law might directly affect only relatively few people, as the cabinet secretary pointed out, we all know that there are people in this country—victims of crime and their families—who believe that they have not received justice for very great wrongs that have been committed against them and their loved ones, and that there will be compelling evidence that they have thus far been denied justice.

There can be no more sickening sight than that of a killer walking from a Scottish court free from punishment for the crime. We have to accept that that has happened in Scotland. If we can properly rectify such an injustice, we should do so.

We must thank the Scottish Law Commission for its deliberations: there can be no doubt that in considering the case for reform of this 800-year-old part of Scots law it took on a significant task.

However, it is disappointing that although the commission accepted the case for retrials in instances of confession and tainted trials, it made no recommendation to allow retrials in cases for which there is new evidence. It suggested a legislative framework, should Parliament ultimately choose to go down that route—I hope that it shall—but that framework does not allow for retrospective application. The commission did not accept that there is evidence that there are current situations in which this change of law would lead to retrials if new evidence were to be made available. I find that to be an odd conclusion—one which I believe will be proved to be incorrect.

However, I am pleased that the Scottish Government has taken a different view and has embarked on the process. I inform the Parliament that, rather unusually, we will support the Scottish Government motion unamended. It is right that the motion does not restrict the areas in which changing the law on double jeopardy may apply

after the consultation, as the Liberal Democrat amendment proposes, particularly given how early it is in the process.

The change in the law in England and Wales, which has been in place for some five years now, applies to a wider range of crimes than murder and rape, as the cabinet secretary and Stewart Maxwell pointed out. That range includes manslaughter, kidnapping, armed robbery and serious drugs crimes. We think that the matter needs to be considered seriously. Of course, there will be the opportunity to consider it during the consultation process. Bill Aitken has done the right thing by withdrawing his amendment, which will now allow for the principle of retrospection to be maintained in the motion. However, I acknowledge the important issue that has he raised, which is that we must ensure that legislation on this is developed as soon as is practically possible. It is right that he brought that matter to the attention of the Parliament, because it needs to be dealt with carefully. We would support stand-alone legislation after a consultation. It is also right to say that the matter has been debated in the Parliament for some time. Of course, the Scottish Law Commission invested considerable time in preparing its own report.

It is right that retrospective implementation is mentioned explicitly in the motion, in particular to inform the consultation process. Given the access that prosecutors now have to new techniques and technologies, such as DNA evidence, that can show proof of criminality even in cases that are many years old, it is right that the proposed new law should have a retrospective impact. We all remember the trauma that was caused by the collapse of the trial for the World's End murders, to which Mike Pringle referred. Indeed, we all remember the Lord Advocate's statement to the Parliament on the matter. If the law is not changed retrospectively, the hopes of the families of Helen Scott and Christine Eadie will have no chance of being realised.

I have heard it argued that double jeopardy is an important principle that should be maintained, because accused persons who have been acquitted should have the right not to have the prospect of a retrial hanging over them. I agree that changes to such an important principle must be dealt with very carefully and with appropriate safeguards. However, adhering too closely to that principle would not take account of the rights of victims and their families to achieve justice for horrors that have been committed against them if they have been failed by court processes. I hope that the consultation process ensures that the views of families and victims are properly taken on board.

Robert Brown: Richard Baker has phrased the matter in an interesting way. The issue, surely, is not the horrors that have been committed against individuals—although those are, no doubt, what lies behind the concern—but the alleged horrors. On such allegations, the need for the criminal trial to find the truth is the important issue that we should keep in front of us.

Richard Baker: Many people are confident that the outcome of the criminal trial that I mentioned will be that the allegations will be proved, but I take Robert Brown's general point.

I accept that parameters and safeguards are needed. I do not argue that people should be tried again and again for the same crime, but I am assured that the need for safeguards will rightly be an important feature of the consultation. The legislation that was passed for England and Wales includes the safeguard that the Court of Appeal must agree to quash the original acquittal. The Cabinet Secretary for Justice has pointed to further safeguards, which we can imagine will be put in place in any legislation that might introduced in Scotland.

The Scottish Law Commission report points out that the change in the law south of the border has not resulted in a raft of new convictions. Of the six applications for retrial that have been determined, three have failed. For me, far from being an argument against making the proposed change, that shows that the legislation in England and Wales is being applied carefully and proportionately and is working. Given that the legislation has been in place for some five years now, we surely have nothing to fear from such a change in the law. I hope, and am confident, that ministers will look at the experience in England and Wales when coming to a final view on whether the law should change in Scotland.

I do not pretend that retrospective application would affect a huge number of cases in Scotland, but I believe that it would apply to some important cases, in which families have been devastated because in their fights, justice in the name of their loved ones has not been realised.

The proposed change in the law should not be taken lightly. We will need to consider carefully how exactly the law should be changed—that is what the consultation process will be about—but there must be a change. As well as providing an important reform of the law for the future, the change should ensure that, wherever possible, we can right past wrongs to ensure that those who should have received justice finally do so.

15:33

Bill Aitken (Glasgow) (Con): A perhaps interesting starting point to the debate is that there

is actually no law of double jeopardy in Scotland, where the somewhat quaint and anachronistic phrase "tholing one's assize" is what applies. Basically, the principle is that no one should be tried for an offence on more than one occasion. As a general principle, that is entirely correct because any democratic and fair society that seeks to have a credible justice system cannot simply allow people to be prosecuted time and again until the prosecutor gets the result that he is looking for.

At the same time, we also need to recognise the times in which we live. Clearly, there is a sound argument now for looking at the existing double jeopardy laws anew, in recognition of the fact that times have changed and that circumstances are somewhat different from when the wont, the usage and the practice of our courts was established.

As the cabinet secretary mentioned, I have lodged amendment 115 to the Criminal Justice and Licensing (Scotland) Bill. Although that amendment might now go no further following the cabinet secretary's announcement today, I think that I was right—as was Robert Brown, who lodged a similar amendment—to propose such a change because that has accelerated a process. I think that there is unanimity in the Parliament that we should look again at the matter.

However, the review has to be restricted to the type of case that we would deal with. There is the question of new evidence. In recent years forensic science and the use of DNA have progressed to an amazing extent. Facts can be established and things can proved that forensic scientists in the era of Glaister could not have imagined, and we must recognise that. We must also recognise that sometimes new evidence, that could not have been reasonably thought to be available at the time, comes to light at a later stage. Those are the sort of cases that I envisage being looked at under that particular heading.

There is also the aspect to consider of juries having been influenced, bribed or threatened, particularly by people who are involved in serious and organised crime. That is a real risk and although I am not aware of any evidence to suggest that any trial has failed on those grounds, we must guard against that possibility.

There is also the issue of subsequent confession. Richard Baker was wrong when he said that nothing is more offensive than the sight of a convicted criminal leaving the court wrongly. What is even more offensive is that same criminal leaving the court and boasting later, sometimes for gain, that he did commit the crime. Even then, I would be looking for the safeguard that such a confession would be subject to the Scots law provision that a confession or admission has special knowledge within it. The law in that respect is very well established.

Margo MacDonald: The member said that the proposed legislation should apply only to very serious crimes and trials. So far, we have heard about crimes of violence. Is there never a case for a serious trial for robbery of some sort?

Bill Aitken: I should make the point that robbery is violence, but I will come to that point presently.

I would not envisage double jeopardy being used in a case in which a jury that has been properly advised and directed comes up with a perverse verdict. I accept that it must be a galling experience for prosecutors when a jury is prepared to acquit in the face of overwhelming evidence, but that is life—we just have to move on from such things. The jury system might not be perfect, but when one considers the various alternatives, one cannot come up with a better way of judging guilt or innocence.

The law on double jeopardy would also not cover errors or omissions on the part of prosecutors.

There is merit in the Liberal Democrats' amendment, but I urge caution. We are at an early stage and do not wish to have a prohibitive or exhaustive list of the crimes that could attract applications for a retrial. Margo MacDonald brought up the question of robbery, and other members have mentioned different categories of crime—the cabinet secretary mentioned paedophiles. A case in which alleged terrorists walk free and subsequent evidence is found that would ensure a conviction could be another such case. We should await the result of the consultation. Because of these issues, we are unable to support the Liberal Democrats' amendment.

The danger of high-profile cases and the publicity that they attract is self-evident, but let us look at what we are trying to do here. An application to the High Court of Justiciary would have to be determined against a background in which publicity could well have adversely affected the prospect of a fair trial. That would have to be taken into consideration.

We should also look at how the legislation has worked in other jurisdictions. Since it was introduced in England, as Richard Baker rightly said, of six cases only three have been successful. I do not think that new cases would be an everyday event in Scotland: I think it would happen once every few years, if in fact it reached that extent.

I am confident that the High Court of Justiciary would apply the proper approach, by which only the most exceptional cases would come before the court for a retrial. The question of the prejudicial publicity that a specific case might attract would also be a relevant feature to be determined.

We are at an early stage in considering the issue; it is proper that we are debating it, and I look forward to its progression through the Parliament and the committee process in the months ahead.

The Deputy Presiding Officer: At this stage, members can, if they wish, take up to a minute longer than they were expecting to take. We move to the open debate.

15:40

Stewart Maxwell (West of Scotland) (SNP): The rule against double jeopardy is of course—as other members have said—one of the longest-standing pillars of our justice system, and we should not throw it away lightly. However, it is clear that the world in which the absolute rule against double jeopardy was relevant has gone, and the position that says that there should be no change to that rule must go with it.

I, like other members, thank the Scottish Law Commission for examining the issue. Its conclusions do not go far enough, nor are they strong enough, but they take us a considerable distance towards a more balanced legal system.

I oppose the idea—as other members have outlined—that the Crown should have the right to go after people until it gets a conviction. However, if it emerges after a trial that the trial was tainted in some way, if the person confesses to the crime or if new evidence emerges, it cannot be right that the guilty can walk free.

Although not everybody is in favour of new evidence as a reason to set aside double jeopardy, that is the area that most needs to be included in any change. It makes no sense to suggest that changes to the rule on double jeopardy should be limited to tainted trials, for example. There can be no one who does not understand the implications of the emergence of DNA evidence in relation to double jeopardy, but the issue concerns not only DNA. We do not know what new technologies will emerge in the future to allow us to ensure the conviction of the guilty, although the cabinet secretary listed some possible examples.

In Australia, the demand for change was driven by the Regina v Carroll case, which hung on inconsistent testimonies as to the identity of the person who was responsible for the bite marks that were found on a baby who had been killed. Mr Carroll was eventually freed on appeal, but subsequent advances in medical technology revealed that he was indeed responsible for the bite marks and for the baby's death. That shows that DNA advances are only one type of new evidence that can shine new light on old cases.

A major issue is whether all cases, or just a limited number, should be open to retrial. Logically, it seems that the argument in favour of change should apply equally to all cases but, in practical terms, that is not necessary, proportionate or appropriate. The main question that we must answer is where we draw the line, but that is difficult, as other members have stated. I do not think that there is any disagreement in relation to the offences of murder and rape, but it is clear that even among those who agree that there should be a change in the law there is disagreement about how far we should go. That is perfectly illustrated by the Liberal Democrat amendment, which I do not support. I am astonished that the Lib Dems do not accept that, for example, genocide or sexual offences against children merit inclusion—or, as Mike Pringle said earlier, that they are serious enough.

I would generally support the list of offences that have been chosen in England and Wales for exemption from the rule against double jeopardy, but there are gaps in that list. It includes murder, attempted murder and soliciting murder et cetera, but it does not include very serious assaults. I believe that that should be examined closely.

Margo MacDonald: Why has the member departed from the basic logic that a tainted trial or a wrong verdict should qualify as a reason to set aside double jeopardy in any case at all? What is his logic in seeking to make exceptions?

Stewart Maxwell: I am sorry if I did not explain that properly—I skipped over the issue, given the shortness of time,

I support setting aside the rule in tainted cases or in situations where there have been confessions after a trial, which is a reasonable position to hold. However, with regard to cases of new evidence, it is reasonable to restrict the measure to the more serious cases.

I support the inclusion in the England and Wales list of sexual offences such as rape and attempted rape, but I question why intercourse or incest with under-13s is included when the list excludes the same offences with an older child. It seems that the more appropriate category for inclusion is one that covers those offences with those under the age of consent, rather than with those aged below 13.

I would also want to include other sexual offences against children. In particular, I would want to ensure that offences involving child pornography or paedophilia are included in any Scottish list. The drugs offences in England and Wales cover importing, exporting and producing Class A drugs but do not seem to include the supply of such drugs. I can envisage cases when a person controls the drugs industry in large parts

of our cities but does not import, export or produce the drugs. I would therefore wish to see the supply of class A drugs included in our list.

