The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 3 February 2011

Session 3

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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CONTENTS

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[The Presiding Officer *opened the meeting at 09:15*]

Double Jeopardy (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): Good morning. The first item of business is a debate on motion S3M-7819, in the name of Kenny MacAskill, on the Double Jeopardy (Scotland) Bill. We have a fair amount of time in hand, so I will not be stopping members unless we are in extreme circumstances. I call Kenny MacAskill to speak to and move the motion.

09:15

The Cabinet Secretary for Justice (Kenny MacAskill): Double jeopardy is a fundamental legal principle that provides an essential protection against the state repeatedly pursuing an individual for the same offence. The Double Jeopardy (Scotland) Bill enshrines that ancient principle in legislation for the first time in our history. The bill is also designed to make that principle fit for the 21st century. Reform is required to take account of advances in science and because an acquitted person should not be able to walk free from court and boast with impunity about getting away with it. It is required to ensure public confidence in our justice system that, wherever possible, justice will always be done.

The need for reform has been widely recognised, and I am heartened by the level of support that the proposals have received. Careful work by the Scottish Law Commission was followed by a debate in the chamber last March. Thereafter, a Government consultation exercise took place last summer and a thorough stage 1 report was provided by the Justice Committee just last week. I record my thanks to all those who took part in that process in whatever capacity, and I am grateful to the committee for its detailed and careful consideration of the bill. I am conscious of the committee's full schedule this session and the effort that was required to prepare and publish its comprehensive report so swiftly.

During stage 1 scrutiny there were, understandably, differences of opinion on some aspects of the reform. I now turn to the parts of the bill that have attracted the most comment. The bill will allow a new trial when an acquittal has been tainted. It seems clear to me that people should not be able to evade justice because of threats or bribery, and I am pleased that the committee endorses that provision. At the heart of this reform is the idea of allowing a second trial when new evidence emerges that casts doubt on an acquittal. There appears to be a consensus in favour of that concept and its application to historical cases. Some have argued that applying the change retrospectively will be unlikely to have a practical effect, because the passage of time might have diminished the evidence that is available. I accept that that will be true in some cases, but not necessarily all.

Robert Brown (Glasgow) (LD): One of the practical problems with retrospectivity that the committee came up against and raised in its report was the potential destruction of productions at the conclusion of the original trial. Can the minister enlighten us on the implications of that?

Kenny MacAskill: The committee raised a valid point, which relates, in many cases, to the attitude and actions of the police and the Crown Office and Procurator Fiscal Service. The Crown gave a full explanation of how it deals with such matters. On many occasions, productions are kept routinely, but it is a judgment call for the Crown. If Mr Brown or any other member wants me to go back to either the Lord Advocate or the Solicitor General for Scotland on particular issues, I will be happy to do so. However, it seems that the Crown Office has a procedure for dealing with productions, not all of which from every case in Scotland can be held, otherwise the service would be bursting at the seams. Nevertheless, in appropriate circumstances, productions will be retained for a relevant period, and that is a judgment call for the Crown. If members have any information or issues that they want to clarify, the law officers and I would be happy to speak to them.

As recently as December, the conviction of Mark Weston in an English retrial for the murder of Vikki Thompson underlined the value of retrospectivity. The bill will allow for retrial based on two broad categories of evidence. The first of those is admissions by the accused. The second is generally referred to as new evidence, and includes evidence that is obtained through advances in DNA technology. There are differences in the nature of the two categories, and the bill treats them differently in relation to the tests that are applied.

Substantial requirements will apply to admissions, but I accept the Justice Committee's conclusion that there is sense in bringing the treatment of admissions and new evidence closer together. I therefore propose to lodge amendments to reflect that. The effect of that change will be that an admission will have to strengthen the case against the accused substantially in order to justify a retrial. It will also mean that the court will have to be satisfied that it

is highly likely that a reasonable jury would have convicted had the admission been available before.

I propose, however, to keep some points of distinction between admissions and new evidence, because I believe that persons who admit their guilt lose the right to absolute certainty that they can never be brought back to trial. No one should be able to brag about their guilt with impunity. That undermines the system and deeply wounds and scars the victims of crime and their families. I therefore think that the admissions exception should apply to all types of criminal case. The exception for other forms of new evidence will be available only for more serious crimes. Both exceptions are targeted at serious offences, and that is where the Crown Office will focus its attention.

Stewart Stevenson (Banff and Buchan) (SNP): Does the cabinet secretary share my substantial distaste—which is widespread in society—at criminals who, having been found not guilty, subsequently exploit that verdict, confess to having committed crimes and make significant sums of money from certain disreputable parts of the media?

Kenny MacAskill: Absolutely. That is a matter that Paul Martin, who is not in the chamber, has frequently raised and something that we have consulted on and have worked on with Governments, both current and past, south of the border. All fair-minded people think that there is something reprehensible about what Stewart Stevenson describes. Whether through a tabloid or through a book, people should not be able to make financial gain at the expense of others.

There is an important point of principle in making it at least possible to pursue persons who boast of having evaded justice, whatever the crime. The committee considered carefully the question of which offences should be covered by the exception for other types of new evidence. In that sort of situation, the question mark over guilt would arise not from a confession but from an external factor such as DNA material or a new witness. There seems to be a consensus that a new trial in such circumstances should be possible only for the most serious offences. That will provide certainty in the law and keep the focus on serious crime.

The question of which offences should be covered is a difficult one, however. The Scottish Law Commission suggested limiting it to murder and rape. The bill goes further by adding other serious sexual offences and culpable homicide, and valid arguments can be made to include other crimes such as attempted murder or serious drug offences. The Justice Committee questioned whether any list of that sort would ever be adequate, however, and suggested simply restricting the new-evidence exception to cases that were prosecuted originally on indictment or to cases in the High Court. I agree that the focus must be on serious crime, and I will give further consideration to the committee's views. I also want to hear members' views on the issue.

The Government is genuinely open to ensuring that, when new information or evidence comes to light regarding those who have perpetrated the most serious offences, we are capable of dealing with it. The European convention on human rights sets parameters and for natural justice there is some requirement for certainty, but I am sure that, if we work together in the chamber, in committee and in Government, we will reach a solution that will provide what is required.

Section 11 of the bill deals with the situation when an accused has been prosecuted for assault or some other offence involving physical injury, but the victim later dies as a result. At present, the common law allows a further prosecution for causing the death, regardless of whether the accused was convicted or acquitted of the original assault. In order to ensure that the law is consistently and equitably applied, the Government wishes to enshrine that in statute. It is right that such an important and fundamental principle is recognised and retained in our legislation and in our system. I welcome the committee's general support for that provision. The committee appears to accept that the bill takes the right approach in dealing with the accused who was convicted of the original assault, for which I thank it. I also thank the committee for its pragmatism in recognising the practical reality that demands that more resources are allocated to a murder investigation compared with an apparently simple assault.

Discussion of the provision has focused mainly on whether an accused can be tried for murder after being acquitted of the original assault. I believe that the common law in Scotland is correct in allowing the accused to be tried for causing the victim's death. Such occasions are rare, but they do occur, therefore it is important that they are covered by the law and that victims and their families are protected.

Robert Brown: The issue seems to centre on the test before we allow a prosecution for murder following an acquittal. Does the cabinet secretary accept that, if the principle of double jeopardy is to have meaning, we must have a test before allowing a further prosecution, and that it has to be of the nature of the new-evidence test, if not precisely the same?

Kenny MacAskill: Yes. Mr Brown is correct. That point was flagged up by the committee and I

will do my best to answer it. He is correct that a high standard and a high bar must be set.

The bill provides that when the accused has been acquitted of assault, the court should apply an interests of justice test. The committee has asked the Government to consider whether in that situation some other additional test should be required before a retrial is allowed for causing the death. The committee has suggested that some form of new-evidence test is required.

I am happy to consider the issue ahead of stage 2, but I must stress that it would not be a double jeopardy situation. The second trial in that situation would not be a retrial. The accused would never before have been tried for causing the death of the victim, whether the charge was murder or culpable homicide. He would have been dealt with previously on a lower charge. We would be dealing with a different offence, whereas the double jeopardy exceptions are designed to hear the same offence again. In the scenario, it would not be a straightforward matter of the Crown rehearsing the same evidence. The court would be considering a different offence, which by its very nature would require additional facts and would require the court to consider questions of fact and law that were not considered in the assault trial.

There will always be additional evidence in such cases. The very fact that a death occurred will require the Crown to produce further evidence. Medical and forensic evidence will be required to link the death of the victim to the actions of the accused. The previous trial would not and could not have considered that.

The bill provides that when there has been an acquittal for assault, the court will have to consider whether it would be in the interests of justice to proceed with the new trial. That requirement, which is new and does not feature in the common law, will offer additional protection to the accused. The Crown will need to consider carefully the evidence that is available to it and the court will need to decide whether it is in the interests of justice to proceed.

The committee is right to point out that we should tread very carefully and with great caution in such circumstances. I believe that the interests of justice test that is contained in the bill will ensure that accused persons are treated fairly, but I am happy to consider the point further, either individually with members—be it Mr Brown or anybody else—or directly in discussion with the committee.

I express once more my thanks to the committee and to all those who contributed to the process of bringing the bill to Parliament.

I hope that the exceptions to double jeopardy that are set out in the bill are seldom used. As was narrated in evidence, it is anticipated that only a handful of such cases will arise over many years, but they will be cases of great significance, both for the individuals concerned and, especially, for the whole justice system. We are, after all, focusing on cases where it appears that justice was not done, which cannot be right.

As I said, such cases thankfully are rare, but each one involves suffering by victims and their families and can affect faith in our justice system. We need to get an element of closure whenever we can, and we need to ensure that we bring to trial perpetrators of serious and heinous offences. Allowing a second trial in exceptional cases will lessen suffering and promote public confidence. I am confident that the bill will achieve that aim, and I await with interest the views of members.

I move,

That the Parliament agrees to the general principles of the Double Jeopardy (Scotland) Bill.

09:30

Bill Aitken (Glasgow) (Con): The bill had its genesis in the Scottish Law Commission's report on double jeopardy, which was published in December 2009. The report concluded that reform was needed in order to clarify and modernise the existing law surrounding double jeopardy. The bill is largely based on that report and seeks to achieve such reform.

The Justice Committee met on four separate occasions to consider the bill and to take oral evidence from witnesses, including the Scottish Law Commission; the Crown Office; the Faculty of Advocates; human rights representatives; the Lord Justice Clerk, Lord Gill; and the Scottish Government.

I thank all those who gave evidence to the committee and congratulate them on the quality of that evidence. I also thank the clerking team for all their work, and in particular Andy Proudfoot, who did a great deal of work on the stage 1 report prior to leaving us temporarily on paternity leave. It was a good piece of work all round.

Section 1 of the bill places the general rule against double jeopardy on a statutory footing. The double jeopardy rule plays a fundamental role in our justice system. The general principle protects the acquitted from the threat of further prosecution for the same offence and from prosecution for a fresh charge based on the same actions. However, as Patrick Layden QC pointed out, there are also "various unclear areas" surrounding the principle. Evidence received by the committee showed wide support for placing the principle on a statutory basis. The committee recognises that and agrees that, in the interests of

clarity and affirming its position in law, the rule should be set out in statute.

Under section 2, an acquitted person could face further prosecution if prosecutors can prove that certain offences against the administration of justice were committed and tainted the acquittal. It is clear that there has been public anxiety about that, which Mr Stevenson has articulated. However, the evidence that the committee received on section 2 was mixed. On one hand, the Crown Office felt that the proposals struck an appropriate balance and the Lord Justice Clerk assured the committee that the judges were satisfied with the safeguards in section 2 to deal with tainted acquittals. On the other hand, a number of witnesses raised concerns. For example, the Law Society of Scotland and the Scottish Human Rights Commission questioned whether the proposals should apply to all offences, rather than only more serious offences considered on indictment. They also questioned the possibility of a second prosecution being raised in instances when the acquitted person had no involvement in the tainting of the first trial. The cabinet secretary contested both those concerns, fairly robustly, on the basis that,

"However serious the charge, people should not benefit from attempts to pervert the course of justice and criminal trials."—[*Official Report, Justice Committee*, 21 December 2010; c 3993.]

He has repeated that view this morning.

Taking everything into consideration, the committee supports the provisions outlined in section 2 and believes that, in the interests of protecting the integrity of our justice system, they should apply regardless of whether or not the acquitted person was personally involved in the tainting. The committee is also satisfied with the tests that will have to be met and the protection that the balance of probabilities test, in particular, will provide. The committee would like to highlight that the existing law on perverting or attempting to pervert the course of justice will remain an available option. A retrial will therefore not necessarily have to be sought in every instance.

Section 3 makes an exception to the double jeopardy rule by making it possible to reprosecute someone based on admissions that are made or become known after acquittal. There has also been public concern about that, to which the cabinet secretary referred. During evidence taking, concerns were expressed about the extent of offences to which the section will be applicable and the potential for repeated prosecution. Despite those concerns, the committee is satisfied that appropriate checks are in place to ensure that the measure will be used only relatively rarely and only when there is sufficient merit in doing so. It was also questioned whether the tests in section 3(4) are rigorous enough. However, taking all the evidence into consideration, the committee concludes that the provision is workable as it stands.

The committee agrees with Lord Gill that in the preliminary stages it is the judge's responsibility to assess the credibility of admissions, and reliability—beyond the need for corroboration—is left for the jury to decide later, during the trial. The Scottish Law Commission questioned whether section 3 was necessary at all, given that it could, in theory, fall under the general new-evidence exception in section 4. The committee recognises that point and invites further discussion on whether, in the interests of streamlining, it might be better to incorporate the two exceptions. That should be discussed and dealt with at later stages in the proceedings. However, we also note the cabinet secretary's response to the Subordinate Legislation Committee, which highlighted that the new-evidence exception will be limited to a specific range of offences, whereas the admissions exception will cover all offences. The committee, therefore, welcomes the Scottish Government giving further consideration to the matter.

Section 4 permits persons to be reprosecuted if new evidence comes to light. Again, the committee received mixed evidence on the issue. Witnesses from the Crown Office supported the general new-evidence exception and felt that it struck a "proportionate balance" between the rights of the accused and the rights of victims. Other witnesses either had reservations or, in the case of the Law Society of Scotland, supported the principle but questioned whether aspects of the current test would go far enough. However, after taking those various viewpoints into consideration, the committee concluded that the inclusion of a general new-evidence exception should be supported and that the tests in the bill are appropriate.

The range of offences that are to be covered by the new-evidence exception also sparked a variety of views. The committee firmly agrees with the Scottish Government that the exception should be made applicable only to a limited number of very serious offences. The committee also recognises the concern of respondents such as the Law Society over why some offences are included while other offences of commensurate seriousness are not. The committee therefore questions whether there could ever be a single, fixed list that would adequately and appropriately lay out the scope of the exception. The committee is, therefore, open-minded about exploring the possibility of replacing the list in schedule 1 with an alternative mechanism for restricting exceptions to only the most serious of offences, which is the unanimous intention of all concerned.

My view, for example, is that there could be a restriction whereby only offences that were originally indicted in the High Court would come under this particular category. Again, however, that matter can be discussed in the weeks ahead.

Sections 5 and 6 contain commonsense provisions, and the committee is content with them.

Section 7 provides for a broader principle, in addition to the double jeopardy rule, against the unreasonable splitting of cases. The committee is content with the provisions that are included in the section, particularly in light of the Crown's assurances that it restates current practice.

Sections 8 to 10 set out further provisions about pleas in bar of trial. Although section 8 attracted little attention from witnesses, Patrick Layden raised concerns over section 9, which deals with cases in which the prosecution's argument against the plea in bar of trial is that the original trial was a nullity and therefore not valid. Mr Layden stated that that is

"simply unnecessary, overcomplicates the legislation and should be removed."—[*Official Report*, *Justice Committee*, 16 November 2010; c 3767.]

In light of that, the committee asks the Scottish Government to explain more fully, either today or later, why section 9 is necessary in addition to sections 7(4) and 12.

Section 10 applies where the accused was originally tried in a jurisdiction outwith the United Kingdom and sets out the factors that the court is to consider in deciding whether it is in the interests of justice for a retrial to proceed. The section attracted some comment. The Faculty of Advocates did not object to the proposal but questioned how it would work in practice. It stated:

"one of the difficulties will be in establishing the standards that have been applied in the context of a foreign prosecution."—[*Official Report*, *Justice Committee*, 7 December 2010; c 3917.]

At the same time, however, measures must be in place for instances in which a previous trial occurred in a jurisdiction that does not uphold our standards of justice. The committee is satisfied with the level of discretion that the section affords courts in deciding whether or not a retrial should proceed in such instances.

Stewart Stevenson: Does the member share my concern about second prosecutions taking place in a different jurisdiction from the original, in respect of something that we cannot deal with here but which, nonetheless, is an issue: a circumstance in which, following an acquittal in a Scottish court, someone is taken to another country where there is no test of the evidence at that point—for example, the United States—and prosecuted there?

Bill Aitken: That is an interesting point, and I concede that the issue could be fraught with difficulty in certain circumstances. We have to rely on the judicial processes that are carried out furth of these shores being adequate and affording the appropriate protections for accused persons. Stewart Stevenson's point is not without merit.

Section 11 allows a person who is convicted or acquitted of assault to be tried for homicide if their victim later dies from their injuries. There are problems with that, as the provision applies regardless of whether or not the person was acquitted or convicted of assault. Evidence received by the committee was deeply divided over the issue. The committee notes the concern that was expressed by the Faculty of Advocates and the Law Society in that regard and feels somewhat sympathetic towards the view that an acquitted person should not face the threat of retrial in the absence of incriminating evidence in the first trial.

However, homicide is a distinct offence under Scots law and the proposal maintains the current common-law approach towards retrial under those circumstances. Not only does that capture the seriousness of the offence but, as the Crown Office stated during evidence, murder inquiries are usually much more extensive than assault inquiries and witnesses are

"more likely to come forward in a murder investigation than in an investigation of an assault, even of assault to severe injury."—[*Official Report*, *Justice Committee*, 16 November 2010; c 3784.]

That is logical and understandable. In light of that, the committee wishes to support the proposal and invites the Government to consider whether adding a new-evidence requirement might be appropriate.

Section 12 deals with the nullity of proceedings on previous indictment or complaint. No objections were received, so the committee is content with the provision and the balance that it achieves between the interests of the prosecution and the accused.

In contrast, section 13, which deals with the retrospective application of the legislation, proved to be highly contentious. Indeed, a host of issues was raised during the evidence-taking process. Concerns were raised about compliance with the ECHR. However, having heard the evidence on that matter, the committee is content that the provision is ECHR-compliant.

Most objections were based on the argument that including a retrospective aspect would deprive acquitted persons of the certainty that they would not be tried again for the same offence. That is a powerful argument. However, the committee also

believes that it is important that justice is given the opportunity to prevail.

It is anticipated that, due to current rules covering the retention of physical evidence, the use of the legislation retrospectively will occur only very rarely, which perhaps addresses the point that Mr Brown raised. The committee does not believe that the physical difficulty of storing evidence is a ground for discarding the retrospective aspect of the legislation. Therefore, the committee is inclined to agree with the Crown Office and others that, should compelling evidence come to light, the bill should apply

"regardless of whether the original trial was held before or after the new reforms."—[*Official Report*, *Justice Committee*, 16 November 2010; c 3783.]

This has been a fairly consensual debate. The committee's inquiry was thorough. We have flagged up a number of issues that need to be addressed, and I am confident that they will be.

There is a need for the provisions in statute. They are a necessary adjunct to Scots law, and the committee is content that the bill should proceed today.

09:45

Richard Baker (North East Scotland) (Lab): Scottish Labour welcomes the Double Jeopardy (Scotland) Bill, which will introduce important reforms to our laws on double jeopardy. It will reconfirm that important principle in statute while also ensuring that, in future, there can be new proceedings against the accused in exceptional cases where there are clear reasons for believing that justice was not done in the original trial. We believe that the Scottish Government has broadly taken the right approach on this important issue and we look forward to supporting the general principles of the bill at decision time.

In our debate on the issue last year, we made it clear why the proposed change in the law is right. 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 indeed been denied justice thus far.

We know that the change in the law will apply to only a small number of cases, as Bill Aitken confirmed in his speech as convener of the Justice Committee, but that does not diminish its importance. There can be no more sickening sight than that of a killer walking from a Scottish court free from punishment for the crime and even, as the cabinet secretary said, bragging that they have done so. We have to accept that people who are guilty of serious crimes have evaded justice in Scotland. If we can properly rectify such injustices, we should do so.

Once again, we must thank the Justice Committee for its considered and informed scrutiny of the bill. As always, and as the convener summed up in his speech, the committee has drilled down into those areas of the bill where there will be a need for further consideration—for example, in determining the range of offences that the reform should cover. I welcome the fact that the cabinet secretary has said that he is willing to give further thought to those issues. However, what comes through in the committee report is the great deal of consensus that exists around the bill as introduced.

We made it clear in our ambitions for the legislation that it should be proportionate, that it should not result in an accused person being tried repeatedly for the same offence, and that there should be clear parameters for the situations in which it should apply. We believe that those things have been achieved in the bill through the provisions on trials that have been tainted or deemed null, the provisions on new evidence, and the fact that it will require special reasons not to accept pleas in bar of trial.

Of course, the Parliament must take care in considering the reform of a principle that has been part of Scots law for generations but, in considering the legislation thoroughly and diligently, the committee found that the general approach that is taken in the bill is indeed robust in achieving the changes for which the Parliament expressed its support almost a year ago.

A key debate following the publication of the Scottish Law Commission's report on double jeopardy was on the issue of retrospective application and we are pleased that the bill will have retrospective effect. That is right because prosecutors now have access to new technologies and techniques, such as DNA evidence, that can show proof of criminality even in cases that are many years old. In the previous debate, a number of us mentioned the collapse of the trial for the World's End murders, and there can be no doubt that the change in the law is important for the families of Helen Scott and Christine Eadie and for other families who face similarly tragic circumstances.

While the Justice Committee was scrutinising the bill, as the cabinet secretary said, Mark Weston was convicted at Reading Crown Court for the murder of Vikki Thompson in 1995. Indeed, the committee asks in its report whether that conviction could have been secured under the provisions in the bill. I am aware that there are differences between the approach to new evidence in the bill and the exceptions to double jeopardy that have been introduced in English law,

but I hope that it can be shown that it will be possible to secure a conviction in similar circumstances under the bill. I hope that the cabinet secretary will be able to do that, as it is important that that can be shown.

The example of the changes that were made to the law in England and Wales in 2003 can give us confidence that the changes should work well here. In England and Wales, the opportunity now exists to seek prosecutions if there is clear evidence that justice has not been served, but it has evidently not created a situation in which accused persons are routinely retried for the same offence. At the time of our previous debate on the matter, of the six applications for retrial that had been determined in England and Wales, three had failed, and Mark Weston is the first person to face a second murder trial in England following the discovery of new forensic evidence. The provision has been used sparingly, but it has obviously been hugely important to the family of Vikki Thompson, as that case has now been concluded.

We look forward to debating the bill further at stage 2, but I stress that, at this point, we see no reason to demur from the approach that the Scottish Government is taking. We are always ready to challenge Government policy when we believe that it does not serve the victims of crime—indeed, we had just such a debate on sentencing policy this week. If, however, the Government brings forward proposals that we believe do serve the interests of victims, we will support them, and we firmly believe that the bill does just that. It is not only an important matter of justice for the victims of crime and their families who will be affected by the change in the law, but it will also be an improvement to our justice system.

We agreed with the Scottish Government's response to the Scottish Law Commission and the consultation process that ministers engaged in was robust. The clear consensus that has been achieved at committee shows that the Parliament supports the bill and I am sure that it will support the general principles at decision time tonight. I am also pleased that we will be able to pass the bill in the current parliamentary session.

We hope that the legislation will be required in only a small number of cases, but there are individuals and families in Scotland who have sought it in the hope that the great injustices that they have had to endure can finally be rectified in our courts. The bill at least offers that opportunity and I hope that it will see a number of past wrongs righted. I also believe that it will safeguard the interests of justice in the future, and that is why we will support it.

09:52

John Lamont (Roxburgh and Berwickshire) (Con): When my colleague and party leader Annabel Goldie opened a debate on double jeopardy in February 2007, she expressed hope that common ground might be found to take this important issue forward. Unfortunately, the then Scottish Executive was not quite ready to engage properly on the issue. I am pleased that we are now at a stage where there is sufficient common ground to allow the matter to be progressed.

It is important to acknowledge at the outset the work of the Scottish Law Commission in producing the report that underpins what we are considering today. Although the bill is not a carbon copy of the report, it is a product of the commissioners' hard work, expertise and knowledge, and we are in their debt for their efforts. The Justice Committee's report adds further weight to the debate and we should also acknowledge the work that Bill Aitken and his colleagues have done on the bill.

Members will be aware that, although there has been an established principle for hundreds of years that an individual once tried and convicted or acquitted of an offence should not be subject to another prosecution for the same offence, the rule against double jeopardy has not been enshrined in statute before. We believe that the rule against double jeopardy is an important principle in the operation of our justice system and that it should be codified in statute. The finality of criminal verdicts allows individuals who are involved in a trial to get on with their lives in the knowledge that the matter has been resolved. It also provides a more general benefit in that public confidence in the court system is retained. The rule against double jeopardy also limits the reach of the state over individuals' lives and protects individuals from the stress of repeat trials. Indeed, the rule is considered so important in the protection of liberty that it is written into the constitutions of many countries including the United States, Japan, Pakistan and South Africa. It is for those reasons that we agree that there should be a general rule against double jeopardy.

As with every good principle, there should be a few significant exceptions, which are outlined in the Scottish Law Commission's report. It seems to me common sense that, if there is compelling new evidence of guilt that was not available at the time of the original trial, the Crown should be able to bring forward a new trial. Given the seriousness of such a step, however, it is right that that should happen only in exceptional circumstances and for the most serious of crimes. It is worth noting that provisions already exist in law for an individual acquitted of an offence to be retried for contempt of court or even perjury if it is clear that their acquittal was based on false evidence.

There is disagreement over certain exceptions, including the use of evidence that emerges after the trial, the list of offences for which a retrial could be brought and the new law's retrospective nature. I am sure that the Justice Committee will examine those details in more detail at stage 2, but there is a clear direction of travel in favour of the bill's general principles, which I believe reflect the interests of not just the accused, but the justice system and wider society.

The Conservatives are particularly pleased to be able to vote for the bill at decision time, as it brings forward a commitment that the Scottish Conservatives set out in their 2007 election manifesto. Indeed, we were the only party to call for these changes at that election although, to its credit, the SNP Government was quick to invite the Scottish Law Commission to review the double jeopardy law in November 2007.

There are many examples over the centuries of other countries borrowing or copying the better attributes of our legal system. However, in the area that we are debating today, we seem to be following the example of changes that have already been made in other countries. As Richard Baker has already pointed out, in England, the Macpherson report on the investigation into the tragic murder of Stephen Lawrence in 1993 contained a damning assessment of the role of racism in the Metropolitan Police. However, in that report, Sir William Macpherson also recommended:

"That consideration should be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented."

In 2001, the Law Commission in England and Wales recommended that, in murder cases only, the Court of Appeal should have the power to quash an acquittal if reliable and compelling new evidence of guilt emerged and if a retrial would be in the interests of justice; moreover, in 2003, the Criminal Justice Bill, which reformed the law on double jeopardy, was passed at Westminster. Of course, that is not to say that we should blindly mirror developments in the legal system of England and Wales, but there is an imperative to consider such a change to the law in Scotland, given the nature of the issue and changes in evidence and how it is gathered. I also suggest that victims in Scotland would find it unacceptable that they might be denied the entitlement to justice afforded to those in England and Wales.

We believe that, although the principle of not being subject to double jeopardy is right and should continue, it should be reformed and restated in Scots law to allow exceptions where new evidence emerges in the form of an admission of guilt or in other new and compelling forms. Clearly, in allowing exceptions to the principle we will have to ensure that there are certain safeguards, but we are satisfied that the bill strikes the right balance between ensuring that we have a fair and effective justice system and protecting the rights of victims and individuals accused of crime.

I am pleased that the Government introduced the bill. The Scottish Conservatives will support it at decision time.

09:58

Robert Brown (Glasgow) (LD): Like many justice bills that the Parliament has previously considered, the Double Jeopardy (Scotland) Bill is important legislation enshrining in statute the old Scots law principle that—to use the old word for an accused person—a panel who has tholed their assize and been acquitted cannot be tried again or put into double jeopardy on the same matter. The decision of the court or jury is final and, as the cabinet secretary pointed out, finality is an important—indeed, central—principle in our law.

The reason for the rule against double jeopardy is straightforward. Professor Paul Roberts of Nottingham University school of law put it thus:

"nobody could be safe and secure in their liberty, person, possessions or reputation if they were constantly at peril of being prosecuted by the state, condemned as a criminal, and subjected to penal sanctions. The government is allowed one attempt at bringing offenders to justice, but acquittals are final. What's done is done, and we all move on."

Some might say that such a rule is very necessary in other countries where democracy and the rule of law are less well entrenched; in Scotland, however, we have the protection of robustly independent courts, an independent Lord Advocate and procurators fiscal prosecuting in the public interest and an independent legal profession. I think it right to warn the Parliament to be ever vigilant in the defence of liberty, due process and the rule of law—and, indeed, the proper use of language. When politicians and journalists talk about "banging up criminals" rather than "prosecuting persons accused of crime"—who, after all, are under the presumption of innocence—we need to be on our guard against abuse of process. I am happy to say that there was no dispute in the Justice Committee about the importance of the general rule against double jeopardy; our consideration centred on the detail of the necessary exceptions to it.

The first exception is where the acquittal is tainted by someone, whether or not the accused, trying to bribe or threaten witnesses or the jury. It is easy to agree that a prosecution undermined in such a way is no real trial at all. In many cases, it might be possible to prosecute perpetrators of such offences against the proper course of justice

but, in any event, it is quite proper that, if such a move taints the trial and if it is in the interests of justice to start again, that should be allowed—and, as the bill provides, allowed for all crimes. It does not matter whether the taint came from the original accused, someone associated with him or someone else to whom no connection could be established. It would be an unreasonable burden on the prosecution to require it to prove a link with the accused as well as a travesty of justice for the victims if a tainted prosecution was allowed to stand. Fortunately, tainted prosecutions, certainly through jury or judge tampering, are fairly rare in Scotland—and long may that continue to be the case.

However, a more common occurrence is the discovery of new evidence that was not and could not with reasonable diligence have been made available at the original trial. There might be advances in forensic science—indeed, the development of DNA testing is a clear example; a body might be discovered, yielding new evidence; or a new witness might turn up. John Lamont was right to mention in that context the Stephen Lawrence case, of which we are all aware.

Such things might or might not make guilt clearer. Even DNA is not conclusive; it all depends on where and how it was found and any implications that might be drawn. As a result, it is right that more stringent tests be met before a new trial is permitted and I felt that there was some force in certain witnesses' view that the fact that new evidence substantially strengthens the case might not go far enough. I hope that the cabinet secretary will continue to examine that particular aspect.