There is no time today to go through an exhaustive list of what could or could not be included, but I say to the cabinet secretary that, if the bill to change the law on double jeopardy does not, in my view, cover the types of offences that I have referred to, I intend to lodge amendments to the bill to ensure that we get the debate that is required on such issues and, I hope, to get some of those amendments agreed to.

Bill Aitken: Bearing it in mind that the list cannot be exhaustive, would the solution to this difficulty simply be that double jeopardy law should apply when, in the opinion of the Lord Advocate, the case is sufficiently serious? It would then be determined by the High Court, which gets round the problem.

Stewart Maxwell: I thank the member for that suggestion. I considered offering that as a possible solution, given some of the difficulties of creating an exhaustive list. We should debate that suggestion closely as a possible answer to the problem.

I turn to what I believe is one of the most important questions about the changes to double jeopardy law—whether they should be retrospective. In all honesty, I can see no logic in saying that such changes should not be retrospective. If we do not allow retrospective application of changes to double jeopardy law, we are endorsing the past injustices that have been perpetrated on Scottish citizens. That is unacceptable. One of the greatest advances in criminal investigation has been the application of new technology to cases and, in particular, the introduction of DNA evidence. Advances in DNA evidence are leading to the solution of cases in which no person was convicted at the time or has been subsequently—so-called cold cases. If we have convincing new evidence, nothing should stop our prosecutors charging and trying an individual—even if they were acquitted before any changes in the law came into force.

Justice is not served by the ability of an individual to escape justice as a result of a tainted trial, by post-trial confession or by the discovery of new evidence after the trial has concluded. We have a duty to protect Scottish citizens and it does not serve the interests of justice or of victims for us to put the history of the law ahead of compassion, mercy and doing the right thing. I therefore ask members to support the motion, reject the Lib Dem amendment and pledge to work together to end what may be a long legal tradition, but is one that no longer serves the interests of justice in Scotland.

15:47

Hugh Henry (Paisley South) (Lab): When I began to reflect on the debate, I started with the instinctive view that I would not be happy with anything that gave the state the “unfettered” right, as the cabinet secretary described it, to prosecute and persecute people. It is important that we build into our system safeguards that protect the individual from abuse by the state. It is not right that the police have the right, time and again, to come after someone simply because they cannot get the case right in the first place, nor is it right for prosecutors to come back time and again because they failed, for whatever reason, to get the verdict that they thought was right.

Also after reflection, however, I concluded that it cannot be right for victims and their families to see someone who is palpably and clearly guilty get off scot free when they have, as Bill Aitken and others have suggested, admitted their guilt for whatever reason, or new evidence has emerged that demonstrates beyond all reasonable doubt that they should have been convicted of a serious offence. The balance should shift in favour of victims and their families—and, indeed, the public—so that when it can be clearly demonstrated that evidence now exists in the case of someone who, for whatever reason, was previously acquitted or found not guilty, it should be considered whether to prosecute that person again.

Such an approach cannot be unfettered, as a number of members have suggested. It would not be right simply to have every possible case brought forward. I am not sure that I wish, in this debate, to go into the full list of circumstances that would justify that. Today, we should be debating whether it is right in principle to change the present practice. Then, through the process of consultation that has been outlined by the cabinet secretary, we should give ourselves and others the opportunity to reflect and consider how best the approach can be adopted carefully. We should proceed cautiously and carefully. The last thing that we wish to do is to rush headlong into addressing an injustice in such a way that creates another one in the process. If there is new evidence to demonstrate a case beyond all reasonable doubt—through improvements in DNA techniques, for instance—it should be considered. As I said, I do not wish to go through an exhaustive list of circumstances, but I instinctively agree with Stewart Maxwell that, where serious sexual offences have been committed against children, we cannot close our ears to the cries for justice. I do not think that the Liberal Democrats’ proposal to restrict the policy to very specific circumstances is the right one.

We have long-established principles in this country that the law should not be retrospective, but the case has been made that, if someone has previously been convicted, then we have changed the law and the evidence is found to be there, there is an argument for looking at it. I hope that that will be considered sensitively in the consultation process.

Publicity is a difficult issue. Trials can be tainted by publicity. The problem is that the publicity surrounding a first conviction, or rather the lack of a conviction, would almost demonstrate—if we consider the argument against the proposal—that no cases could ever be brought back before the courts. There will inevitably be publicity. Judges will have to consider that carefully, but they are experienced in doing so at present, and publicity in itself should not rule out the opportunity to hold another trial.

Robert Brown: Would Mr Henry nevertheless accept the importance of having no prejudicial publicity emerging from the consideration of a request for retrial? That could foul up the fairness of the retrial.

Hugh Henry: I agree with that point, but the same applies to the first trial. The judge must make it clear to the press and other parties that injudicious comments could prejudice a fair trial, so people should be very careful. Unfortunately, we now live in the kind of society where prurient and sensational headlines and stories appear, and, although they might well sell papers, they do not help the judicial system. The judge will have to take some responsibility for that.

Margo MacDonald: I suggest that that point is now wider than it might have been in the past. We are not talking merely about newspaper files and reproductions of past stories; we are talking about the internet, which is an unfettered opinion outlet. We must therefore consider seriously how public opinion will be influenced.

Hugh Henry: I do not doubt that that is the case, but the same applies to all trials. Such is the scope of the internet that people can read comments that have been made elsewhere about trials taking place in this country. Indeed, if we were to take the argument to its logical conclusion, the scope of the internet would allow very few trials to proceed. Care needs to be taken, and I am sure that it will be.

On the question of who should make the decision and how it should be made, I am attracted to the suggestion that the Lord Advocate should determine issues of serious significance and that a judge should make the final decision. My mind is open on the matter and I hope that more evidence on that will emerge as a result of the consultation.

I support the principles that the cabinet secretary outlined in what I thought was a measured speech. It is right that the Parliament takes steps to change something that I believe to be fundamentally wrong.

15:56

Ross Finnie (West of Scotland) (LD): I am very pleased to take part in this important debate, in the course of which have emerged a couple of interesting issues about what we are seeking to do. Bill Aitken was right to remind us all of the exact status of double jeopardy—a phrase that I use advisedly—in Scots law. I have noted a tendency in the debate for people to talk about redefining principles; I do not wish to get into a semantic debate, but I believe that there is an inherent danger in that point of view. If we talk about redefining a principle but then start to make exceptions to it, we will find it very difficult to have a logical discussion about where, in fact, we stop.

To that extent, the cabinet secretary was right. If we are seeking to follow the Scottish Law Commission's recommendation that there ought to be a presumption against double jeopardy, surely it is more logical to rewrite the law to state expressly the conditions under which an exception might be made instead of beginning with some emotional attachment to an alleged principle of Scots law that one seeks to defend. That will only make it difficult to allow exceptions to be made. Indeed, the debate has already made clear the difficulty of the whole exercise.

There is a very serious case to be made for retrospection, but again I am not sure that we are discussing strict definitions in that respect. My understanding was that retrospection was about applying a new law to an existing set of circumstances that might have become difficult to justify, but I do not think that that wholly covers what we seem to be talking about here, which is the application of a new law to new circumstances. I think that that only strengthens the case for examining these issues carefully.

With regard to the other issues that have been raised by the cabinet secretary and various members, there is no doubt that we need a clear view of the issues and cases that would be affected by any redefinition of this principle. Notwithstanding our amendment, there is some logic in the argument that it should apply to everything. It should certainly be considered in the first two areas highlighted in the Scottish Law Commission report—confessions and what we have loosely described in this afternoon's debate as tainted trials—because it would be very difficult to seek restrictions on such matters.

As for the issue of new evidence, however, we should not seek to create a law that would allow proceedings merely to go on and on and would make any interpretation impossible. That would not be in the best interests of serving justice.

Much has been made of DNA evidence but, of course, even that is not a simple matter. In his speech, my colleague Mike Pringle referred to the World's End case, in which DNA evidence was involved. However, in the context of this debate, we should bear it in mind that the judge's ruling on the adequacy or inadequacy of the evidence in that case bears on the points raised in the Scottish Law Commission report and that the World's End case itself highlights the failure of due diligence on the part of the prosecution in presenting evidence in a proper and acceptable form.

These are not simple issues, as the cabinet secretary and my colleague Mike Pringle have properly pointed out. However, without a shadow of a doubt, if a test can be applied to new evidence that demonstrates that justice has not been done, the case for amending and rewriting the law of double jeopardy is, I believe, very fairly made. Therefore, I welcome the Government's consultation on double jeopardy, to which I agree alterations need to be made. It will not be an easy task. Framing the legislation will be quite complex, because it will be difficult to ensure that we achieve the objective of keeping a general presumption against double jeopardy, while allowing for clear exceptions that can be both understood by the public and easily interpreted in our courts of law.

16:01

Nigel Don (North East Scotland) (SNP): Members will not be surprised to learn that I will address an issue that has not been covered in the debate so far. In doing so, I propose to quote pretty extensively from the Scottish Law Commission report number 218, which we all have available to us.

In particular, I want to highlight the issues that are raised by what the Scottish Law Commission describes as the third application under English law, namely the case of Regina v Andrews of 2008. For those who may not recall the details, let me quote:

"In R v Andrews, the respondent had been acquitted of indecently assaulting and then raping SN, a girl of 15 who assisted at a summer camp run by his company. Thirteen years had passed between the alleged offence and the trial. The evidence of SN, who also gave evidence of having suffered sexual abuse in other unrelated incidents, was largely unsupported. Andrews presented himself as a man of good character who had a long and unblemished record of working with children. The jury acquitted on all charges. Following the acquittal, Andrews' ex-wife read of the case and went to the police, informing them that he had been arrested, many years previously, in connection with the indecent assault of three children at the school at which he then worked. Following an extensive police investigation, a further indictment was laid against Andrews, charging 17 counts of offences relating to sexual offences against a number of youths in relation to whom he had enjoyed a position of responsibility and trust. The Crown Prosecution Service sought to have Andrews' acquittals of indecent assault and rape quashed, and a retrial granted on the charge of rape, on the basis of this new evidence."

That would seem to be a situation that would be covered by the legislation that we are discussing.

The Scottish Law Commission report goes on:

"The Court of Appeal held that the relevant question was, rather, whether the evidence was admissible to prove that, contrary to his evidence at trial, Andrews had raped SN:

'What matters is that the evidence should be admissible to prove that, in accordance with her complaint, and contrary to his evidence at trial, the respondent raped her. It would be contrary to the purpose of the legislation for new, compelling, highly probative, admissible evidence that he did so to be disregarded. [Otherwise] we should end up with a new concept, that is two compartments, both containing evidence admissible in law to prove guilt if deployed at a second trial, but with evidence from one compartment excluded from consideration when addressing the question whether the acquittal should be quashed and a second trial ordered. In the context of the legislative purpose such compartmentalisation would be remarkable.'"

The point of that statement is that the court quite clearly saw that it had to look at the new evidence in the context of all the preceding evidence in order to decide about its compellability. That makes sense.

The Scottish Law Commission report continues:

"The Court of Appeal also quoted with approval the DPP's statement that 'he would only proceed in cases where, as a result of new evidence, a conviction is highly probable and any acquittal by a jury at a subsequent trial would be perverse,' characterising this guidance as 'entirely appropriate, and consistent with the relevant legislative framework.'"

Again, I think that we are talking about legislation that is fundamentally consistent with what is proposed for Scotland. Therefore, I am concerned by this last paragraph:

"In the course of allowing the application, the Court said:

'[The CPS] rightly contend that the new evidence shows that SN's allegation was not an isolated complaint against a man of good character who spent his adult life blamelessly working with children, but as now appears, one in a series of independent allegations forming a pattern of abuse of those in his care or for whom he was in a position of authority and trust. Even if not "direct" this provides strong supporting evidence for SN which was not available at trial, and the evidence that the respondent was guilty of the rape of SN is now significantly more powerful than it was. In our judgment, if it had been available at the first trial, or if it were now to be deployed at a second trial, the high probability is that the respondent would have been or will be convicted.'"

On reading that, I struggle to agree with the English Court of Appeal, as I think that it points to a failure to distinguish between what might be likely and what is compelling. In this case, I do not see that that evidence of consistent abuse of children is of itself evidence of rape. I have to say that the Court of Appeal's statement worries me. If it were a Scottish case, I would not be speaking in those terms. I do not mind criticising the English courts, given that I am speaking from the Scottish jurisdiction. I did not mind telling the House of Lords that it got it wrong in the Johnston case on pleural plaques.

My point is that when we draw up our legislation, we need to be extremely careful to ensure that we do not finish up in the position in which a court can say, "Well, it seems reasonably likely, so we'll have another go." In my view, there needs to be a compelling case for holding another trial. It needs to be clearly written into whatever legislation we put together that it must be more than just reasonably likely that the new evidence would affect the verdict in a second trial. That evidence needs to speak to the root of the crime, and in the case that I have cited it did not.

Margo MacDonald: Would that test of whether there was a compelling case for holding another trial apply to all types of crime?

Nigel Don: It seems to me that, in principle, it should. I think that we are talking about a matter of principle, so there should be no shades of grey. It seems to me that the new evidence should be compelling—there need not be 100 per cent certainty, because we do not live in a world in which that is terribly likely—and I find the case that I have referred to worrying.

I want to pick up the issue that Hugh Henry had a dialogue with Robert Brown about. It seems to me that any pre-trial assessment by the Court of Appeal or the High Court of whether a second trial would be acceptable will get into the public domain, one way or another. Sure, it could be reported with sensitivity, but it is inevitable that if there is to be a second trial those who will be engaged in it will know fine well that that is the case, so it will follow that a second trial has been allowed by the High Court in an assessment. We cannot duck that. Not publicising the pre-trial assessment will not avoid people knowing that there will be a second trial. We will simply have to live with that.

16:08

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): For 800 years, Scotland has lived under the judicial rule of double jeopardy. It is a rule that is embedded in the legal traditions that we live by, and have lived by for generations, but I believe that the time for change has arrived. We all have an opportunity to right what I believe is a fundamental wrong in our justice system.

It is clear that there is no overall consensus on the need for change, but in my opinion, and in the opinion of many, the crux of the matter lies in the injustice that is perceived by victims and the public when new evidence, or even a confession, comes to light. Although we hear and read about those cases, as others have said, we do not have the power to do anything about them or to right those wrongs.

Scotland needs to reform its practice in line with what has been done in England and Wales. Few members could argue logically that if overwhelming and compelling evidence is discovered about someone who has been found innocent in a court of law, they should not come before a court again. Currently, if someone is found guilty and new evidence comes to light that they believe proves their innocence, they can appeal against their conviction. In a just society, why should we not have the same right to justice in the public interest?

With advances in DNA evidence and other innovative technologies, it is getting increasingly common across the world for incriminating evidence of crimes that were committed in bygone years to come to light, the evidence and the technologies not having been available at the time when the crime was committed. Here in Scotland, under the double jeopardy rule, there are killers who have literally got away with murder.

Support for abolishing double jeopardy is not universal. Like other members, I thank the Scottish Law Commission for its work and I welcome the consultation process that is now under way. It is important to get the views of people on the front line, of the general public and of victims who believe that justice has not been done.

For me, the justification for refreshing this ancient rule is compelling. The historic case of Billy Dunlop assists in demonstrating the importance of the proposed change. Dunlop murdered 22-year-old Julie Hogg in 1989, and faced trial, twice, in 1991. On both occasions the jury failed to reach a verdict, and the killer was never brought to justice. As a result of the change in the law in England and Wales—where it applies retrospectively—Billy Dunlop was charged with and convicted of the murder in 2006, having confessed his guilt to the authorities back in 1999. Unfortunately, the outcome would have been very different had such a development occurred here in Scotland. I quote Paul McBride QC, an advocate specialising in criminal defence and regulatory crime. He says:

"I could stand trial for murder and be acquitted. Yet I could tell the world that I was guilty, and ... would not be retried. I think that most right-thinking people would agree that that is wrong."

I might not agree with Mr McBride's political analysis, but I very much agree with his analysis on this subject.

It is not often that I find myself agreeing with the justice secretary, but I welcome his comments this afternoon and his commitment to consider introducing legislation on the matter in its own right in the autumn. It would be a mistake to make amendments to the Criminal Justice and Licensing (Scotland) Bill. The legislation in this area needs to change, and that needs to have the weight of public opinion and scrutiny behind it.

To those who are worried about the proposals I say this. One of the words that is inscribed on our mace is justice, which is a key element in our society. Sadly, however, some criminals have avoided justice as a result of double jeopardy. A change would not mean open season on all those who have been acquitted of a crime, but it might from time to time provide victims and their families with the justice that they deserve, if new, relevant information and evidence come to light. I urge all members to support the motion in the name of the Cabinet Secretary for Justice.

16:13

Ian McKee (Lothians) (SNP): Nothing is more infuriating than seeing someone who is obviously guilty escaping justice through some quirk of the law. A person who is found not guilty on a technicality can hold a metaphorical get-out-of-jail card for evermore, because it is against the law to be tried twice for the same offence. The injustice is even more offensive if the crime involved is particularly repulsive.

However, a change of law made as a knee-jerk response to public anger over such issues risks creating more problems than it solves. That is why I applaud the Government's decision to make measured progress on the matter, embarking first on a widespread consultative process.

The first question that must be answered is whether we need a double jeopardy rule at all. In its recent report, the Scottish Law Commission, having considered the matter, came to the conclusion that the rule still serves a useful purpose, and that the general presumption against double jeopardy should remain. The commission gives several reasons for that, the most important of which, perhaps, is closure. That includes closure for wider society, for those who are most affected by the crime and for the accused.

However, although closure is important, it is not invariably the most important issue for most of us. Surely justice has a part to play, too. For example, if new techniques, such as DNA analysis, are developed that point conclusively to a person's guilt, it seems perverse to disallow the practical use of such evidence in proving guilt simply because a not guilty verdict was arrived at when those techniques were unavailable. If that continues to be the law, even after the Parliament has legislated on the issue, we had better have some good reasons to account for it.

I am running ahead of myself—the court first needs to decide whether double jeopardy arises at all in a particular case. As the Scottish Law Commission points out,

"the whole basis of the plea of res judicata rests upon a proper decision reached in accordance with the relevant rules".

If a verdict of not guilty is reached after a jury, or even a judge, has been suborned, it can be argued that the accused was never in jeopardy during the first trial and so a second trial is perfectly in accordance with the law as it stands today.

The criminal law committee of the Law Society of Scotland considers that a second trial in such circumstances would be fair only if it could be proven that the accused person had been involved in the perversion of justice. I hesitate to take on such an august body, but I think that it is wrong. First, it must be extremely difficult to prove such a link, although the circumstantial evidence must often be strong—who else would have such a vested interest in an acquittal? More important, however, if the perversion of justice were such that it rendered a guilty verdict impossible, the accused would not have been in jeopardy, and it matters not whether he or she was aware of the fact at the time. In such circumstances, double jeopardy would be impossible and a second trial should be considered appropriate.

It is more difficult if perjury results in a not guilty verdict. Deliberate perjury by the accused probably merits, in principle, not just a trial for the perjury but a retrial for the original offence. It is not always easy to assess whether what appears to be perjury is in fact simply a failure of recollection. It is even more difficult if a witness has allegedly lied under oath, and efforts to revisit a trial in which the verdict might well have been brought in by a jury whose deliberations were secret could create many more problems than they solved.

Moving on to situations in which a person was in jeopardy in the first trial, is it appropriate to prosecute someone who has already been found not guilty of a charge when, subsequently, it is found that the alleged offence was merely an aspect of a more serious crime, of which further evidence exists? To take the opposite extreme, what about a case in which fresh evidence is

produced that shows that a person has been convicted unfairly of a serious offence, but which also shows that he or she is almost certainly likely to have been guilty of a lesser offence?

Margo MacDonald: In that instance, if the person were not prosecuted in the original trial for the real crime, would it not be a simple thing to prosecute them when evidence became available?

Ian McKee: I believe that, in law, the robustness of the original evidence, and whether the same evidence is used again, is what counts. I am perfectly happy to discuss the matter in more detail with the member afterwards.

Margo MacDonald: No, no.

Ian McKee: That was a threat, not a promise.

The original sentence should certainly be quashed, but should the person then be charged with the lesser offence, or does the principle of avoiding double jeopardy prohibit that?

In the Galloway v Somerville case, it was held that a man found in possession of a hare could first be convicted of poaching, but that it was then lawful to charge him later with possession of game without a licence. Should it be possible to have a second or even third or fourth prosecution for offences that flow from a single unlawful act—a sort of dripping roast for lawyers?

I chose those few examples to illustrate the legal minefield that we enter when we consider double jeopardy. I reiterate what I said at the beginning of my speech: there should be no change in the law without the widest consultation and deepest reflection.

16:18

Robert Brown (Glasgow) (LD): This has been a focused and worthwhile debate on a tricky but significant question. The Scottish Law Commission's work has made a principled approach possible and the Scottish Government is right to follow it up with a consultation.

I intend to ask the chamber to allow me to withdraw the Liberal Democrat amendment, as some of the discussion around the subject has been useful in elaborating exactly where we should be going. There has been a wee bit of a mix-up, if I can put it that way, concerning the terms of the motion, which talks about things that the Scottish Law Commission recommended before going on to talk about the consultation and so on. In doing so, the motion supports certain things that are yet to be decided in the consultation. We lodged our amendment in that context. I think that the motion has given the wrong slant to the matter—perhaps it had the same effect on the Conservative amendment, which was withdrawn earlier.

The list of crimes is proving to be quite a tricky area. In talking about murder and rape, we had it in mind that that would include homicides of a murder type, if you like, and other offences that are in fact rape, although they are defined differently. Stewart Maxwell is right to say that there is a question about how far the proposal should go beyond such crimes. However, I had considerable concerns when he listed the offences that he thought should be included. For example, it would be quite problematic to treat sexual offences involving 13 to 16-year-olds as cases that there can be a second go at if new evidence comes to light. The issues relate not just to accused persons, but to vulnerable witnesses who would be required to give further evidence in a second trial. That is a serious proposition if a child, a young person or a person with mental health difficulties is involved. That consideration should lie behind our thinking on the matter.

Stewart Maxwell: I accept absolutely the points that Robert Brown makes about the age of witnesses and the effect of a second trial on them. We would have to be cautious in proceeding in that way. However, the law in England and Wales includes cases involving children under 13 who have been raped or involved in incest, which can be prosecuted under double jeopardy, but excludes cases involving children aged between 13 and 16—those who are still under the age of consent. I find the logic of that position difficult to understand. Surely older children are more robust and more able to take part in such proceedings.

Robert Brown: It depends on what we are talking about. If we are talking about the rape of 13 to 16-year-olds or cases in which force is used, that is one thing; if we are talking about a consensual situation—albeit one that is illegal because those involved are under 16—that is something else. That is the issue. I do not want to get sidetracked, but it is an important issue for us to get right. Like other members, I am attracted to the formulation that Bill Aitken set out, under which very serious crimes would be certified as such by the Lord Advocate. Anything else would land us in complicated definitional arguments.

I will say a word about retrospectivity. As Ross Finnie said, it appears that the concept is being applied in a rather different way from that which we would normally expect. We should not make new laws retrospective. However, we are dealing with the procedures for proving old laws, if you like, and old cases, which is not quite the same thing. The Scottish Law Commission has said that, when there is an admission of guilt, applying retrospectivity would not be incompatible with the ECHR. The Law Commission states:

"Allowing for a retrial in such circumstances does not criminalise conduct which was not criminal when committed."

That is important, and hits the nail on the head. In fairness, the Law Commission took a slightly different position on new evidence. However, frankly, I cannot see the difference in principle between the Law Commission's statement in relation to an admission of guilt, and the position that would arise on the production of new evidence.

A number of other issues arise regarding safeguards. Without question, Liberal Democrats take the view that we must go cautiously on that matter. It will be interesting to see what comes out of the consultation, as the question of safeguards is very important. First, there is general agreement across the chamber that it should be possible for the High Court, as the independent judicial arm of the state, to judge that, in a limited number of cases, retrial is merited. Mention has been made of the six applications that were made in England over five years, of which only three were granted. Secondly, evidence must be genuinely new and substantial, not something that the prosecution knew about, or should have known about, originally. I very much agree with Hugh Henry's comments on that. I am concerned that, in the consultation paper, the Scottish Government—admittedly, not having made its final decision on the matter—thinks that the rule against double jeopardy might be overruled to put right prosecution failings. To my mind, that is an extremely slippery slope, and the Government would be well advised to be very cautious before going down it.