There is fairly broad agreement that the new evidence rule as a basis for a new trial should be limited to serious crimes, but I do not think that the cabinet secretary's approach of listing crimes works very well; in particular, I cannot see how one can satisfactorily define sexual assaults by separating out serious ones from more minor ones. I urge the cabinet secretary to follow the committee's suggestion and make the dividing line whether or not the case was prosecuted on indictment. I am less clear, though, as to whether the case in question should be on indictment in only the High Court or on indictment more generally; that requires to be bottomed out.

Section 3 also proposes a specific exception to the double jeopardy rule if an admission by the accused subsequently comes to light.

Stewart Stevenson: The member suggests that retrials should be permitted only for prosecutions on indictment. Does he acknowledge, however, that had the additional evidence been available, what was tried as a summary case might well have been tried on indictment and that, as a result, excluding summary cases from being revisited might put us in an uncomfortable position?

Robert Brown: I take Mr Stevenson's point but, to be quite frank, I think that such a situation would be pretty unusual. The question whether the prosecution was on indictment would probably depend on the nature and severity of the offence, rather than the adequacy of the evidence and I think that, in practical terms, we can probably disregard the member's suggestion.

I was not persuaded by the Scottish Law Commission's reasoning that a new admission by the accused was qualitatively different from other forms of new evidence and believe that its new view on the matter is correct. In any case, its original view emerged at a time when it was uncertain whether there should be a more general new-evidence exception and, as Patrick Layden QC said,

"there is little logic in leaving admissions out of the ordinary new-evidence exception".—[*Official Report, Justice Committee*, 16 November 2010; c 3766.]

I welcome the minister's comments on this matter, but I ask him to follow the committee's suggestion and look more closely at the issue. Admissions are a notoriously unreliable area of evidence and many high-publicity murders bring forth a veritable army of people claiming for various deluded reasons to have carried out the killing.

Although some might think that I take a different view, I strongly support retrospectivity. It would be a scandal if someone who had been acquitted of a heinous murder or rape through lack of sufficient evidence could not be prosecuted again in a clear case where, say, DNA evidence materialised later that demonstrated compelling evidence of guilt. There would be a public outcry if, in such situations, a serious criminal could not be prosecuted and put behind bars. The central point is that we are not creating a new crime. A new offence, rightly, should not be retrospective. Instead, we are for good and exceptional reasons allowing a second prosecution of a crime that was always a crime. The difference between the substantive law and the procedural law seems to me to be valid.

With regard to prosecuting for murder or culpable homicide someone who was acquitted of an assault that the victim later died of, it has been argued—with some truth—that such a charge would be more thoroughly investigated and prosecuted. However, I do not think that that takes us all the way. It seems to me that there is clearly merit in the views of those who have said that, if that were to be allowed, there should at the very least be substantial new evidence that was not reasonably available before. I do not accept the cabinet secretary's position that that is not an example of the double jeopardy rule in practice.

The principles are exactly the same. I accept the existing law position, but we need to get the principle right, and it seems to me that there should be prosecution in those circumstances only when there has been an acquittal and new evidence has come forward.

There are on-going issues of detail to be resolved, but it is clear that the bill's basic principles are valid. As other members have done, I ask members to support the bill's principles at stage 1.

10:05

Nigel Don (North East Scotland) (SNP): My first thought is that we seem to have been at this debate for quite a while. It has gone on for a long time, but that is probably a good thing, because we are talking about changing the law as it has been for centuries. The bill is not a political whim or a policy idea that somebody thought would be a good one. We are reflecting on what has happened for generations and we must ensure that we get things right. After all, we are unlikely to change the law again soon.

I want to go through the issues and reflect on the Law Society of Scotland's comments, as it is clear that it is still not, for reasons that I respect, in the same place as us. It seems to me that the Law Society's comments should be addressed, as it has considerable connection with the legal process day by day and week by week.

I will start with tainted acquittals. The Law Society commented that the principle should apply only in solemn cases and only where the accused had played some part in the tainting of the trial. I understand where it is coming from, but I agree with the committee and comments that members have made so far. That is simply not the right approach. I think that the principle remains that if a trial is not a fair test—it should be a fair test—there should be the ability to have it again. It has nothing to do with whether the accused had any part in what happened. If the accused got off as a consequence of jury nobbling or evidence tampering, it seems to be in the interests of justice to be able to have the trial again. It seems to me that the principle is that if a trial is not a fair test, there will have been no justice at all, and that it is in the interests of justice that it should be possible to have it again. It may, of course, be appropriate not to have the trial again but to try somebody for perjury, for example, but that would be up to the Crown. That said, it seems to me that the principle is quite clear. If the original trial was not fair, it should be possible to have it again.

The Law Society of Scotland is concerned about admissions and, again, I think that I understand where it is coming from. Lord Gill, however, gave a lucid explanation that I remember well. His point was that at the opening stage of the appeal before the judges, it is for them to decide whether the admission and the evidence for that admission can fairly be put to a jury. They are to apply those tests. The jury is to decide how reliable something is only if it gets to the jury. Again, it is quite clear that that should cover all offences. I think that the Government made that point. There is really no distinction to be made. If somebody owns up, or is said to have owned up to an offence, there is no earthly reason why the matter should not be brought back to the court to consider whether that is right.

Robert Brown: Does the member accept that, leaving aside boasting, there really is no distinction of principle, in respect of the merits of the issue, between a particle of evidence that relates to an admission and a particle of evidence that relates to something else? What is the principal difference between the two situations?

Nigel Don: The principal difference goes back to the idea of acquittal. The layman's view is that if somebody walks away from the court and says, "I did it," or that part of the evidence that proved that they did something was tampered with, they will have told the world that the test was unfair. To use a cricket analogy, they tampered with the ball, and that is not fair. If the guilty party tampered with evidence, they have taken away the right to say that they got away with it.

In contrast, we need to be very careful about new evidence. The idea and importance of the rule against double jeopardy first emerged in that context. We need to be absolutely clear that we are looking for new-evidence exceptions only in the most serious cases and that we do not expect anybody to come back to court for relatively minor offences just because the evidence has improved. The public want the murderer and the rapist and possibly the armed robber and the major fraudster to be able to be brought back to trial. Those are matters of considerable public significance and we should be able, with new evidence, to break the historic rule in such cases. That is why I am, I confess, in the same position as those who have spoken so far: I am not sure that there should be a list. In fact, I am now quite sure that there should not be a list. We should couch things in terms of the level at which a crime was originally prosecuted. I am not with Robert Brown on the issue of general indictment. Of those who have spoken so far, I am with Bill Aitken. Only High Court cases should be involved, because those are the cases in which the public will be interested. I can see the principle that Stewart Stevenson has already enunciated, that a case might originally appear on a summary cause, but it seems to me that that would be the exception to the exception and we do not have to worry about it. It seems to

me that we should be dealing with serious offences by anybody's standards, that they will at the very least have been indicted and, I suspect, have been indicted in the High Court. That is where we should put the line.

Mike Pringle (Edinburgh South) (LD): Nigel Don talks about cases on indictment only in the High Court, but surely one of the bill's principles is to give some satisfaction to people who have been affected by crime. Surely the principle is the same for people have been affected by crime, whether the case has been dealt with under indictment in the High Court or in the sheriff court. It is about getting justice for people who have had injustice committed against them.

Nigel Don: Indeed, but this is not just about justice; if it were, there would be no limits. We would say that the moment there was new evidence anybody should be able to go back to court. However, we have accepted over the centuries that that is a bad principle, because it basically means that the state could retry until it got the conviction that it wanted. We recognise that that is not where we want to be, as a matter of human rights and good political principle. That is the principle that history has given us and we are trying to find exceptions while accepting that principle. Therefore, not all cases should be involved, although I understand the logic.

The Law Society of Scotland was concerned about the problem of eventual death and I am sticking with that approach. Other members have mentioned the issue. It seems clear to me that if something ain't broke, don't fix it. That is where the law has finished up and there is no reason to change it. As the cabinet secretary outlined, it is a completely different event: a person will be charged with a different offence under different circumstances that will have generated a different investigation. That has not caused us a problem and nobody has said that it is wrong for any practical reason. People have argued about a matter of principle and it seems to me that we should go back to the original position given by common law.

Colleagues have said everything that there is to say about retrospectivity. The trial of Mark Weston for the murder of Vikki Thompson makes the point far more eloquently than any of us could. It would be crazy not to make things retrospective. I understand the concerns that exist, but the practicalities are before us. It is a matter of public confidence; it is about the public knowing that the prosecution can go back for new evidence in the most serious cases, or for other issues in the most difficult or worrying cases. We owe it to the public to ensure that that principle is enshrined in the law so that the courts know what they are doing.

10:14

Bill Butler (Glasgow Anniesland) (Lab): I support the motion in the name of the cabinet secretary that urges members to support the general principles of the bill.

As deputy convener of the Justice Committee, I place on the record my thanks to those who gave evidence to the committee, the Scottish Parliament information centre for its invaluable assistance, and the committee's clerking team for its sterling support.

The bill, which is based on the Scottish Law Commission's report on double jeopardy, published in 2009, seeks to enshrine in statute the established principle that a person should not normally be prosecuted for a second time for the same offence or on a new charge arising from the same actions.

The SLC defined the rule against double jeopardy as

"prohibiting a repetition of criminal proceedings against anyone who has been previously tried for a particular offence, whether he was convicted or acquitted in those earlier proceedings."

The commission noted that, although it has been clear in Scots law for centuries that no one could be tried twice for the same offence, the law lacked clarity and

"the precise boundaries of the present protection against double jeopardy in Scots law are unclear."

That is an unhappy circumstance.

Witnesses were overwhelmingly in favour of enshrining in law the rule against double jeopardy. The Lord Justice Clerk, Lord Gill, said that the judges of the High Court of Justiciary were

"unanimously of the view that the double jeopardy rule is of considerable constitutional significance and that, subject to certain exceptions ... it should be retained."—[*Official Report, Justice Committee*, 14 December 2010; c 3959.]

Given the weight of evidence, it is unsurprising that the committee—correctly—recognised the central

"importance of the double jeopardy rule, in providing certainty about the finality of criminal proceedings and in protecting accused persons against repeated prosecution",

and the need to clarify and entrench the rule by placing it on a statutory footing.

As members have said, the bill proposes several exceptions to the principle, which include exceptions when the original trial was tainted by an offence against the course of justice, when new evidence that an acquitted person confessed to the offence emerges and when other new evidence of guilt emerges. In the main, those exceptions are rational and acceptable. As the cabinet secretary has said,

"It is no threat to our justice system to reappraise historic principles such as double jeopardy",

for there must be a

"balance between the rights of the accused and the ability of the Crown to prosecute in the public interest."

Quite so.

I will touch on some exceptions to the general principle that the Justice Committee considered. Section 2 of the bill proposes that an acquitted person could face further prosecution if prosecutors could prove that the acquittal had been tainted by certain offences against the course of justice. Section 2 mirrors the SLC's recommendation of an exception when an acquittal

"has allegedly been subverted or perverted by someone bribing or threatening witnesses, jurors or, in extreme cases, the judge."

The SLC concluded that retrials should be permitted if the prosecution could convince three High Court judges, on the balance of probabilities, that an offence against the administration of justice had been committed in relation to the original trial; that that had resulted in a tainted acquittal; and that a further prosecution was in the interests of justice.

I believe—as did the committee—that the evidence that was presented to members in favour of that approach was persuasive. I acknowledge that the proposals gave rise to several concerns, most notably from the Law Society of Scotland and the Scottish Human Rights Commission. Nevertheless—and given the balance of probabilities test—the committee was correct to judge that the provisions provide

"an appropriate level of protection in this particular context".

Like my committee colleagues, I concluded that the general new-evidence exception in section 4 was appropriate and rational. I was comforted by the Lord Justice Clerk's confidence that judges could apply the tests in section 4. Lord Gill noted that that

"is an approach that can be applied, as it is routinely applied in new-evidence appeals in the court of appeal."—[*Official Report, Justice Committee*, 14 December 2010; c 3965.]

I, too, was struck by the case to which members have referred of Mark Weston at Reading Crown court for the murder of Vikki Thompson in 1995, which came to the committee's notice during its consideration of the bill. His conviction, which was made possible following the discovery of new forensic evidence, was allowable only because a new-evidence exception had been introduced in English law. That exception was entirely reasonable and such a rational approach should be followed in Scotland.

The putative legislation strikes the correct balance between the rights of the accused and the public interest. In the most serious cases, we must do all that we as a legislature can to prevent someone from literally getting away with murder. Scottish Labour will support the motion at decision time.

10:20

Dave Thompson (Highlands and Islands) (SNP): The Double Jeopardy (Scotland) Bill is based on the Scottish Law Commission's "Report on Double Jeopardy". The bill aims to codify in statute a long-held Scottish law principle that a person should not normally be prosecuted a second time for the same offence. The wide agreement that such codification is desirable was reflected in the evidence taken by the committee, which did not hesitate to recognise the fundamental importance of the double jeopardy rule and therefore fully supported putting it on a statutory footing.

However, one subject of discussion on which witnesses' views differed was whether the law should be retrospective. The SLC did not support retrospection and claimed that it would have little practical effect, as much evidence is not kept after a trial. That argument has merit, but it does not provide sufficient reason not to apply the law retrospectively. Even if retrospection applied to only a small number of cases—I think that the number would be tiny—a public outcry would arise if evidence of an offence came to light but the Crown could not pursue the offender because the law was not retrospective. The conviction of Mark Weston in England for the murder of Vikki Thompson highlights that issue.

It was put to the committee that people who enjoyed certainty after being acquitted before the bill came into force would have their judgments converted into provisional judgments. I suppose that that is true, but that is no different from the position of those who will be tried and acquitted in the future, when all judgments to which the bill will apply will, in essence, be provisional. The argument is not strong enough to convince me that the bill should not be retrospective.

New evidence generated much discussion. The SLC found that to be the most difficult issue that it faced and made no recommendation on whether a new-evidence exception should be created. The Crown Office felt that the new-evidence exception in the bill struck a proportionate balance between the rights of the accused and the rights of victims. It also felt that the tests that would require to be passed were very high and would provide sufficient safeguards.

Those tests are in section 4(6), which says that the High Court can set aside an acquittal only if, first,

"the case against the accused is strengthened substantially by the new evidence";

secondly,

"the new evidence was not available, and could not with the exercise of reasonable diligence have been made available, at the trial in respect of the original offence";

thirdly,

"on the new evidence and the evidence which was led at"

the original

"trial, it is highly likely that a reasonable jury properly instructed would have convicted the person of ... the original offence";

and fourthly,

"it is in the interests of justice to do so."

Those are not easy hurdles to overcome and they are sufficiently robust to protect the accused effectively.

Unlike the exceptions for tainted acquittals and admissions, the new-evidence exception is tightly drawn, with the intention of restricting it to certain offences. The SLC recommended that, if a new-evidence exception was created, it should be restricted to murder and rape, although ministers should have the power by affirmative order to add other serious offences.

The bill goes further than that and adds culpable homicide, genocide, crimes against humanity, war crimes and a broader range of sexual offences. What the list of offences should include is not agreed. The problem with such a list is that, once it is created, all sorts of groups will exert pressure for new offences to be added to it. In our deliberations, the committee agreed that the general new-evidence exception should apply to only a limited number of very serious offences but questioned whether a list was the best way in which to achieve that.

As has been said, the committee suggested that consideration should be given to replacing schedule 1 and dealing with the matter in another way. The suggestion is that the new-evidence exception would affect only offences that were originally prosecuted on indictment or tried in the High Court. The advantage of restricting the measure to High Court-only offences is that that restricts application of the new-evidence exception to cases that the Crown felt merited a sentence of more than five years. It has been suggested that such a proposal may encourage the Crown to put more cases to the High Court on the basis that that will make such cases eligible for the new-evidence exception in future. I doubt that that will be the case. The option of High Court-only cases is well worth considering. I await the Government response with interest.

The bill will enshrine in statute a long-held Scottish legal principle that an accused can be tried only once on the same set of evidence, but it allows, rightly, for exceptions. The number of cases that will be caught by the provision will be tiny, as evidence elsewhere shows clearly. I hope that the Parliament can and will support the general principles of the bill this evening.

10:26

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I welcome the opportunity to speak in this stage 1 debate. I begin by outlining my support for the general principles of the bill, which the cabinet secretary has introduced. Of course, I also want to emphasise the importance of protecting the rights of all our constituents. The last time that I spoke on the issue in the chamber, in addition to stating my support for change, I welcomed the ensuing consultation period. Having listened carefully to the evidence, along with my fellow members of the Justice Committee, I remain steadfast in my belief that this reform is needed.

As we have witnessed, cases south of the border show that persons who were previously acquitted of a crime have been brought back to trial in light of new evidence. The evidence that the Society of Solicitor Advocates provided to the committee affirmed that DNA evidence—or whatever other form of incriminating evidence that comes forward—does not prove that someone is guilty. We must all wholly accept that point of view. It said that, if such evidence comes forward, it should trigger only a retrial, not prove someone's guilt. It is the responsibility of the prosecution to prove guilt and it is for the jury to reach a decision. Furthermore, I agree with the analysis of those who are experienced in trauma and loss, who recognise that with the constant developments in forensics it is time for amendments to be made to the double jeopardy rule to reflect those improvements.

I understand—but disagree with—the concerns of some lawyers, judges and human rights experts who worry that the changes will infringe on the liberties and rights of the accused. Professor Paul Roberts stated that

"nobody would be safe and secure in their liberty, person, possessions or reputation if they were constantly at peril of being prosecuted by the state".

I want to make it clear: I do not support any act that intrudes on the civil liberties of people in my constituency and across Scotland. I am sure that there is 100 per cent agreement on that around the chamber. I also do not believe that the overall principle of changing the double jeopardy rule will

lead to such encroachment. If incriminating evidence arises that puts in doubt the innocence of an acquitted party, we should encourage this change in the law, with the full intention of providing justice to victims and their families.

There has been and is little protest about the proposals to alter our legal system to allow for a new trial if an acquitted individual expresses his or her guilt. Previously, I have highlighted the historic case in England of Billy Dunlop, who murdered 22-year-old Julie Hogg in 1989 and who twice faced trial in 1991. On both occasions, the jury failed to reach a verdict and the killer was never brought to justice. The killer was subsequently imprisoned for another crime and boasted to prison officers that he was guilty of the murder of Julie Hogg.

As a consequence of the 2003 changes to the legal system in England and Wales, Billy Dunlop was charged and convicted of the murder in 2006, following his confession in 1999. He thought that he had got away with murder—indeed, for 17 years he did—but changes in the law that applied retrospectively meant that he came before the court and got his just deserts. However, if the case had happened in Scotland, that vicious murderer would still be free to walk the streets and the family of the victim would still have no sense of justice or closure.

Our criminal justice system is unquestionably unique, and etched in it is much of the history of Scotland. As legislators, our job from time to time is to amend the system and fix fundamental wrongs that should not happen in modern-day Scotland. I agree that care must be taken and the Government must ensure that the rights of all citizens—victims and accused alike—are protected. However, change is needed. I hope that all members recognise that.

Bill Aitken, the convener of the Justice Committee, highlighted very adequately the recommendations and conclusions of the committee following the evidence sessions that we heard and submissions that we received. We have some concerns. I am pleased that the cabinet secretary listened to the committee and that he indicated in his speech this morning his willingness to work with us to discuss and address the issues that we highlighted. I look forward to working with the cabinet secretary and my colleagues on the Justice Committee to ensure that we get this matter right. The rights of victims and the rights of those who are accused need to be protected, but justice should be seen to be done in all cases in Scotland.

10:31

Ian McKee (Lothians) (SNP): For me, the double jeopardy debate is one of the most difficult issues that we face in Parliament. Unlike many other issues, there is no party split but the arguments for and against legislation to allow prosecution for an offence of which a person has previously been found not guilty are both compelling.

The benefits of refusing to allow further prosecution are strong. In 2009, the lead commissioner for the Scottish Law Commission, Patrick Layden QC, neatly summed up the reason:

> "Essentially, it prevents the state from running the criminal prosecution system on a 'Heads we win; tails, let's play again until you lose' basis".

Allowing not even for the possibility of further prosecution gives closure to people who have been acquitted at a fair trial. People who are truly innocent might otherwise feel the sword of Damocles hanging over their heads for the rest of their lives. However, although most would concur with the 1842 observation of Lord Justice Rolfe—in a case in the English courts of a compensation claim that resulted from faulty maintenance of a stagecoach—that hard cases make bad law, there is something grossly offensive in the spectacle of a person who has been found innocent of a serious crime subsequently boasting that he or she has got away with it. Massive advances in the forensic sciences mean that evidence that could not have been available at the time of the trial can now prove conclusively that the person who was found innocent is, in fact, guilty of the crime. We need to take account of that. What is needed is a fair balance between the two poles of the argument. That is what has been achieved in the bill that is before us today.

Let us look at the main issues. It is important that double jeopardy legislation applies only to the most serious offences. It should not apply to those who could have been tried at the time for another alleged offence had the prosecution chosen to do so; nor should it apply if the so-called new evidence would have been available to the prosecution at the time of the original trial, had reasonable diligence been shown. That could be a defence against the reopening of the World's End case.

The bill covers those situations. In particular, the bill affects only those who have previously been acquitted of one of the serious offences that are listed in schedule 1, and after High Court approval of a retrial. A person cannot be tried again for an offence that is listed in schedule 1, unless that offence was listed in schedule 1 at the time of the first trial. I have not had the benefit of being a member of the Justice Committee and hearing all the evidence, but I have heard enough in today's debate to feel that we should look again at schedule 1 and consider whether listing offences in a schedule is the best way of proceeding.

Another rare but important use of the proposed legislation is in cases of tainted acquittal, perhaps when there has been proven interference with a jury or even a judge. Even in those cases, the acquittal may not be set aside unless the court is satisfied that the previously acquitted person or someone else has been convicted of an offence against the course of justice in connection with the trial, or that the balance of probability leads to the same conclusion. Of course, the court must also consider that the interference could have had an effect on the outcome of the proceedings.

An associated issue that has caused particular unease in some quarters is whether double jeopardy legislation should be retrospective. In general, I am against retrospective legislation. It seems unfair even to attempt to convict someone of a crime that was not a crime when an incident took place. That opens legislative bodies to the charge of being vindictive or even attempting to settle old political scores. However, as Robert Brown stated, the situation here differs to an important degree. When a person was tried in the past for one of the serious offences that are listed in schedule 1, those were offences at the time—it is simply a case of the person having been found innocent. If advances in science or whatever now provide strong evidence to the contrary, I see no reason why the person should not be charged again. If someone goes around boasting of having committed a murder or a rape, for example, thinking that they are immune from prosecution, it is not in the interests of the law or society that they should be protected.

A similar argument applies to new evidence, which must be substantial. As has been said, difficulties may arise because material evidence can deteriorate or be contaminated over the years, which may mean that a second prosecution is unlikely to be successful. However, that will not always be the case. If the evidence is watertight, I cannot see how it is in the interests of justice or anyone other than the perpetrator of the serious crime that a retrial should not take place.

We have before us a bill that is the culmination of years of reflection by all concerned with this difficult issue. I have studied the checks and balances that the bill contains and consider them to be proportionate and appropriate. I therefore support the bill and commend it to the chamber.

10:37

Stewart Stevenson (Banff and Buchan) (SNP): I welcomed the Cabinet Secretary for Justice's referral of this issue to the Scottish Law Commission in 2007. That was an important step in taking forward a matter that we have debated and engaged with in this place for some time.

Of course, the principle of ne bis in idem or, in French, autrefois convict has been in Scots law for some 800 years. It is worth thinking of the kind of world that existed at that time. The English had been conquered by the Normans, but Scotland had yet to face down the substantial challenge that Edward I would bring 100-plus years later. That was a very different world, with a very different approach to legal matters. The fact that the principle has endured over such a lengthy period should put us substantially on notice that it is not a matter to be treated trivially, but one of the utmost seriousness. It has been at the centre point of Scots law—and the law of many other countries—for a very long time.

For me—and, I suspect, for other members—one of the most chilling speeches that has been made to the Parliament was the speech by the Lord Advocate on the World's End murder case. It was a lengthy speech that left the chamber as quiet as I have ever heard it. There was no fidgeting—there was a stillness among us as we heard the Lord Advocate lay out matters before us in a judicial manner to which we are not used. Those who listened to that statement—some members found it sufficiently disturbing not to stay for the whole of it—will understand the issue that is before us.

Cathie Craigie was absolutely right to focus on issues relating to the victims of crime; I think that she was the first speaker in the debate to do so. The point is not simply to identify someone's crimes and to ensure that an appropriate punishment is put in place, but to serve the interests of those who have been affected by crime. When considering whether, after 800 years, we should look at the matter again, there are very substantial issues that we must consider.

Having served on two justice committees of the Parliament and having spoken on the subject previously, I see today's debate as a welcome opportunity to revisit it. Of course, revisitation is the whole point of the bill. It could be argued that it is somewhat strange that trials can be restarted for a variety of reasons up to the point of decision but that cases cannot be revisited thereafter, as decisions are absolute and inviolate. We have now moved beyond the point of accepting that. Equally, we have accepted that it is no small thing to do so. The English example shows us that the criminal justice system and the interests of justice do not collapse when such a measure is introduced. That can give us substantial confidence that it is worth our while proceeding in this way.

Clearly, there are other ways in which the ends of justice can be served. We have observed with varying degrees of interest and engagement the use following a civil trial of the law of perjury for one of the former tenants of these premises. Let

us not forget that people are found not guilty—they are not found innocent at any stage, although the presumption is that they are innocent. If someone has been prosecuted and has not been found guilty, there are other ways, one of which is the law of perjury, of serving the ends of justice. Of course, that is not an easy matter with which to deal.

What tests are we putting in place? Are they sufficient and adequate? The hearing that must precede any reprosecution is a very important part of the changes that we are contemplating. For example, all of us recognise that not all confessions are sincerely made. I suspect that there will be instances of people who are clearly engaged in criminality and may already have substantial criminal records embellishing a tale to the point of confessing to crimes that they may or may not have committed, because they are publishing a book or have the opportunity to be paid large sums of money by one of the tabloid newspapers. For that reason—and many others—the hearing process is important, as it will allow us to test whether a reprosecution should be contemplated in the interests of justice. It is equally important that the person who may be subject to a new prosecution has the right to appear and to be represented in it. Those are important provisions in the bill.

We have had some exchanges on the scope of reprosecution; I suspect that we will continue to have such exchanges as the bill proceeds through Parliament. Should it be limited to original prosecutions on indictment, or should it be extended to summary prosecutions? Perfectly properly, Robert Brown said that it was pretty unlikely that evidence would come forward following a summary trial that would have caused the case to be taken on indictment in the first instance, but we cannot exclude that possibility. If we are thinking of the victims, we need to think very carefully about where we strike the balance.

There are some things that are not in the bill that could not, sensibly, be in it, but which it is worth having a think about. For example, should we be able to reprosecute people who have died? That might seem a slightly amusing idea, but the reality is that holding a court case to prosecute someone who is dead—which can be done in other jurisdictions—does, in certain instances, serve the interests of justice and of the victims. However, that is an extremely difficult thing to contemplate and the size of the bill, which at present is relatively modest, would be substantially greater if we were to do so. I mention that just to point out that we should not imagine that we are solving every issue that surrounds double jeopardy.

Robert Brown: I am not quite clear what Mr Stevenson has in mind, but I wonder whether he is thinking of the Megrahi case and the situation whereby the reported death of Mr Megrahi, in due course, would have interrupted the re-review of proceedings. Does he think that that would have given rise to an issue whereby the victims would have been deprived of the opportunity to test the issues before the appeal court, following on from a decision by the Scottish Criminal Cases Review Commission?

Stewart Stevenson: The member cites a perfectly reasonable example; there would, of course, be others.

There are other ways in which the issue can be dealt with, besides having a retrial in a criminal court, but it is clear that victims often do not regard such alternatives as being equivalent to prosecution in a criminal court. Prosecuting someone after they have died is not dealt with in the bill, and I would not wish the Presiding Officer to draw me up too tightly for speaking on a matter that is not strictly before us.

Turning to things that are in the bill, an issue that has been raised relates to acquittals when there has been interference with the jury. Section 2(5) says:

> "But the acquittal is not to be set aside if, in the course of the trial, the interference (being interference with a juror and not with the trial judge) became known to the trial judge, who then allowed the trial to proceed to its conclusion."

Superficially, that looks okay, but the reality is that the effects of that interference might have been greater than the trial judge was aware of at the time at which they allowed the trial to proceed to its conclusion. Those who will take the bill forward might wish to look at that again, if that part of the bill is to be retained. If one juror was nobbled, they may have contaminated other jurors or put other jurors in a state of fear and alarm before they were removed from the trial. The judge may not have been in sufficient possession of the facts to have realised that that had happened. As almost everything that a judge decides can be reviewed elsewhere, to exclude a review of a judicial decision to allow a trial to continue after a juror has been nobbled may be an exclusion too far.

I am conscious that we have a certain amount of time so, if I am permitted, I will proceed to deal with the committee's report. Paragraph 33 mentions the concerns of the SHRC and the Law Society about what the standard of proof should be. They thought that beyond reasonable doubt should be the standard of proof at the hearing but, of course, that would not necessarily have been the case in the original prosecution. It is important to bear in mind that the procurator fiscal could

have considered a lower test—the existence of a reasonable prospect of a conviction.

Paragraph 48 mentions that the SHRC, and John Scott talked about the range of serious offences. As the bill proceeds, it will be important to test that we can combine the trial of new charges with the retrial of old charges in a way that will serve the interests of justice, and I hope that the members concerned will do that.

The committee considered at great length the retrospective application of the bill, which, instinctively—like others—I am not comfortable with. However, in this particular case, I think that it would leave a huge gap in our ability to deliver justice for many people if we were not to have the opportunity to revisit trials that took place in the past.

Earlier, I intervened on Bill Aitken on the subject of extradition, and I think that there remains a substantial issue there. People may be extradited to other jurisdictions in the European Union and to the United States in a variety of circumstances, without there being any necessity to show that there is a case to answer—that is a matter for the jurisdiction to which the extradition takes place. In a case in which someone who has already been found not guilty in a Scottish court is extradited, there is an enduring potential for injustice but, of course, responsibility for the law in respect of extradition lies elsewhere and it is not at our hand to change it.

Section 10(3) relates to article 54 of the Schengen convention, which touches on some of that. I had been aware of the Schengen convention only to the extent that the UK is outside the common travel area that it created, much to travellers' inconvenience. I will go away and read it to discover what other delights it contains.

I congratulate the Government and all who have pressed for such provisions on the introduction of an excellent bill that will serve the interests of justice and of victims, and which will be a source of great fascination to those of us who are interested in the minutiae of legal legislation.

The Deputy Presiding Officer (Alasdair Morgan): We move to the winding-up speeches.

10:52

Mike Pringle (Edinburgh South) (LD): Double jeopardy is a procedural defence that forbids a defendant's being tried again on the same or similar charges following a legitimate acquittal or conviction. The rule against double jeopardy is a fundamental principle of Scots law that provides essential protection by preventing the state from repeatedly prosecuting an individual for the same act. Stewart Stevenson gave us a bit of a history lesson, which shows that we are now in a different place.

Interestingly, double jeopardy has even interested Hollywood. The film "Double Jeopardy", which starred Tommy Lee Jones and was made in 1999, was about a wife who is framed for her husband's murder and who suspects that he is still alive. As she has already been tried for the crime, she says that she cannot be reprosecuted if she finds and kills him.

All members of the Council of Europe, which includes nearly all European countries and every member of the European Union, have signed the European convention on human rights, which protects against double jeopardy. Article 4 of the optional seventh protocol to the convention says:

"No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

However, member states may implement legislation that allows the case to be reopened in the event that new evidence is found or if there was a fundamental defect in the previous proceedings. The optional protocol has been ratified by all the European states except Belgium, Germany, Spain, the Netherlands and the United Kingdom. In those member states, national rules governing double jeopardy may or may not comply with the provision that I cited. I note that Bill Aitken said that the committee looked at that issue and was satisfied that the bill is ECHR compliant.

Double jeopardy is an extremely complex and often sensitive issue, so we welcome the bill and the clarification that it provides in setting out in statute the rule against double jeopardy as part of a fair and modern criminal justice system. We support the setting-out of exceptions to the rule against double jeopardy, for example when the original trial was tainted by jury tampering or when the acquitted individual has since confessed to the crime.

In its submission, the Law Society outlined its view that there should continue to be a general rule against double jeopardy. However, it said:

"It should be possible to retry an acquitted person where the acquittal is tainted by an offence against the course of justice in relation to the original case ... and ... It should be possible to retry an acquitted person who subsequently admits to having committed the offence."

The issue of admission should be dealt with in law. The cabinet secretary referred to that in his speech and said that he will lodge amendments to strengthen and clarify the bill on that matter.

In addition, we support an exception in limited and very serious cases in which important new

evidence emerges. That exception should of course apply only when the evidence was not and could not have been—with the exercise of reasonable diligence—available at the original trial. Advances in science such as those relating to DNA provide perhaps the best example of how that could happen. As Robert Brown, Ian McKee and others have said, various considerable advances have been made in scientific evidence. Members have referred to the English case of Mark Weston, who was cleared in 1996 of the murder of Vikki Thompson near her home in the Cotswolds. He was retried after the double jeopardy rule was removed in 2005 and was subsequently found guilty because small patterns of blood were discovered on his boots. That, and other DNA evidence that was not available at the original trial, led to his conviction. That surely must be right.

The decision on whether there should be a retrial must be made by the High Court when, having examined any new evidence, it deems that a retrial is in the interests of justice. Nigel Don suggested that only cases that were taken on indictment in the High Court should be brought back for retrial. I make it clear that my colleague Robert Brown did not say that only cases that were taken on indictment should be brought back; instead, he said that the Justice Committee needs to bottom out that issue.

The Procurator Fiscal Service decides whether cases are taken on indictment or are to be summary cases and whether they go to the High Court or sheriff court. At a particular time, a procurator fiscal might decide that, because the sheriff court is inundated and there is a bit of free space in the High Court, they will push one or two cases to the High Court. Would it be right if only cases from the High Court could be re-examined? I suggest not. Stewart Stevenson made the good point that the bill is about the interests of justice and of victims, and that victims need closure. I therefore suggest that the issue is another one that the Justice Committee must consider and bottom out.

Nigel Don: If I misunderstood Robert Brown earlier, I apologise for doing so.

Mike Pringle: I accept that.

Legal people in the High Court will look at the evidence and consider whether a case should be brought back. The High Court might decide that a case that was originally taken as a summary case should now be taken on indictment and not in the sheriff court but in the High Court. There are many permutations. I suspect that the Justice Committee will spend some time on that issue at stage 2.

The debate on whether a new-evidence exception should be applied retrospectively is complex. However, our view is that it would be arbitrary and probably unsatisfactory if acquittals that occurred before a certain date were final while those occurring after it could be looked at again in the event of new evidence emerging. The Law Society of Scotland remains of the view that it would not be in the interests of justice to allow any exception to the principle of double jeopardy to be retrospective but, as I said, I am not convinced of that and I think that most members of the Justice Committee and other members who have spoken in the debate take that view, too.

I am not a member of the committee, but I am aware that it received evidence on that aspect of the bill and examined it in considerable detail. I suspect that it will examine it again. The committee's stage 1 report states that it believes that

"prosecutors should be able to seek to reopen cases where compelling evidence has become available, even if (given the safeguards rightly included in the Bill) relevant circumstances arise only rarely."

It therefore

"supports the retrospective application of the Bill, whilst recognising some of the practical difficulties which may limit the ability of the police to obtain new evidence in relation to cases which have already been decided."

I congratulate the committee on all its hard work up to this point. I suspect that it has a lot of hard work still to do at stage 2, and I am sure that it will do that work. I will be happy to support the bill at decision time this evening.

11:00

Bill Aitken: Although several matters are unreconciled at this stage, I am pretty certain that we are all moving in the same direction and that there can be a satisfactory outcome. It is important that we reassert what we are trying to do in the bill. We have had several interesting speeches—one was particularly interesting—and a lot of common sense has been spoken, but let me try to clarify what we are trying to do. I believe that none of us would seek to achieve a situation in which the rights of the individual were under threat and people could face a catalogue of prosecutions if the Crown initially failed to sustain a conviction.

The first protection that is in place is that a case will go to the High Court only when the Crown feels that it is in the public interest to do so. We have received assurances on that from the Crown in evidence to the committee and from the cabinet secretary this morning. The unanimous view of the Parliament is that only very serious cases should be pursued for the second time. We might have to work to identify the type of case, if indeed we take that route. Such cases would be pursued only when doing so was essential to the public interest.

Very few prosecutions have occurred under the legislation that was introduced in England, and I anticipate that a similar situation would pertain in Scotland.

So the first protection is that the Crown would pursue a case only in extreme circumstances. The matter would then require to be determined by the Scottish court of criminal appeal, with three judges sitting. It would inevitably set a high bar, which is entirely appropriate. The new evidence would have to be evidence that was not available at the time of the original trial and could not reasonably have been expected to be available. That is a further protection. To refer to a point that Richard Baker raised and Stewart Stevenson subsequently made, I have difficulty in seeing how the World's End case—Sinclair v Her Majesty's Advocate—could be reprosecuted under those terms. However, that is an argument for another day.

Stewart Stevenson: It would be useful if I said that I actually agree with the member. I just think that when members were confronted with the sort of detailed material that is presented to the courts, as people who are, thankfully, not normally in a court, that was a substantial wake-up call to us about the real world. Thankfully, most of our community, including members, are relatively isolated from that.

Bill Aitken: We have that protection in respect of new evidence. I am confident that the High Court would set a fairly high bar.

I turn to admissions. As Robert Brown correctly said, when a high-profile murder or other serious crime occurs, every deluded individual and his auntie seems to phone up the press claiming responsibility for it. The protection would be that the High Court would have to be persuaded that the admission contained a degree of special knowledge—that would be persuasive. That would perhaps do away with the difficulty of bar-room bragging by some of our more imaginative citizens.

Robert Brown: I take that point. I was interested in the point that my colleague Mike Pringle made when he quoted the ECHR rules, which refer to tainted prosecutions and new evidence, but not to admissions. Does Mr Aitken have a view on whether that affects the argument and whether we should incorporate the admissions issue into the new-evidence issue, as we have discussed in the Justice Committee?

Bill Aitken: That is one of the unresolved matters. I will consider it fully before it returns to the committee, but I am initially of the view that there is an argument for merging the two issues. That is how I see it at present, but I will take appropriate advice.

In any event, the question of tainted acquittals presents a degree of difficulty. To some extent, we are inhibited in our knowledge of what goes on by the operation of the Contempt of Court Act 1981. We might have to consider how we get round that. In essence, we are not allowed to know what happens in a jury room—sometimes that might be just as well, in the context of matters that are not related to the business that is before us today. We must consider the operation of existing legislation in that regard.

The list of offences, and what is and is not on it, remains a current issue. I heard what Mike Pringle said on the subject and there is merit in his argument, but my view is that the list should be restricted to cases indicted in the High Court, which is consistent with the application of the approach to only the most serious crimes.

The main issue is the interests of justice. Forensic science has improved immeasurably over the years, not just DNA analysis but fingerprint analysis and other aspects. Things can be done today that could not have been done even five or 10 years ago. In the interests of justice, we must use every tool that is available to us and I see nothing wrong with using DNA samples that were taken at the time of the crime but which could not be used because the science of the day was inadequate. There might be difficulties to do with storage, but we can work round such difficulties, because we are talking about the principle of justice.

The Parliament will do nothing that would prejudice anyone's right to a fair trial. However, we must consider victims and, in the case of murders, victims' relatives. What we are seeking to do is morally entirely justifiable and legally sensible. I am sure that when we have sorted out the various issues that have been raised in the debate, the Parliament will be presented at stage 3 with a bill that will make a significant impact on the law of Scotland.

11:07

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to close the debate on behalf of the Labour Party. I thank the Justice Committee clerks and everyone who gave evidence to the committee and contributed to its detailed report.

There is no doubt that the issue is serious, so it is right that the committee gave it serious and detailed consideration. There is much agreement on the matter, but we owe it to the Parliament and to the public to show that we are considering the issues appropriately. As Stewart Stevenson said, double jeopardy is an 800-year-old principle. The Scottish Law Commission took the issue forward

in its report, having given it appropriate consideration, as John Lamont said. It is correct that the principle of double jeopardy be codified in law. As Lord Gill said, it is a matter of considerable constitutional significance that in 2011 we begin the process of establishing in statute a principle that has been around for 800 years.

Much of the debate has centred on the exceptions to the double jeopardy rule and why they should be made. As many members said, it is right that we consider the experience of victims and their families. There can be no worse experience than the tragic loss of a loved one in a violent incident, and the inability to see justice done must eat away at families every day.

We must ensure that only the right cases are taken forward. The delivery of justice must be paramount. We can look to examples in England and Wales. Many members mentioned the Mark Weston case, which shows that justice can be achieved by introducing exceptions to the double jeopardy principle and lends a strong moral case for what the bill is trying to achieve. We can also learn from what has happened internationally.

Bill Aitken talked about how DNA analysis and other scientific techniques have greatly improved, which lends tremendous weight to the argument for giving further consideration to cases in which a person was cleared but there is new evidence.

Also on the subject of modern technology, we live in the information age and people are much more aware of cases in which there has potentially been a miscarriage of justice. It is not just about people who might have been wrongly cleared; DNA evidence can be used to clear the names of people who have been wrongly convicted. The public's greater awareness of such cases lends greater weight to the need to consider the bill and take it forward.

Important legal principles of consistency and certainty are at the heart of the bill. The committee was right to support the approach in section 2, on tainted acquittals, which deals with situations in which a result was achieved by perverting the course of justice. As the committee's convener, Bill Aitken, said in his opening speech, the Scottish Human Rights Commission and the Law Society of Scotland questioned the application of the provision to all offences, but I agree with the Crown Office and Procurator Fiscal Service that the bill strikes the right balance. It is right that we revisit trials in which witnesses were intimidated or jury members were unduly influenced, so that justice is done.

Section 3 is on admissions made or becoming known after acquittal and the committee had to consider whether the provision should apply to pre-acquittal and post-acquittal admissions. Some witnesses thought that it should apply only to post-acquittal admissions. However, Victim Support Scotland gave powerful evidence on the matter and the Association of Chief Police Officers in Scotland said that section 3 will help to deliver public confidence in the Justice Committee—I meant the justice system; I assure Bill Aitken that we always have confidence in the Justice Committee. ACPOS made a valid point.

Members talked about the standard of proof and I welcome the cabinet secretary's acknowledgement that the bar might be raised and the approaches in sections 3 and 4 made more consistent. That might help to address the fears about section 3 that were expressed in evidence.

The new-evidence exception in section 4 is in the public interest. New techniques such as DNA analysis will supply new evidence.

There has been much discussion this morning of the list of offences to which the new-evidence exception should apply. The Scottish Law Commission stated in its report that the provision should apply only to murder and rape. The Government was right to extend the list of crimes in the bill to cover more serious offences such as war crimes and certain sexual offences.

There has been a certain amount of debate this morning about whether a list is appropriate, or whether the provision should apply simply to cases that have been tried on indictment or in the High Court. There has been a lot of support for that argument, but I see some attraction in having a list of offences. A list is quite transparent, so the public can see the offences to which the retrial provision would potentially apply.

Introducing an alternative system would potentially open the way for the provision to apply to other cases, and the public might think that it would not apply in certain cases. As members have said, the provision should apply only to serious cases.

Mike Pringle: Will the member take an intervention?

James Kelly: I will take an intervention in just a minute.

An alternative approach in that regard might have unintended consequences and open the issue up. I have a relatively open mind on the issue, but I do not dismiss the idea of having a list.

Mike Pringle: On that point, who will draw up the list? Will it be a group of people, the High Court or the Justice Committee?

James Kelly: The Government has introduced a list in the bill. If the Parliament and the Justice Committee do not consider the list to be appropriate, we must amend the bill at stage 2.

Ultimately, we are dealing with a very serious matter, and the list—or any alternative—must be lodged in statute.

Section 11 deals with the eventual death of an injured person and there has been discussion about whether there should be a retrial in such cases. The cabinet secretary dealt with that point well. If someone subsequently dies, the circumstances change and the police will view the investigation differently. They will potentially put more resources into it and bring forward more evidence, and the prosecutors will look for more evidence to bring the case back to trial. Logically, the changed circumstances and the additional evidence that is on display would make it appropriate for a retrial to take place.

The Scottish Law Commission disagreed with the Government on retrospectivity, but I support the Government on that issue. If the provision is introduced, it should be applied retrospectively. One needs only to look at the application of the law in England and Wales in that regard—in the case of Mario Celaire, for example. He murdered Cassandra McDermott in 2001 and was found not guilty in 2002, but the case was subsequently retried in 2009. I am sure that Ms McDermott's family are glad that the provision on exceptions to the double jeopardy rule was applied in England and Wales. That is a strong example that supports the case for applying the provision retrospectively.

I think I have a bit of time left; I do not want to eat into the minister's time.

The Deputy Presiding Officer: The member is under no compulsion to carry on talking if he does not wish to.

James Kelly: I will touch briefly on some of the contributions from members during the debate.

There was an exchange between Robert Brown and the cabinet secretary on the storage of evidence that might be needed for a retrial. As the cabinet secretary said, the relevant services will have to make an appropriate call with regard to the storage of evidence. If the bill is passed, it will create a different situation and we will have to consider storing more additional evidence than has been stored in the past. However, it is right to be pragmatic in such matters. We do not want a lot of evidence to be stored unnecessarily from cases that would not be deemed to be appropriate for a retrial.

Robert Brown made a valid point about how the public will view retrospectivity. They would see it as a scandal and an outrage if someone was perceived to be potentially liable to be retried for a crime but the case could not be taken forward.

Nigel Don made a thoughtful contribution, as ever. It was helpful of him to take Parliament through some of the Law Society's criticisms, and he rebutted those very competently. Although there is general agreement in Parliament this morning, we heard criticisms of certain aspects of the bill in the Justice Committee, and it is helpful for those to be aired in the chamber.

Stewart Stevenson's contribution was interesting as ever, and full of depth. We got a bit of history, and a bit of French at one point. On a serious note, he recalled the Lord Advocate's statement on the collapse of the World's End trial. I take Bill Aitken's point about that matter but, as Stewart Stevenson said, the statement was a poignant moment for Parliament, and it has given some focus to our deliberations this morning. Stewart Stevenson was correct to link that issue with Cathie Craigie's contribution, in which she emphasised the importance of victims.

I am happy to support the general principles of the bill at stage 1. It is in the interests of justice, public confidence and the consistent application of the law.

11:22

The Minister for Community Safety (Fergus Ewing): We welcome the debate. There is plainly a broad consensus today, which continues the consensus reached on the previous occasions on which we have debated this very important matter.

As Nigel Don said, it is right that we take time to debate double jeopardy and that we debate and consider it in great detail and at length. It is essential that we pass an effective bill that achieves the objectives that we all share. That is our predominant duty—as a Government especially, but also as members of the Parliament—in reforming the law of double jeopardy, which I think a vast majority of the public wishes us to do.

The law of double jeopardy is a vital safeguard, and it is right that the cabinet secretary and the Justice Committee convener began by setting that out. We are not scrapping the principle that has served Scotland so well for centuries, and which was well described by Robert Brown—drawing, no doubt, on his extensive legal experience.

The principle is important for three reasons. First, it allows finality in criminal proceedings. People who have been acquitted in a court will have gone through the fire and the ordeal of a trial—with all the pressure that is put on any individual who finds himself in the dock, especially in a case in which a very serious crime has been libelled against him. That individual and his family will have faced that pressure—it is an experience that, as far as I am aware, none of us here has undergone. It is essential that an individual who has been acquitted—against whom the state has

not made the charge—is then able to get on with his life. If that were not the case, individuals who were acquitted might live in constant fear of a retrial. It is the existence of the law of double jeopardy that marks out what we all regard as a civilised legal system for people whom we would otherwise view in a different light entirely. It offers a necessary finality.

Secondly, the law of double jeopardy limits the power of the state and the ways in which it can pursue citizens through the criminal courts. Thirdly, it also provides protection from the anxiety and humiliation that repeated trials would undoubtedly cause accused persons.

It is agreed across all parties, and it has been acknowledged among all the members who have taken part in the debate, that there should, however, be changes to the current system. Those changes have been considered extremely carefully and thoroughly, first by the Scottish Law Commission and then by the Parliament.

I will deal first with the issue of tainted acquittals. On trials that have been tainted, it is essential, as a matter of principle, that people should not benefit from attempts to pervert the course of justice. Many speakers commented on that.

There are myriad ways in which trials can be tainted. Jurors and witnesses can be bribed. Witnesses can be threatened—for example, so that they do not identify an accused person as the person alleged to have carried out the crime. A witness can be threatened with violence either against members of his family or against himself. That is a real scenario; it does not exist purely in the pages of John Grisham novels. It is quite easy to recognise that, in some sections of society, witnesses may be and have been placed under such pressure.

It has emerged during the debate that all members agree that if the trial is tainted, there should be an opportunity for a retrial, whether the crime of which the accused person was originally acquitted is of the most serious sort or less serious. Where there is taint, there is injustice, and there must be an opportunity to put it right. That principle was expounded by Dave Thompson, and he was absolutely correct in what he said. There has not been a fair first trial in such cases, and it is therefore right that there should be an opportunity for a further trial so that a false acquittal can be set aside. Any offence against justice is a serious matter.

In his closing speech, Bill Aitken touched on the possible effect of merging elements of the new-evidence test and of the admissions exception. Both admissions and other types of new evidence can create a compelling case for a new trial. However, it is important to stress that for an admission to justify a new trial the bill as drafted requires that it must be "credible". That answers Bill Aitken's point about instances when a number of individuals—and, I think he said, their auntie—come forward, for reasons best known to themselves, to claim that they carried out the crime. Indeed, financial reasons could be involved, as Stewart Stevenson said.

The admission must be credible, it must be new and it must be corroborated by other evidence. It must also be in the interests of justice to have a new trial. Those are all substantial requirements—it is important to stress that. We will amend the bill so that an admission will have substantially to strengthen the case against the accused in order for it to justify a retrial, and it must also be highly likely that a reasonable jury would have convicted had the admission been available.

Robert Brown: I ask the minister to consider Mike Pringle's point about the wording of the ECHR arrangements regarding double jeopardy—which I have not recently read, and had actually forgotten about. Does the fact that the ECHR provisions at least appear to cover the two categories of tainted evidence and new evidence give the Scottish Government pause for thought as to whether that should be the framework under the bill, so that the admissions bit would be tied in as a sub-particle of the provisions on new evidence?

Fergus Ewing: If Robert Brown does not mind, I decline his invitation to respond to his question with a definitive answer—for good reason. I will not respond now with specific and definitive answers on how we will frame amendments.

However, I can say, and it is correct for me to do so, that we will reflect carefully on each contribution that members have made in the debate, and we will then lodge our stage 2 amendments. We have already determined, as the cabinet secretary announced, the purpose of the amendments that we seek to make and to which I have alluded. However, although my contribution will probably not turn out to be short, it will not be definitive on how we will seek to amend the bill. We have to get it right, and it would be foolish of me to make commitments or give undertakings on the hoof. I have not done that for four years, and I am certainly not going to start today.

The bill is plainly not intended to encourage the reopening of cases involving low-level offences as a result of an admission; rather, it is about the principle of pursuing people who boast of their guilt. I hope that we can all support that position.

If I understood him correctly, I think that in his closing speech Bill Aitken proposed that we merge section 3, on admissions, with section 4, on new

evidence. I will make a few points about that. There are some points of difference between admissions and new evidence.

First, the section on new evidence is limited to a specific range of offences, but as I have just set out, the admissions exception should be capable of covering any offence. That is a difference between two of the reasons that justify the departure from the general principle of double jeopardy.

Secondly, the section on new evidence allows a person to be reprosecuted only once for the offence, whereas it should be possible for an application to be made under the admissions exception regardless of whether there has already been a retrial. In other words, if an individual is acquitted after a retrial, but then boasts of having got away with it, that should not be acceptable. Although I suspect that the number of such cases will be very small indeed, the example illustrates the difference between the two categories.

The new-evidence provisions cover murder, rape, culpable homicide and serious sexual offences. The difficult issue on which many of the speeches focused is how we tackle which offences should permit a departure from the general principle. Do we list those offences? Do we try to define when the general principle can be disapplied by providing a different test—one that is based on whether the case was originally tried in the High Court or whether the crime would normally be dealt with on indictment rather than by way of summary procedure? These are difficult areas and the questions are finely balanced, so we will consider the matter further.

We accept that it is difficult appropriately to define the scope of the exception by using a list alone. However, because most offences can be tried on indictment or in the High Court, an approach based on that test would make the range of offences that could be reprosecuted following new evidence much wider than the list in the bill. One option would be to restrict retrials in such cases to those that were initially prosecuted under solemn procedure or in the High Court, but to retain the list. I say that as a general response to that whole area, which was probably the area that was most widely covered by members in today's debate.

Bill Aitken: Does the minister agree that summary cases could be dealt with in another way? Rather than seek a retrial, we could charge the accused—or anyone else involved—simply with attempting to pervert or perverting the course of justice. That would probably be tidier than going through the procedure again.

Fergus Ewing: We will certainly consider that approach before we lodge stage 2 amendments. I am sure that we will wish to involve the committee in discussions prior to the stage 2 proceedings so that we can get such matters settled as well as we can.

The bill contains the power, using the affirmative procedure, to add or remove offences from the list, so Parliament will have full scope to consider any such changes. It will be for the Government and Parliament to consider what would be appropriate in each case when change is proposed.

There is an important issue around the new-evidence test. Many speakers in the debate referred to DNA evidence as the most likely source of new evidence that leads to a retrial. Indeed, although I do not plan to mention individual cases, members referred to the one case in England in which a retrial led to a conviction on the basis of new evidence.

What should our new-evidence test be? It is important to say that the Scottish Law Commission devised our test after a thorough analysis of the law. The test looks at the effect of the evidence on the case as a whole. It is a high-level test, but it is not the English test. The commission looked at the test that is used in England and Wales, which requires new evidence to be compelling in its own right. It concluded that, in practice, the English courts had found that test to be unworkable because it does not permit a retrial when the new evidence is unremarkable by itself but, in combination with the existing evidence, puts the case in a compelling light. It is important to accept that the SLC's judgment on that is correct. It concluded that in practice the English courts looked at the effect of new evidence in strengthening the original case. That is much more in line with the provisions in our bill. However, a brief perusal of a submission from the Director of Public Prosecutions in England reminded me that, during the five years in which the law has been in force south of the border, there have been only 10 applications to the High Court for retrial; I am advised that four of them led to a conviction. That is an important reminder for us.

As Mr Pringle and other members said, relatively few cases will end up in retrials. That is an important point because many people have legitimate concerns about what we are seeking to do. The Green MSPs are opposed to the bill, although they are not here to state their position today, which is a shame. Nonetheless, I mention that for the record.

The Presiding Officer (Alex Fergusson): I must ask you to close, minister. I did not think that I would have to say that in this debate.

Fergus Ewing: I was just getting into my stride, Presiding Officer.

The Presiding Officer: Please be fairly quick because we are encroaching on the next item of business.

Fergus Ewing: Certainly.

I thank all those who contributed to the debate. It is essential that we should be able to bring people to justice when new evidence emerges. We are trying to perfect the removal of an injustice that has existed for perhaps too long, and I am grateful that we have the support of the parties that have been represented in the debate.

Scottish Executive Question Time

General Questions

11:40

Multiple Sclerosis Specialist Nurses

1. Rhoda Grant (Highlands and Islands) (Lab): To ask the Scottish Executive what plans there are to secure a specialist MS nurse for the Western Isles. (S3O-12872)

The Minister for Public Health and Sport (Shona Robison): It is for national health service boards to determine their workforce requirements, including for specialist nurses, based on the clinical needs of the population and service developments in their area. Specialist nurses must also be seen in the context of the multiprofessional team that includes medical and allied health professionals in caring for those with specific conditions, including MS. NHS Western Isles is in the early stages of establishing a managed clinical network for neurological disorders, which will be an important and significant component of the delivery of appropriate care to those who have MS in the Western Isles.

Rhoda Grant: The Scottish Government currently pays centrally for patient travel. If NHS Western Isles appointed a specialist MS nurse, there would be savings to that centrally held budget. Will the minister consider making some of those savings available to the NHS board to enable it to employ a specialist MS nurse so that the public purse saves overall?

Shona Robison: If Rhoda Grant would like to write to me with more information about that, I would be happy to look at it. At the end of the day, however, it is for each NHS board to make its own provision. We very much value specialist nurses and I certainly look forward to seeing the Western Isles proceed with its development in that area. I am happy to look into the issue that Rhoda Grant raised.

Broadband (Speed Target)

2. Andy Kerr (East Kilbride) (Lab): To ask the Scottish Executive what representations have been made to the United Kingdom Government regarding the postponement of the minimum broadband speed target of 2 megabits per second from 2012 to 2015. (S3O-12875)

The Minister for Enterprise, Energy and Tourism (Jim Mather): As I informed Mr Kerr earlier today, the Minister for Culture and External Affairs and I met Ed Vaizey, the UK Minister for

Culture, Communications and Creative Industries, this morning to discuss our respective Governments' broadband strategies. I am pleased to say that the UK Government's universal service commitment was on the agenda for discussion. The meeting was part of the wider work that the Scottish Government is undertaking with the UK Government to ensure that action that is taken in Scotland under our forthcoming digital strategy, which will be published in the next few weeks, builds on and adds value to the work that is taking place at the UK level. Our new target for broadband coverage is availability of next generation broadband for all by 2020, with significant progress to be made by 2015.

Andy Kerr: I am pleased that my question prompted such a meeting to take place this morning and I appreciate what the minister has done. When countries around the world are aspiring to higher broadband speed, I hope that it is within the gift of the Government and the industry, which is a key partner, to deliver the minimum speed of 2 megabits per second. It is therefore disappointing to look around our constituencies—and my constituency is no different—and see broadband slow spots, such as those in Lindsayfield and Stewartfield in East Kilbride. What more can the Government do with the outcome of this morning's meeting to ensure that people have access to reliable broadband at the speeds that match their needs?

Jim Mather: We are continuing to press on all fronts. The message that we got from Ed Vaizey today was very much that the UK Government is looking to ensure that we have improved infrastructure as part of the move to a speed of 2 megabits per second. The member makes a telling point about broadband coverage across Scotland. We also made sure that the point was well understood that we do not want to pay twice for our broadband, and that the 95, 96 or 98 per cent coverage of the UK should also be of the component parts of the UK.

Road Maintenance (Liquid De-icer)

3. Charlie Gordon (Glasgow Cathcart) (Lab): To ask the Scottish Executive what additional costs are consequential on the recent introduction of a new liquid de-icer for use in winter road maintenance. (S3O-12871)

The Minister for Transport and Infrastructure (Keith Brown): The cost of the purchase and storage of the new liquid de-icer is estimated at around £40,000.

Charlie Gordon: Will the Scottish Government encourage local authorities to use the de-icer in their winter maintenance operations? If so, will the Scottish Government help to meet any additional costs arising therefrom?

Keith Brown: Let me say first that the use of the de-icer this year is on an experimental basis. There have been preliminary trials, which will continue. We have placed the de-icer at strategic locations around the motorway network and, if temperatures fall below -7°C, it is likely that we will use it.

Beyond that, if the de-icer proves to be successful, it will obviously be open to local authorities to use it as well. They may be interested in particular in the benefits of its use on pavements, where they have had problems. We have already helped out local authorities with £15 million additional support for additional costs of winter maintenance. Of course, that was made possible by not agreeing to previous proposals to take £10 million out of the winter maintenance budget. Just as it is difficult for local authorities to live within a constrained budget, the same is true for the Scottish Government, but we will continue to work with local authorities to make joint economies of scale when they are possible.

The Presiding Officer (Alex Fergusson): Questions 4 and 5 have been withdrawn.

M8

6. Christina McKelvie (Central Scotland) (SNP): To ask the Scottish Government what benefits it considers will accrue from the completion of the Edinburgh to Glasgow M8 motorway. (S3O-12846)

The Minister for Transport and Infrastructure (Keith Brown): The M8 project, along with the M74 and M80 projects that will be completed this year, fulfils our commitment to complete the last remaining gaps in the central Scotland motorway network. It is expected to bring significant benefits, including strengthening the links between Edinburgh and Glasgow and providing better access to businesses and communities; creating more than 8,000 jobs over the next 20 years and delivering £1.1 billion in economic benefits; cutting journey times by up to 20 minutes for the 100,000 vehicles that use that stretch of the A8 on a daily basis; and enhancing cycling and walking facilities.

Christina McKelvie: Will the minister explain how the use of the non-profit-distributing finance model that has been adopted by the Scottish Government will protect the economic benefits to communities in Lanarkshire that he describes?

Keith Brown: It is worth saying that the NPD model has been developed as a means of capping the returns earned by investors in public sector procurement at a level that produces a fair but not excessive profit that is aligned with the corresponding risk transfer. We have seen excessive profits being made in the past. We are determined that the economic benefits of the

scheme should not be put towards excessive profits for private developers but instead should be shared among those who will enjoy the benefits of the scheme outlined in my previous answer.

Andy Kerr (East Kilbride) (Lab): On the subject of the non-profit-distributing model, will the minister first agree that it is a form of public-private partnership? Secondly, can he provide any academic or other evidence to suggest that the cost to the public sector is less than under other models of public-private partnership? There is no evidence to support that claim. Will he also acknowledge that the non-profit-distributing model was brought in by the previous Government?

Keith Brown: Let me say first that we will not be in the business of building one motorway for the price of two, as has been done with hospitals in the past. There will not be the same excessive profits that have been produced in the past so, to that extent, the model is obviously not the same as PPP. Had the previous Administration been willing to look at alternative models, such as the trust model proposed by my council for new schools, we would perhaps not have seen the excessive profits that Andy Kerr was so keen on in the previous Administration.

Jamie Hepburn (Central Scotland) (SNP): The minister has set out the benefits of the M8 completion, but he will be aware that, although benefits accrue through the completion of motorway upgrades such as the M8, M74 and A80/M80 projects, such upgrades cause disruption to residents and businesses along their route. Will he outline what steps the Scottish Government takes to ensure suitable consultation, mitigation and, when appropriate, compensation for those affected by motorway works, perhaps with specific reference to the projects that I mentioned?