The High Court must also be satisfied that the new evidence would have produced a different result. We have to be extremely careful about phraseology. It might not be altogether helpful, as the Law Commission report seems to phrase it, for Crown counsel to be able to tell the jury that the High Court thought that, on the new evidence that had been presented, the accused ought to have been convicted. Finally, the High Court must be satisfied in the round and in all circumstances that it is in the interests of justice to allow a retrial, and any such move must involve in-depth consideration by judges.

We must begin with the long-recognised principle that, in general, people who have been acquitted in a trial should be able to regard the decision as final. Indeed, that principle was put in place for good reason and applies in other jurisdictions for the same reasons. The need for a person to protect and defend their innocence a second or third time is a harassment that our law normally frowns on and forbids. In this country, the state is not entitled to try people again and again until it gets the result that it wants. Much of that view is rooted in the great landmark constitutional decisions of the past that established protections against arbitrary actions by the Crown or Government. It will be interesting to see where the consultation goes with regard to the narrowly construed exceptions that we have been discussing, but I accept and share the chamber's view that urgent action should be taken to implement the consultation's outcome in a way that is compatible with Scotland's traditions.

16:26

David McLetchie (Edinburgh Pentlands) (Con): This has been an interesting debate on an important principle of law that Stewart Maxwell in his speech described as one of the long-standing pillars of our justice system. It is a principle and pillar requiring us to balance the relationship between the individual and the state, the presumption of innocence and the need for justice not only to be done but to be seen to be done in the interests of victims, accused persons and society as a whole.

Some might say that such complexities justify the slow progress that has been made in considering the issue. The Scottish Law Commission was asked to examine the matter in November 2007 and, two years later, produced a report. Now, four months into the Scottish Government's consideration of the report, we have a consultation exercise. It has to be said that that pace of progress is in marked contrast to the situation that pertained in England, where, as we have heard, the law on double jeopardy was reformed by the Criminal Justice Act 2003.

They say that in life everything comes to those who wait and that in politics everyone ends up agreeing with the Tories. It is true, however, that some of us have to wait longer than others to have their good judgment vindicated. I remind members that it is more than three years since the last parliamentary debate on this topic, which was on a Conservative motion.

The Minister for Community Safety (Fergus Ewing): Given that Mr McLetchie is making so much of this, can he explain why action was not taken in the 18 years that the Conservatives were in government under Mrs Thatcher and others?

David McLetchie: I regret to say that under Mrs Thatcher and others we had not made the astonishing advances in forensic technology and evidence gathering that have since been made. I can assure Mr Ewing that, had we done so, Mrs Thatcher would have been the very first to act on this matter.

Mr Ewing was a little too early with his intervention, because I was about to praise him and the Scottish National Party. In that debate

three years ago, the Conservatives with the SNP's support called for a reform of the double jeopardy law, but the initiative was frustrated by the votes and inaction of the then governing parties: Labour and the Liberal Democrats. How times and tunes have changed. In her capacity as Deputy Minister for Justice, Johann Lamont was in no hurry to do anything in that debate beyond lodging an amendment that said that the issue was all terribly complex and on-going and then, of course, puffed up the Scottish Executive's alleged achievements.

Our former colleague Gordon Jackson, one of Scotland's leading QCs and exponents of the criminal law, was against any change in principle and, if I may say so, spoke very eloquently on the matter. He reminded us that hard cases make bad laws, a point that is always worth bearing in mind by any legislator. Others in that auld and little-lamented Lib-Lab alliance were equally critical.

In fairness to Mr MacAskill, he was characteristically robust in support of the Conservative motion and it was he and his Government that set the ball rolling with the Scottish Law Commission, for which they are to be commended. In the spirit of generosity for which we Conservatives are renowned, let me say that, as far as we are concerned, the Labour latecomers such as Richard Baker are also welcome.

However, if Labour has changed its tune and Richard Baker has accomplished yet another U-turn with scarcely a blush in the chamber today, the Liberal Democrats have changed their tune in even more spectacular fashion. Back in 2007, their then justice spokesman, Jeremy Purvis, told us that the state should not have a right to prosecute in perpetuity, that we could not separate principle from practicalities and that he could not support a change in the law. Mike Pringle, the author of today's Liberal Democrat amendment, which the Liberal Democrats want to withdraw, spoke in even more dramatic terms three years ago, conjuring up an image of a Kafkaesque trial situation in which a defendant is lost inside a machine, with no control over his fate.

Richard Baker: Will the member give way?

David McLetchie: Here is another Kafka—come on.

Richard Baker: Mr McLetchie is, unhappily, sounding a note of discord in what has been a consensual debate until now. Surely it is right for parties, including the Liberal Democrats and ourselves, to reflect on cases that have come up recently, including the World's End case. For some years now, Labour has made the case for change; indeed, we made the change down south. Double jeopardy has been in place for the past 800 years. For a large part of that time, there was a Tory Government and it did nothing about the issue.

David McLetchie: Of course, the reality of the situation is that Mr Baker's colleagues down south had the presence of mind and the common sense to enact a change in the law in 2003, but, despite that being pointed out to him and his colleagues for the best part of four years, they chose to do nothing about it. Nothing happened until Mr MacAskill referred the matter to the Scottish Law Commission in November 2007. I refer Mr Baker to the *Official Report* of the debate three years ago, where he will see exactly what Labour's then Deputy Minister for Justice said and what the party did, which was precisely nothing.

The presumption of innocence is, indeed, a fundamental principle of our criminal law. It is clearly unacceptable for the state to have a general right to keep trying an accused person over and over again until it finds a jury that is willing to convict. The state should prosecute a citizen only if it has a reasonable belief, on the basis of the evidence gathered, that a conviction can be secured by establishing guilt beyond reasonable doubt. The Scottish Law Commission has set out at considerable length in its report the permutations of circumstances in which a second trial is competent at present and would be competent under the proposals that it has put forward for discussion.

I believe that it is right that the new evidence exception should apply only when that evidence is both genuinely new and compelling. If I may say so, I thought that Nigel Don made some very interesting observations on that point in his speech. Furthermore, I agree that the exception should apply only to the most serious cases, because we cannot keep trying and retrying relatively trivial matters, as doing so would clog up our courts. Having said that, there is legitimate scope for debate about the extent to which the definition of a serious case should be extended beyond murder and rape. Stewart Maxwell made some very good points on that score. I also think that it is right that a new trial should be possible when an acquittal arises from interference with the administration of justice to a material extent, for example, when there is jury tampering, intimidation of witnesses or corruption—the cabinet secretary gave all those examples in his opening speech. Finally, I think that a new trial should be permissible when there has been a post-acquittal confession by the accused person.

Margo MacDonald: Will the effect of the crime on the victim be the demarcation line between what is serious and what is trivial, or will there be some other measurement?

David McLetchie: The serious nature of a crime is determined by a range of factors, not just

the effect on the victim. In some instances, there might be a victimless crime. The example of major drug cases was discussed earlier. In such cases, we do not know who the specific victims are, but we certainly know that there are victims in society of that code of behaviour.

Overall, as Richard Baker informed us in his speech, we should recognise that if the proposed change to our law comes into effect, it will give rise to only a tiny number of new cases—the figure of six applications in England in the past five years was mentioned, and I think that only three of those led to retrials. Let us acknowledge that in Scotland such retrials will be very rare, and rightly so. However, the proposed change is in the public interest and would bring our law into line with the advances in forensic science to which I referred earlier in my response to Mr Ewing's intervention. It would also prevent those who deserve to be retried from cocking a snook at our justice system to the outrage of the law abiding. I support the motion.

16:36

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to close this afternoon's debate on behalf of the Labour Party and to follow on from Mr McLetchie. I note that the Tory deputy spokesman on justice, John Lamont, is not here—perhaps he is out making an early start on his election campaign. No doubt he will be somewhat deflated after the excellent budget statement from Alistair Darling this afternoon.

We have had a quality debate in which lots of excellent speeches and relevant points were made, and I am sure that those points will be included in the consultation. In examining exceptions to double jeopardy—a law that was established 800 years ago—we must look at current thinking. Down in England and Wales, the driver for change was the Stephen Lawrence murder case, and further to that changes were made to the law to introduce exceptions to the double jeopardy principle. In Scotland, as many have mentioned, the issue was given focus by the collapse of the World's End murder trial. I well remember the Lord Advocate coming to the Parliament to make a statement on the matter and there is no doubt that it was a sombre and serious occasion. I point out to David McLetchie that, following on from that, Paul Martin called for action to look at exceptions to the double jeopardy principle. In politics it is correct that as events develop, political thinking develops, which is what happened in that case.

As others have mentioned, DNA science has developed considerably, particularly in the past 10 to 15 years. As a result, in numerous trials, not just in Scotland but in England and Wales, people have been brought to justice for crimes that they committed a good time ago and that has given some reassurance to the victims' families. As Stewart Maxwell mentioned, the international experience has moved on and there have been crucial developments in both Australia and New Zealand.

It is right that all such factors should be taken into account, and we have now seen the Scottish Law Commission's report. Like others, I thank the commission for its work in developing such an important matter. The Scottish Law Commission concluded that there are cases in which exceptions to double jeopardy should be investigated—where, for example, the trial is tainted by a jury being rigged, or where there has been intimidation. It is clear that such instances would create a lot of concern about the verdict, so the commission's conclusion was proper.

If a new confession is made, it is right that the result of the original trial is looked at again.

Robert Brown: Does Mr Kelly nevertheless accept that people can confess on the police record to all sorts of things that they have not done? Surely we must be cautious about even that fairly obvious situation.

James Kelly: Although a confession has been made, it must still be examined in a trial. At that point, the person being tried is still innocent in the eyes of the law.

The Government has accepted most of the Scottish Law Commission's conclusions. I agree with Richard Baker that it is unfortunate that the Law Commission did not take a position on new evidence, which is one of the drivers of the consultation. There has been a lot of discussion of that important issue; it needs proper consideration and therefore it is only correct that it goes out to consultation. If the measure is taken forward, we will need to establish whether the new evidence is relevant and whether there should, as a result, be a new trial, and any such process must involve the High Court's due consideration.

Important arguments have been made in favour of considering new evidence. For example, there have been important developments not only in the use of DNA evidence but in other scientific fields including, as the cabinet secretary pointed out, image processing. There is a strong moral case for considering fundamental new evidence that might change the result of the original trial, but we need to bear in mind the important legal principle of consistency.

It is useful to consider examples from England and Wales, where changes to the law that were set out in the Criminal Justice Act 2003 were implemented in 2005. As has been said, very few such cases have been taken forward. One

particular case, however, involved the conviction of Mario Celaire—as the result of a new confession—for the murder of Cassandra McDermott. I am quite sure that that outcome reassured Ms McDermott's family, but we should also remember that, after he had been cleared originally, Mr Celaire carried out a very serious hammer attack on another woman. Such circumstances strengthen the case for there to be exceptions to double jeopardy, because the outcome can not only reassure victims but ensure that the people who are actually guilty of crimes are placed in prison where they belong, instead of being let out to commit other violent acts.

There has been a lot of discussion about the crimes to which the new evidence rule should apply. I welcome the fact that the Liberal Democrats intend to withdraw their amendment, which mentions only murder and rape. In England and Wales, the list of crimes to which the rule applies is extensive and provides a reasonable starting point for the consultation; nevertheless, it should not represent the conclusion. The good thing about the consultation is that it allows us to consider the list of offences in England and Wales and take on board other comments and evidence to produce a list that is relevant to Scots law.

I strongly support the retrospective application of exceptions. In that respect, Cathie Craigie highlighted an excellent example in the case of Billy Dunlop, who was retried and convicted of a crime that had been committed in 1989. Again, that gave some reassurance to the family of the victim of the crime.

We must be diligent in the drawing up of any new evidence and ensure that it is properly constructed, can be assessed correctly and is relevant to a new trial.

In one of her many interventions, Margo MacDonald made some points about publicity. The consultation deals with publicity, and examines the possibility of giving powers to the court to ban press reporting. That idea needs to be considered seriously. As has been said throughout the debate, such a measure is likely to apply in only very few cases.

Double jeopardy is an important issue, and this has been a good debate, in which a lot of excellent contributions have been made. I look forward to the conclusion of the consultation in the autumn and to the Government taking action to strengthen the law on double jeopardy and to shift it in support of victims and their families.

16:45

The Minister for Community Safety (Fergus Ewing): This has been an extremely useful debate, with excellent contributions from members of all parties, and from the independent member, Margo MacDonald, who has kept many other speakers on their intellectual toes, so to speak.