Keith Brown: Transport Scotland has consulted widely throughout the development of the scheme to ensure that the impact of construction is kept to an absolute minimum for those who could be affected. The environmental statement sets out where mitigation measures are required during construction.

Once construction is under way, contractors are required to provide a contact point so that local communities can receive information and raise concerns during the construction process. The contractor is responsible for ensuring that the works are strictly controlled. Contractors must limit working hours and noise levels to limits set by the relevant local authorities and, in certain circumstances, financial assistance with noise mitigation measures may be made available.

Following completion of the scheme, individuals' rights to compensation are further protected under part 1 of the Land Compensation (Scotland) Act 1973 if they can demonstrate that the value of their property has depreciated as a result of physical factors resulting from the operation of the scheme.

Rural Abattoirs

7. Elaine Murray (Dumfries) (Lab): To ask the Scottish Executive what its position is on the impact on the viability of rural abattoirs of the Food Standards Agency's proposed new charging regime for meat hygiene and welfare controls. (S3O-12888)

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): The Food Standards Agency's proposals on the reform of meat hygiene charging were recently consulted on. In Scotland, all meat plants, including rural abattoirs, were contacted to seek their views. The FSA is analysing the responses to the consultation before its board makes recommendations to ministers. The Scottish ministers will then look closely at the potential impact on rural abattoirs and the wider meat and agricultural sectors. Parliament will of course be aware that the Scottish Government expressed concerns in recent years about the impact on such sectors of full cost recovery of meat inspection charges under the previous proposals.

Elaine Murray: The cabinet secretary may be aware that I have recently written to him on the issue because I had been advised that the only abattoir that slaughters cattle in Dumfries and Galloway has been told that, under the proposals, its charges for meat hygiene inspection would increase more than fourfold. Does he share my concern that such increases could result in the closure of rural abattoirs and animals being transported long distances for slaughter? I appreciate that the decision is made by the FSA at United Kingdom level, but can he advise whether there are any sources of financial support that could assist rural abattoirs to remain viable?

Richard Lochhead: The key to ensuring that rural abattoirs remain viable in this context is to ensure that the final proposals that are adopted by the FSA are appropriate for rural abattoirs and the wider meat and agricultural sectors. That will certainly be the aim of the Scottish Government. The member will also be aware that, in its proposals, the FSA takes into account the needs of rural and smaller businesses where there is a lower throughput of livestock. Indeed, it is obliged to do so by European Union regulations.

Alasdair Morgan (South of Scotland) (SNP): Does the minister agree that in rural Scotland, as part of our promotion of Scottish produce, we should seek to have more abattoirs not fewer, that any measure that might be suitable for urban centres elsewhere should be resisted in Scotland,

and that we should be moving in the opposite direction so that we have a structure that encourages more rural abattoirs?

Richard Lochhead: I would certainly be in favour of there being more abattoirs in rural Scotland, but we must recognise that they have to stack up commercially to be viable. There have been examples of new rural abattoirs in Scotland in recent years, and the Scottish Government offers support for their establishment where it can. Clearly, each case must be treated on its merits, but the abattoirs have to be commercially viable.

John Scott (Ayr) (Con): The minister will be aware of the view of the Scottish Federation of Meat Traders Associations that an excessive and disproportionate burden is being placed on its members by the current charging regime for meat inspection. Given the reduced and reducing need for such a regime of inspection charges to be in place following the reduced incidence of BSE, what cost-saving measures can he envisage being made in future? Has he considered outsourcing such inspection work, perhaps in a Scottish context?

Richard Lochhead: I am always willing to look at solutions in a Scottish context, and I will continue to do so in relation to meat hygiene inspection charges. The member highlights again the need to ensure that the FSA proposals are appropriate. He will be aware that, in those proposals, the FSA has given a commitment to reduce its own cost base before it passes on any higher charges to the meat sector in Scotland. I repeat that we will look closely at the impact of the proposals on the viability of Scotland's meat sector.

Cowal Hospice

8. Jamie McGrigor (Highlands and Islands) (Con): To ask the Scottish Executive what discussions it has had regarding the proposal to close the Cowal hospice at Dunoon hospital. (S3O-12824)

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): Both ministers and officials remain in close contact with all national health service boards. Although I understand that NHS Highland and its planning partners are considering the best way to plan and provide palliative care and end-of-life services in the future, it is important to be clear that no decisions have been taken about the future of the Cowal hospice.

Jamie McGrigor: I am delighted to hear the news that NHS Highland has postponed taking the decision, but is the minister aware of the strength of feeling on the issue in Dunoon and Cowal? Local general practitioners and many thousands of local residents are united in seeking to retain an in-patient hospice facility at Dunoon hospital. Does the minister agree that local accessibility to hospice facilities is of key importance for patients and their families and friends alike, and that that should be a major consideration for NHS Highland?

Nicola Sturgeon: Yes, I generally agree with that proposition. I assure Jamie McGrigor that I fully understand the strength of local feeling in support of the Cowal hospice. However, it is important to stress that no decisions have been made. It is right that the NHS, together with its planning partners, keeps local services under review to ensure that they remain of the highest quality. I understand from NHS Highland that those considerations are at a very early stage, and I have been assured that all local stakeholders and the local public will be fully engaged in and involved with the work as it moves forward. As in any other situation of this kind, I expect the health board to engage fully with the population concerned.

Rhoda Grant (Highlands and Islands) (Lab): I, too, have had many constituents contact me on the issue. There is a lot of concern in the Dunoon area. Some of them have pointed out to me that the community was involved in setting up the hospice in the first place. Can the cabinet secretary give the health board some guidance on how to deal with situations in which a community has set up a service that the health board subsequently wants to take over and change?

Nicola Sturgeon: A wealth of guidance is available to health boards on how to deal with proposals for service change. Since the Government took office, health boards have been under no illusion as to what is expected of them in terms of consulting and engaging with the public. I expect that to happen in the case of the proposals for the Cowal hospice as in the case of any other proposals for service change. The considerations are at an early stage and no decisions have been made. I encourage the members who have asked questions on the subject today to get involved with the health board and its partners and seek to influence those decisions, as is right and proper.

A80

9. Cathie Craigie (Cumbernauld and Kilsyth) (Lab): To ask the Scottish Executive what discussions it has had with Transport Scotland regarding compensation for those impacted by the A80 upgrade. (S3O-12865)

The Minister for Transport and Infrastructure (Keith Brown): There have been no discussions between the Government and Transport Scotland. As an agency of the Scottish Government,

Transport Scotland deals with all compensation matters on behalf of Scottish ministers.

Cathie Craigie: In the light of the minister's answer to a previous question, I suggest that he needs to have discussions with Transport Scotland as a matter of urgency, as a number of issues have been raised by the upgrading of the A80. In his previous answer, he indicated that a public contact number would be made readily available to people seeking information. If I had not intervened with his predecessor, a public contact number would not have been made available for the people who live along the A80 corridor.

I cite the example of Mr and Mrs Gordon, in my constituency.

The Presiding Officer: Can we just have a question please, Mrs Craigie?

Cathie Craigie: Yes. They were offered £4,000 in compensation by Transport Scotland. Unfortunately, one of them died and the offer has been reduced to £2,000. Will the minister intervene to ensure that my constituent is given the amount of money that he is due as a result of the impact of the upgrading?

Keith Brown: There is a good reason why ministers do not get involved in the statutory processes that have led to the compensation claim and award that Cathie Craigie mentions. I am happy to discuss that case with her more privately in another forum.

I visited the A80 this week. The new road will open to northbound traffic on Monday and to southbound traffic a week later. On the general point about public consultation, I was told by the contractors that there are extremely good relationships with local community councillors, who have praised the contractors for their public engagement, which Cathie Craigie will know about. They were also pleased with the progress that has been made on the road, which will open in advance of its timetabled opening and under budget.

Jackson Carlaw (West of Scotland) (Con): Does the minister regard the quite extraordinary illuminated sculpture on the A80 as a blight or a compensation?

Keith Brown: As someone who represents Clackmannanshire, which has four or five examples of the same type of structure by the same architect, I could not say otherwise than that it is a very attractive illumination.

The Presiding Officer: That concludes general question time. Before we move to the next item of business, I invite members to join me in welcoming to the gallery the Canadian high commissioner to the United Kingdom, His Excellency Mr James Wright. [*Applause*.]

First Minister's Question Time

12:00

Engagements

1. Iain Gray (East Lothian) (Lab): To ask the First Minister what engagements he has planned for the rest of the day. (S3F-2873)

The First Minister (Alex Salmond): Later today, I will have meetings to take forward the Government's programme for Scotland.

Iain Gray: As of Tuesday, 6,000 convicted criminals a year will escape jail because the First Minister pushed through legislation against short prison sentences. Kenny MacAskill has said that it is fine, because those convicted criminals are just "daft laddies". Does the First Minister agree?

The First Minister: First, let us have a look at the phrase "pushed through". This is a minority Government, which—as Iain Gray knows—has to appeal for support to gain a majority, particularly in legislative terms. The reason why the criminal justice system has been changed in Scotland is because a majority in this Parliament believed that that was the right direction to take.

At various times, Iain Gray says to us that we must follow the will of the Parliament, but what he means is that we must follow the will of the Parliament when it is convenient for him. Changes to other aspects of the justice system have, of course, been carried through by this Administration. The delivery of 1,000 extra police officers on the streets of the communities of Scotland was carried through with support from the Conservative party.

The significant point about the penal changes that have resulted in the lowest level of crime in Scotland for 30 years—whether it be the move to comprehensive and strong community sentences or the 1,000 extra officers on the streets of Scotland—is that none of the changes has been supported by the Labour Party.

Iain Gray: It is all very well having 1,000 additional police officers, but when they arrest criminals, what happens to those criminals matters. Last year, 736 of those 6,000 "daft laddies" were violent offenders, 148 were knife criminals and 17 were sex offenders. This year they will not go to jail at all; they will do community service. We read this morning that they might get "30 days' hard knitting". Can the First Minister tell me how many criminals who are given those arduous sentences ever even complete them?

The First Minister: It is not, as Iain Gray puts it, "all very well" that there are 1,000 extra police officers on the streets of Scotland; it is all very important that these officers are protecting people across the country. Not a single one of those officers would have been employed if we had listened to the Labour Party. It is also not the case that a 30-year low in recorded crime is merely incidental. For the first time in recorded crime statistics, the fear of crime is dropping across Scottish communities. My belief is that that is because of the additional officers that have been delivered by this Administration, not one of whom was supported by the Labour Party.

On the presumption against sentences of three months or less, that policy has gained the support not only of parties across this Parliament: we also see when we look down south to England that—if my memory serves me right—the new leader of the Labour Party said at, or around the time of, his party conference that when Ken Clarke brings forward proposals to avoid short sentences, the Labour Party should not show knee-jerk opposition. If Ed Miliband is not showing knee-jerk opposition to penal reform in the Westminster Parliament, why is it that all that Iain Gray has to offer week after week in this Parliament is knee-jerk opposition?

Iain Gray: What is important is that the justice system backs those police officers and backs the public. Even those who agree with the First Minister with regard to short sentences—I do not—would tell him that the policy will work only if the community justice system is working, too. The fact is that 40 per cent of those who are sentenced to community service do not finish their sentences. In some parts of Scotland, the figure is as high as two thirds. The community sentence system is not working, but the First Minister is cramming thousands more offenders into it. Everyone knows that many will get off scot free. That is why the First Minister is seen by so many as "Soft-touch Salmond".

Does the First Minister know how many times, under his Government, someone has to be convicted before they actually go to jail?

The First Minister: I point out to Iain Gray that he cannot just sweep away the fact that he believes that the 1,000 extra officers are not being backed up in the judicial system, for two reasons. One is that if it had been up to the Labour Party they would not have existed at all—they would not have been there to be backed up by the judicial system. Secondly, as we saw in the Public Petitions Committee's debate on knife crime, and in other evidence that has been submitted to that committee, that police officers such as John Carnochan—who said, "I've been a cop for 34 years"—support the direction of travel of this Parliament and this Government with regard to the judicial system.

We should judge these matters by results, and we have the ability to do so. The approach of this Government to crime and punishment in Scotland has delivered a 30-year low in recorded crime and 1,000 extra officers in the streets and communities of Scotland. It also recognises the futility of short sentences, after which the vast majority of offenders reoffend, and it recognises the hope that is represented by community justice, after which the majority of offenders do not reoffend.

The Labour Party's position is ridiculous and impossible and does not serve the people of Scotland.

Iain Gray: As ever, the First Minister has no answer to any of the questions. I have freedom of information figures that show that some first-time prisoners had 40 previous convictions. They had not not reoffended; they had reoffended 40 times before they went to jail. Hundreds of them had 10, 20 or 30 previous convictions before they ever faced jail. They do not go to jail, and some of them do not even turn up for community service, and all of that happened before the Scottish Government abolished thousands of short sentences. It is not right.

Does the First Minister understand that it is the law-abiding public who are being treated like "daft laddies" by him?

The First Minister: I believe that

"The Commission recommends that, if the Act"—

that is, the Custodial Sentences and Weapons (Scotland) Act 2007—

"is to be implemented, its implementation must follow the implementation of this Commission's other recommendations and the achievement of a reduction in the short sentence prison population".

That, of course, is a quotation from the report of Henry McLeish, the former Labour First Minister of Scotland.

We should compare the position of Henry McLeish—a former First Minister, who experienced these matters in office, saw the futility of short sentences and made a recommendation that was backed by a majority of this Parliament—with the position of Iain Gray, who has nothing constructive to offer and is left flailing about in the face of the fact of there being 1,000 extra police officers on the streets of Scotland who are delivering a 30-year low in reported crime, and of the progressive reform of the criminal justice system of Scotland is making this country a safer place, under this Government.

Prime Minister (Meetings)

2. Annabel Goldie (West of Scotland) (Con): To ask the First Minister when he will next meet the Prime Minister. (S3F-2874)

The First Minister (Alex Salmond): I hope to meet the Prime Minister in the next couple of weeks.

Annabel Goldie: Is 30 days' knitting a tough community sentence?

The First Minister: Annabel Goldie should have the flexibility to adjust her question after hearing Iain Gray's efforts. Of course, perhaps, after hearing the Labour leader, she thought that she could do rather better.

I believe in the reality of a 30-year low in recorded crime in Scotland and I believe that the reforms that were passed by a majority of this Parliament will further improve the criminal justice situation in Scotland.

Annabel Goldie: I point out a headline in a paper this morning: "Sentenced to 30 days' hard knitting". I inform the First Minister that two knitting needles, a ball of wool and a cup of tea are not a tough community sentence. In Scotland, we call that a knitting bee.

I have to give credit to the First Minister for at least acknowledging that, because of the Scottish Conservatives, we have delivered 1,000 extra police in Scotland, but the point is that the Scottish National Party is putting all of that at risk with its soft-touch-Scotland approach—more tagging, less jail, the failure to end automatic early release, and the scrapping of short prison sentences. Is not the reality that all the First Minister's tough talk about tough community sentences is just candy floss and flim-flam, and that under the SNP Government there is no such thing as a tough community sentence?

The First Minister: I suppose the real difficulty for Annabel Goldie and, indeed, for her back benchers is the recognition that Ken Clarke, as a Tory Secretary of State for Justice and Lord Chancellor in a coalition Administration south of the border, is now pursuing exactly the same policies—

Annabel Goldie: On a point of order, Presiding Officer.

The Presiding Officer (Alex Fergusson): We do not take points of order during questions.

The First Minister: I think that I understand why Annabel Goldie did not want to hear this point, but nonetheless—[*Interruption*.]

The Presiding Officer: Order.

The First Minister: I think the difficulty for Annabel Goldie is that a Tory Lord Chancellor in a coalition Administration is pursuing exactly the same policies against short sentences and in favour of community justice as this Administration is pursuing in Scotland. Why would that be the case if he had not analysed the position and come

to the conclusion that he should do that? Is he being overridden by the Liberal Democrats in the coalition or is he just a sensible Lord Chancellor who is trying to improve the justice situation in England, just as this Administration has pursued it in Scotland?

Annabel Goldie: As the First Minister knows, I am responsible for my party's justice policy in Scotland, and the First Minister is responsible for the justice system in Scotland. Is not it time that he started doing the job?

The First Minister: I think that this is a case of short memories, and not just of short sentences. At last week's question time, Annabel Goldie asked me about a policy that is being pursued by the coalition Government south of the border with regard to cancer drugs. This week, she is complaining when I refer to another coalition policy south of the border that includes the commonsense approach that short prison sentences do not work. They do not protect the public, they do not serve society, and that is why the Scottish Government's justice policies, which are supported by a majority of the Parliament, are the way forward for Scotland.

Secretary of State for Scotland (Meetings)

3. Tavish Scott (Shetland) (LD): To ask the First Minister when he will next meet the Secretary of State for Scotland. (S3F-2875)

The First Minister (Alex Salmond): I met the Secretary of State for Scotland yesterday at the economic summit between the three devolved Administrations and the United Kingdom Government.

Tavish Scott: Yesterday, the Scottish Government said that it would transfer social workers to the national health service under Government direction. The Government also plans to scrap local fire and police boards and to put them under Government direction. Council tax levels are directed nationally, school buildings have been given to a quango under ministerial control, and even local salt stocks for our roads are now decided nationally. Will the First Minister tell us whether there are any other areas of responsibility that he plans to remove from local government?

The First Minister: I cannot believe that Tavish Scott is actually disputing the effectiveness of having the resilience supply of salt stocks held nationally during the recent weather emergency in Scotland; nor, I hope, would he dispute the obvious advantage of having a resilience supply of vaccine for the flu virus being held centrally. Tavish Scott must understand that we judge such matters in terms of effective government and what delivers for the people of Scotland. In both of those examples, having that central resilience supply was obviously in the best interests of Scotland.

Instead of taking a predisposed position on these matters, will Tavish Scott try to address them in terms of what delivers the public services to which the people of Scotland are entitled?

Tavish Scott: I thought that I was asking the questions, not being asked them.

Surely, even after that question, the First Minister will concede that there is an element of chaos in the Government's plans for elderly people. Yesterday, Lord Sutherland, who reviewed free personal care a couple of years ago, said:

"The time for talking is over",

but in the same press release the Minister for Public Health and Sport announced the setting-up of a new group as a first step to beginning discussions. As we know, elderly people are still waiting for the care that they need, but today 38,000 social work staff who look after elderly people across Scotland cannot concentrate on their jobs because yesterday their futures were thrown into doubt by a footnote in a Government press release. When are those hard-working local staff going to get answers about their futures?

The First Minister: If I may say so, Tavish Scott made an error in not giving Lord Sutherland the benefit of quoting his full remarks. Let me do so, for the chamber. He said:

"Lead commissioning provides the best and quickest way of achieving an integrated care system, and I believe the Scottish Government's approach is the right one.

It avoids the need for new legislation and wholesale re-organisation, which means improvements can begin to be made straight away.

The time for talking is over. It is now time just to get on with it."

That is what Lord Sutherland said, in backing this Government's approach.

Elaine Smith (Coatbridge and Chryston) (Lab): As I have written to the First Minister on this matter, he will be aware that thousands of my constituents are protesting at the proposed siting in Coatbridge of a pyrolysis incinerator, which was refused planning permission by the council. Given that under the Town and Country Planning (Scotland) Act 1997 it is within Alex Salmond's Government's power to refuse the developer's current appeal, will he do so and put the interests of the people of Coatbridge before Shore Energy's private profits?

The First Minister: If Elaine Smith has been looking up the acts, she must know that I cannot give a judgment or determination on a matter of ministerial discretion in this way.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Trump?

The First Minister: If Mike Rumbles wants to raise other matters, he should catch the Presiding Officer's eye. He can then ask a question, to which he will get a robust answer.

Jackie Baillie (Dumbarton) (Lab): As the First Minister will be aware, the mortality rate for death from Clostridium difficile at the Vale of Leven hospital has been revised upwards. Instead of the 55 people affected and 18 deaths that were originally reported, the public inquiry is now considering 60 people affected and 38 deaths—a staggering number that confirms that this has been the worst outbreak in the United Kingdom. Does the First Minister agree that further steps need to be taken to ensure that C diff is recorded appropriately on death certificates? Is he able to advise the chamber whether he or the Cabinet Secretary for Health and Wellbeing has been told of the further delay to the conclusion of the public inquiry?

The First Minister: This independent public inquiry, which was established by the cabinet secretary, is live and on-going and must be given its full latitude to examine all the issues in this tragic and serious case. Although we accept that the public inquiry has that job and remit, I am sure that Jackie Baillie will be the very first to acknowledge that C difficile cases have been halved in Scotland, which is a welcome improvement in what is a tragic and difficult condition.

Scottish Council for Voluntary Organisations (Meetings)

4. Christine Grahame (South of Scotland) (SNP): To ask the First Minister what discussions have taken place with representatives of the Scottish Council for Voluntary Organisations, given the likelihood of job losses in the third sector due to budgetary constraints. (S3F-2878)

The First Minister (Alex Salmond): Christine Grahame will be aware of the importance that the Scottish Government places on our relationship with the SCVO. We are in regular contact with the organisation. The Cabinet Secretary for Finance and Sustainable Growth met it and a range of third sector organisations to discuss the independent budget review, and on 26 January officials attended the SCVO policy committee.

The Westminster cuts have had an impact across the third sector and we are committed to working with the sector to protect services wherever we can. I am pleased that the SCVO is well represented on the Christie commission, given the vital role that the third sector plays in providing vital services, especially for the disadvantaged.

Christine Grahame: The First Minister will be aware that, in England, citizens advice bureaux are being closed at a time when—as there is in Scotland—there is increasing demand for advice about debt, changes to the benefits system and eligibility for benefits, and homelessness. As CABx in Scotland are substantially funded by local authorities, will he enter into discussions with the Convention of Scottish Local Authorities on the matter, given that money that is spent on keeping CABx doors open is, in my opinion, spending to save by preventing ill health, family break-ups and loss of homes?

The First Minister: That point is hugely important. CABx provide a valuable service to communities and, indeed, to individuals throughout Scotland and I hope that members across the chamber will join me in putting on the record appreciation for their work.

The Scottish Government is working with local authorities on protecting services from the impact of the spending cuts as well as on other measures such as the increase in VAT, which will, of course, cost Scotland more than £1 billion over the next year. That is why the spending settlement with COSLA for local government for 2011-12 will see a reduction in revenue of only 2.6 per cent. The settlement is hugely difficult, but it is dramatically better than what is being experienced elsewhere in these islands. It is better than what local government south of the border and all the other portfolios that are covered by the Scottish budget, with the exception of the health portfolio, will receive. I believe that the health portfolio needs special protection.

Johann Lamont (Glasgow Pollok) (Lab): The First Minister has, of course, disregarded the fact that there was pressure on the sector before the coalition cuts came in. Those cuts are now compounding the pressures. He also disregarded the fact that local government may find its savings disproportionately through the voluntary sector. Is he aware of the concerns of those who represent workers in the voluntary sector not just about the huge pressure on those who face losing their jobs, but on those who will remain in post and will have to pick up extra responsibilities in order to deliver the services that they care about? Will he agree to meet representatives of voluntary sector workers and their unions to consider urgently what he can do to support them in these difficult times?

The First Minister: I have set out the regular discussions that we have. We have had discussions very recently, and I would be happy to meet the SCVO and associate unions at any time.

Johann Lamont slipped in the issue of coalition cuts. It is absolutely true that the coalition Government has introduced a budget for next year that involves £1,300 million of cuts in Scottish public spending, but there was, of course, £500 million of cuts in the year before last year—that is the reality—and we know from the acknowledgement by the Labour Party leader, Ed Miliband, that Labour was planning two thirds of the cuts that Johann Lamont now denounces. She should consider her questions and realise the full extent of the economic disaster into which the Labour Party led this country, and its consequences for public spending, which are bearing down on the voluntary sector and every public sector organisation in Scotland.

Hugh O'Donnell (Central Scotland) (LD): Given the First Minister's fulsome support for the voluntary sector and his recent meeting with the SCVO, does he want to comment on information that has been given to members? A document that they have been given says that the SCVO's

"vital work is being undermined by Scottish Government policies designed to protect the public sector."

Will the First Minister clarify how we will reconcile the commitment to having no compulsory redundancies in the public sector with the pressures that his Government's decisions are placing on the voluntary sector?

The First Minister: I said that Johann Lamont should recognise the Labour Party's part in the public sector squeeze in Scotland. It is time that Hugh O'Donnell recognised that he has colleagues in London who are leading the attack on public services. The Government's aim and ambition to have no compulsory redundancies is hugely important and vital for public services in Scotland. I also recognise the key role of the SCVO and the attendant voluntary organisations, which is exactly why they have been asked and have agreed to participate at the very heart of the Christie commission. That is the priority that we put on the role and performance of the voluntary sector in Scotland.

New National Examinations

5. Des McNulty (Clydebank and Milngavie) (Lab): To ask the First Minister, in light of reported comments from the Educational Institute of Scotland, whether the Scottish Government will delay the introduction of new national exams. (S3F-2892)

The First Minister (Alex Salmond): No. The advice of the curriculum for excellence management board, which includes, of course, the teaching unions, directors of education and the Scottish Qualifications Authority, is clear: the new qualifications are on track. Indeed, at its meeting on 16 December 2010, the management board explicitly recommended that there should be no delay and that the new qualifications be delivered on time in 2013-14. It should also be remembered that, despite the naysaying of doom-mongers, the new curriculum has been successfully implemented in every single secondary school in Scotland from August. That is a track record of achievement that gives confidence to teachers, parents and pupils alike.

Des McNulty: Scotland's schools have more than 3,000 fewer teachers now than they had in 2007. Officials worry that we could lose 900 more next year, which would bring the total of teachers' jobs lost under the Scottish National Party to 4,000.

On the curriculum for excellence, the issue is not whether the qualifications agency can deliver the exams, although they should have been delivered last June and were promised in October. Where are they? The issue is whether teachers have confidence in the exams and whether they believe that pupils could be disadvantaged because of the Government's mishandling of curriculum for excellence's implementation.

Given what the EIS has said, will the First Minister order his Cabinet Secretary for Education and Lifelong Learning to hold an urgent meeting with the EIS and the Scottish Secondary Teachers Association—which Mr Russell chucked off the CFE implementation board—to get the reforms back on track and do what is needed?

The First Minister: I have given the curriculum for excellence management board's view on implementation. I know that Des McNulty would not want to be counted among the doom-mongers whose forecasts have proven to be distinctly wide of the mark.

As for Des McNulty's first point, I know that he would want it to be on the record that class sizes are at a record low and that we are delivering a Convention of Scottish Local Authorities deal that includes a teaching place for every new teacher in Scotland in 2011. He would acknowledge that, despite the hugely difficult circumstances, we have by far the lowest teacher unemployment rate in these islands. If we can persuade Labour councils—which have the most deplorable record on employing post-probationers—to share the enthusiasm of the many councils that take a different approach, we will all be better off. The Labour Party implements locally what Des McNulty complains about nationally.

Glasgow Sheriff Court (One-stop Shop)

6. Bill Aitken (Glasgow) (Con): To ask the First Minister on what basis the Scottish Government decided to establish a one-stop shop

at Glasgow sheriff court, increasing liaison between community service and social work staff. (S3F-2887)

The First Minister (Alex Salmond): I was delighted that Bill Aitken welcomed that new initiative in the letters page of *The Herald* on Tuesday this week. I know from his letter that he agrees that the Scottish Government has delivered measures to make community sentences tougher, faster and more effective. The pilot that the Cabinet Secretary for Justice announced last Sunday will receive funding of £175,000 from the Scottish Government. It will help to ensure that offenders who are, at Glasgow sheriff court, sentenced to unpaid work will begin their sentences immediately.

When the cabinet secretary launched the new community payback order on 1 February, he announced that £4 million will be available from proceeds of crime funds to support unpaid-work projects across Scotland and to help to ensure that benefits are delivered to communities, as well as punishment to offenders.

Bill Aitken: The prospect of the Scottish Government making community service tougher is remote, to say the least. Will the First Minister accept that we genuinely regard the measures as common sense? They will introduce some immediacy for community service, which I hope will reduce the appalling breach rate to which Mr Gray referred.

At the same time, will the First Minister recognise our disappointment that, despite the resolution by the majority of the Parliament on 9 May 2009, no moves have been made to establish a community court pilot in the sheriff court complex in Glasgow along the lines of the highly successful New York city model?

The First Minister: I was about to welcome Bill Aitken to the enlightened majority in the Parliament. I know that it is difficult for him to strike a balance between avoiding losing the reputation on crime that he has built up over the years and acknowledging—as he did in *The Herald*'s letters column—that new initiatives are working and making community sentences operate faster, which I am sure he accepts.

Bill Aitken should continue the route of travel that he has taken. The majority in the Parliament would welcome him into the ranks of the enlightened majority, who believe that our policy will make criminal justice more effective not just for offenders but—far more important—for communities, which are entitled to be paid back for the distress that offenders have caused.

Robert Brown (Glasgow) (LD): Does the First Minister agree that major gains for public safety will result from the speedier and more effective community orders such as those that are assisted by the project in Glasgow? Community payback orders typically cost £1,000 to £4,000. Does he agree that the proper way forward is to sort the problems with community payback orders and not to bang up people unnecessarily by way of yet another prison disposal that costs £40,000 a year and that has twice the reoffending rate?

The First Minister: I agree. I believe that Robert Brown was part of the majority in the chamber who saw the logic and sense of the proposals that are now being unveiled. I welcome his support in that regard. I am certain that this is the right direction of travel for criminal justice in Scotland. Those of us who believe that do so from a solid platform: the lowest rate of recorded crime for 30 years in Scotland; the highest public satisfaction and lowest fear of crime ever in Scotland; and the 1,000 extra officers who are patrolling the streets of Scotland and making our communities safe.

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer, you ruled earlier that the leader of the Conservative party should keep her point of order until after questions had been taken. You said that that was because in this chamber we do not accept point of orders during question time. Is that a convention or a standing order?

The Presiding Officer: It is a convention, Ms MacDonald.

12:31

Meeting suspended until 14:15.

14:15

On resuming—

Scottish Executive Question Time

Education and Lifelong Learning

Pupil Support Assistants

1. Lewis Macdonald (Aberdeen Central) (Lab): To ask the Scottish Executive whether it considers that pupil support assistants make a valued contribution to children's learning. (S3O-12881)

The Minister for Children and Early Years (Adam Ingram): Yes.

Lewis Macdonald: I am delighted that Mr Ingram and I are in such agreement. Given that PSAs are usually women, that they are not highly paid and that they are often resident in disadvantaged areas, does the minister agree that any council that is considering large-scale redundancies among PSAs is under a statutory duty to carry out an equality impact assessment of cutting such posts? If he does agree with that, will he or his colleague Mr Russell ensure that Aberdeen City Council, which is planning some 290 further redundancies among pupil support assistants, carries out such an equality impact assessment before any redundancies are made?

Adam Ingram: I am glad to say that the situation in Aberdeen City Council seems to have moved on. The member will be aware that the SNP council group has brought forward proposals to withdraw the threat of wholesale compulsory redundancies. I hope that we can move forward, build better relationships with staff and unions and maintain key services for the people of Aberdeen, including having pupil support assistants in the classroom.

Further Education

2. Duncan McNeil (Greenock and Inverclyde) (Lab): To ask the Scottish Government how it is supporting the provision of further education. (S3O-12884)

The Minister for Skills and Lifelong Learning (Angela Constance): The Scottish Government has provided record levels of funding for colleges. Funding for the current academic year is up 6.9 per cent on last year, reflecting our wish to make available more learning opportunities, especially for young people.

Duncan McNeil: James Watt College, which is based in Greenock, is facing a shortfall of up to £5.7 million in its annual budget, which is jeopardising more than 100 jobs and putting a question mark over the availability and quality of student provision at a time of high demand. Does the minister recognise that every pound that is taken from the further education budget leads to an increase in youth unemployment, damages our skills agenda and—as the colleges are important employers in communities such as Inverclyde—increases overall levels of unemployment? Can she confirm that all those consequences were taken into account before the FE budgets were cut?

Angela Constance: I thank the member for his concern for his local college. I appreciate that there are difficult times ahead for James Watt College. Colleges are, indeed, having to make tough decisions given the onslaught of cuts that the Scottish Government is having to make courtesy of the United Kingdom Government. I regret the prospect of redundancies at James Watt College and I share the view that was expressed by the college's principal that, where possible, those will be by voluntary arrangement as opposed to compulsory, although I appreciate that there is, as yet, no guarantee of that.

I fully understand the contribution that our colleges can make to our economic recovery and hoped that the member would welcome the fact that the Scottish Government, in collaboration with Scotland's Colleges, has managed to protect the core funding that is available for FE places.

Kenneth Gibson (Cunninghame North) (SNP): Will the minister confirm not only that the teaching budget at James Watt College has increased substantially over the past four years, but that the number of student places there has increased from 13,000 to 16,000 in the same period and that student numbers will remain at that level next year?

Angela Constance: Like other members, Mr Gibson is a doughty campaigner for his local college. The figure for the teaching grant and fee waiver was in excess of £27.5 million in 2006-07 and just under £30 million in 2010-11. I think that Mr Gibson is correct in saying that the number of student places at James Watt College will rise from 13,000 to 16,000, but I am happy to confirm that to him in writing.

Further and Higher Education (Courses)

3. Tom McCabe (Hamilton South) (Lab): To ask the Scottish Executive what reassurance it can give that maintenance of core places in higher and further education will also fully maintain the diversity and volume of courses available to students. (S3O-12880)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): We agreed with the college and university sectors to preserve the number of core places precisely to protect the widest opportunities for students. The basis of that agreement is set out in my letter of guidance of 17 November 2010 to the Scottish Further and Higher Education Funding Council.

Tom McCabe: I appreciate that answer. However, my concerns are around the introduction of subjectivity or elitism in the definition of core places. There are many courses available, particularly at college level, that allow young people to pursue a range of careers that are beneficial and serve the community and the young people well for the rest of their lives. I hope that the minister can provide some reassurance that that type of course—and such diversity of courses—will remain in place at the current volumes for students with varying interests and varying levels of ability.

Michael Russell: I appreciate that the member has a long-standing interest in this issue and that he made those points during the process of budget scrutiny. It is important to maintain the diversity of provision in further and higher education in Scotland. These are difficult financial times—my colleague has just made that point—but with those difficulties we must try to preserve the best possible approach to further and higher education. In using the words "best possible", I certainly agree that we need to avoid elitism and ensure that there is a choice available that really does make a difference to the life chances of young people.

Peter Peacock (Highlands and Islands) (Lab): Mr McCabe's question referred to the diversity of courses available to students. Is the minister aware that such diversity is threatened in the Highlands in relation to specialist traditional music? That specialist work is undertaken at a centre created in Plockton to serve the whole of Scotland, for which the Scottish Government has given additional grant in the past. What is the minister's view on that matter? What action does he believe that it might be important to take to ensure that that excellent provision is maintained?

Michael Russell: I am very concerned about this issue and I am grateful to Mr Peacock for drawing it to my attention, as others have done over the past few days. There is a very strong indication of considerable concern throughout Scotland. The centre of excellence at Plockton is an example of something very special indeed and it would be enormously regrettable were we to lose it.

The funding for the centre is included in the local government settlement for Highland Council. Any decisions made by Highland Council would have to take account of that fact. I hope that Highland Council will be prepared to discuss the matter with me and perhaps with my colleague Fiona Hyslop, who has an interest in it, as soon as possible. I certainly give a commitment to the Parliament that we wish to do so. I had a very brief word with the convener of Highland Council yesterday at another event and I think that he is also willing to discuss the matter. I think that this issue unites the parties in the chamber, so I am happy for our discussions to be supported by Mr Peacock and other members who have a strong interest in the issue.

School Estate (Glasgow)

4. Mr Frank McAveety (Glasgow Shettleston) (Lab): To ask the Scottish Executive what resources it has made available to fund school estate investment in Glasgow since 2007. (S3O-12879)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The total capital support made available to Glasgow over the period 2007-08 to 2010-11 for investment in capital projects totals £792 million, of which £306.7 million is available for non-specific investment in projects such as the school estate.

Mr McAveety: Can the cabinet secretary name a school investment that has been commissioned and built from resources available from the Scottish Futures Trust in the Glasgow Shettleston constituency since 2007?

Michael Russell: A very substantial number of proposals have been brought forward in Glasgow and elsewhere by this Government and through the mechanisms to which the member refers. The reality is that by the end of this session, we will have been involved in the procurement of more than 300 new schools. That is a larger number than the previous Administration planned to procure, had it won in 2007. I am pleased with what we have done and we can do more. We will do more in the next parliamentary session, because we will bring even more resource to taking Scottish schoolchildren out of unsatisfactory accommodation—just as we have done more of that than our predecessors.

The Deputy Presiding Officer (Alasdair Morgan): Question 5 was not lodged.

Education (Capital Expenditure)

6. Dave Thompson (Highlands and Islands) (SNP): To ask the Scottish Government what capital expenditure provision it has made for education for 2011-12. (S3O-12850)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The 2011-12 draft budget includes £162.1 million of capital

expenditure for the education and lifelong learning portfolio. In addition, up to a further £100 million of capital investment in education facilities will be supported via the non-profit-distributing programme announced in the budget.

Dave Thompson: Highland Council has made major improvements to Lochaber high school in two phases in recent years. However, with the completion of phase 2, progress is in jeopardy, as the council has made no provision in its capital plan for the completion of the third and final phase. That will leave a large part of the school in a very unsatisfactory condition. Will the minister encourage Highland Council to finish the job so that Lochaber's schoolchildren do not have to be educated in substandard accommodation?

Michael Russell: I am certainly opposed to children being educated in substandard accommodation and I am pleased that this Government has done so much to change that situation in Scotland.

Funding for completing the Lochaber high school refurbishment is, of course, first and foremost a matter for the council, which can identify money from the resources that are available to it. I understand that Highland Council remains committed to completing the work and that it seeks to identify further resources from a number of funding streams within its revised capital programme. It is investing significant sums in its school estate.

Certainly, where there are problems, we would wish councils to treat them seriously and we would like this issue to come to fruition as soon as possible.

Ken Macintosh (Eastwood) (Lab): Can the cabinet secretary say whether the £120 million—I think that that was the sum—that he mentioned in relation to next year's capital expenditure includes funding for the first tranche of schools that the Scottish National Party announced? I should point out that one of those 55 schools is Eastwood high school, in my constituency. Is any money earmarked for that school next year? Has any money changed hands yet? Has East Renfrewshire Council been given any money to build that school?

Michael Russell: I know that Mr Macintosh will welcome the fact that Scotland's schools for the future school-building programme remains on track to deliver 55 new or refurbished schools and that no school project has been cancelled. The programme will now be delivered via a mixture of capital grant and funding from the investment pipeline. In all those circumstances, we are pleased that, despite the extraordinary pressure on capital that has come from the coalition Government—a squeeze that would have been imposed by the Labour Party, if it had been returned at Westminster—we are still able to move forward in that regard.

I would be happy to meet Mr Macintosh to discuss a specific project in his area, should he wish to do so.

Budget for Bursaries Campaign

7. Patrick Harvie (Glasgow) (Green): To ask the Scottish Executive what its response is to the National Union of Students Scotland budget for bursaries campaign. (S3O-12898)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): I am positive in relation to trying to support students in every way possible. In the current academic year, we are providing a record level of support for further education student bursaries. Our £84 million represents an increase of 6.2 per cent in cash terms on last year. Our draft budget for the academic year 2011-12 protects that level of investment, at a time when Scotland's block grant is being cut by £1.3 billion.

Patrick Harvie: The cabinet secretary refers to an increase in cash terms, but I cannot be the only member of the Parliament who is being bombarded with correspondence from concerned students who are pointing out a real-terms cut of more than £1.7 million by next year and are projecting a shortfall of £14 million in relation to the need that exists.

Even if the Government is unwilling to raise revenue to protect public services, does the cabinet secretary agree that, given that times are tight, there is no better time than now to move away from a short-term, first-come-first-served approach to bursaries and move towards an approach to bursaries that is based on a projection of need and an attempt to provide long-term support for students who have that need?

Michael Russell: I have sympathy for the idea that we should change the way in which we provide student support. Indeed, the green paper on higher education that we published in December addresses that issue. The National Union of Students and others were involved in considering new options. I am open to reform and to what Mr Harvie refers to in terms of finding a better way forward.

The issue of support for students is important. If we do not support students adequately, the opportunity that they have to take their education through to fruition is diminished. However, I would like Patrick Harvie to acknowledge that this Government has done considerably more than its predecessors in that regard and is still doing more than is done south of the border. For example, we

have not abolished the education maintenance allowance, which has been abolished elsewhere.

We are working hard to provide as much as we can. I remain focused on seeing what resources we could still bring to the table on this issue. I am not insensitive to the needs of students and I am constantly looking for opportunities in this area.

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased that the cabinet secretary agrees with Mr Harvie that perhaps the current model of college bursaries needs to be examined to ensure that college students have confidence in the system and are properly supported. Does the cabinet secretary agree that the yearly negotiations and the annual running out of money is becoming all too familiar and is not helping Scotland's students?

Michael Russell: Yes, I agree that we should look for better ways to do this, and that is why the green paper refers to better ways to do it. I say with great respect to Claire Baker that I am open to that, that I am looking for ideas, and that my predecessor increased resources year on year. Our predecessors in Government did not seem to be so concerned with the issue. She might reflect on that before she attempts to criticise.

Further Education (Student Numbers)

8. Mary Scanlon (Highlands and Islands) (Con): To ask the Scottish Executive what the planned growth in student numbers in further education is for 2010-11. (S3O-12825)

Of course, it should be 2011-12.

The Minister for Skills and Lifelong Learning (Angela Constance): In the current academic year, the Scottish Further and Higher Education Funding Council has asked colleges to deliver similar activity targets as in 2009-10. Colleges that serve areas of increased unemployment were given additional funds by the funding council and European structural funds with a view to their growing activity above their targets.

Mary Scanlon: Given the potential increase in student numbers at Inverness College at the new Beechwood campus, I ask the minister for a commitment that the Government funding will be put in place urgently in order to take advantage of the European Union money that is currently available, and also to ensure that the new Beechwood college campus will be ready by 2014.

Angela Constance: I am aware that Mary Scanlon has a long association with Inverness College. I hope that she will take some reassurance from the fact that in our draft budget we have indicated our intention to fund improvements to the college estate, which includes Inverness College. She will be well aware that decisions on the funding of individual colleges are for the Scottish funding council rather than for ministers, but ministers are encouraged by the college board of management's decision to choose Beechwood rather than Longman Road as its preferred site for the redevelopment of the college.

Des McNulty (Clydebank and Milngavie) (Lab): I accept that it is the responsibility of the funding council rather than ministers to decide on funding allocations to individual further education institutions, but has the funding council gathered information about the implications for jobs and course provision of the Government's reduced funding allocation to further education colleges for the coming year? Do we have any information or advice on the implications of the decisions that ministers intend to impose in the budget next week?

Angela Constance: I assure Mr McNulty that the Scottish Government is, as ever, vigilant to any potential repercussions across the college sector. We are living in unprecedented times. Indeed, he will be familiar with the fact that the Government is facing an unprecedented cut of £1.3 billion. I hope that he will at least join me in acknowledging that, despite the difficult times, our colleges are rising to the challenge and are committed to protecting student numbers. There are indeed difficult decisions across the college sector, but the Government will continue to work collaboratively with every college the length and breadth of Scotland.

The Deputy Presiding Officer: Question 9 has been withdrawn.

Les Compagnons du Devoir

10. Linda Fabiani (Central Scotland) (SNP): To ask the Scottish Government whether it is aware of the French approach to training for trades as represented by the organisation, les Compagnons du Devoir. (S3O-12834)

The Minister for Skills and Lifelong Learning (Angela Constance): Oui, madame. A representative of Compagnons du Devoir met Historic Scotland's director of conservation on 12 November. Historic Scotland found it to be a useful meeting as the Compagnon scheme shares characteristics of Historic Scotland's craft fellowship scheme, and both parties agreed to follow up the meeting.

Linda Fabiani: Does the minister agree that, as in parts of mainland Europe, sectoral craft skills should be held in as high esteem as those of the professions? Does she agree that colleges such as South Lanarkshire College in East Kilbride are to be commended for their interest in alternative ways of addressing perceived skills shortages and

that the French concept of apprenticeship and training is worthy of consideration?

Angela Constance: The member is correct to say that the French concept is worthy of consideration. It has some interesting aspects. I would say that the strength of our modern apprenticeship scheme is in the employed status of apprentices, but nonetheless I commend the interest of and the work that is going on in the colleges in her area.

Linda Fabiani might be interested to note that Historic Scotland is already involved in the development of traditional craft skills. An example is the funding of nearly £2.5 million from the Heritage Lottery Fund to roll out across Scotland the national progression award in the conservation of masonry.

Europe, External Affairs and Culture

Antonine Wall

1. Cathy Peattie (Falkirk East) (Lab): To ask the Scottish Executive what progress has been made in developing facilities for the Antonine wall since it was awarded world heritage site status. (S3O-12891)

The Minister for Culture and External Affairs (Fiona Hyslop): The inscription in 2008 of the Antonine wall as a world heritage site was a springboard for partnership working between the five local authorities, heritage bodies, museums and local community groups to promote the wall. The partners have recently made progress on several fronts. In December, they appointed a full-time co-ordinator to drive the implementation of the management plan; an interpretation plan based on an evaluation of visitors' perceptions and requirements is now complete; an access plan will be delivered in March; and Learning and Teaching Scotland's Scotland's history website was launched last October. The partners remain committed to delivering future projects and, although all of this has to take account of the current financial climate, we expect them to come forward with sustainable action plans to be delivered as resources become available.

Cathy Peattie: I welcome that response and echo the minister's view that partnership is the best way forward. I also thank Friends of Kinneil for its work on promoting the world heritage site. Although I look forward to hearing more about the timescales involved, I am also interested in finding out what the Government is doing to support and promote tourism, education and so on with regard to the site.

Fiona Hyslop: Government support, including Historic Scotland funding, is fundamental to all the actions that I have mentioned. I, too, recognise and support the work of Friends of Kinneil. After all, this is as much about the involvement of voluntary groups as it is about the work of statutory agencies. There is a real energy about what we are doing. Great opportunities are emerging across the range of authorities, and we see our responsibility as co-ordinating the different local authorities and agencies.

Jamie Hepburn (Central Scotland) (SNP): The minister will recall that in this chamber I suggested the development of a Roman heritage centre near the Antonine wall. In the absence of such a centre, however, I wonder whether she can set out the efforts that are being made to ensure that young Scots can find out about and engage with their Roman heritage.

Fiona Hyslop: I know that members throughout the chamber are enthusiastic about having a physical centre to promote Roman history in Scotland, but there are other ways of having centres of excellence. Indeed, Learning and Teaching Scotland's Scotland's history website contains great opportunities for teachers to look into Caledonian, Pictish and Roman history; extensive information about Roman sites in Scotland; resource packs; audio and video clips; and databases of information from the National Museums of Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland, the Hunterian museum and the British museum. However, I hope—indeed, I am sure—that the enthusiasm that has been expressed throughout the chamber for exploiting all the opportunities can be realised not only in local campaigns for physical centres but in promoting what is already available on websites.

Alex Johnstone (North East Scotland) (Con): I am tempted to ask, what did the Romans ever do for us?

What lessons have been learned from the awarding of world heritage site status to the Antonine wall that might benefit other communities that are looking to achieve the same, including the campaign group in Arbroath that would like Arbroath abbey to be elevated to that level?

Fiona Hyslop: The member is behind the times; I used his quotation about the Romans when we last discussed this issue.

There are important lessons to be learned, not least the importance of bringing different agencies together. As we have seen in Edinburgh, as well as with the Antonine wall, efforts to win world heritage site status are not the possession of any one group or campaign. I know that there are many campaigns for different heritage sites but, as the member knows, I cannot express a preference for any of them. However, he is absolutely right and I am very keen to learn lessons from the

experience of Edinburgh, the Antonine wall and other areas for any new heritage site that might be secured in Scotland.

Malawi

2. David Stewart (Highlands and Islands) (Lab): To ask the Scottish Executive how links are being strengthened between Scotland and Malawi. (S3O-12894)

The Minister for Culture and External Affairs (Fiona Hyslop): Scotland has a special link with Malawi, which remains central to the Scottish Government's international development policy. As part of a programme of events in November 2010 to mark the fifth anniversary of the signing of the co-operation agreement between Malawi and Scotland, the Scottish Government held a trade event to promote trade links with Malawi and a networking event for current Scottish Government Malawi grant holders to promote links between projects and the sharing of best practice. We also provide funding for networking organisations such as the Scotland Malawi Partnership, which helps organisations in Scotland to build and strengthen links with their counterparts in Malawi. In February last year, I visited Malawi to see how Scottish Government funding is making an impact. I met ministers and officials from the Government of Malawi during my time there to strengthen the already strong Government-to-Government relations.

David Stewart: Will the minister join me in welcoming to the gallery Constance Kilimo? She is the first parliamentary intern from the National Assembly of Malawi.

The minister will, of course, be aware of the recent very successful and constructive cross-party visit to Malawi. There are challenging issues there, such as the conditions in the women's prison in Chichiri. Will the minister undertake to discuss with the Scottish Prison Service how to export best practice in areas such as training and prison visiting?

Fiona Hyslop: I am pleased to welcome Constance Kilimo, and I was pleased to take part in activities during the previous Commonwealth Parliamentary Association Scotland branch visit in February last year to build links at the parliamentary level. I am keen to support such links, and I look forward to meeting members of the more recent cross-party delegation to find out lessons.

I reassure David Stewart that one of the strands of our relationship with Malawi is governance issues, and work with the Scottish Prison Service has already taken place. Michael Matheson raised the issue with me previously. As far as I recall, some of the programme funding supports work in prisons. Obviously, we would be interested to hear further about the member's concerns and whether anything that relates to the on-going programme can be done to help colleagues in Malawi. We recognise that there are big challenges, but we have made progress in some areas. We are already addressing conditions in prisons as part of our support programme.

Maureen Watt (North East Scotland) (SNP): Presiding Officer, as you know, I was part of the delegation that returned from Malawi this week. I was privileged to be part of that delegation. Mrs Constance Kilimo, who is in the gallery, travelled back with us. She is on a pilot programme in which she will receive direct support and training in priority areas that will best aid the running of the National Assembly of Malawi. She is a special assistant to the clerk of the National Assembly of Malawi. Does the Scottish Government have any similar schemes for Government officials from Malawi? If not, will the minister consider such schemes in the future?

Fiona Hyslop: It is clear that there are frequent meetings that relate to the oversight of the agreement and frequent exchanges, and there is a lot of co-operation between policy officials in the Scottish Government and the Malawi Government. We think that the relationship between CPA Scotland and the National Assembly of Malawi is a strong way of building on the Government's strands; indeed, I have discussed that with colleagues previously. We as a Government are keen to help to promote funding from different sources for that agreement.

If the Malawi Government makes requests for more exchanges on a more permanent basis, we will be happy to entertain them, but it is important that we recognise that our co-operation agreement with the Malawi Government is based on there being an equal relationship and that we would not want to impose exchanges that it did not request.

Liam McArthur (Orkney) (LD): Like Maureen Watt, I welcome Constance Kilimo to the gallery. I thank her and all those who hosted the delegation to Malawi last week. The visit was memorable.

The minister laid particular emphasis on the importance of Government-to-Government and Parliament-to-Assembly relationships, but does she agree that many of the relationships between community groups, school groups and others in Scotland and counterparts in Malawi predate the co-operation agreement? For example, there are links between the presbytery in Thyolo and the presbytery in my constituency and between the St Magnus festival and Limbe choir in the south of Malawi. What efforts is the Government making to support those links in a way that makes people feel that they are part of a wider effort in

deepening and broadening the ties between our countries?

Fiona Hyslop: Liam McArthur is right to focus on our people-to-people links and strengths. When I talk to other Governments and when I have discussions in the European Union, people are struck by the strength of the people-to-people and community-to-community relationships, which must be recognised and supported and which go back decades, if not longer. Even now, we probably underestimate the number of school-to-school and church-to-church relationships.

We support the Scotland Malawi Partnership and we encourage people who have relationships with Malawi to be part of that organisation, which provides the opportunity for voluntary organisations to network and share their experience and practice. That is one way in which we support the people-to-people link with Malawi.

Elaine Smith (Coatbridge and Chryston) (Lab): The initiative between North Lanarkshire Council and Shire Highlands education division in Malawi is the only local authority partnership to be recognised by the Department for International Development and the British Council. It involves a large cluster of school partnerships that are focused around Coatbridge and Chryston. What practical and immediate financial support can be offered to help to build capacity for that beneficial and sustainable initiative?

Fiona Hyslop: North Lanarkshire Council has developed that partnership itself and is to be commended for it. Much of our support for the Network of International Development Organisations in Scotland and for non-governmental organisations that work in the area relates to capacity building and learning lessons from elsewhere, as Elaine Smith knows. Many of the positive links concern teacher training and have been beneficial both ways.

The Government can support several avenues. There is a bidding round. In 2010-11, £5 million of Scottish Government funding—way above the baseline funding of £3 million to which we are committed—was spent on supporting initiatives in Malawi.

It is important that we hear about and support good initiatives. Many of them are conducted on a tendering basis. We would need to think carefully about what North Lanarkshire Council was doing and to avoid displacing what is obviously a good scheme.

Ted Brocklebank (Mid Scotland and Fife) (Con): As another of the members who have recently returned from Malawi, I commend to the minister the twinning arrangements that are being trialled with 10 MPs from Malawi. I was fortunate to have a valuable meeting with my partner, John Hiwa, who is the member for Ntcheu West; other MSPs met their partners. Does the minister agree that extending that twinning scheme would only strengthen local links with Malawi and contribute to increased mutual benefits for both countries in the partnership?

Fiona Hyslop: On my visit to Malawi in February last year, I was pleased to meet some MPs who planned to be part of the twinning arrangement. It is important that the twinning arrangement succeeds. I know that demand for it exists. One member of the Malawi Parliament—an energising woman from Chiradzulu—was keen to join when I visited, but the initial capacity of 10 had been reached.

I am pleased that Ted Brocklebank has promoted the scheme, which he should talk about with his colleagues. I am interested to hear about members' recent visit, as I suspect are other members. I encourage the cross-party delegation to invite members to a meeting to hear about the visit and to encourage those who are elected in May to engage in the twinning arrangement.

The Deputy Presiding Officer: Questions 3 and 4 were not lodged and question 5 was withdrawn.

Celtic Connections

6. Bill Wilson (West of Scotland) (SNP): To ask the Scottish Government what the economic impact is of traditional cultural events such as Celtic Connections. (S3O-12854)

The Minister for Culture and External Affairs (Fiona Hyslop): From festivals to ceilidhs, traditional cultural events and activities the length and breadth of the country play a valuable economic role and a vital cultural role. Celtic Connections, which concluded last weekend, had another successful year, with ticket sales topping 100,000 for the fourth year running. Last year, the event's economic impact study concluded that the festival was worth £11.9 million to Scotland's economy in 2010.

Bill Wilson: How does the Scottish Government assess the non-economic contribution of such cultural events to Scotland?

Fiona Hyslop: The measure of cultural events is the demand for tickets and the attendance figures. The festival involved a range of cultural contributions, international stars and talented people. It is important to recognise that, when we pull in the likes of Sir Tom Jones, Rosanne Cash, Justin Currie and the Waterboys for sell-out concerts, the measure is audience participation.

It would be dangerous for any culture minister to judge the quality of cultural performances. Bill

Wilson will respect the fact that to do so would be to go beyond my responsibilities as a minister.

The Deputy Presiding Officer: Indeed. The question is on the economic impact.

Rob Gibson (Highlands and Islands) (SNP): The minister will be aware of the large number of young musicians from Plockton high school's national centre of excellence in traditional music who have played at Celtic Connections and who are now making their way in the world as professionals. Has she had discussions with Highland Council on the threatened closure of this national treasure?

The Deputy Presiding Officer: I did not catch that, but I suspect that it was not relevant.

Fiona Hyslop: I did. It was to do with traditional music. I am happy to answer the question.

The Deputy Presiding Officer: No. We will move on. Question 7 is from Mike Rumbles.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): It is a relevant question, Presiding Officer.

Alex Johnstone (North East Scotland) (Con): We will be the judge of that.

Fair Trade (Purchasing)

7. Mike Rumbles (West Aberdeenshire and Kincardine) (LD): To ask the Scottish Executive what discussions the Minister for Culture and External Affairs has been involved in regarding how its purchasing decisions support fair trade for farmers and workers in the developing world. (S3O-12908)

The Minister for Culture and External Affairs (Fiona Hyslop): I have not directly been involved in discussions regarding the Scottish Government's purchasing decisions in relation to fair trade. Responsibility for the issue lies with the Cabinet Secretary for Finance and Sustainable Growth.

The Scottish Government remains committed to raising awareness and promoting the fair trade agenda in Scotland. My officials work closely with colleagues in the Scottish procurement and commercial directorate to ensure that fair trade options are made available within existing contracts, while still complying with European Union procurement legislation.

Mike Rumbles: As we know, public sector purchasing decisions have an impact on the lives of producers in developing countries. Including fair principles in all stages of procurement would make a material difference to those producers. Will the minister inform the chamber—perhaps after discussions with the Cabinet Secretary for Finance and Sustainable Growth, whom she said knows the answer to the question—about the proportion of Government spending on goods and services that includes fair trade principles? It is important not only that we have a statement saying that we support fair trade but that we know how we will do that. We need to know what proportion of spending is involved.

Fiona Hyslop: I will try to tease out the issue, Presiding Officer. I do not have information to hand on the proportion that is involved. I will see whether we can locate that.

In terms of EU procurement, it is important to stress that similar restrictions are placed on specifying fair trade as are placed on specifying Scottish producers. The member asked about building in fair trade principles. We are not allowed to put the principles of fair trade within procurement policy. I can, however, send the member guidance that was issued in 2005 and supplemented in 2009. We have to work within EU state aid and procurement rules in supporting fair trade. As a Government, we encourage and support our suppliers in that regard. I will get as much information as I can. Certainly, in Scottish Government buildings and in what we provide, we can ensure that procurement achieves fair trade supply. I hope that the member recognises some of the challenges in delivering that.

Linda Fabiani (Central Scotland) (SNP): As everyone knows, Scotland is working towards becoming a fair trade nation. I am sure that the minister agrees with me and many in the grass-roots fair trade movement that that will not be truly meaningful until we get beyond consumables and into issues such as procurement. Public bodies are the first part of that, after which we can encourage the private sector. Given that the United Kingdom is the member state in Europe, will the minister make further representations to the UK Government to look seriously at how we can best influence European procurement rules to allow real fair trade in our dealings in Scotland, the UK and across Europe?

Fiona Hyslop: Yes, I will. If, as I am hoping to, I have the opportunity to speak directly to the European Commissioner for Development, I will raise the issue with him, to try to overcome some of the constraints that we currently have to abide by.

China Plan

8. Gavin Brown (Lothians) (Con): To ask the Scottish Executive what plans it has for implementing its China plan in the next 12 months. (S3O-12826)

The Minister for Culture and External Affairs (Fiona Hyslop): As members may be aware,

today marks the start of the Chinese new year—the year of the rabbit. I therefore want to take the opportunity to wish everyone a happy Chinese new year. I would also like to put on record this Government's appreciation of the valuable support that we have received from Consul General Madam Tan Xiutian, who will be moving diplomatic posts later this month.

The success of Vice Premier Li Keqiang's visit to Scotland last month is a clear demonstration of the value of our strategic engagement with China, as are the benefits that are accruing to Scotland from the First Minister's meeting with Vice Premier Li on 9 January. That is strong evidence of the fruits of our long-term commitment. In implementing the China plan, we will take forward a number of initiatives that were discussed during the visit.

Gavin Brown: The minister's answer focused more on what happened in the year of the tiger. Can she tell us what specifically will happen over the next 12 months?

Fiona Hyslop: A number of exciting initiatives are under way. There is support for the whisky industry, which now has access to the Chinese market. We are already talking to salmon producers about the opportunities for trade links that exist. On education, we are discussing further roll-out of Confucius institutes. On tourism, there is a fantastic opportunity for discussions with the Chinese Government about supporting parents of the many Chinese students who stay here. Edinburgh zoo's connection to conservation work with pandas is another exciting development. The member should not worry—there are plenty of opportunities going forward, in the year of the rabbit, to strengthen the relationship.

Certification of Death (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-7821, in the name of Shona Robison, on the Certification of Death (Scotland) Bill.

14:56

The Minister for Public Health and Sport (Shona Robison): I am pleased to open the debate on the general principles of the Certification of Death (Scotland) Bill. Before I turn to the substance of my speech, I want to thank a number of people. First, I thank the organisations and individuals who helped to shape the legislative proposals and those who provided evidence to the Health and Sport Committee—our proposals have benefited from their expertise and experience. Secondly, I thank Christine Grahame and the Health and Sport Committee for their detailed scrutiny of our proposals and considered conclusions in the stage 1 report. I stress that I will continue to listen to and work with stakeholders when taking forward the proposals in order to ensure that we have a sound and workable system.

The bill will introduce a single system of independent scrutiny of medical death certificates that will apply to deaths that do not require a procurator fiscal investigation. It will replace the current crematoria medical referee system and associated forms and will, therefore, abolish the cremation fees that families pay to doctors. As well as removing historical differences between cremation and burial that were introduced when medicine was less advanced, the new system will provide us with a robust and modern approach to scrutiny of death.

As the committee acknowledged in its scrutiny, a death certification system cannot prevent criminal activity of the kind that was carried out by Harold Shipman, but our proposals have been designed to deter malpractice and to provide public reassurance. They have been developed with the people who will be most affected in mind. Foremost of those are bereaved families, to whom we owe a duty to ensure that the new system minimises distress, avoids undue delay to funerals, and is affordable. Consequently, the reforms will result in a financially sustainable and proportionate system.

At the heart of the new system will be an emphasis on improving the quality of death certification. Improved quality of information on cause of death will help us to understand the distribution and determinants of mortality and to

identify at-risk populations. It will inform quality improvements in national health service services and provide better information to help us to deal with outbreaks of infectious disease.