When the Cabinet Secretary for Justice began the debate, he emphasised that a rule against double jeopardy is an essential feature of a fair society. The state should never have unfettered freedom repeatedly to prosecute individuals for the same act. It was useful to start the debate by canvassing that principle. That was the approach that the Scottish Law Commission took, as we would expect, when it analysed the issue in its report. The commission started off by asking whether we need double jeopardy at all. Is there a case for scrapping the rule altogether? We feel that there is not such a case, although it is always sensible to challenge one's own views and beliefs, is it not?

The Scottish Law Commission set out three reasons why, in its view, it is essential to have a rule against double jeopardy. First, it is a fundamental recognition of the finality of criminal proceedings. We do not want a criminal justice system in which the same matters are tried again and again. We want a criminal justice system in which our citizens have confidence, and where we get it right in the vast majority of cases. We are all confident that that is indeed the case, given the excellent quality of those involved in the system in every way.

Secondly, the rule has an important function in expressing the limits of the power of the state vis-à-vis the private citizen. The plight of a citizen facing a criminal trial is one of the citizen against the state. It is public law. It is a matter of the state deciding that an individual's conduct has led to their facing a criminal trial. For the individual, there can be few more serious experiences in life than facing the power of the state under those circumstances. That is why we have legal aid, rules of procedure and the independence of the Government from the judicial system.

Thirdly, the rule against double jeopardy affords protection from the anxiety and humiliation that repeated trials would undoubtedly cause accused persons.

I think that it was Cathie Craigie who alluded to the fact that we have had a rule against double jeopardy for around eight centuries. That is indeed the position that the Scottish Law Commission canvasses. It states that the rule was recognised by judges by the 13th or 14th century. Cathie Craigie is absolutely correct about that.

If I may, I will quote Baron Hume. I do not often get the opportunity, but it is a great pleasure to do so; in my humble opinion, he is not quoted frequently enough in the Parliament. If we fast-

forward to the 18th century, we note that Baron Hume stated the following:

"The prime benefit of a sentence of absolvitor is, that the pannel"—

that is, the accused—

"can never again be challenged or called in question, or made to thole an assize (as our phrase for it is) on the matter or charge that has been tried. The ground of which maxim lies in this obvious and humane consideration, that a person is substantially punished, in being twice reduced to so anxious and humiliating a condition, and standing twice in jeopardy of his life, fame or person."

In Baron Hume's day, people would literally be standing in the dock in jeopardy of their life. I must say, Baron Hume excepted, there are one or two judges who were around at that time before whom I would not have been too keen to stand in the dock, charged on any matter.

Margo MacDonald: He's nane the waur o a guid hangin.

Fergus Ewing: Indeed. I might deserve such a fate in the opinion of some members.

The principle of double jeopardy is well established, but it is in need of reform and the Scottish Law Commission has clearly recognised the need for clarity on its operation. Although there are some exceedingly difficult questions on double jeopardy that we have explored during the debate, there are others that we have not explored in detail, such as those that arise when one charge is introduced and a slightly different charge is introduced later. There are some complex issues of principle and practice that we need to get right. Therefore, I very much welcome the tone of the debate and the speeches by members of all parties, which I believe recognise that we must proceed with care and study the issues extremely carefully.

Double jeopardy is an important safeguard, but it is in need of reform. We are exceedingly grateful to the Scottish Law Commission for its work, which has enabled us to prepare the consultation paper, in which there are 10 questions and which restates the 36 recommendations from the SLC's report.

I now seek to reply, as best I can in the time that I have, to some of the points that members have made. I think that it was Margo MacDonald who raised the general issue of whether exceptions to the double jeopardy rule because of a confession, a tainted trial or other new evidence should be restricted to the most serious crimes—murder, rape and so on. The SLC does not suggest restricting any exception for post-acquittal confessions or tainted trials to a list of specific offences. The reason for that was set out by Dr Ian McKee. If a trial is tainted, that means that the convicted person, if you like, nobbled a juror—in other words, bribed them to deliver a certain verdict. In such cases, there has not been single jeopardy, because there has not been a proper trial. The trial has been perverted, so there has been no double jeopardy. It is fair to acknowledge that.

Similarly—I do not think that this point has been advanced in the debate—when someone who has been tried and acquitted subsequently confesses, clearly and without duress, to having committed the crime of which they were acquitted, that person waives the protection of the double jeopardy principle. I do not think that it can be said that a person who freely confesses their guilt faces a double jeopardy scenario—they simply face the consequences of having acknowledged their crime. That is an underlying distinction that I wanted to make to Margo MacDonald.

Margo MacDonald: I have a short query. There are cases that are time barred for various reasons. Is there any obstacle in the form of time barring of evidence?

Fergus Ewing: I am no expert in the law of time bar, but my understanding is that, by and large, it is a concept that is more applicable in civil law than it is in criminal law. Where it applies, it applies to the time limits for bringing prosecutions, whereby accused people who are in custody must be brought to trial within a certain period; I believe that the 110-day rule has been amended. I do not believe that there is a law of proscription in cases of murder, for example, so I do not believe that time barring is a problem but, plainly, I am not expert in the field. We will look at that issue.

There has been much discussion of cases in which new evidence arises. Initially, that discussion focused on the Liberal Democrat amendment, which says that new evidence exceptions to the double jeopardy rule should be restricted to cases of murder and rape. I warmly welcome the indication by the Liberal Democrats that they intend to withdraw their amendment, a decision that they were perhaps influenced to take by what has been said in the debate. That is a welcome development in a Parliament in which we want to pursue matters by way of reasoned argument, instead of always sticking to the party line, which I have not always done, as members may know—although that was in former days, of course.

It might help members if I refer to part 5 of the Scottish Law Commission's report, in which the commission noted:

"One respondent suggested that there should be no limit upon which offences might be retried, the matter being one which could safely be left to the discretion of the Lord Advocate."

Bill Aitken might have made such a suggestion today.

The commission went on to ask the question that we have been addressing today: how do we define "most serious cases"? The commission noted:

"On one view, the only principled point at which to draw a line is between murder ... and other offences."

The Government is not sure that that way of approaching the question will bring the right answer. The debate has demonstrated that there is a view that we need to look beyond murder and rape to many other very serious offences. Of course, the crime of genocide, by definition, involves murder. Stewart Maxwell mentioned a number of serious offences, including sexual offences against children, which I think that society acknowledges to be extremely serious. If we were to take steps to have a modern system of double jeopardy law, so that we could bring people to trial when new evidence emerged, such as DNA evidence, it would surely be perverse to exclude from the operation of the relaxed rule sexual offences, in relation to which it is most likely that DNA evidence could demonstrate guilt in a way that was not possible before scientific advances were made. Such new evidence might be able to deliver justice for victims of serious sexual offences.

Nigel Don made a thoughtful speech. We will consider his arguments carefully. The SLC acknowledged that it is difficult to form a test, as we acknowledged in paragraph 7.6 of our consultation paper. We would welcome further debate on the matter.

Many members talked about the risks of a second trial being prejudiced by publicity. That is a reasonable point, which we address in chapter 8 of the consultation paper. The SLC recommended that the High Court should have wide discretion to decide whether a retrial would be in the interests of justice. It also recommended that the courts

"should have power to make an order limiting publication of reports".

I do not think that members mentioned that recommendation. Such a power could be used to provide the safeguards that many members thought might be appropriate.

Neither I nor the cabinet secretary has mentioned individual cases, as some members have done. It is not that we do not want to do that, but doing so would not be prudent or consistent with our ministerial roles.

There was consensus in the debate, which Mr McLetchie did his best to disturb when he brought a whiff of political partisanship to the debate by castigating just about everyone except the Conservatives for not addressing the issue before now. I hope that he does not mind my having the temerity to point out that the Conservatives had a small opportunity to address the matter between 1979 and 1997, with the help of such previously disguised liberals as Nicholas Fairbairn, Michael Forsyth or perhaps Albert McQuarrie, through a private member's bill. The Conservatives did not address the matter.

However, the Scottish Government looks forward and not back, as members know. I am delighted that in arguing that we need a new rule on double jeopardy, in the interests of justice, we have the support of members of all parties. On that consensual—as always—note, I am happy to close.

Expenses Scheme

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-6027, in the name of Tom McCabe, on the reimbursement of members' expenses scheme.

17:00

Tom McCabe (Hamilton South) (Lab): The expenses scheme here at Holyrood has been held up as a benchmark of good practice. In order to reinforce that, the Scottish Parliamentary Corporate Body, with the strong support of the main party leaders, asked Sir Neil McIntosh to conduct a review of our expenses scheme. As we would have expected, he carried out a thorough and professional review of the scheme. I put on record our thanks for that. Each member has received a communication from you, Presiding Officer, explaining the detail of the motion and its impact.

I move,

That the Parliament recognises that the Scottish Parliamentary Corporate Body ("the SPCB") commissioned and received a report from Sir Neil McIntosh on the Reimbursement of Members' Expenses Scheme and in implementation of those recommendations therefore agrees to:

(a) Amend the Resolution of 12 June 2008 ("the Resolution") agreeing to the Reimbursement of Members' Expenses Scheme ("the Scheme") annexed as Annex 1 to the Resolution by—

(i) adding after "appropriate" at the end of paragraph (iv) "and in particular, and without prejudice to the generality—

(a) entering into arrangements with those members who, in relation to Edinburgh accommodation, are claiming and have claimed reimbursement of mortgage interest allowance in accordance with paragraph 4(5)(b) of Part B of the Previous Scheme and paragraph (v) of the Resolution. In respect of paragraph 2.1.6 of the Scheme as amended by this Resolution, the entitlement to the costs in paragraph 2.1.3 (b), (c), (d) and (e) of the Scheme will not apply to those members who have not entered into such an arrangement with the SPCB; and

(b) making provision for termination payments to members' staff who are close family members of the member (as defined in paragraph 9.1.1 of the Scheme), where the costs of employing such close family members is reimbursed in accordance with Section 3 of the Scheme and termination of the employment of such close family members on or before the 31 July 2015 is due to the effect of paragraph 3.1.8 of the Scheme as inserted by this Resolution, and paragraph (a)(ii) of this Resolution. Such termination payments shall be calculated in accordance with the principles for determining redundancy payments provided for in Section 3.6 of the Scheme";

(ii) adding after "31 March 2011" at the end of paragraph (v) "except that (i) the entitlement to reimbursement of staff costs under Section 3 of the Scheme in respect of close family members (as defined in paragraph 9.1.1 of the Scheme) whose employment by a member commenced before 1 April 2010, and (ii) the requirement to declare such relationships to the SPCB in accordance with paragraph 3.7 of the Scheme as it read prior to the amendment made by this Resolution, shall end not later than 31 July 2015";

(b) Amend the Scheme with effect from 1 April 2010 by—

(i) substituting for existing paragraph 1.6.2—

"On no more than two occasions in any financial year, a member may transfer in total an amount which does not exceed in aggregate one half of the limit on that member's entitlement to reimbursement of office costs to that member's entitlement to reimbursement of staff salary costs. A member making such a transfer shall notify the SPCB in advance of incurring any costs in respect of the sum transferred";

(ii) deleting from paragraph 2.1.4 the words "and 2.1.6";

(iii) substituting for existing paragraph 2.1.6(b)—

"(b) the member also owns another residence in Edinburgh which the member uses in connection with the performance of Parliamentary duties, the member is entitled to claim reimbursement of the actual costs specified in paragraph 2.1.3 (b), (c), (d) and (e) in respect of that other residence.";

(iv) inserting as new paragraph 2.3—

"**2.3 SHARED RESIDENTIAL LEASED ACCOMMODATION**

2.3.1 Section 2.3 shall only apply to a member with a main residence in a constituency listed in Group Three of Annex A.

2.3.2 Subject to paragraph 2.3.3, where more than one member leases the same residential property in Edinburgh together with another member or members, those members are entitled between or amongst them to reimbursement of the costs of leasing the residential property in accordance with paragraph 2.1.3.

2.3.3 The limit on the entitlement of each member to reimbursement of costs reimbursed under paragraph 2.3.2 is the limit in each financial year specified in the Schedule of Rates plus one third of that amount in respect of each additional member, apportioned equally between the members.