The provisions will create the posts of medical reviewer and senior medical reviewer, who will be independent medical practitioners. Their key function will be to review death certificates. The bill provides powers for the reviewers to scrutinise an agreed number of death certificates each year. Those arrangements have been discussed in detail with the committee. Medical reviewers will undertake 1,000 comprehensive, random, real-time level 2 reviews and they will carry out additional targeted reviews, when they believe that there may still be cause for concern, after discussion with the certifying doctor. Crucially, the bill will also for the first time empower individuals to request a review, where they have concerns. Taken together, the package of reviews will amount to around 2,000 cases a year. Furthermore, medical reviewers will randomly scrutinise 25 per cent of all deaths—around 13,500 in all—by way of shorter level 1 reviews.

Medical reviewers will also assist families and authorise funding for post mortems in certain circumstances if the death has occurred abroad, the cause of death is unknown and the funeral is to take place in Scotland.

I now turn to the key issues raised in the stage 1 report. The report highlights a number of matters on which I have been asked to report back to the Health and Sport Committee. It also contains some specific recommendations for amendments, which I have considered. I will, of course, consider those points carefully and sympathetically and report back in detail to the committee shortly.

I am grateful for the committee's recommendation that the general principles of the bill be agreed. I am also grateful for its general welcome for our proposals to reform the death certification system and to align procedures between burial and cremation. I also welcome its response to the additional proposals that I outlined during stage 1.

The appropriate level of scrutiny has clearly been a key consideration for all of us. We have worked hard with the committee to try to reach a satisfactory conclusion. I will clarify what the proposals entail and reflect on the reasons for reviewing the current system.

Under the current system, in which up to 3 doctors countersign cremation forms and receive a substantial fee from families, there is no guarantee of detecting malpractice. We know from discussions with many stakeholders and from the conclusions of the independent review group—which examined the subject in recent years—that existing checks may, in some cases, be perfunctory. In addition, quality can be poor and there is no systematic approach to improving quality nationally.

We should not forget that the failings of the current system led the previous Administration to establish the independent review group and to the group's recommendations for change. Our proposals, as they will be amended after stage 1, will deliver a deterrent effect, be proportionate and deliver on quality.

On deterrence, level 1 reviews will maintain the checks by a second and now fully independent doctor for 25 per cent of all death certificates, with an option for each of those reviews to be increased to a more detailed level 2 review if required. Level 2 reviews will provide detailed checks of 1,000 certificates. Importantly, those checks will be entirely random and doctors will not be in a position to predict when their certificates will be scrutinised.

Additional targeted scrutiny will also be carried out where medical reviewers have identified issues locally, based on analysis by the new posts of statisticians who will examine all death data. Further reviews will also be initiated by families or other interested persons.

In fact, our proposed reviews, combined with the number of cases that are reported to the procurator fiscal each year, will mean that around 50 per cent of deaths in Scotland will be subject to more robust scrutiny than under the current system.

The bill's provisions on quality will establish a quality improvement programme to change behaviour and practice around death certification. The programme will place the medical reviewers' reviews within an audit cycle of continuous improvement.

Informed by the evidence that has been gained from a number of sources—including NHS deaths data, General Register Office for Scotland statistics, national statistics and patterns of death produced by the national mortalities statistician, random reviews and interested party reviews—the reviewers will carry out interventions ranging from targeted reviews, to critical clinical governance links with NHS boards, to training. Those interventions are intended to follow up concerns and bring about changes in behaviour and practice—some immediate, others over longer periods of time—and will be monitored so that they can be adjusted over time.

The 1,000 random level 2 reviews will provide a Scotland-level benchmark and year-on-year monitoring information that will allow us to gauge progress in driving up quality standards for death certification. The number of reviews that will be

conducted remains flexible and can be changed upwards or, possibly, downwards in the light of the evidence that we gather from early implementation of the new system, including the proposed test sites.

Our proposals on proportionality will maintain an appropriate balance between cost and scrutiny. Let us not forget that any increase in scrutiny will have an impact on costs. The proposed system is affordable to the public and I have agreed with the committee that the Scottish Government will bear the cost of the additional reviews that we discussed at stage 1. That amounts to around £600,000 in addition to the set-up costs that we already intend to fund.

The anticipated fee charged to the public is £30. For those who currently pay cremation fees, which is around 60 per cent of the public, that represents a substantial saving of about £120. I appreciate the committee's positive comments about the setting of the fee and the abolition of the higher cremation fee in favour of a lower universal fee for all deaths. We will continue to work constructively with stakeholders on developing an effective fee collection mechanism.

The proposed legislation has been designed to require an annual report to Parliament on the activities and performance of the medical reviewers. That will allow for a transparent examination of the operation and impact of the new system by all interested parties, including colleagues in the Parliament, and for adjustments to be made to the level of scrutiny, as required. I have also committed to report back to the Health and Sport Committee following the operation of the test sites before full roll-out. That will take account of stakeholder input and will feed into the monitoring and evaluation plans.

The committee considers that faith groups' needs—particularly the needs of the Jewish and Muslim faith groups—for a quick funeral should be specifically reflected in the bill. I assure members that we have carefully considered the issue and have met faith groups' representatives. We have considered the committee's point thoroughly. The expedited procedure that is included in the bill is intended to benefit a range of individuals who need to arrange a funeral quickly. That includes faith groups, although it will cover other circumstances.

I welcome the committee's attention to the impact of the proposals on certain remote and island communities. I confirm that it is absolutely not my intention to disadvantage remote communities. We will examine that aspect specifically during the test-site phase before implementation. We will also consult funeral industry representatives from remote areas regarding the specific issues that are raised.

The committee also raised the question of where responsibility for checking certificates that are associated with deaths overseas should lie. Having reflected on that matter and listened to stakeholder concerns about the proposals in the bill to give that function to superintendents at local burial grounds and crematoria, I will amend the bill at stage 2 to require the medical reviewers office to carry out that function instead. I hope that that will address the concerns of stakeholders and the committee.

I welcome the committee's comments on training and education. The bill seeks to improve existing training requirements and we will be examining the issue of supervision and training in more detail.

On electronic certification, I recognise the potential benefits that it could bring and I will further explore the feasibility of introducing such a system. Legislation already exists to allow for the introduction of electronic medical certificates of the cause of death, should implementation be desired.

The committee expressed a concern that the number of medical reviewers might not be adequate. We believe that our figures are robust, and they have been revised to take account of the additional proposed reviews. However, the number of reviewers is not specified in the bill and can therefore be adjusted. Furthermore, in the year before implementation, we will run test sites, a key evaluation aim of which will be to provide more detailed information on the duration of reviews. That will let us know how many staff are required.

I move,

That the Parliament agrees to the general principles of the Certification of Death (Scotland) Bill.

15:08

Christine Grahame (South of Scotland) (SNP): I speak as convener of the Health and Sport Committee on yet another cheery topic for the committee. Going from patients' rights and palliative care to certification of death with, for some, a detour through end of life assistance was a logical but grim direction of travel—that is the popular phrase, I think. The process was lightened by gallows humour off camera, none of which I can repeat on the record for reasons that members will understand. Suffice it to say that the deputy convener's sonorous baritone voice seemed most appropriate to the business at hand.

Speaking of business, I turn to our stage 1 report. It is a bit difficult when speaking as convener if a minister has addressed in advance many of the things that the committee put in its stage 1 report. Perhaps we should turn round the procedure so that the committee gets to speak to

its report first and the minister then addresses our concerns. However, that is for another day.

The bill was introduced on 7 October 2010 and was referred to the Health and Sport Committee. We launched a six-week call for written evidence, during which we received 39 written submissions. We began taking oral evidence on 24 November, when we heard from the Scottish Government's bill team officials. We went on to take evidence from witnesses representing the University of Dundee, the Information Services Division of NHS National Services Scotland, the Association of Anatomical Pathology Technology, the Scottish Pathology Network, the Federation of Burial and Cremation Authorities, the National Association of Funeral Directors, and from the chief registrar of the City of Edinburgh Council. We concluded our oral evidence taking on 15 December, when we heard from the Scottish Council of Jewish Communities, the Muslim Council of Scotland and, last but not least, the Minister for Public Health and Sport.

On behalf of the committee, I put on record our thanks to everyone who provided evidence, especially the people who braved the inclement weather and lengthy and testing journeys in December—through blizzards or black ice and sometimes both—to give oral evidence to the committee. I also thank the minister and her officials for the evidence that they provided.

As the minister said, the bill's overall purpose is to introduce a new system for the scrutiny of death certificates in Scotland. The primary objective is to increase the quality of, and confidence in, the system of death certification.

The bill will introduce a new system in Scotland for scrutiny of medical certificates of cause of death, which will be useful in public health planning. It will create the posts of medical reviewer and senior medical reviewer, whose functions will be to review the accuracy of death certificates. It will provide for the form of MCCDs to be amended to show additional relevant medical information, for example to indicate whether it is safe to dispose of the body by cremation. It will make it an offence in Scotland to dispose of a body or body parts without authorisation.

The bill also provides that if a person has died outwith Scotland and the body is to be cremated in Scotland, medical reviewers will determine whether it is safe to cremate the body. In a case in which a person dies outside Scotland and the body is to be buried or cremated in Scotland but no cause of death is available, the bill provides that a medical reviewer may assist with arranging a post-mortem to establish the cause of death.

The committee published its stage 1 report on Friday 21 January. Although we supported the general principles of the bill, we sought more clarity from the Government on several areas. To some extent the minister has pre-empted what I will say in that regard.

The bill will introduce arrangements for a sample examination of death certificates by medical reviewers on a random basis. We welcomed the steps that the minister announced to increase the random sample size—indeed, we welcome much that she said today, which we will consider. We were concerned that there should be rigorous statistical analysis of the sample, to create confidence in the system.

As a result of the evidence that we received, we were concerned that the proposed new system for scrutiny of death certificates could prove to be less rigorous than the system that is currently in place. In the light of recent controversial cases, the most notable of which is the Harold Shipman case, the committee thinks that it is essential that the public have confidence in any system for examining and scrutinising causes of death. That is vital, in the context of the identification of possible cases of medical negligence or criminal activity, and in the context of accurate recording of public health data.

The committee thought that the proposed new scrutiny system could be improved through the use of modern technology to collect, collate and analyse information on causes of death. We were surprised—that is the diplomatic word—to learn that the Government is not taking this opportunity to specify a modern electronic system for death certification in Scotland. Instead, the bill calls for the continuation of a paper-based system.

An electronic system would have obvious advantages. There could be prompts and guidance for completion of death certificates, and the need for repeated data entry would be reduced. There would also be benefits from having a readily accessible audit trail. The committee did not make this point, but the activities of a Shipman, who I understand regularly moved practice and area, thereby covering his tracks, would be more readily detectable, because the electronic database would surely uncover a suspicious pattern. In the light of the benefits of an electronic system, the committee strongly urged the Scottish Government to provide for the use of such a system for death certification before national roll-out. We accept that it would not be possible to use such a system in the pilot.

The committee was anxious to ensure that the new system for death certification would not give rise to undue delay for grieving families who must make funeral arrangements. Such delays could present issues for various faith communities and for remote communities, and would potentially

cause difficulties in relation to organ donation. The bill should be amended to clarify such matters. I think that the minister is addressing the issue.

Another area of concern that emerged from the committee's scrutiny related to the role of inexperienced junior doctors in signing death certificates. To ensure the accurate recording of causes of death, the committee thought that a doctor should be required to attain a specified level of experience before he or she is considered eligible to perform that function. In the absence of any oversight of that process by an experienced consultant, junior doctors should not be allowed to sign a death certificate without having completed appropriate training. I am sure that the committee will consider what the minister has said on that today.

The committee welcomes the provision in the bill to strengthen the current procedures for dealing with circumstances in which a death occurs outside Scotland. However, under the current proposals in the bill, examination of the relevant paperwork and certificates provided by the authorities in the country where the death occurred would fall to staff of the crematorium or cemetery here in Scotland. As only a small number of such cases occur each year—the Government estimates the figure to be around 250—the committee felt that the assessment of the validity of such documentation should be carried out centrally by the Scottish Government. I note the minister's comments in that regard, which we can consider.

On the financial aspects of the bill, the committee welcomes the abolition of the higher fee that relates to the disposal of a body by cremation, which currently applies in about 64 per cent of cases, in favour of a lower and universal fee that will cover all cremations and burials in Scotland. The committee also supports the Government's original policy intention that any new system of death certification should be self-funding; I note that the minister reinforced that intention today.

We noted the rationale for giving the responsibility for collecting the fee to registrars, but we acknowledged the concerns that their representatives raised on that issue.

I welcome the opportunity to debate these important issues, and I look forward to hearing contributions from other committee members in developing the general concerns that I have highlighted.

15:16

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The bill is important, as much of the legislation on burial and cremation is more than 100 years old. Although it was the Shipman inquiry that led to the substantial revision that the bill proposes and to the revision in England, it was increasingly evident that this area of Scots law was no longer fit for purpose.

Today, there are many fewer post mortems, which are the most accurate form of diagnosis, although stillbirth remains one of the areas in which that process is frequently recommended to ensure a clear understanding of cause. Moreover, we are in the early stages of a new era of non-invasive post mortems, which may make a major contribution to accurate diagnosis in the future.

We know that the accuracy of existing medical certificates of cause of death is not great, although the minister's suggestion that old age was never acceptable as a diagnosis hugely irritated my colleague Dr McKee; I am glad that that slur on his—and indeed my—past certification was later corrected by officials.

Evidence on the current system pointed to significant levels of inaccuracy. Professor Fleming said in columns 3752 and 3754 of the Health and Sport Committee *Official Report* that in the 62 per cent of disposals that took place by cremation, the required reviews to be undertaken by two further independent doctors resulted in some 20 or 30 post mortems through the procurator fiscal, but more importantly resulted in 15 per cent of certificates being "fine-tuned". That amounted to 4,500 cases.

Dr Colin Fischbacher from the Information Services Division indicated that he has to contact doctors about 2,000 MCCDs annually, which is around 4 per cent of total deaths. I found it disturbing to learn for the first time that those doctors were not obliged to respond to the request for further information, so that needs to be addressed. Despite all that, however, it is agreed that the current system—and indeed any system—could not have prevented Shipman from killing hundreds of patients over the past quarter of a century.

Regrettably, it has taken a long time to go through this process in Scotland. It began in 2005, with a group reporting three years later in 2008 and a consultation, which led to the bill, in 2010. When the committee began to consider the matter, it was quickly established that the priorities included the need to retain public confidence, about which we must be very clear. Another issue, which the Government has highlighted, is the need for quality and accuracy.

We need a modern system that has some chance of providing Scotland today with legislation that will stand the test of time—if not 100 years, then a reasonable time—but that was not contained in the original bill. I welcome the

interaction that is already occurring between the Government and the committee, which has resulted in some improvements. Nevertheless, the removal of the three-doctor review on cremation and its replacement with a two-level review system as originally proposed is wholly inadequate. Around 500 random reviews, and a further 500 reviews that were either targeted or resulted from interested person requests, would have resulted in only 1,000 level 2 reviews, which is 2 per cent of deaths. Some of those reviews could be retrospective, taking place up to three years after death, which is not exactly an immediate response.

The increase to 2,000 level 2 reviews, along with an increase to 25 per cent for level 1 reviews, is excellent. As the committee report says, that is a step in the right direction. We have no idea, however, where that figure comes from, and it contrasts with the English proposal to have reviews in 100 per cent of cases—which I acknowledge will be far more expensive. Our system has to be proportionate, but it must be driven by public confidence, and it cannot be driven solely by short-term cost considerations. It must be recognised that all the experts agreed, as I have mentioned previously, that no system could totally eliminate criminal activity.

The absence of a requirement to examine the body is still a matter of some concern, and we might need to make that a requirement for cremation if it is not already provided for.

If the Government's other main intention is to improve the quality of the MCCD, it is extraordinary that it has not considered moving to an electronic system from the very start of the process. That we are now going to rush into having paper test sites and will then probably have to consider using further test sites with an electronic system is frankly a sign of some timidity and lack of vision.

Let us consider some small elements that would improve our health care system, but that have not been mentioned—the minister can correct me on that. The inclusion in the MCCD of ethnicity was considered at the joint cross-party group meeting by the racial equality in Scotland and mental health groups last night, and that would help us in our understanding of some of the premature death outcomes among ethnic minority groups.

The automatic requirement to include the community health index number—the CHI number—would allow for data linkage in a way that is crucial for determining a number of epidemiological factors. At least in the hospital and care-home settings, the requirement to say whether there is a presence or absence of health care-acquired infection would improve the quality of outcome data substantially.

As the committee convener mentioned, there is an issue around the experience of the signing doctor. The current system means that 34,000 of the MCCDs that are signed in hospital are probably being signed by an FY2—a foundation year 2 doctor—or another inexperienced junior doctor. It is appropriate that that should be part of their training, but as things stand 22,000 of those cases would be reviewed by a doctor of at least five years' experience, because of the cremation process. In my view the MCCD must be signed only by a doctor who has completed a module of training specifically on death certification. If an FY2 signs it, it should be countersigned by a consultant.

Moreover, there should be a feedback system to ensure that, as part of their training, all specialists and general practitioners have some of their certificates reviewed automatically at level 1. That might require a greater focusing of level 1 prescribing. All of that will be much easier if the MCCD is electronic.

I do not have time in this opening speech to review a number of other important issues, including post mortems ordered by the family, the disposal of body parts and foetuses, the certification of the absence of devices that could cause dangerous explosions at cremation, expedited MCCDs for faith groups, the implementation of the eventual act for remote and rural communities, overseas deaths and the whole financial approach, but I know that other members will cover those areas.

Labour supports the bill at stage 1.

15:23

Mary Scanlon (Highlands and Islands) (Con): I appreciate the timetable for dissolution in March, but in my view it is not good practice when committee members and those who are speaking in the debate do not get an opportunity to see or hear the Government's response to the committee's stage 1 report until the minister speaks at the start of the debate. That system might suit the Government, it might suit our timetable and it might suit officials, but it certainly does not enhance the democratic process or the debate.

When the Certification of Death (Scotland) Bill came to the Health and Sport Committee for scrutiny I thought that it would be uncontentious, that it would probably be fairly technical and that it was likely to pass all stages without hitches or criticisms. I could not have been more wrong.

The policy memorandum cites the

"need to examine the processes governing death certification following the inquiry into the case of Dr Harold Shipman."

At the very least, I expected proposals for a more robust system of death certification than is currently in place. It is only right to put on record that it was funeral directors who raised concerns about the deaths of elderly people under Dr Shipman's care.

Professor Stewart Fleming from Dundee stated with regard to the bill:

"I am not convinced that it will necessarily improve accuracy on the medical causes of death. I am even less convinced that unnatural deaths will be identified as a result of it."—[*Official Report, Health and Sport Committee*, 1 December 2010; c 3750.]

He said that, under the proposals, a doctor would be checked on every five to 10 years.

Ishbel Gall expressed her concerns about a body not being examined by even one doctor before the medical certificate of cause of death was issued.

The National Association of Funeral Directors said that the bill, as introduced, would mean that the system would be not nearly as robust as the one that we have in place at present, and that it would be nowhere near as robust as the system in England and Wales.

Given that the certification of death sets out to confirm the fact of death, to confirm the cause of death for input into health care planning, and to detect and investigate unnatural death, the concerns that were raised in evidence are very worrying indeed. When I asked Professor Fleming whether there would be more accurate information on the death certificate as a result of the bill, his response was "I do not believe so". There will be no improved input into health care planning. That is well outlined in the Health Committee's stage 1 report.

The committee welcomed the increase in the sample size for review to 4 per cent, but that falls well short of the 10 per cent that is said to be necessary if there is to be a realistic chance of errors being identified. I acknowledge the points that the minister made today, but there is a lack of experience and training. That and other issues were well covered by Dr Simpson; I have no doubt that we will return to them.

As a Highlands and Islands MSP, I am concerned that there seems to be very little comprehension of the difficulties that are faced by remote and island communities, which could lead to potential delays in certification and review.

Other issues that were raised in the committee's stage 1 report relate to organ donation and bodies that have been donated for medical research.

The minister addressed some of the concerns that were raised by the Association of Anatomical Pathology Technology, but the association still states its concern that there will be less scrutiny than there is at present when the deceased is to be cremated. With 62 per cent of deceased persons being cremated, that is a notable concern. Given the large number of cremations, there does not seem to be a system of identifying and removing implanted devices such as cardiac pacemakers, which must be removed prior to cremation. Currently many of those devices are discovered after the MCCD is issued by the second medical practitioner after reading the medical records or examining the deceased.

The Scottish Pathology Network still contends that the new death certificate should bear two signatures for level 1 reviews, and it notes that the level 2 reviews are still considered to be too low.

I will reflect on the minister's statements today and I am sure that many of the witnesses will keep a watchful eye on the bill.

In this age of technology, it is quite ridiculous that the idea of using electronic death certificates was first raised by Richard Simpson. That is a reflection of the poor standard of the bill. I hope that the Government has heard all the significant criticisms and that it will respond to them with amendments at stage 2 and stage 3. We support the general principles of the bill, while acknowledging that the Government and the bill team still have much work to do.

15:28

Ross Finnie (West of Scotland) (LD): The prospect of being able to take part in the scrutiny of a bill such as the Certification of Death (Scotland) Bill will almost undoubtedly guarantee that the number of candidates who offer themselves for election to the Parliament in May will reach record levels.

As Richard Simpson said, this is a serious debate. The certification of death is an important matter. The legislation on it is extraordinarily old and, in many ways, not fit for purpose.

The changes were driven by both a recognition of that and an element of the Shipman inquiry. I am bound to say that we accept the Government's proposition that no system will deal with the particular perfidy of Dr Simpson—sorry, Shipman. I repeat, Shipman. [*Laughter*.]

Ian McKee (Lothians) (SNP): He said it.

Ross Finnie: I hear Dr McKee trying to correct me again.

The important point is that, in all walks of life where there are attempts by some perverse purpose to subvert a system, there needs to be a system of checks and balances. Therefore, I hope that the Government is not reading into the

committee's and parties' criticism of the level of check and balance some view that we aspire to eliminating the chances of a Shipman-type situation. That is not what we are saying; we are saying that we should concentrate on the checks and balances.

The minister mentioned in her opening remarks her pleasure that there is a sense that we want to accept the harmonisation between the systems for burial and cremation. In accepting that, I direct her attention to much of the evidence in which many of the witnesses stated that, if the Government wants to harmonise the two systems, it should be moving towards the degree of certification, check and balance inherent in the cremation system, not the other way. If one supports the harmonisation, one does so not on the basis of moving towards the burial system but to be aware of the other.

The difficulty is that the Government proposes other fundamental changes in the training, preparation and standards that it expects the medical profession to reach. That is a question of assessing risk. I want to make an important point to the minister. The evidence led to the committee by Dr Thomas, which is quoted in paragraph 28 of the committee's stage 1 report, was that there might be a requirement for 10 per cent of certificates to be checked. That is contrasted with the fact that, even on the basis of the Government's revised plans, a rate of around 4 per cent would be reached.

I do not want the minister to believe that I am advocating that she has to go to a rate of 10 per cent, because the 10 per cent figure is based on an existing system with the existing level of training and everything else. I believe that the committee, the political parties and, more important, the public would like a better statistical analysis of the confidence that the Government wishes to claim to have in the system.

In other words, to put that in simple terms, Dr Thomas was of the view that on the existing system and with existing methodology the Government would have to get the rate of checks to 10 per cent. I am not saying that the Government has to get to 10 per cent; I am saying that, given the changes that it is recommending, including in training, and the different system, it ought to be able to indicate to Parliament the degree of comfort that it is deriving and the statistical basis for that. That would be enormously helpful in resolving the real difficulties and reservations that have been expressed by committee members and by every speaker in the debate from the political parties so far.

That is the major issue. Richard Simpson raised a number of other issues. It was good of Mary Scanlon to give Richard Simpson credit for proposing an electronic system, but I am bound to say that in its report in October 2007 the burial and cremation review group stated at paragraph 24:

> "It was considered by all that change was indicated to the current death certification process in Scotland, not only as an outcome of the Shipman Inquiry, but to reflect modern society, facilitate electronic transfer and storage and use of data".

Even the review group suggested that electronic storage of data was in its thinking. That point is a major concern.

I am pleased to hear the minister's response on the change in who is responsible in relation to deaths overseas and the other changes that she has mentioned, which we can reflect upon. Those matters are all manageable and can be addressed. However, the one thing that the general public are looking for is something that they can point to as a level and degree of public confidence in the system. I regret to say that, as things stand, that question has not been satisfactorily answered. I believe that it can be answered, but it needs to be answered before we go much further.

The Liberal Democrats will, however, support the bill at stage 1.

15:35

Ian McKee (Lothians) (SNP): I welcome this long-overdue reform of the arrangements concerning the certification of death in Scotland. I comment on the bill not only as a member of the committee that has scrutinised it, but as a person who has signed scores, if not hundreds, of death certificates as well as cremation forms B and C.

The original driver for change in this field was the events surrounding the Harold Shipman case, but I share the Government's belief that we cannot guarantee to prevent the criminal actions of an intelligent but psychopathic doctor, although electronic record keeping and careful surveillance could possibly detect such actions at an earlier stage. Several goals have subsequently become apparent. The Government sensibly wishes to initiate a system that is affordable and simple, that improves the quality and accuracy of medical certification and that provides improved public health information and clinical governance. Let us consider how those objectives have been met, and I will express some genuine but remediable concerns.

The proposed system is certainly much less costly for the 62 per cent of Scots who are cremated. In place of the cremation certificate combined fee of £158, the cost has been reduced to £30. Members will know that I have never been regarded as an apologist for the British Medical Association—indeed, that body has been the only organisation to threaten to sue me in my time in

Parliament. However, having been on the receiving end of lawyers' fees of £220 an hour plus VAT, I believe that the sum of £73.50 for an experienced professional to take evidence from the doctor who is signing the medical certificate, interrogate those who have been looking after the deceased in his or her final days and travel to a chapel of rest or mortuary to view the body is a relative bargain. The fee of £30 must be even more acceptable. That sum is less acceptable, of course, if the deceased is to be buried, as there is no charge for that at present; however, it fades to almost nothing in comparison with the total cost of a funeral these days.

Let us consider the quality and accuracy of a medical certificate. Here, two issues are at stake. The first issue arises if a non-recognised term such as asthenia is used by the certifying doctor. Such a term cannot be codified and is useless for the purpose of another objective—to improve public health information—although the proposed medical reviewers can follow up such indiscretions and have them corrected. The second issue is much more complex. All the wording on a certificate may be totally correct for coding purposes but still get the cause of death completely wrong. That may be unavoidable, especially when the number of post-mortems that can be carried out is falling year by year. When an elderly, frail person gets weaker and dies, an accurate diagnosis of cause of death is often impossible, yet something has to be put on the certificate. Alternatively, the error may be due to clinical incompetence or inattention to the deceased's history on the part of the certifying doctor.

Some of that can be picked up by another doctor. The committee heard evidence from Professor Fleming of Dundee University that, every year, about 30 cases of unnatural deaths in Scotland are detected only at the stage when the second part of the cremation certificate is completed. He cited the case of an elderly lady whose cause of death was initially stated to be bronchial pneumonia, only for the second doctor to unearth the fact that she was slowly dying in hospital as the result of a road accident—a difference of some public health significance. So, having at least a second doctor to complete a certificate has value.

We should contrast what happens now with what is proposed. Today, the 62 per cent of us who are cremated do not go to the furnace until three doctors have signed the necessary certification and the process always involves an impartial doctor who quizzes usually those who were present at around the time of death. Only one doctor signs for a burial, but with a burial exhumation is a possibility if there are subsequent doubts as to the cause of death.

What is proposed in future is that up to 4 per cent of deaths will be intensively investigated, 25 per cent will have the certifying doctor quizzed over the telephone by a medical reviewer and, by the minister's estimate, 50 per cent of all deaths will be certified only by a single doctor—perhaps even one who is relatively junior and who might not even have seen the body after death. However, there is the safeguard that a doctor or doctors suspected of failing may have all his or her deaths subjected to selective scrutiny. We must decide whether that system, while undoubtedly less expensive overall, is more likely to achieve the stated objective of more accurate medical certificates of higher quality.

Of course, an important function of medical reviewers will be to provide training and guidance to those completing medical certificates. A problem to be overcome here is that there are about 20,000 doctors in Scotland with this potential responsibility. Paragraph 3 of schedule 1 states that any function of a medical reviewer may not be delegated by healthcare improvement Scotland, yet it is obvious that most of this function must be delegated to the postgraduate deaneries. Will even they have the time and resources to complete satisfactorily this huge task?

Those are some of the issues that come to mind when considering the bill, which I strongly support in principle. I will listen to the minister's response with interest.

15:41

Rhoda Grant (Highlands and Islands) (Lab): This was not the most gripping of bills, but it is safe to say that it is one that will affect us all eventually.

The bill seeks to change the process under which death certification is carried out. As the minister said, the work towards the bill was instigated as a result of the Shipman inquiry and the need to try to provide more robust checks. However, witnesses told us that, if anything, the bill will give less protection.

Evidence also stated that the sample to be reviewed was not of any statistical use and would act only as a deterrent rather than provide adequate scrutiny—even though the Government has stated that it will raise the sample size to 4 per cent. In evidence we were told that a sample of 10 per cent would be required to pick up any anomalies.

The policy memorandum stated that the average time to organise a funeral is around seven days and that, therefore, there is ample time to carry out the review without delaying the burial process. However, that does not take account of social customs or religious beliefs that

dictate a much quicker burial. The Jewish and Muslim communities require burial to be on the day of death if at all possible. Their formal grieving process cannot start until the burial has taken place. Therefore, any delay will lead to further distress.

The Government responded to those points by saying that medical reviewers would have the flexibility to fast-track the process to deal with those issues. In response to that, we have had further written evidence from the Scottish Council of Jewish Communities, which suggests some fairly straightforward remedies that would speed up the process. It has asked that the bill be amended to require a presumption that registration take place in parallel with a review. It would be for the medical reviewer to state if that was not the case.

The council also asked that it be clear in the bill that the expedited procedure permits disposal as well as registration. That way, funeral directors would begin their work immediately. Otherwise, they would wait until the body was released for disposal before making arrangements, which would build in a further delay.

The council states that there should be an out-of-hours service and that adequate cover should be available when the reviewer is attending to their training duties. It went on to quote a case where there was a delay in burial due to a registrar being unable to register a death timeously because they were taken up with other duties—I think that they were conducting weddings on that day—which meant that the funeral was delayed, which caused the family further distress. Our laws need to be sensitive to those needs.

In our rural and island communities, there are customs that require rapid burial on a timescale of two to three days after death. The deceased's body is normally brought home, where it remains until the funeral. In some communities, family and friends are able to view the body at this time, which is essential to them in their grieving process. If there was a delay in burial, the body would need to be stored in refrigerated conditions. That poses two issues. First, it would mean that the bereaved could not take the remains home, which would give rise to distress. Secondly, as Ishbel Gall from the Association of Anatomical Pathology Technology—that is hard to get my tongue round at this time of night—pointed out, there are very few mortuaries in remote and rural communities, and where they exist they are not likely to be refrigerated. If storage is not available locally, bodies need to be kept some distance away. With regards to island communities, that could culminate in delays to funerals, if weather conditions delay the movement of the body, and it would add to funeral costs and arrangements.

Delay can also be caused by access to a medical reviewer. Their numbers are limited and it is unclear where they will be situated. If every island group were to have its own reviewer, few would be based in the centres of population. If they are not based on islands and in rural communities, what happens when a body is randomly selected for review? In normal circumstances, the reviewer would have to make travel arrangements to get to islands, which can be challenging for a range of reasons, but would probably take longer than two to three days, which is the normal timescale for burial in those communities. We should also remember that flights and ferries can often be full in the summer, because of holidaymakers, or cancelled or delayed in the winter, because of adverse weather conditions.

A process must be put in place that deals with all those issues but which is still able to deliver the same level of protection to the communities that are affected. I welcome the minister's commitment to considering the matter and working with those communities to find solutions to those issues.

There was some debate about who would collect fees for the process. The general consensus was that registrars should collect the fees, because that is the one duty that is carried out in relation to death. However, registrars were not keen on that. They felt that that could delay registration of death, because deaths are not always registered by family members or people with an interest in the estate. Quite often, a neighbour, a funeral director or a police officer registers a death, and they are not in a position to pay the fee. The Government needs to consider what can be done in such a situation to ensure that people do not put off registering deaths.

On the whole, this is a technical bill, which means that the community is dependent on experts who give evidence. There are tensions in the bill between keeping down costs and providing a robust service. It is clear that the bill will impact on people when they are especially vulnerable, so we need to ensure that what is in place is sensitive to community traditions as well as to religious beliefs. I believe that there is a will to get it right, and I hope that the Government will take those suggestions on board.

15:47

Stewart Stevenson (Banff and Buchan) (SNP): I find myself at both an advantage and a disadvantage in this debate, as I am a doctor's son and therefore have much of the language of the medical profession but almost none of the understanding. As my father once said, that is a perfect fit for politics, because one is a plausible ignoramus.

The registration system that we have today came into operation in 1855. For many years after, it was not uncommon, in situations in which a doctor was not reasonably to hand, for the cause of death to be shown on the certificate as "Doctor not present" or something similar. As a person who has pursued genealogical studies for 50 years, I have come across many instances of that, almost invariably on the islands. It is interesting that, 150 years on, we are still confronting the issues that are associated with population sparsity and remoteness.

We have come a long way from the situation in 1855. In particular, cremation is now a significant option that is chosen by families. Even when my father became a GP in the 1940s, it was pretty much the exception. Of course, there were practical reasons for that. For example, where my father practised, in Cupar, there was no crematorium to hand. In my constituency, where the crematoria are some distance away, it is a less significant part of funeral arrangements than it might be elsewhere.

I hope to be cremated about a year after my death because, like others in my family, I have recorded my wish to be sent for medical research, and the arrangements are that the various bits come together a year later and are cremated. If I get my wish—it is increasingly difficult for the wish to be delivered, I have to say—I will be most thoroughly examined post mortem. Of course, for me, as for one or two others here who are perhaps, arguably, in the last quarter of our lives, this is not a matter of philosophical debate but a matter of practical concern.

The proposed measures will make more systematic and robust the system of checks and balances that oversees our system of registration. Of course, the bill is not simply about implementing a new process. It is about what that process has to deliver, and about detecting statistically significant variations from the norm and, crucially, the factors of personnel or treatment with which they are associated. In that sense, like others, I believe that we will have to move sooner rather than later to a process that, however it is achieved, allows the analysis of robustly captured data on computer systems. As a genealogist, however, I hope that we will continue to see the signature of the person who registers the death in the electronic record, because it is fascinating to see one's ancestors' signatures. Indeed, in one case, the signature showed me, to my surprise, that my father registered the death of someone I had not previously realised he was in contact with at that stage in his life, and that was before he was a doctor.

In one of its variants—I recognise that there are many—the Hippocratic oath includes the phrase:

"I will neither prescribe nor administer a lethal dose of medicine to any patient even if asked nor counsel any such thing".

Not all doctors take the Hippocratic oath, which is perhaps diminishing in importance, but, after a period of 2000-plus years, it does still capture something important about the relationship between doctors and their patients. Above all, the ignoramus that is the general public in relation to medical matters places an immense trust in doctors and, if the bill can further build confidence in doctors and other health professionals, it will serve a good purpose indeed. What we do in the bill must address that issue.

When I was a trainee nurse some 47 years ago now—it is quite alarming how long ago it was—ours was essentially the ward that people came to if they were expected to die. When someone died, we did not necessarily wait for a doctor before laying out and moving the remains to the mortuary. I believe that practices such as that have been much refined and there is now clear involvement of doctors or other qualified health professionals. The fact that they are masters of the fact of death is important.

Let me talk about statistics and inspection. The issue of cover, be it 25 per cent, 50 per cent, 4 per cent or 100 per cent, is not a trivial one. Superficially, the higher the figure, the better it sounds, but a higher figure does not necessarily deliver better outcomes. What is equally important is what is examined and the depth of the examination. In many areas and different professions, if a large number of examinations are conducted for little return and there is little resulting intervention, the psychological phenomenon of ennui comes in, and when a case comes along that requires attention, people are more likely to miss it because there is less time to devote to each individual activity that is undertaken. I do not come up with any answer to that. I merely say that we have to be careful.

Returning to electronic recording, I point out that there is a system that is operated by the registrars of births, marriages and deaths, and that is the system into which the data go. I wonder—without having any answers myself—whether it would be an idea to roll the system out more widely with mild adaptations to allow conditional registration by health practitioners and to capture data relatively early. However, I know that it can often be quite difficult to adapt computer systems.

It is remarkably easy to make errors. When, in 1984, I registered my mother's death, I forgot her father's name and put her grandfather's name on the death certificate by accident. I had not known those grandparents; they were not familiar to me. There is plenty of scope at all levels for getting things wrong.

Ian McKee said that we will all die. Arguably, we will all die from heart attacks. It is not at all clear that there is no room for judgment and debate about what should go on a death certificate. Indeed, in these days of mechanical apparatus that keep the body functioning, if not alive, it is not always entirely clear when death might happen.

I hope that we respect the rites and practices of a wide range of religions—in fact, I am sure that we will—and I very much support the bill.

15:56

Helen Eadie (Dunfermline East) (Lab): I identify with many of the opening remarks of the committee convener, Christine Grahame, on the various legislative proposals and bills that the committee has been dealing with. As I was walking to the chamber this afternoon, Ross Finnie crept up on me, humming a funereal dirge and saying that we should really walk very slowly to this debate. I smiled as the penny dropped about what he meant. Indeed, I also smiled at Stewart Stevenson's research proposals. I have to confess that I have never thought about that before, but it seems to be very worth while and something that people should at least consider and explore.

I am very glad to hear that the minister will continue to listen very carefully as the bill proceeds and I am willing to support my colleagues' view that the Parliament should approve its general principles. I also welcome the minister's response to the faith communities, in particular the Jewish community, with regard to expediting burials. We received submissions to that effect not only during the consultation process but afterwards and, in her evidence, Leah Granat very much underlined the importance of addressing those concerns. I also welcome the minister's response on the issue of electronic certification processes, which was raised by Richard Simpson and other colleagues.

Since we concluded our report, we have continued to receive a variety of views about the bill. Indeed, Mary Scanlon, Richard Simpson and Rhoda Grant have mentioned the submission that was made only this week by the Association of Anatomical Pathology Technology. I will not repeat the points that have been made in that respect—suffice it to say that I endorse my colleagues' views—but I think that the issue of clarifying the position of burials abroad, which has also been raised in these papers, merits more careful thought.

Although nearly all the submissions that were received supported, for the reasons that others have mentioned, attempts to improve the death certification process and to reassure the public, many respondents did not believe that either of those aims would be achieved under the current proposals. Indeed, a report that we received details changes to the current situation, costs and problems with the timing of reviews and the training of doctors. As Christine Grahame pointed out, the proposals are not as robust as the current system or the new system in England and Wales. For example, 75 per cent of burials and cremations will take place after only one doctor has seen the deceased or the death certificate.

We should use this opportunity to change the certification of death for the better and not implement inadequate and unreliable changes just to save money. We need reassurances regarding the training requirements for doctors and reviews involving part-time doctors to ensure that there are no delays to funerals and, indeed, the bill's proposals must be adequately resourced to avoid any such delays.

Currently, at least two doctors are required to examine a death certificate in cremation cases. Therefore, at least two doctors are involved in approximately 67 per cent of deaths. In the remaining cases, the body is buried, which leaves scope for further examination in the future if that is required. The Government has stated that the two-doctor check is perfunctory, but the BMA refuted that in giving evidence to the Health and Sport Committee. It said that those second checks resulted in a

"15 per cent improvement in accuracy and picking up on dozens of unnatural deaths".—[*Official Report, Health and Sport Committee*, 1 December 2010; c 3754.]

The bill, as amended by the minister, will mean that approximately 75 per cent of funerals for burial or cremation will go ahead with only one doctor having seen the death certificate or body. The committee and others do not question the ability or professionalism of doctors, but we recognise that the proposed system is significantly less robust than the current system and does not provide any reassurance to the public. Training a doctor to fill out a form adequately will not provide any additional reassurance to the public.

Shona Robison stated that "affordability is an issue" and that

"The bill establishes the best system for doing all the things that we want to do."—[*Official Report, Health and Sport Committee,* 15 December 2010; c 3878.]

We believe that we should use the opportunity to change the certification of death for the better and not implement inadequate and unreliable changes to save money.

The Government recently examined the numbers and decided that the number of reviews needs to increase. There will now be 25 per cent level 1 reviews and approximately 4 per cent level 2 reviews, but I believe that that is still not enough,

and I highlight the need for more medical reviewers to undertake that additional number of reviews. In England and Wales, 100 per cent of death certificates will be seen by more than one doctor. That is an improvement on the current system, in which all cremation cases—or 67 per cent of those who are dead—are seen by more than one doctor. However, Scotland is moving to a system in which only 25 per cent of certificates will be seen by more than one doctor, and only 4 per cent will be examined in any depth.

The Government has defended that by arguing that the bill seeks to drive up completion of death certificate standards rather than using the assumption that checks on certificates are needed. The different approach will work only if the education and training element of the bill is adequately resourced and implemented. Indeed, there is a danger that, should the number of checks be increased—the bill contains the ability for a medical reviewer to scrutinise up to 100 per cent of cases in any geographical area or practice where they believe that that is appropriate—financial constraints could limit such a move or result in the important education and training side suffering, despite a medical reviewer's belief that more reviews are necessary.

There are concerns about the additional workload for doctors and the short timescale for each review. We appreciate that that is required to avoid delays to funerals and that all reviews can be suspended during epidemics but, outwith such circumstances, doctors in primary and secondary care settings constantly work to very tight timescales and juggle patients in planned and emergency situations. A doctor will be required to decide whether to let a patient suffer or cause a delay to a funeral if, for example, an unrealistic timescale is set, an emergency arises or there are pressures due to staff absence. The result of choosing a patient over the review is a fine or imprisonment.

There is particular concern about part-time or shift-working doctors and how they will take part in reviews. Either a part-time doctor would be expected to be, in effect, on call when they are not working to respond to a review, or they could cause a delay to a review and, ultimately, to a funeral. We look forward to hearing further details on how the system would work with part-time doctors, given the large and ever-increasing number of such doctors in the profession.

I support the bill but, as members have heard, that support is qualified.

16:04

Michael Matheson (Falkirk West) (SNP): I am one of four members of the Health and Sport Committee whose direction of travel in the past six or seven months has gone from membership of the End of Life Assistance (Scotland) Bill Committee to consideration of the Palliative Care (Scotland) Bill to consideration of the Certification of Death (Scotland) Bill. There was a synergy between those three bills to a large extent, which made it an interesting time for those of us who went through the issues.

People often say that two things in life are certain—taxes and death. What becomes of us after our death? Who knows? The only certainty is that our passing away will have to be certified. The bill will improve on the existing legislation, which goes back to the 19th century.

I had considered the bill before it arrived at the Health and Sport Committee, but I do not think that many other members had given it much consideration before then. The bill was introduced after a considerable number of years in which representations had been made to the Government on the need to reform the law. One person who has advocated reform for some time is Graeme Easton, a funeral director in Bonnybridge in my constituency, who is the president of the British Institute of Funeral Directors. He has highlighted to me for a time the need to reform the death certification process. I welcome the bill as a step in the right direction, despite some concerns that have been expressed, to which I will return.

I welcome in particular the removal of the historical difference between the costs of a burial and the costs of a cremation. It is important to recognise that step. It is not entirely clear to me why such a marked distinction was made. I can presume only that it was based on issues with medical science when cremations began to take place and on the fact that a buried body can at least be exhumed, which cannot happen after a cremation, as Ian McKee said. However, things have moved on and we need legislation that reflects that. The bill seeks to achieve that.

The cost to a family for a cremation is significant. It is almost a straight £150, whereas a burial incurs no charge. Moving to a universal charge of about £30 for cremations and burials is reasonable, although it means that burials, for which people previously did not pay, will incur a £30 charge.

As Richard Simpson said, part of the genesis for the bill was the investigation into the Harold Shipman case. As the committee fully accepts and as even the witnesses who gave evidence to the committee accepted, there can be no fail-safe system. No piece of legislation could be brought before the Parliament to ensure that such a case never happened again. The aim is to put in place a reasonable and proportionate system to deal with the issue.

I will not rehearse many of the concerns that members have already raised, particularly on training and education for certifying doctors, which are extremely important. A legitimate concern is whether the new system will be as robust as the existing system is. We will have to keep an active eye on that.

I repeat that we are trying to find a reasonable and appropriate system. Comparisons have been drawn with the new system that has been introduced in England and Wales. The cost to families of that new system is significantly higher than that of either the system in Scotland now and the one that the bill proposes.

We must be mindful that, if we wanted to ramp up the potential checks in any new system, that could increase the costs of certification that families must deal with. Before we jump into saying, "Let's just do a bit more," we must recognise that we are shifting the financial burden on to families, because—as the committee agreed with the Government—the process should be largely self-financing.

I listened closely to Ian McKee's contribution. He is a good friend and always someone who is prepared to challenge the vested interests in the medical world, his former profession. I very much respect him for that.

I have long been puzzled by why doctors are paid £73 for two certificates of cremation. The rate may be reasonable when compared to fees of around £200 an hour for a lawyer, but I do not think that doctors should have been paid that sort of money in the first place—never mind people making comparisons between them and lawyers. Some in the medical profession may not agree with that, but I suspect that the debate on the matter has more to do with the GP contract than anything else. At some point, I would like to see doctors not being paid for any of this type of thing. Unfortunately, GPs and others in the medical profession are paid for things that we should get as a matter of right from people who are in well-paid public sector jobs.

I was taken by the concerns that were expressed by people from the Muslim and Jewish communities, in particular Leah Granat, about the need to ensure that the bill recognises the religious observances of faith groups that wish to see the disposal of a body within a 24-hour period after death. I note that the bill provides for an expedited procedure, but there remain concerns that delays may be caused if a case is elevated to a level 2 review. From the minister's comments so far, I recognise that she is prepared to improve the bill further. I hope that we can provide that assurance to those in faith groups who remain concerned.

Overall, like other members who have contributed to the debate, I am happy to support the bill at stage 1.

16:12

Ross Finnie: One of the unanimous committee conclusions is to be found at paragraph 121 of our report:

> "The Committee also notes the need for expedited procedures where bodies were being donated for medical research and notes the Minister's response that this would be dealt with in guidance."

Now that Mr Stevenson has addressed us, we have to reconsider that unanimous conclusion. Apparently, there is no need for an expedited process for medical research, as Mr Stevenson is to be cremated a year after his death. I am sure that that has come as a great sadness to us all.

I do not have a lot to add to what I said in my opening speech. I simply leave the minister with my concern that, at the end of the day, it will be for the public to consider whether they have confidence in the system.

I turn to a confusion that arose at committee. In her opening remarks, the minister said that the review group had found the present system to be "perfunctory". The difficulty for the committee was that that evidence was not sustained by anybody who gave evidence to us. That neither makes the committee right nor the review group wrong; it simply means that those who ventilated their views on these matters in public did not agree. People were more inclined to support the view that Ian McKee expressed in his excellent speech that the procedures for certification of cremation are a process in which funeral directors, medical professionals and families repose a degree of confidence. That may not be well based in evidence, but it is a matter of fact in terms of how people see things.

As I said in my opening remarks, before we get to stage 3, the Government needs to make clear the statistical basis on which checks will be made. Ministers need to respond in some detail on that. As Dr Simpson said, there is no prerequisite level of experience for any doctor who is to sign the medical certificate of cause of death. That has a bearing on confidence in the system. That is equally true of the fact that, as Richard Simpson made clear in his opening remarks, currently there appears to be no need for an examination of the body. I am not saying that such an examination is needed or that anyone who signs a certificate needs to have 10 years' experience. However, if those conditions are not in place, that has a bearing on the level of confidence that is required and the level of checking that needs to be carried out. I accept wholly that a balance must be struck.

However, at the moment it is not clear from ministers' statements in support of the bill that that balance has been adequately achieved or that the explanations that have been given in support of the bill's proposals meet the required test. In my opening speech, I said that such a balance can be achieved but that there is a lot of work to do before that happens.

I regret to say that the minister may be left with half an afternoon for her concluding remarks. All of us will look forward to them with considerable interest.

16:16

Nanette Milne (North East Scotland) (Con): It has been interesting to hear the comments about and criticisms of the bill as introduced. I agree with most of them. I note that nearly all those who have spoken are members of the Health and Sport Committee, which puts me in a small minority alongside Stewart Stevenson, who entertained us with his personal experiences.

When one is not a member of the committee that is scrutinising a bill, it is difficult enough to assimilate the detail of what is proposed and the reaction of the witnesses called by the committee, without having to absorb the Government's response during a stage 1 debate to issues that the committee raised in its detailed report. Like Mary Scanlon, I would have welcomed some prior knowledge of what the minister was going to say, because the debate has not been enhanced by what has happened today.

Like most members, I agree that there is a need for new legislation, given that much of Scotland's burial and cremation legislation is more than a century old and does not reflect life in the 21st century. The Harold Shipman affair was a wake-up call that highlighted the need for a review of the processes governing death certification, burial and cremation, even though—as everyone has agreed—no new system could deal with a future Dr Shipman.

An improvement in the accuracy of death certification is needed in the interests of health care planning and, not least, to provide reassurance to the public. However, when I read the Government's proposals, they seemed to me to be less robust than the current system. My initial reaction has been backed up by the expert witnesses who gave evidence to the committee and by the BMA in its briefing for the debate.

As we know, currently at least two doctors are required to examine a death certificate before cremation can be sanctioned. Consequently, in around two thirds of deaths, three doctors are involved, with the remaining one third of deaths, following which the deceased is buried, requiring just one medical signature to certify death. Although the Government has stated that the two-doctor check may be perfunctory, the second medical check has resulted in a 15 per cent improvement in the accuracy of certification, as Richard Simpson pointed out, and has picked up a significant number of unnatural deaths that would otherwise have gone undetected.

Clearly, the Government disagrees with that approach and considers that its proposals to introduce a systemic quality improvement system, via intelligence-led medical review, would be more effective than the current system. It also does not approve of the non-targeted system that is being introduced in England and Wales, which would be more expensive.

As I understand it, under the minister's amended proposals, which were presented in evidence to the committee on 15 December, 25 per cent of deaths will be randomly selected for level 1 review, with around 4 per cent being subject to level 2 review. That will mean that 75 per cent of deceased people will be buried or cremated on certification by only one doctor. The intended increase to 4 per cent in the number of deaths that are selected for level 2 review will still fall well short of the 10 per cent that witnesses recommended as the minimum percentage sample that is required to give a realistic chance of picking up errors.

The concern about the lack of confirmatory checks under the proposed system was summed up by Gerard Boyle of the National Association of Funeral Directors, who said:

"We welcome any improvement to the medical certification for statistical analysis, but we feel that, for cremation, going from a two-doctor system plus a medical referee at the crematorium down to one doctor is ... a bit of a backward step ... the proposed system is definitely not as robust as the current one."—[*Official Report*, *Health and Sport Committee*, 1 December 2010; c 3764.]

Professor Fleming acknowledged that, without post-mortem examination, we will not get anywhere near 100 per cent accuracy. Nevertheless, he thinks that we can improve the current accuracy rate, although he believes that the bill's proposals will make that less likely.

The committee's concerns about the changes to certification for cremation have not yet been fully addressed. Although I accept that the procedures for burial and cremation should be aligned, I agree with the committee's conclusion that, given the finality of cremation, any alignment should have as its benchmark the rigor of the current cremation procedures. Ross Finnie emphasised that point well.

The proposed universal fee in relation to burial and cremation is welcome. It will ensure that a lower fee is payable by everyone rather than a

higher one being payable by only a proportion of bereaved relatives.

There is also a concern that no level of experience is specified before a doctor can sign a medical certificate on cause of death. That means that a junior doctor could authorise cremation without any supervision. The BMA makes a good point that, if the second doctor—who must have five years' post-registration experience before they can sign a cremation certificate—is to be removed from the process, all junior doctors must be supported by high-quality training programmes before they become eligible to sign such certificates. That is a huge training commitment, as Ian McKee pointed out.

Concerns have also been expressed about the adequacy of the proposed medical reviewer workforce, given its remit to advise, train and carry out the level 1 scrutiny of 25 per cent of deaths and given the likely resultant increase in the number of level 2 reviews. I was pleased to hear the minister say that the number of reviewers is not set in stone.

The short timescale for reviews will impact on doctors' workloads, and there are worries about how part-time or shift-working doctors will take part in reviews. It is clearly important to avoid delays to funerals in the interests of the bereaved and of faith groups for whom early funerals are the norm.

Members have flagged up several other issues in the debate, most notably the lack of proposals for an electronic registration system.

It is obvious that a great deal of work remains to be done during the next stages of the bill's passage through Parliament if the result is to be improved and more robust legislation.

We will support the general principles of the bill at this stage but we expect amendments at stages 2 and 3 in response to the concerns and criticisms that many people expressed during the stage 1 scrutiny.

The Presiding Officer (Alex Fergusson): I call Dr Richard Simpson. Dr Simpson, you have quite a long time.

Christine Grahame: Aw!

Ross Finnie: Oh!

16:22

Dr Simpson: My colleagues on the Health and Sport Committee are probably booing because they remember the rather long speech I made during one committee meeting.

This has been a thoughtful and useful debate. It reflects the Parliament's scrutiny at its best. The expert group came up with a view on which the Government consulted. We have all been through a fairly lengthy process, but we start from an agreed point.

As Stewart Stevenson thoughtfully pointed out, the current procedures began to come into place in 1855 and certainly are no longer sufficiently robust. That is the starting point. They no longer have full public confidence, but the Shipman inquiry was only part of a process that indicated that they were no longer fit for purpose.

The accuracy of the data is important to us in epidemiological research, in holding the Government to account on progress on reducing premature deaths and in ensuring that there is equality of treatment in ethnic communities. Those are all dependent on the quality of the data that are obtained.

At the same time, we want to prevent the possibility of any criminal activity, although we have all agreed that it is not possible to guarantee that such activity will be prevented. Nonetheless, as all speakers have made clear, the central issue in the debate is that whatever system we come up with at the end of stage 3 must retain public confidence. The easiest way to do that is to have level 2 scrutiny in 100 per cent of cases. That is what has been done through the English legislation and how the English intend to proceed. However, as Michael Matheson and others pointed out, the cost of that per individual will be high—perhaps around £150 or £170—if the system is to be self-financing. The proportionate measure that is proposed in Scotland would cost around £30 or, if it were totally self-financing, perhaps £50.

The core issue of public confidence remains vital. Proportionality is all very well, but if we do not retain public confidence, the system will require revision.

Already as a result of the debate and the evidence that was received in committee, the Government has moved to increase the level 1 scrutiny to 25 per cent of certificates and the level 2 scrutiny to 4 per cent. The minister mentioned in her opening speech a figure of 50 per cent. I would be grateful if she could explain that a little further, because I do not see how we get to 50 per cent from the 25 per cent level 1 reviews and the 2,000 level 2s, particularly as the level 2s will mostly follow on from level 1s and might not be separate.

Shona Robison: The 50 per cent includes referrals to the procurator fiscal.

Dr Simpson: I cannot believe that we move from 25 per cent to 50 per cent by including procurator fiscal referrals. There cannot possibly be 25 per cent procurator fiscal referrals. I see that

the minister is nodding—I put that on the record. I would be very surprised if 25 per cent of cases are referred to the procurator fiscal, but the minister says that that is the case, so we should accept that.

Ross Finnie analysed the situation most clearly. He said that a figure of 4 per cent is better than the previous proposal, and the committee has said that that would be a step in the right direction. However, evidence to the committee suggested that 10 per cent might provide us with a proper statistical basis. If we get somewhere between 4 and 10 per cent, we might have something that we can work with. The minister has given an undertaking that the figure could be adjusted further as we go along and after the test sites have been looked at. That might be practical, but I ask her to produce a little more detail at stage 2 on how the 4 per cent figure was arrived at. What risk assessment was carried out in arriving at that figure rather than 10 per cent?

I return to the fundamental problem, which is that, in the current system, more than 62 per cent of certificates are scrutinised by three doctors. The new system will not distinguish between burial and cremation, but that distinction did not arise purely by chance; it arose because the public and Parliament felt that, when someone is cremated and the body is no longer there to be reviewed, a greater degree of scrutiny is required.

Many members have referred to the need for improvement in the accuracy and quality of the data. If that is achievable, we might not need to scrutinise 100 per cent of cases, as in England, or even the 10 per cent that it is suggested that we should have here. As Ian McKee and Helen Eadie said, to achieve that improvement, we need to ensure that there is an adequate training process. The training will not necessarily be provided by a medical reviewer—it might need to be devolved to the post-graduate deans, which the bill will need to allow for. As Helen Eadie said, the resources for training must be adequate and ring fenced in some way. I suggest that no one should be allowed to sign a form unless they have gone through a certificated training module to show that they understand what the process is about.

Ian McKee said that quality and accuracy are not the same thing. We might end up with what appears to be better quality but, at the end of the day, it might not be more accurate. That is a conundrum that I do not propose to unravel, despite the encouragement of the Presiding Officer to speak for a greater length of time.

The most important issue is that of electronic forms, because an electronic system could underpin the whole system. I remain surprised that consideration of electronic forms has not been undertaken—I was even more surprised after Ross Finnie pointed out to us that that suggestion was in the expert group's report. That is a grave mistake. I would go further and suggest that we should not actually have test sites without having an electronic system. That might involve delay, but I would rather have a delay and get a system that is correct than go to test sites, amend the whole system and then have to come back and retest with electronic forms.

Christine Grahame: I remind the member that the committee agreed unanimously in our stage 1 report that we would not seek to have an electronic system brought in before the test sites commence.

Dr Simpson: I accepted the approach in the report, but on reflection and after hearing what members have said in the debate I think that we probably have to think again. I will be interested to hear what other members say.

We have not addressed some issues, such as the ordering of a post mortem by the family. The disposal of body parts and foetuses, which Stewart Stevenson mentioned, needs to be considered in more detail. The question of ensuring the certification of the absence of devices is important. It was pointed out that devices are sometimes not picked up until the second level of certification, which can be dangerous. If devices get as far as cremation we have—literally—an explosive situation on our hands.

The minister said that the certificates that are issued for the 250 deaths that occur overseas should be reviewed centrally. I welcome that. Helen Eadie mentioned the issue.

Rhoda Grant and other members talked about the needs of faith groups. I think that we have secured better consideration of the issue, but further issues to do with parallel or retrospective review need to be considered. There is also an important issue to do with deaths in remote and rural areas, as Mary Scanlon and Rhoda Grant, who both represent the Highlands and Islands, said. In the test sites, we must ensure that such issues are taken into account and followed through. Perhaps one of the sites should be in Glasgow, where there is a greater number of faith-based communities.

I will conclude—if that is acceptable to the Presiding Officer—by talking about finance. I was originally of the view that funeral directors should collect the fee, but as the arguments have been made I have begun to think that the registrars might well have to do that. Perhaps we can combine the proposed fee and the charge that is currently made for people who want a copy of the certificate, which registrars already administer—I think that they charge £9. However, as many members said, if the death is registered by

someone other than a family member, such as a police officer or a minister, there could be a problem. That is an administrative matter, with which I am sure the minister will be able to help us, perhaps through guidance.

A fee of £30 sounds reasonable—particularly given that people have been paying more than £150—but it might not be enough to enable the system to be self-funding. In an age of austerity, we must ask whether the Government should be putting a further £1 million or £1.5 million into the system. The approach would be welcomed by individuals but might need to be looked at again.

The central issues of public confidence and the proportionate nature of the bill will need to be considered at stage 2 when amendments are lodged. We support the bill at stage 1.

16:33

Shona Robison: I thank everyone who spoke in the debate, which has been—as the stage 1 report is—constructive and has brought to the fore important issues in relation to all the subjects that the bill covers.

Before I talk about those issues, I will take a moment to reinforce the importance of the measures that are set out in the bill, which are firmly embedded in the Scottish Government's aim

"to deliver the highest quality healthcare services",

as we set out in "The Healthcare Quality Strategy for NHSScotland".

As I made clear in my opening speech, the bill will deliver a single system of independent scrutiny of all deaths that do not require a procurator fiscal investigation. There is no doubt that the current arrangements for death certification require reform, as many members said. The provisions in the bill will introduce a new and modern approach to scrutiny of death.

The current approach is based on double or triple-checking the certification for cremation, at a cost to families of £147 and with no link to quality improvement, and there is currently no scrutiny of deaths when burials are conducted.

The approach to which we propose to move is intelligence led, targeted and based on quality improvement. It does not discriminate between methods of disposal of the body. It is based on random checking of certificates, which is followed up in an audit cycle, and supported by improvements in training and education.

I confirm for Richard Simpson that 25 per cent of deaths are currently reported to the procurator fiscal: that covers unexpected or sudden deaths and deaths that occur under suspicious circumstances. That will not change; indeed, our proposals will result in around 50 per cent of all deaths being subjected to detailed scrutiny. I hope that that will provide some reassurance to the public—I will come to Ross Finnie's point in a moment, because it is important—and act as a deterrent against malpractice.

I have listened with great interest to the many and varied points that members have made about the proposals, and I will now address as many of those as I can cover—which, given the time, will probably be all of them.

Christine Grahame and a number of others talked about an electronic system. I accept that that was mentioned in the review group's report, but it did not go into any detail. There was a passing reference, but there was no detailed evidence or scrutiny in terms of a cost benefit analysis. As I have said, we should consider what can be done in that regard, but I caution against Richard Simpson's suggestion that we wait for an electronic system before we use the test sites, because that would lead to huge delays and to an immediate increase in cost to develop that technology.

We should work on the technological requirements to get something up and running before roll-out, but people talk about electronic systems as if they can be taken off the shelf and plugged in. We all know that introducing electronic systems in the NHS and in public services generally is difficult and expensive, and takes time. We need to be aware of that before we put down preconditions, but I have made a commitment to look at the matter, certainly while the test sites are on-going.

Dr Simpson: I accept that we need to have a clear understanding of what that would involve, and that we should not delay the whole process unnecessarily with an electronic system. However, I understand that at present ISD, in linking to the registrars, already has an electronic system in place. The 2,000 cases that Dr Fischbacher told us had to be looked at again were brought up because of the electronic system. We may already be part of the way there.

Shona Robison: That was a very helpful intervention. Of course, we would expect the starting point to involve looking at what is already there rather than at developing something from scratch, but we will take the process forward as planned.