2.3.4 A member who submits a claim in respect of the cost of shared residential leased accommodation shall declare that arrangement to the SPCB. The declaration shall be in writing, include the name(s) of the other member or members with whom tenancy is shared, a copy of the letting agreement and/or lease, and such other information as the SPCB shall determine.";

(v) inserting new paragraph 3.1.8—

"Section 3 does not apply in relation to the employment of a close family member by a member, whether individually or through a pool;

(vi) substituting for existing paragraphs 3.7 and 3.7.1—

"**3.7 EMPLOYMENT OF CLOSE FAMILY MEMBERS OF ANOTHER MEMBER**

3.7.1 A member who submits a claim in respect of the costs of employing a close family member of another member, whether individually or through a pool shall declare that relationship to the SPCB. The declaration shall be in writing and shall include the name of the close family member, the name of the other member, the relationship to that other member and such other information as the SPCB may determine" ;

(vii) substituting for existing paragraph 8.4—

"**8.4 ACCOMMODATION, OFFICE AND ASSOCIATED COSTS**

8.4.1 A former member is entitled to reimbursement of the costs reasonably incurred—

(a) in the closing down of a parliamentary office;

(b) in connection with the termination of any agreement pertaining to leasing residential property within Edinburgh under paragraph 2.1.2(b);

(c) in connection with any ancillary obligations arising from paragraph 8.4.1(b);

(d) for the purpose of travel within Scotland undertaken in connection with (a) (b) or (c);

8.4.2 The reimbursements in paragraph 8.4.1 are subject to a limit equivalent to one third of the office cost provisions set out in section 4";

8.4.3 Any costs reimbursed under paragraph 8.4.1 may include the costs of travel of the former member's staff provided that such costs are incurred for the purpose of paragraphs 8.4.1(a), (b) or (c).".

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

European Economic and Social Committee

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-6034, in the name of Fiona Hyslop, on Scottish ministers' nominations to the European Economic and Social Committee.

Motion moved,

That the Parliament endorses the Scottish Executive's proposal to nominate Mr George Traill Lyon, nominated by CBI Scotland and the Institute of Directors Scotland, Mr Sandy Boyle, nominated by the STUC, and Ms Maureen O'Neill, nominated by the Scottish Council for Voluntary Organisations and the Poverty Alliance, to the UK delegation on the Economic and Social Committee of the European Union for the forthcoming mandate from September 2010 to September 2015.—*[Fiona Hyslop.]*

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

Business Motions

17:01

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-6042, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 14 April 2010	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Debate: Local Government Finance (Scotland) Amendment Order 2010
followed by	Scottish Government Debate: Economic Recovery Plan
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 15 April 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Liberal Democrats' 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 Debate: Gaelic – An Action Plan for Gaelic
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 21 April 2010	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 22 April 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Europe, External Affairs and Culture; Education and Lifelong Learning
2.55 pm	Stage 3 Proceedings: Control of Dogs (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business—*[Bruce Crawford.]*

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-6043, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on an extension to the stage 2 timetable for the Criminal Justice and Licensing (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Criminal Justice and Licensing (Scotland) Bill at Stage 2 be extended to 7 May 2010.—*[Bruce Crawford.]*

Motion agreed to.

Parliamentary Bureau Motions

17:02

The Presiding Officer (Alex Fergusson): The next item of business is consideration of Parliamentary Bureau motions S3M-6044, S3M-6045 and S3M-6046.

Motions moved,

That the Parliament agrees that the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 be approved.

That the Parliament agrees that the National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2010 be approved.—*[Bruce Crawford.]*

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

Before we come to decision time, the Liberal Democrats wish to seek the leave of Parliament to withdraw amendment S3M-6033.2, in the name of Mike Pringle, in relation to the earlier debate on double jeopardy. Does any member object to the amendment being withdrawn?

David McLetchie (Edinburgh Pentlands) (Con): I object.

The Presiding Officer: There is an objection, so the question will have to be put at decision time.

Decision Time

17:02

The Presiding Officer (Alex Fergusson): There are five questions to be put as a result of today's business.

The first question is, that motion S3M-5681, in the name of Trish Godman, on the Scottish Parliamentary Commissions and Commissioners etc Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Scottish Parliamentary Commissions and Commissioners etc. Bill.

The Presiding Officer: The next question is, that amendment S3M-6033.2, in the name of Mike Pringle, which seeks to amend motion S3M-6033, in the name of Kenny MacAskill, on double jeopardy, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

Against

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)

Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

Brown, Robert (Glasgow) (LD)
Hume, Jim (South of Scotland) (LD)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
O'Donnell, Hugh (Central Scotland) (LD)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tolson, Jim (Dunfermline West) (LD)

The Presiding Officer: The result of the division is: For 0, Against 104, Abstentions 14.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S3M-6033, in the name of Kenny MacAskill, on double jeopardy, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)

Goldie, Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)

The Presiding Officer: The result of the division is: For 115, Against 2, Abstentions 0.

Motion agreed to,

That the Parliament agrees that, although double jeopardy must continue to provide an important safeguard, it needs to be reformed to fit with a fair and modern criminal justice system; agrees that persons who confess after an acquittal or who undermine trials by threats or corruption should be retried; supports reform to allow a second trial in very serious cases where important new evidence emerges and for this to apply retrospectively, and welcomes the Scottish Government's consultation on this issue.

The Presiding Officer: The next question is, that motion S3M-6027, in the name of Tom McCabe, on the reimbursement of members' expenses scheme, be agreed to.

Motion agreed to,

That the Parliament recognises that the Scottish Parliamentary Corporate Body ("the SPCB") commissioned and received a report from Sir Neil McIntosh on the Reimbursement of Members' Expenses Scheme and in implementation of those recommendations therefore agrees to:

(a) Amend the Resolution of 12 June 2008 ("the Resolution") agreeing to the Reimbursement of Members' Expenses Scheme ("the Scheme") annexed as Annex 1 to the Resolution by—

(i) adding after "appropriate" at the end of paragraph (iv) "and in particular, and without prejudice to the generality—

(a) entering into arrangements with those members who, in relation to Edinburgh accommodation, are claiming and have claimed reimbursement of mortgage interest allowance in accordance with paragraph 4(5)(b) of Part B of the Previous Scheme and paragraph (v) of the Resolution. In respect of paragraph 2.1.6 of the Scheme as amended by this Resolution, the entitlement to the costs in paragraph 2.1.3 (b), (c), (d) and (e) of the Scheme will not apply to those members who have not entered into such an arrangement with the SPCB; and

(b) making provision for termination payments to members' staff who are close family members of the member (as defined in paragraph 9.1.1 of the Scheme),

where the costs of employing such close family members is reimbursed in accordance with Section 3 of the Scheme and termination of the employment of such close family members on or before the 31 July 2015 is due to the effect of paragraph 3.1.8 of the Scheme as inserted by this Resolution, and paragraph (a)(ii) of this Resolution. Such termination payments shall be calculated in accordance with the principles for determining redundancy payments provided for in Section 3.6 of the Scheme";

(ii) adding after "31 March 2011" at the end of paragraph (v) "except that (i) the entitlement to reimbursement of staff costs under Section 3 of the Scheme in respect of close family members (as defined in paragraph 9.1.1 of the Scheme) whose employment by a member commenced before 1 April 2010, and (ii) the requirement to declare such relationships to the SPCB in accordance with paragraph 3.7 of the Scheme as it read prior to the amendment made by this Resolution, shall end not later than 31 July 2015";

(b) Amend the Scheme with effect from 1 April 2010 by—

(i) substituting for existing paragraph 1.6.2—

"On no more than two occasions in any financial year, a member may transfer in total an amount which does not exceed in aggregate one half of the limit on that member's entitlement to reimbursement of office costs to that member's entitlement to reimbursement of staff salary costs. A member making such a transfer shall notify the SPCB in advance of incurring any costs in respect of the sum transferred";

(ii) deleting from paragraph 2.1.4 the words "and 2.1.6";

(iii) substituting for existing paragraph 2.1.6(b)—

"(b) the member also owns another residence in Edinburgh which the member uses in connection with the performance of Parliamentary duties, the member is entitled to claim reimbursement of the actual costs specified in paragraph 2.1.3 (b), (c), (d) and (e) in respect of that other residence.";

(iv) inserting as new paragraph 2.3—

"**2.3 SHARED RESIDENTIAL LEASED ACCOMMODATION**

2.3.1 Section 2.3 shall only apply to a member with a main residence in a constituency listed in Group Three of Annex A.

2.3.2 Subject to paragraph 2.3.3, where more than one member leases the same residential property in Edinburgh together with another member or members, those members are entitled between or amongst them to reimbursement of the costs of leasing the residential property in accordance with paragraph 2.1.3.

2.3.3 The limit on the entitlement of each member to reimbursement of costs reimbursed under paragraph 2.3.2 is the limit in each financial year specified in the Schedule of Rates plus one third of that amount in respect of each additional member, apportioned equally between the members.

2.3.4 A member who submits a claim in respect of the cost of shared residential leased accommodation shall declare that arrangement to the SPCB. The declaration shall be in writing, include the name(s) of the other member or members with whom tenancy is shared, a copy of the letting agreement and/or lease, and such other information as the SPCB shall determine.";

(v) inserting new paragraph 3.1.8—

"Section 3 does not apply in relation to the employment of a close family member by a member, whether individually or through a pool;

(vi) substituting for existing paragraphs 3.7 and 3.7.1—

"**3.7 EMPLOYMENT OF CLOSE FAMILY MEMBERS OF ANOTHER MEMBER**

3.7.1 A member who submits a claim in respect of the costs of employing a close family member of another member, whether individually or through a pool shall declare that relationship to the SPCB. The declaration shall be in writing and shall include the name of the close family member, the name of the other member, the relationship to that other member and such other information as the SPCB may determine" ;

(vii) substituting for existing paragraph 8.4—

"**8.4 ACCOMMODATION, OFFICE AND ASSOCIATED COSTS**

8.4.1 A former member is entitled to reimbursement of the costs reasonably incurred—

(a) in the closing down of a parliamentary office;

(b) in connection with the termination of any agreement pertaining to leasing residential property within Edinburgh under paragraph 2.1.2(b);

(c) in connection with any ancillary obligations arising from paragraph 8.4.1(b);

(d) for the purpose of travel within Scotland undertaken in connection with (a) (b) or (c);

8.4.2 The reimbursements in paragraph 8.4.1 are subject to a limit equivalent to one third of the office cost provisions set out in section 4";

8.4.3 Any costs reimbursed under paragraph 8.4.1 may include the costs of travel of the former member's staff provided that such costs are incurred for the purpose of paragraphs 8.4.1(a), (b) or (c).".

The Presiding Officer: The next question is, that motion S3M-6034, in the name of Fiona Hyslop, on Scottish ministers' nominations to the European Economic and Social Committee, be agreed to.

Motion agreed to,

That the Parliament endorses the Scottish Executive's proposal to nominate Mr George Traill Lyon, nominated by CBI Scotland and the Institute of Directors Scotland, Mr Sandy Boyle, nominated by the STUC, and Ms Maureen O'Neill, nominated by the Scottish Council for Voluntary Organisations and the Poverty Alliance, to the UK delegation on the Economic and Social Committee of the European Union for the forthcoming mandate from September 2010 to September 2015.

The Presiding Officer: Unless any member objects, I propose to put a single question on motions S3M-6044 to S3M-6046, on the approval of Scottish statutory instruments.

There being no objection, the next question is, that motions S3M-6044 to S3M-6046, in the name of Bruce Crawford, on the approval of SSIs, be agreed to.

Motions agreed to,

That the Parliament agrees that the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 be approved.

That the Parliament agrees that the National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2010 be approved.

Armed Forces Cadet Movement

The Deputy Presiding Officer (Alasdair Morgan): The final item of business is a members' business debate on motion S3M-5633, in the name of Elizabeth Smith, on 150 years of the armed forces cadet movement. The debate will be concluded without any question being put.

Motion debated,

That the Parliament congratulates the armed forces' cadet movement on its 150th anniversary; considers that the Sea Cadet Corps, Army Cadet Force, Air Training Corps and Combined Cadet Force have given great opportunities to young people to develop self-confidence, teamwork, leadership and responsibility through a wide range of activities, including sport, adventure training, first aid, military skills training, community activities and military music groups, including the Black Watch Battalion Army Cadet Force, which covers Perth and Kinross and Fife, and further notes that, through Cadet150, the 131,000 current cadets will be taking part in events across the United Kingdom, with a notable programme of events in Scotland and events overseas.

17:07

Elizabeth Smith (Mid Scotland and Fife) (Con): I am pleased to have secured this debate to mark the 150th anniversary of the Army Cadet Force. I warmly welcome the representatives of the Combined Cadet Force in the gallery and thank the cadets who turned up this morning to meet MSPs. In particular, I congratulate the cadets from Loretto school whose CCF celebrates its centenary this year.

The Army Cadet Force is one of the United Kingdom's oldest, largest and most successful youth organisations, and Scotland has played a unique role in its history. Kirkcaldy—for which I have special affection, as the birthplace of my father—was home to the first detachment in Scotland. From that early foundation, the cadet movement has gone from strength to strength, and is now able to boast more than 47,000 cadets, who are part of the 1,700 local detachments throughout the UK.

As all members who will participate in the debate are well aware, those detachments help young people between the ages of 12 and 18 to develop personally and physically by providing them with a wide range of challenging and exciting opportunities and activities, and training them in the skills that they need for later life. The Combined Cadet Force is renowned for its ability to instil a sense of discipline, leadership and community spirit in our young people. That can only be a good thing, particularly when it can help to turn around the lives of some of our more troubled young people as well as inspire thousands more to achieve their ambitions, including, in many cases, to join the forces.

Perhaps one of the greatest assets of the cadet movement is its ability to provide a positive framework for young people of all ages and backgrounds so that it provides them with confidence and self-esteem, strong social bonds and lasting friendships.

Many recent debates in the Parliament have made us focus on the need to improve young people's skills. Colleges, universities and employers often tell us that we need to do much more in that respect. That is precisely why we should celebrate the success of the cadets and all those who work for them. Whether they learn map and compass skills for the Duke of Edinburgh award, perform in a military band or help with voluntary work in the community, the skills that they learn are hugely important, and they can use them for the rest of their lives. It is a testament to the cadet force's success that it has become one of the largest music educators of young people in Scotland. Some 800 young people in the cadet force are taught piping and drumming each year; one in every 14 cadets learns to play the pipes or drums.

We should recognise the significant contribution that the cadet force makes in our communities. Community projects enrich local knowledge, encourage good citizenship and provide support for many community events and groups. It is encouraging to see the work that is being done in schools, where the emphasis is on citizen service for all 16-year-olds, which gives young people opportunities to play a leading role in their communities.

In what will inevitably be a difficult financial period in the coming years, it is vital that we do not lose such opportunities. Jim Hume lodged a motion last week in which he rightly asked:

"That the Parliament notes with concern the plans to close the Combined Cadet Force ... at Knox Academy in Haddington, the only CCF remaining in a state secondary school in Scotland".

I hope that all stakeholders, including East Lothian Council and the Ministry of Defence, will enter into constructive discussions to ensure that that cadet force remains at the school.

The cadet force's greatest strength is its many volunteers and instructors, who provide experience and specialist skills to develop cadets' talents. Without the support of such people, which is given selflessly and with unrelenting enthusiasm, we would have great difficulty in supporting our young people. That is why it is a matter of considerable concern that the current economic climate is forcing the United Kingdom Government to make savings of £4 million in the Army Cadet Force training budget, which will inevitably have a detrimental effect on the staffing of cadet courses. There are encouraging signs among all parties in the Parliament that we acknowledge the need to do more to encourage and support volunteers throughout Scotland, but we need to turn our words into action.

A 150th anniversary is an important milestone in any organisation's history. In the case of the Army Cadet Force, it brings a timely reminder of the strength of our young people when they are motivated to succeed. I hope that the many events throughout the UK, including the aptly named cadetfest in Glasgow in April, the cadet forces piping event in Inverness in the first week of April and the parade at Buckingham palace on 6 July, as well as the hugely important parade at Edinburgh castle on 12 June, will be widely supported by all members and will provide a showcase for the cadet movement in every part of the UK.

I wish all cadets a successful year of celebrations to mark their 150th anniversary. I wish them well in the future. I hope that we can do our bit to ensure that during the next 150 years the Army Cadet Force will be as successful as it has been in the past.

17:12

Stuart McMillan (West of Scotland) (SNP): I congratulate Elizabeth Smith on securing the debate and I welcome the Combined Cadet Force representatives to the public gallery.

I was only too happy to sign the motion when it appeared in the *Business Bulletin*. I firmly believe that organised activities for younger people, such as are provided by the armed forces cadet movement, the Boys Brigade, the Girls Brigade and the scouting and guiding movements, play an important role in providing additional education, instilling discipline and enabling young people to learn a great deal about other people and cultures. There is also the small matter of having fun, through fantastic experiences and building up camaraderie, which helps younger people to develop.

I was never a member of the cadet movement, although I was in the Boys Brigade. I am sure that cadets' experiences are sometimes more exotic than the experiences of members of other organisations. When I was researching the matter for today's debate, I read that there is an opportunity for cadets to go to Lesotho.

In my previous job, when I worked for an MSP, we had a great deal of contact with the west lowland battalion A company detachment at Port Glasgow. The young people were a credit to themselves, their families and the company. They had won the award for best detachment for about four years in a row and the officers were rightly proud of them. They were invited to the Parliament

and they thoroughly enjoyed their day out. I was struck by their discipline. Every young person was impeccably behaved and respectful towards the officers and the Parliament.

I had a similar experience earlier this afternoon, when I had the pleasure of meeting cadets from Mid Scotland and Fife, which is not my region. Once again, I was taken by the cadets' manners and discipline. One cadet, who has been a member for four years, started as a bass drummer in the pipe band and is now the drum major. His experience and leadership role will stand him in good stead in future. I am a piper myself, so I know only too well the demands that are placed on bass drummers and drum majors. I have every respect for what that young man is doing. The remarkable thing about him is his maturity. He is still only 16 years old, but his maturity is well beyond his 16 years.

I am also very jealous of him. We chatted about some events that he has played at, and he told me about his experience of playing at the Edinburgh Military Tattoo at Edinburgh castle. My experience as a civilian piper in a Territorial Army band did not stretch to playing at the castle. I could not afford the four weeks off to rehearse and play all the time. Unfortunately, the way the tattoo is organised, people have to be there for the full four weeks; they cannot just do a week here and there. So I am extremely jealous that he, as a 16-year-old, has achieved something that I have not been able to achieve in my 37 years. That young man and others will have similar wonderful experiences with the armed forces cadet movement.

I wonder how many people in the past 150 years have gone through the cadets and on to great things. I also wonder how many have gone through the cadets and, due to receiving a little bit of discipline, have managed to keep themselves on the straight and narrow and thus have not had an impact on other elements of the public sector.

All in all, I whole-heartedly welcome the 150 years of the armed forces cadet movement, and I sincerely wish it every success in future.

17:16

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I welcome the opportunity to take part in the debate. The armed forces cadet movement brings together young men and women from across Scotland and the UK. The respective groups teach teamwork, instil discipline and build key life skills such as self-confidence and responsibility.

Cumbernauld and Kilsyth constituency, which I represent, has a variety of cadet groups that bring together young people from across the area. Much of the Argyll and Sutherland Highlanders battalion Army Cadet Force F squadron is based in my constituency. Three of the five detachments are based in Cumbernauld, Kilsyth and Condorrat. Under the direction of Major Lockhart, that Army Cadet Force squadron develops the attitude and physical side of young people in the Cumbernauld and Kilsyth area. Attitude is an important issue. The cadets in my area and across Scotland are being taught the value of community and the notion that they are part of something larger than their individuality. Those young people learn those values, and in the process they give something back to their home communities.

The cadet force goes on four weekend training sessions a year as well as to an annual camp during the summer, which provides exciting and adventurous activities for the young people. The young folk I have spoken to enjoy that immensely. They are proud to take part, they take it seriously, and it stands them in good stead for the rest of their lives.

The Army Cadet Force is just one branch of the cadet movement. The Air Training Corps 2496 squadron is based in Carbrain in Cumbernauld, and we also have young people involved in the Combined Cadet Force. All branches try to get the best out of the young people who are under their wing.

Young people in Cumbernauld and Kilsyth and across Scotland can get a bad reputation. Some people complain about their insolence and lack of respect. As members know, that applies to a minority, but sadly, in many cases, our young people are tarred with the same brush. Like Stuart McMillan, my experience of the young people who are involved in the cadets in my constituency could not be further from that. The fact is that those young people are a credit to their units, their parents and their communities. They do voluntary work in the community throughout the year and not just when it comes round to the poppy collection.

The tens of thousands of cadets across the UK are a testament to the qualities of young people. They are role models to their peers, and an example of great potential for the next generation. I thank Elizabeth Smith for her motion, and for bringing to the attention of the Parliament the fact that we should congratulate the armed forces cadet movement on its fabulous milestone of 150 years in service to our communities. That shows that the movement has staying power.

Sadly, Presiding Officer, I have to attend a meeting that started nine minutes ago, so I do not have staying power. With your permission, I will leave directly after sitting down.

17:20

Jim Hume (South of Scotland) (LD): I, too, congratulate Elizabeth Smith on bringing the topic to the chamber for debate and thank her for mentioning my motion on the cadets in her opening remarks.

The cadet force—whether air, sea, army or combined—is a huge boon to our young people. We should be immensely proud that it exists, and it is perhaps an indication of the enthusiasm of cadets, schools, parents and others that we celebrate the movement's 150th anniversary this year. I also send my congratulations to the movement.

As the motion states, the cadet forces provide young people with leadership and other skills that will doubtless benefit them in years to come. When we speak to young cadets, it is obvious that, apart from any practical skills that they learn, they gain a huge amount of confidence, a great deal of comradeship and a sense of belonging and working together as part of a close-knit cadet team—apparently, that was demonstrated during the cadets' visit to the Parliament today, which unfortunately I was unable to attend due to parliamentary business. Those soft skills can be translated into later life.

My eldest son benefited from the air cadets in his early teenage years—I know that I look far too young to have a kid that old, but there we go—so I know the value that is attached to such groups for young people. The cadet forces cut across all boundaries: race, gender, age, colour and creed. For that reason alone, they are an ideal vehicle for giving our young people a balanced view of the world. It is true that the life of a cadet is filled with adventure and new experiences—Stuart McMillan mentioned some of those—but cadet forces are underpinned by a firm set of principles: equality, fairness, teamwork and public spirit. Those are all qualities that we want to instil in our young people.

Not only that, the cadet forces keep alive the memory of our armed forces personnel who fought in the past and who are currently fighting in Iraq and Afghanistan, for example. The cadet forces are a link between the armed forces and our young people. They maintain the memory of the bravery that our servicemen and women have shown over the years. On a dangerously solemn note, I propose that the cadet forces are a tribute to that bravery and a continuation of the memory of every one of those servicemen and women.

I am grateful for the opportunity to speak, because the cadet forces resonate with many in East Lothian constituency, which is in my South of Scotland region. As Elizabeth Smith mentioned, the uncertainty over the future of Knox academy Combined Cadet Force has been a prominent issue for many months. Knox academy has been fortunate to benefit from a cadet force for many years, and indeed has just celebrated its centenary. It is the only state school in Scotland with its own cadet force, which brings me back to my earlier comments about crossing social boundaries. Unfortunately, in recent times, the future of that cadet force has been unclear. Indeed, the MOD now intends to remove funding as of 1 April.

It is difficult to know the precise cause of the problems in that situation, but I ask the local authority, the school staff and the MOD to work together to come to some sort of reasonable conclusion that will not leave the young people without a cadet force. Everything must be done to reach a solution. Local campaigners—including my colleague, the Haddington provost Councillor Sheena Richardson—have been working hard to come up with alternative ideas. There have even been discussions about a community-based cadet force, for example, or even going into collaboration with a private school—in fact, Loretto, which Elizabeth Smith mentioned. No matter which route is taken, buy-in from all stakeholders will be essential.

It is incumbent on us to ensure that our young people are given the valuable opportunities that cadet forces afford them. Let us hope that the cadets go on for at least another 150 years.

17:24

Murdo Fraser (Mid Scotland and Fife) (Con): I commend my colleague Elizabeth Smith for her motion and congratulate her on securing the debate. Like Stuart McMillan and other colleagues, I had the pleasure of meeting representatives from the cadet forces earlier today and was impressed by them.

I associate myself with the comments that Elizabeth Smith and Jim Hume made about the Knox academy Combined Cadet Force. It would be a tragedy if we lost that resource now.

As we have heard, the cadet forces are voluntary youth organisations for boys and girls aged 12 to 18, and the central aim of the cadet movement is to promote citizenship and team building, which provides youngsters with a real sense of achievement. I cannot commend the movement enough. I take this opportunity to thank all of the adult volunteers who are involved with the movement, make it work so well and give up their time for the youngsters.

In my region of Mid Scotland and Fife, we are fortunate to have a large number of cadet detachments. In Perth and Kinross, there are detachments in Auchterarder, Blairgowrie, Crieff, Dunkeld, Kinross, Perth and Stanley, as well as

numbers throughout Angus, Stirling, Clackmannanshire and Fife. Having the opportunity to take part in military and adventurous activities is a highlight for the youngsters who are in the cadets, who are also actively involved in helping their communities. It is clear that those young people highly value being part of a detachment and feel pride in their accomplishments.

Blairgowrie has a tremendous local detachment that I have had the pleasure of visiting on a number of occasions. Like many in the area, it is part of the Black Watch battalion Army Cadet Force, which is mentioned in Elizabeth Smith's motion. Young people from the Blairgowrie detachment get involved in an astonishing range of opportunities, from adventure weekends to military training to flying planes.

Such has been the success of the detachment that it is helping to set up a new detachment in Pitlochry. The initiative is spearheaded by Major Douglas Pover, John Gregory and other volunteers, who have held three open nights so far to introduce the Army Cadet Force to Pitlochry. So far, 21 young people have registered to be involved. Since February, the detachment has held training nights in Pitlochry high school, with youngsters regularly attending. Senior cadets from Blairgowrie are helping out and training the new cadets, to ensure that there will be a successful new detachment. The previous detachment at Pitlochry closed in the mid 1970s, whereas the nearby detachment at Aberfeldy shut down in 1980, so the cadet movement is reforming in Highland Perthshire. That will be much to the benefit of the area, given that at present the nearest detachment is some miles down the A9, in Dunkeld.

What is happening in Pitlochry goes to show that the hard work and dedication of a few individuals can have an enormous effect on a whole town of youngsters. I pay tribute to individuals such as Major Douglas Pover and John Gregory for their work, which is having a lasting and positive impact. I also put on record my thanks to the commandant of the Black Watch army cadets, Colonel Martin Passmore, whom I had the pleasure of meeting earlier today; the honorary colonel of the Black Watch battalion Army Cadet Force, Lorraine Kelly; and the Lord Lieutenant of Perth and Kinross, Brigadier Mel Jameson. It is tremendous that individuals of that calibre are prepared to give up their time to support this worthwhile cause.

The Black Watch is a proud regiment that is intertwined with the Tayside area. All soldiers of the Black Watch throughout its history would be proud of our current cadets. I doubt that those cadets would seek any higher honour.

17:28

Karen Whitefield (Airdrie and Shotts) (Lab): As other members have done, I congratulate Elizabeth Smith on securing tonight's debate. There was a time, especially in the 1970s and 1980s, when the armed forces cadet movement was perceived to be on the uncool side of youth development. I am pleased to say that that perception, which was never accurate, no longer holds. The opportunities that the Sea Cadet Corps, the Army Cadet Force, the Air Training Corps and the Combined Cadet Force offer to young people throughout Scotland are now widely recognised.

The core of the corps—if members will pardon the pun—is that they combine personal development with a strong sense of team and community. That is vital for members of our armed forces and if we are to build thriving, caring communities. My local cadet corps is the Airdrie and Coatbridge unit of the sea cadets. The unit's headquarters are located in Airdrie, and all of its boating activities take place at Hillend reservoir near Caldercruix.

I am proud to tell members that the Airdrie and Coatbridge unit is the most improved sea cadet unit in the United Kingdom. That is not just the boast of their local MSP: it is a fact. Last year, the unit was awarded the Indefatigable cup, which is awarded annually by the Indefatigable Old Boys Association. It is only the third occasion on which the cup has been awarded to a sea cadet corps. Being the most improved unit in Scotland is a fantastic achievement for the unit. It is also recognition of the hard work and dedication of the adult volunteers who support the corps and look after the young people in their care. It is remarkable that they did all of that at the same time as they restored the cadet headquarters, which were falling down around them. It is a real achievement.

Although winning the cup was deserved recognition of the unit's achievements, it is important to remember what the cadet force offers to young people. That is what matters to all the volunteers who give up their time for it. One of the cadets, Michelle, talks about her experiences in the Airdrie and Coatbridge unit on its website. She says:

"I joined the Airdrie and Coatbridge sea cadets when I was 12 years old. ... During my time in cadets I have made many friends from all over Scotland, Northern Ireland and the North of England. ... While I have been in the sea cadets I have gained many qualifications and life skills that I could not gain anywhere else at my age ... Being a sea cadet is far from boring, as not only do we have the opportunity to attend sea cadet camps where we can gain many qualifications but we are also allowed to attend marine cadet camps too."

Michelle clearly gets a lot out of her involvement with the sea cadets. Having visited them on several occasions, I know just how enthusiastic all the young people are.

It is important, however, that the wider community also gets a great deal out of organisations such as the cadet corps in Airdrie. The unit places great emphasis on personal development and on responsibility. I am always struck by the young people who attend the remembrance day services at the cenotaph in Airdrie, who show their respect along with other members of the community for their ancestors who gave up so much for our country. That awareness of history and that respect for the sacrifices of others in the past can only be a good thing in building confident and responsible young women and men.

I congratulate Elizabeth Smith and join her in celebrating 150 years of the armed forces cadets. I look forward to their next 150 years.

17:33

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I join colleagues in congratulating Liz Smith on securing the debate and allowing Parliament to recognise formally, in the *Official Report*, the contribution that the cadets have made to Scotland over the many years of their existence. I declare an interest as the convener of the cross-party group on supporting veterans in Scotland and a member of the Lowland Reserve Forces and Cadets Association. Through those, I recognise fully the contribution that the cadets make, which we have perhaps taken for granted but which we all appreciate.

Today, there have been ceremonies in London, on HMS Belfast, to mark Russia's formal recognition of those who contributed to the Arctic convoys. Many in Scotland have been represented there. In my capacity as the convener of the cross-party group, I had the privilege of having a discussion with a veteran who had taken part in the Arctic convoys. I was humbled—we use that word too much, but I was genuinely humbled—by the bravery and dedication that that individual had shown. The young people in our cadet force are also familiar—as we should be—with the sacrifices that are made by those in our armed forces.

Elizabeth Smith and Jim Hume rightly recognised the cadet movement's appreciation of the military right across the services. The cadet movement is now a recognised youth movement. It is right that the Parliament should recognise its contribution in that regard. As Karen Whitefield, Elizabeth Smith and Stuart McMillan said, uniformed youth groups have a profound importance on the lives not only of young people but the communities of which they are a part and society as a whole. I pay tribute to them. The previous debate on the contribution of the uniformed services was on the 100th anniversary of Girlguiding Scotland. In the debate, Karen Whitefield and I shared the recollection that neither of us had been in the Guides—which is easier to understand from my perspective than hers. I think she said that she was in the Girls Brigade.

Karen Whitefield: That is right.

Jeremy Purvis: Members have mentioned the contribution that the uniformed youth services make to discipline, self respect, respect for others and knowledge of community and society. On a more contemporary note, the services show consistency on education reform, including on curriculum for excellence, and they acknowledge the recognition in our qualifications system of voluntary service. I credit the Lowland Reserve Forces and Cadets Association for putting the organisation four-square behind Scottish Government initiatives, whether it is the national performance framework, specific outcomes such as national outcome 4 or qualifications more generally. It was no surprise therefore that the Confederation of British Industry Scotland and Institute of Directors Scotland, the Scottish Trades Union Congress and the Scottish Government worked together to make a tripartite advertisement to encourage young people to be part of the cadets. If business organisations and leaders, unions and Government can come together to recognise the contribution of the cadet movement, it is only right that the Parliament should recognise it, too.

The cadets provided a very interesting publication for members, "Service Cadets in Scotland", which highlights the contribution that adult volunteers make across all constituencies. It is interesting to note the 3.5 per cent rise in the number of Army Cadet Force adult volunteers over the past year, while other parts of the voluntary sector struggle to find adult volunteers. In conclusion, I will quote from the introduction to that publication:

> "Cadets have gone on to climb Mount Everest, cycle across continents and sail over the roughest seas. All readily admit that the cadet experiences taught them resilience, courage, determination, independence and self confidence; all qualities that help young people make their way in the world."

Let us give thanks for the cadet movement and cadets who not only empower themselves but make better all of society as a result of their contribution.

17:38

The Minister for Housing and Communities (Alex Neil): I, too, congratulate Elizabeth Smith on securing the debate, which I am very proud to sum up on behalf of the Scottish Government.

We are celebrating over 150 years of the cadets. It is absolutely fascinating to look back over some of their early history. The cadets began way back in the 1850s with the formation of several forerunners to the existing organisations. Despite the rumours, I was not around at the time.

The Cadet Corps, the forerunners of the Combined Cadet Corps, was first formed in schools as a means of training young people to support the masses of volunteers who were required to boost army numbers following heavy losses in the Crimea and given the possibility of further war. The Cadet Corps was recognised by the then War Office and permitted to wear the uniforms of their parent volunteer battalions, which were later combined to become the Territorial Army. Gradually, additional battalions developed outwith schools and, as the threat of war receded, some Cadet Corps battalions developed into rifle clubs, and cadet battalions that were not associated with schools became social welfare organisations, the forerunners of the current Army Cadet Corps.

In the meantime, also during the 1850s, a number of orphanages were established to look after children who were orphaned as a result of the Crimean war. Those were run with the help of sailors returning from the Crimea. An organisation was then formed called the Naval Lads Brigade. Over the next 50 years or so, 34 brigades of boys were established and, in 1919, were granted recognition by the Admiralty. The title Navy League Sea Cadet Corps was adopted.

Taking us forward to 1938, a retired officer from the Royal Flying Corps and the Royal Air Force, Air Commodore Chamier, had the foresight to see the need for people trained in airmanship and started the Air Defence Cadet Corps. That comprised units that were set up in schools to provide part-time training for young men who intended to join the Royal Air Force. They were hugely successful and their value was noted by the Government of the time, including Winston Churchill. Having developed from the Air Defence Cadet Corps, the Air Training Corps was formed in 1941 by royal warrant. By 1942, the other cadet forces started to thrive once again and were heavily supported by the Government. That has been the case until today, when the cadet forces are still heavily supported by the UK Government and the Scottish Government.

Although many cadets join the armed forces, it is a myth that there is pressure on them to do so. The Ministry of Defence accepts that the cadet forces add value to the youth of today, and for that reason it continues to support them, as we do, whole-heartedly. There is no compulsion to engage in a military career because of one's involvement in cadet forces.

As Elizabeth Smith pointed out, the four cadet forces in Scotland have a total population of 11,000, with 700 adult volunteer instructors and 400 officers who provide training. In the UK, there are 131,000 cadets, with 25,000 adult volunteers in more than 3,000 units—numbers that we hope will be enhanced over the coming years. All four cadet forces—the Army Cadet Force, the Combined Cadet Force, the Sea Cadet Corps and the Air Training Corps—are military-themed youth organisations in which participants have to undertake public service tasks to rise through the ranks, and in which there is a strong emphasis on social inclusion. As others have said, the cadet movement is based on principles of equality, fairness, teamwork and public spirit. Thus, it is a force for good that brings training, teamwork skills, community spirit, discipline and a sense of worth to thousands of young people in Scotland. Business and Technology Education Council qualifications were developed in public service and music, and are recognised by colleges and universities, which enhances opportunities for Scotland's young people. To date, 1,000 have studied for their BTEC in music, mainly piping.

I hope that the cadet movement continues to flourish and to foster a spirit of adventure and that, at the same time, cadets continue to develop the qualities of leadership and good citizenship. Through its tailored training, the cadet movement will continue to instil and promote in our young people the qualities of responsibility, self-reliance, resourcefulness, endurance, perseverance and a sense of service to the community. We cannot ask any more of our young people, and we are proud of them. The cadet experience is invaluable for young people of all social backgrounds, and we encourage young people to participate. Membership helps to develop life skills, and it is excellent experience, as well as being fun and enjoyable.

I invite my ministerial colleagues to participate in the 150th anniversary events throughout the year. In addition to the events that have already been mentioned, there are three others. First, cadets will plant 150,000 trees that have been supplied by the Woodland Trust as part of the celebrations. Secondly, first world war remembrance activities will be given a special cadet 150 flavour this year. Finally, teams of air cadets from Aberdeen and the north-east of Scotland are hoping to be joined by cadets from throughout the country in the Scottish poisk 2010, helping to celebrate the 150th anniversary of the cadet movement. The Scottish

poisk is the original air cadet mountain endurance event, which takes the form of a continuous journey through mountain fell, moorland forest and water, broken down into various stages, with a strong element of navigation throughout. Needless to say, I have never participated in such an event.

We encourage all members of Parliament to support the 150th anniversary and the celebrations that go with it. I hope that we can congratulate, on a cross-party and all-party basis, the cadet forces on their 150 years of success. They deserve every plaudit that comes their way. We have every reason to be proud of their achievements.

Meeting closed at 17:45.

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