Richard Simpson also talked about training. Junior doctors already receive training in death certification, and their competencies are tested and they are supervised in completing certificates in their first year. However, I have listened carefully to what has been said about training and education and I will reflect on that.

Helen Eadie: One of the papers that the committee received raised the issue of training for retired doctors in the event that there is a major outbreak in Scotland. How do you propose to address that? Their services might be called upon, as I think Richard Simpson or Ian McKee mentioned in committee.

Shona Robison: I would prefer to go away and reflect on Helen Eadie's point rather than try to give a response just now, but I will certainly look into that matter in more detail.

Richard Simpson also raised the matter of viewing the body, which has been an issue throughout the debate. It comes down to a decision about proportionality. A trained professional will always examine the body to verify that life is extinct, and I think that everyone accepts that that is the case. As I said earlier, 25 per cent of deaths are referred to the procurator fiscal if they are unexpected, sudden or suspicious. The doctors who took part in the review process advised us that viewing a body is generally of no greater assistance than the medical records, and I and my officials have said that during the committee process. There is a judgment to be made about how important viewing the body is in the process.

Mary Scanlon and Rhoda Grant both raised issues concerning remote and island communities, and it will be important to pick up those issues during the test site period. As I think I said at committee, one of the test sites will cover a remote and rural area. In the meantime, officials are contacting the relevant funeral industry and local authority representatives to discuss the issues in preparation for the next phase. We are very much sighted on some of the concerns that have been raised by Mary Scanlon and Rhoda Grant.

I do not think that there should be concerns about implants, which Mary Scanlon also spoke about. In the future, details will be captured on amended MCCD forms across the UK by certifying doctors who have access to medical records. The current practice will continue: funeral directors will check whether implants such as pacemakers have been removed, and they will make any arrangements for any internal devices to be removed before disposal takes place. Funeral directors' technicians are trained to remove such devices. Alternatively, they will get a medical practitioner to remove them.

I turn now to a point that Ross Finnie made, because it was one of the critical points of the debate. He talked about the 10 per cent rate of sampling, and about whether or not the proposed compromise on the increase in the proportion of sampling is adequate. There is, of course, a debate to be had on the matter. At stage 1, the committee heard from the statisticians with whom we have been working. To give some reassurance on the issue, we are happy to write to the committee with more detail regarding the consideration that has been made, in order to help the committee to understand how the statisticians came to some of their judgments. I think that was one of the main points that Ross Finnie was driving at.

Reference has been made to Dr Jeremy Thomas's evidence, which was quoted by the committee in its stage 1 report with regard to the 10 per cent sample size, which Dr Thomas said was necessary to have "a realistic chance" of identifying errors. Dr Thomas has confirmed that that refers to review procedures for diagnostic histopathology. For members who, like me, do not know what histopathology is, it is

"the microscopic examination of tissue in order to study the manifestations of disease."

The issue is whether or not the 10 per cent sample that has been referred to in that context is really comparable with the sample sizes for death certification. I am not saying that the point is wrong, or that it is like comparing apples with pears, but we need to be cautious about the 10 per cent figure and about what was meant by it.

Ross Finnie: I thank the minister for that, but I reiterate what I said—and the minister might care to refer back to the *Official Report*. I was clear in making the point that 10 per cent was the figure that was put to the committee. I was not seeking a 10 per cent result. I am absolutely clear about the matter, but if the minister's statisticians or directorates can come back to me—I cannot speak for everyone on the Health and Sport Committee—and lay out the statistical basis on which they believe the current sample meets certain tests, that will be satisfactory. I accept that the 10 per cent sample is on a particular basis, but we need some greater underpinning for the figure that the minister has now arrived at.

Shona Robison: I am happy to give that reassurance and to come back to the member on that important point.

Ian McKee raised the issue of delegating the functions of medical reviewers for training and education. I confirm that that does not mean that third parties cannot exercise that role. The purpose of the bill's provisions on that is to ensure that functions are carried out only by a dedicated group of persons. The reviewer's role is one of leadership; it is not to take over functions that are already carried out by others, for example the royal colleges.

Rhoda Grant made an important point about whether people might be put off from registering deaths because of fees. It is currently a statutory duty to register a death, and that will not change.

Equally, although the intention is to collect the new statutory fee at the point of registration, it will proceed regardless of whether payment is made at that point. Under the current system, most people who register a death pay a fee to obtain a full extract of the entry in the register of deaths. Collection and reimbursement of the new statutory fee will follow the same approach. For those reasons, we do not consider that the requirement to pay a fee will deter people from registering a death. However, we will monitor the situation.

Rhoda Grant: The issue was about when the police or a neighbour or someone who might not want a copy of the death certificate registers the death to help the bereaved family, or because the family is not around, for example. The registrars felt that those people might not be so willing to go along because they would be faced with having to pay a fee when it is not their role to do so; it is more appropriate for the family or estate to make that payment.

Shona Robison: Part of the solution to that will be communication about the new procedures. We will have to look at how we can send out a reassuring message. The important point is that registration will proceed regardless of whether payment is made at that point. Perhaps we need to pick up on the issue of communication to the public about the process so that we can give reassurance.

I take great comfort from the fact that there is a desire across the chamber to look at the issues and to come to some conclusions. We have made a lot of progress along that road already. There might be a few issues to be resolved, but I am sure that we can resolve them.

I believe that the proposals that are before the Parliament will provide robust deterrence and reassurance to the public, although I accept that we need to come back to the committee on some points. It will also harness the benefits of a targeted quality improvement approach that is proportionate and keeps the financial burden on the Government, as well as on bereaved families, at a reasonable level. Michael Matheson reminded us all that, for every increase, whether it be in the level of scrutiny or an immediate roll-out of an information technology system, there will be a cost. In these difficult financial times, there is a limit on what the Government can contribute to that, although I have already put in some additional resources. If further increases are to be cost-neutral, there will be a direct cost to families, and I would like to avoid that—as would everyone else in the chamber, I am sure.

We have to get a system that can reassure and comfort the public while costs are kept proportionate. I think that we can get there. There are still some issues to be resolved, but I am heartened by the tone of today's debate. I look forward to working with the committee as we continue to progress with the bill.

Certification of Death (Scotland) Bill: Financial Resolution

16:48

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-7822, in the name of John Swinney, on the financial resolution for the Certification of Death (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Certification of Death (Scotland) Bill, agrees to any increase in expenditure payable out of the Scottish Consolidated Fund arising in consequence of the Act.—[*Shona Robison*.]

The Presiding Officer: The question on the motion will be put at decision time, which will be at 5 o'clock.

16:48

Meeting suspended.

16:58

On resuming—

Point of Order

Elaine Smith (Coatbridge and Chryston) (Lab): On a point of order, Presiding Officer. Under rule 13.4 of the standing orders, a question is deemed to be admissible

"unless ... it does not comply with the requirements of Rule 13.3.3",

which states:

"A question shall ... (b) relate to a matter for which the First Minister, the Scottish Ministers or the Scottish Law Officers have general responsibility".

At today's First Minister's question time, I asked a question relating to the Scottish Government's powers under paragraph 3 of schedule 4 to the Town and Country Planning (Scotland) Act 1997. The First Minister told me that if I had been looking up the acts I must have known that the First Minister

"cannot give a judgment or determination on a matter of ministerial discretion in this way."

Thus, the First Minister called into question the legitimacy and admissibility of my question.

It is clear, from the legislation, that the Government has the power to step in and recall the planning appeal in question. I represent thousands of people in my constituency who wish that Alex Salmond's Government would act on the side of the people and use his powers to reject the appeal by Shore Energy, which seeks to overturn the decision of the democratically elected members of North Lanarkshire Council and is against the wishes of the community. Rather, the First Minister seems to have tried to sidestep his responsibilities through his evasive answer on his Government's powers under the 1997 act.

The Presiding Officer (Alex Fergusson): Come to the point of order please.

Elaine Smith: Scottish National Party members may jeer, but the people I represent believe that this is a deadly serious matter. As my question legitimately related to a matter for which the First Minister and his ministers are responsible, it was clearly admissible, so I contend that it was out of order for the First Minister to suggest otherwise in his response. Do you consider that that was a breach of standing orders? If so, how can it be remedied?

The Presiding Officer: I can confirm two things. First, your question was admissible. Secondly, there was no breach of standing orders in the way in which the First Minister responded to it.

Decision Time

17:01

The Presiding Officer (Alex Fergusson): The first question is, that motion S3M-7819, in the name of Kenny MacAskill, on the Double Jeopardy (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
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)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
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)
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)
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)
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)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

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

The Presiding Officer: The result of the division is: For 114, Against 2, Abstentions 0.

Motion agreed to,

That the Parliament agrees to the general principles of the Double Jeopardy (Scotland) Bill.

The Presiding Officer: The next question is, that motion S3M-7821, in the name of Shona Robison, on the Certification of Death (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Certification of Death (Scotland) Bill.

The Presiding Officer: The next question is, that motion S3M-7822, in the name of John Swinney, on the financial resolution on the Certification of Death (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Certification of Death (Scotland) Bill, agrees to any increase in expenditure payable out of the Scottish Consolidated Fund arising in consequence of the Act.

Further Education Colleges

The Deputy Presiding Officer (Alasdair Morgan): The final item of business is a members' business debate on motion S3M-7436, in the name of Andrew Welsh, on Scotland's further education colleges. The debate will be concluded without any question being put.

Motion debated,

That the Parliament congratulates the staff and students of Angus College on what it considers another successful year in providing high-quality training and resources in its continuing exceptional contribution to building Scotland's skills base for the future and also acknowledges the wider role of Scotland's further education colleges in upskilling and retraining across the range of professional and practical skills considered essential in overcoming the challenges of the current economic situation.

17:03

Andrew Welsh (Angus) (SNP): I declare an interest as a former business studies and public administration lecturer at Dundee College and senior lecturer at Angus College.

I pay due tribute to Scotland's further education colleges, which are the engine for skills in Scotland—they work locally with people, communities and businesses to improve knowledge, employability and productivity. Their strength lies in their autonomy and flexibility, which allows them, at their best, to react locally, regionally and nationally to utilise effectively and efficiently their 22,000 staff members for the benefit of the Scottish economy. Their range of activity is impressive. In 2008-09, there were 483,472 student enrolments in further education colleges in Scotland. Flexible part-time study was provided for 82 per cent of students and 29 per cent of teaching was delivered to students from Scotland's most deprived postcode areas. A total of 5,358 international students came from more than 100 countries.

Because 48 per cent of students are over 25 years old and 55 per cent are women, colleges are both reactive to student demand in the current recession and predictors of the future economy and the resultant labour market. For example, Angus College is developing the infrastructure, staff, skills and programmes for education and training to deliver the workforce that is essential for the renewables industry when it comes on stream over the next five to 10 years, as well as for those who are retraining for or entering the labour market.

Last year, in addition to achieving nationally and internationally recognised qualifications, progressing to university degrees, advancing in their chosen careers and improving employability, students from Angus College gave back value to

their local and international communities during their studies. Angus College staff and students raised more than £16,000, helping charities such as Cancer Research, the Haiti earthquake appeal, the Children's Hospice Association Scotland and their own Angus College student crisis care fund. More than 100 students received student volunteering awards in recognition of their service to the community—three of them at the exceptional gold level.

Angus College has links with Don Bosco Technical College, which is in one of the poorest parts of Malawi. Social science, hairdressing and care students contributed to the building of a much-needed girl's hostel project. One student, James McIntosh, on construction and access to uniformed services courses, sold all his personal possessions to raise the money to go to India for three months to work with Raleigh International to build water wells and solar elephant-damage prevention fencing.

In the 2009-10 academic year, a record number of students attended Angus College. There were more than 1,650 full-time students—nearly 6 per cent up on the previous year. Thereby, the college absorbed many of the young people in our community who have been affected by the economic recession and achieved record levels of student activity—above the level that was contracted with the Scottish Further and Higher Education Funding Council. That demonstrates the college's commitment to the Angus community. Indeed, if the college did not fund those places from its own resources, 2,400 students in Angus would have been denied a college opportunity.

Angus College students' results are, in general, 13 per cent above national average levels. In some cases, such as care and child care, they are 25 per cent above the national average.

In the 2009-10 session, Angus College staff and students won 39 prestigious national and local awards—an unprecedented total for a college of its size. The quality of teaching and courses can be seen in the Scotland-wide awards for best customer service, best professional development, best individual contribution to marketing, best relationship building and best development in e-learning and e-assessment. Indeed, a record number of new initiatives came to fruition. For example, that session produced the first graduates from the BA management degree—delivered part-time via new broadcast technology in partnership with Robert Gordon University—and there are now two more cohorts of 37 students undertaking that degree across Angus.

Members of staff in disciplines ranging from welding through hairdressing to teaching skills visited Malawi to help with the development of its embryonic college sector, which is vital for that country's future development. Some 30 staff and 28 students have benefited from opportunities to share best practice and gain work placements across no fewer than 16 European nations.

With the growing success of its revolutionary design and drafting qualification for key employers in the North Sea oil and gas industry, Angus College is now the second-biggest provider of engineering modern apprenticeships in the east of Scotland.

Angus College students lead the way in Scotland in volunteering and effective learner engagement. I could go on—there is much, much more.

My bias towards further education colleges is based on practical experience of what can be achieved with top-quality management and an enthusiastic, highly motivated, professional teaching staff. They are at the heart of Scotland's further education system. As a part of Scotland's overall education system, our further education colleges are a potential springboard in providing Scotland's economy with the practical range of skills and expertise that are required and indeed essential both for Scotland's successful emergence from the recession and to allow us to compete and create our nation's 21st century prosperity.

I pay tribute to Angus College's principal, John Burt, and depute principal, Jackie Howie, as well as the college's teaching staff and students. I wish them and all colleges throughout Scotland all continuing success in the future. They have done our students proud and they are an essential part of helping us to take Scotland into prosperity during the 21st century. In all our areas, we can be proud of what the colleges have done.

The Deputy Presiding Officer: We move to the open debate. As a large number of members wish to speak, I ask that speeches be kept to four minutes.

17:11

Johann Lamont (Glasgow Pollok) (Lab): I congratulate our colleague on securing this evening's debate. He made some important points about the role of the further education sector, to which he is clearly very committed, and I congratulate him on his speech.

I am also very proud of the FE sector. In particular, I want to highlight Cardonald College in my constituency, which has benefited from significant capital funding and has been magnificently refurbished. It is an excellent college and one that people enjoy, and it plays a critical role in the local economy, as well as everything

else it does. Critically, it supports young people, but it is creative in providing opportunities for a wide range of people in my constituency and far beyond. Significantly and importantly, it provides second chances. If people have more challenges in their lives, they are less likely to have succeeded the first time round, at school, so the FE sector is crucial for giving people a second opportunity or, perhaps, a third one. We must not understate or underestimate the significance of that for youngsters who are born into difficult circumstances. They are often given the opportunity through the FE sector to achieve their potential and to move forward.

Colleges are also important—again, Cardonald College has been excellent in this respect—because they reach out in communities to people who are hostile to formal education. The fact that they provide classes in the community has built confidence in the education sector, and we have some great examples of people benefiting from that. People who have previously been excluded from education because of their circumstances and people who have been reluctant to learn have discovered the joy of learning at a different stage of their lives.

I also want to reiterate—this comment reflects some of what has already been said—that further education is not a second-best choice. Cardonald College is a good example of where the FE sector is leading the way and providing cutting-edge opportunities for learning—particularly in new technologies, whether they be in broadcasting or whatever—and it is leading the world in some circumstances. That ought to be recognised, too.

Although the debate is a celebration—I do not deny the importance of celebrating—it is because of the issues that Andrew Welsh highlighted, particularly around the importance of colleges to deprived communities, that I want to mention the challenges that the sector is facing. Members will be aware of the National Union of Students Scotland's campaign on bursaries, and I want to make just a couple of points about the importance of not endangering the sector through some of the decisions that have been made. We all get campaign letters on a wide range of issues, but I cannot overemphasise the degree to which the NUS campaign has been brought to my e-mail box in a way that no other campaign has. That reflects where the bursary cut is going to hit and the nature of the constituency that I represent. I hope that the minister will reflect again on the decision.

We know that the number of people who are not in education, employment or training rose in the last period. We also know that £3 million of the more choices, more chances money has been cut from the sector, and that that will have a significant effect. Equally, the ending of some elements of the education maintenance allowance by the Scottish National Party has meant that £6 million has come out of support for poor families in our communities.

Andrew Welsh: As someone who was born in Cardonald and saw Cardonald College being built, I share the member's admiration for the work that it has done. However, I point out that Angus College has overcome a 6 per cent cut, which shows what can be achieved through the ability and talents of those run who the colleges.

Johann Lamont: I fear that we might be in danger of leaving disadvantaged students even more disadvantaged. My challenge to the minister is to be alive to the consequences for particular equality groups of any spending choices that we make. Although the Tory Government has chosen not to enact the socioeconomic duty in relation to equalities, we should ask ourselves whether any spending choice that disproportionately affects women and disproportionately impacts on those with families, those who have struggled the most to get to college or those who have in their earlier lives been least supported in developing an education, is actually the right one. I urge the minister to examine this particular choice, to ask herself whether the decision to cut bursaries disproportionately impacts on youngsters from disadvantaged backgrounds and, if so, to think again about implementing it. My mailbag suggests that that is exactly what is happening. After all, given that we all share an interest in the sector, we will all want to ensure that we are not excluding youngsters.

Notwithstanding that, I congratulate Andrew Welsh on making very important positive points about colleges, which are surviving through tough times.

17:16

Stewart Stevenson (Banff and Buchan) (SNP): First, I congratulate, in the conventional way, Andrew Welsh on securing this debate. Of course, my congratulations are tinged with sadness, because there is every chance that this is the last motion that will be debated in Andrew Welsh's name in a distinguished parliamentary career that extends back more than 37 years. Another opportunity might come along, but I suspect not. Presiding Officer, I must also apologise to you, the minister and colleagues as I will be leaving the debate early. I have been in the chamber almost all day and have one or two other things to do.

As it is the Chinese new year, it is particularly appropriate that the debate centres on Angus College, which has been developing links with Yantai Vocational College in China. Moreover, I know that the member sponsoring the debate has

great interests in China and, indeed, is one of the few members who can speak some sensible words in Chinese. That link reflects enthusiastic work that has been carried out by organisations right across Angus and illustrates that successful colleges not only have deep roots in their own communities, but will work with others. I am sure that such a relationship, with the college at its centre, will benefit the local area.

Of course, when the economy is in a less-than-ideal condition, it becomes ever more important that we have a range of opportunities to allow people to upgrade and change their skill sets. Indeed, many people go to college not because it is second best—a phrase that Johann Lamont did not want us to use and which I certainly do not wish to—but because it often provides a second chance to acquire the skills that they require. It is also a good starting point that allows people to take things to whatever level they are capable of reaching. A sufficient and capable further education sector is a central part of the Government's programme.

Offshore energy is a very important industry in Angus and, indeed, in my constituency, where Banff and Buchan College has a long engineering tradition, thanks to its proximity to the offshore industries that will continue to be important. Now that Peterhead has been designated as a key hub of Scotland's offshore renewables industry, the local college in my constituency will play an important role in ensuring that we have the necessary skills to support the economic benefits that will come from that industry.

Colleges play an important role in allowing people to retrain or to gain more skills throughout their lives and are, of course, a vital destination for many school leavers: last year, 27 per cent of school leavers attended FE colleges.

There are, of course, specific challenges in rural or relatively sparsely populated areas. I think that we all welcome the announcement that was made yesterday that the University of the Highlands and Islands has finally become a university formally. It reflects the specific needs of the very different area within which it operates. Exactly the same point can often be made about our colleges.

In my previous role, I was engaged with Montrose harbour, which is an important place where people from Angus College may go. It is slightly amusing that Montrose was, of course, the base of an important American engineering company called Stewart & Stevenson.

The Deputy Presiding Officer: I am not quite sure what that had to do with the motion, but never mind.

17:20

Elizabeth Smith (Mid Scotland and Fife) (Con): I warmly welcome the opportunity to speak in this debate, which has been secured by Andrew Welsh. Apart from the fact that we are celebrating Angus College and all our other colleges, the debate is timely for the reasons that Johann Lamont set out. There are on-going deliberations on how we should fund higher and further education in Scotland and, more broadly, on how we should prepare our young people for the world of work. That has been a pertinent issue this week, given some reports from the business community.

Colleges in Scotland have proven themselves to be outstanding, and are an important part of the Scottish education landscape. They are also fundamental to our economic success as a nation. They offer a huge range of qualifications, from access courses at Scottish credit and qualifications framework level 3 right up to PhDs at level 12. Their recent strength has lain in their adaptability to national and economic circumstances and in their flexibility in responding to different regional demands. That is a factor that is aided in no small part by the enhanced autonomy that they have enjoyed since a Conservative Government passed the Further and Higher Education (Scotland) Act 1992. Like universities, Scotland's colleges are rightly protective of their autonomy. The enhancement of that autonomy will ensure the continued success of the sector.

In its most recent briefing, Scotland's Colleges stated:

"The success of the college sector is fundamentally dependent on local autonomy and the flexibility and responsiveness that this creates."

Andrew Welsh gave us clear evidence of that in his speech.

I am sure that it will come as no surprise to members that the Conservatives want to encourage greater scope for colleges to work with local schools, universities and businesses to enhance their economic and social contribution and to open up new opportunities to students through better integrated learner pathways. On working with schools, it would be helpful to have a more clearly defined two-route system from 14 years onwards, and to put much more emphasis on the skills that are required in the world of work, whether that is on awareness of the crucial need to turn up for work on time, to be appropriately dressed in a professional environment, or to know how to make calls and write letters to clients or customers. Senior businesses raised that important point just this week.

If we are serious about opening up new academic and vocational routes to pupils, it is important and logical that colleges, as the largest providers of skills for new entrants and existing employees in the Scottish workforce, play a foremost role. From an academic perspective, I agree entirely with the suggestion from Scotland's Colleges that there could be simplification of some academic qualifications, but nonetheless greater rigour in some ways for members of the student population in Scotland's colleges who are undertaking considerable higher education courses.

On collaboration with universities, there is a lot of good will from both the college sector and the universities and there is a lot of scope to build upon the excellent collaborative work that has taken place. Andrew Welsh referred to that and gave examples, and I know that my colleague Alex Johnstone will expand on the matter.

I have put it on public record many times that there is great scope in Scotland to adopt the principle of greater flexibility in the exam system. That can help to facilitate benefits for the education of more of our young people and allow us greater flexibility in how we fund it. It is clear that that will be important.

Our time is short. I congratulate Andrew Welsh not only on his long service, but on securing an important debate in which I am happy to have participated.

17:24

Margaret Smith (Edinburgh West) (LD): I thank Andrew Welsh for securing the debate. Like Stewart Stevenson and Elizabeth Smith, I pay tribute to him for his great service to the Parliament and to his colleagues. He has always been a tremendous support to his colleagues in the work that he has done on the corporate body and as the Finance Committee's convener. I add my congratulations to Angus College's staff and students. Not for the first time, Andrew Welsh has praised them eloquently.

One good aspect of speaking in members' business debates is that we can highlight the work that is done in our constituencies. I will be no different. The fantastic work that is done in Angus College and elsewhere is echoed in my area—not quite in my constituency, but on the edge of my constituency. Telford College shifted from my constituency to a new development in Malcolm Chisholm's constituency, but I will not hold that against him. The college, which is fantastic, is one of the 20 colleges that have been built or rebuilt since 1990. A great feature of colleges in Scotland is that we have some fantastic estate, because much of the capital budget in the past few years has gone into our colleges. People are benefiting from that.

Andrew Welsh was right to highlight the flexibility and diversity of Scotland's colleges and their central role in their communities. As we emerge from recession, we will need an able and skilled workforce that is ready for the new industries and challenges of the future. A number of us are worried by comments such as that in the 2010 report of the United Kingdom Commission for Employment and Skills that

"Current employment and skills systems in Scotland are neither fully integrated and consistent, nor always sufficiently aligned to labour market needs."

We can see that work to try to align systems to labour market needs has been done in colleges. If we are moving—as we must—to a simplified system to deliver skills, colleges should be central to that, because they deliver good value. For every pound that is invested in them, we get back £3.20 in economic benefits.

Colleges' contribution to helping the country to tackle the worst effects of recession cannot be overestimated. Their work in relation to partnership action for continuing employment and in our communities to deal with people who have lost their jobs has been phenomenal. There is almost a renaissance in people's appreciation of our colleges' role, because colleges have shown flexibility, adaptability and the ability to deal with matters in short periods by helping people to upskill and to take a second or third chance as a result, as Johann Lamont said.

Upskilling, workplace training for graduates who have little experience in industry and completely retraining individuals to enter new vocations are all being undertaken across Scotland in colleges that offer flexible courses and ways of study that focus on the individual and reflect local needs. Only yesterday, we celebrated the achievement of university status for the University of the Highlands and Islands, which is based very much in the college sector.

Times are tough. The college sector is not immune from job losses and people in the sector are under threat now.

The Deputy Presiding Officer: The member must conclude.

Margaret Smith: Last year, we fought in our budget negotiations to secure additional college places. In those negotiations this year, we hope to obtain a better deal for colleges. I sincerely hope that we will do that, because they certainly deserve it. Colleges deserve our thanks and appreciation today.

17:29

Claire Baker (Mid Scotland and Fife) (Lab): I congratulate Andrew Welsh on securing the debate. I know how much members value their local colleges, and his enthusiasm for his local college is clear. On Labour's behalf, I recognise his contribution to the Scottish Parliament. When I was a member of the Audit Committee as a new MSP, I always found him to be a fair and insightful colleague. I wish him the best in his life after the Scottish Parliament.

I am happy to join Andrew Welsh in recognising the contribution that Angus College's staff and students make to the local economy and the part that they play in progressing Scotland's economy.

Angus College faces particular challenges as a rural college. The distribution formula has not always benefited rural colleges, and I welcome the moves to address that issue. Although levels of deprivation and unemployment are not as high in rural areas as they are in the cities, there can be, as Andrew Welsh highlighted, significant concentrations of deprivation. We need to ensure that, regardless of where they live, there are opportunities throughout Scotland for young people and adults who are looking to retrain or upskill. For many young people and adult returners to education, colleges play a vital role in providing access to those opportunities in a friendly and less intimidating environment. Location is also important in that regard.

Our colleges are key to Scotland's economic recovery. Their flexibility, responsiveness, strong links with business, knowledge of their local labour market and ability to respond all add up to a sector that is at the centre of a modern Scotland.

In my region, Adam Smith College is at the forefront of modern industry. Once known for heavy industry, particularly mining, Fife has had to work hard to reinvent itself. Fife's colleges have been instrumental in ensuring that villages and towns that were depressed by high unemployment and its social consequences retain access to opportunities. Fife's colleges do much more than that. They work actively with agencies to create opportunities. For example, Adam Smith College is a key partner in the hydrogen office, which opened recently in Methil.

Over the years, Adam Smith College has actively encouraged people to come to college through a network of local facilities. Johann Lamont stressed the importance to people of having access on their doorstep. The minister recently opened a new facility in Leven that is part of the Adam Smith College campus.

Colleges are at the forefront of new technologies. The newly opened future skills centre at Adam Smith College's Stenton campus in Glenrothes offers state-of-the-art facilities with a wide range of courses in engineering, construction, renewables and science. Fife can be proud of those facilities, which point towards our economic future.

Since devolution, the Scottish Parliament has invested in our colleges. There has been significant investment in capital projects, resulting in excellent facilities across Scotland. Of course, there is more that we could do, but we have a well-equipped sector. As we all know, we face significant challenges in ensuring that we maintain standards so that colleges can continue to deliver quality education at a time of financial constraint. The best way out of a recession is to invest in the workforce, including by ensuring that people have access to training and skills. In that way, Scotland can emerge stronger and more competitive.

We all know the challenges that we face. This afternoon's education and lifelong learning questions were dominated by concerns about college places, student support and bursaries, funding and opportunities for young people. Although the minister will highlight Scottish Government investment, we know that for a few years now colleges have been supplementing bursaries from their own reserves. As Andrew Welsh highlighted, Angus College has shown its commitment by funding 2,400 students.

Colleges go above and beyond our expectations of them. My fear is that the piece of elastic can be stretched only so far. There are enormous pressures on the college sector. The news of the substantial redundancies at James Watt College is concerning, and the college is unlikely to be alone in pursuing that option. Although the number of places may be maintained, we have to question the ability of colleges to continue to provide a high-quality experience for students once they have fewer staff. The National Union of Students Scotland is campaigning in advance of the budget debate for more investment in bursaries.

Those are the big challenges that we all have to face. Colleges are vital to our economic future and, like their students, they must have the resources that they need to make their contribution.

17:33

Linda Fabiani (Central Scotland) (SNP): Like other members, I am pleased to speak in the debate, not only because of the subject, which is so very worth while, but because—as others have said—this is Andrew Welsh's last stand. Tonight marks his final members' business debate in what has been a long career. It has all been said already, so it is difficult to add anything other than to say on a personal note that I will miss him very

much. In case you feel put out, Deputy Presiding Officer, I will miss you, too.

What really jumped out of the motion for me was what it said about the success of Angus College—and other colleges, of course—

"in providing high-quality training and resources"

and in making an

"exceptional contribution to building Scotland's skills base for the future."

I will speak about South Lanarkshire College in East Kilbride. As members may be aware, the college has been mentioned many times in the chamber. The building of the Aurora house, an eco-house that is a model for the future and a great training ground, has been highlighted, as has the college's success in the skillbuild competition in 2009, in which its students were very successful in obtaining medals. Those successes are a great tribute to the innovative thinking of the college's board, staff and students, who are always willing to look at new ways forward and at what is best for the students.

That is reflected in the report by Her Majesty's Inspectorate of Education that the college received this week. I am not seeking any one-upmanship—or one-upwomanship—today; however, for the second time in four years, South Lanarkshire College has been deemed to be the best college in Scotland. The inspectorate said that it had "full confidence" in all aspects of the college. The report is super and provides great building blocks for the future. It refers to "excellent" practice and "sector leading and innovative practice", and contains not one main point for action. That shows the level of excellence that can be reached with the full commitment of everyone who is involved.

I note some of strengths on which HMIE reported. The report states:

"Attainment rates for FE level programmes ... are consistently very high ... and well above sector average values."

It makes the extremely important point that

"Sustainability is embedded in much of the college's provision."

It also notes:

"The college prepares learners very well for employment and further study."

Both Elizabeth Smith and Margaret Smith picked up that issue in their speeches. These days it is extremely important that we prepare people for the workplace. Colleges all over Scotland have taken that on board and are doing it very well.

Time runs out quickly when there is so much to say. Andrew Welsh spoke about the community aspects of our colleges. HMIE said that, in South Lanarkshire College,

"learners enhance their employability and citizenship skills by participating in a range of relevant activities within the college and the local community."

I mention in that regard the college's involvement in the East Kilbride cross out child poverty campaign, which is extremely important.

I leave the last word to Katie McCall, the president of South Lanarkshire College's student association, who said what HMIE already recognises—that

"our college is a fantastic place to study!"

That is a great tribute to everyone who is involved.

The Deputy Presiding Officer: I am prepared to accept a motion without notice to extend the time for debate by up to 10 minutes in order to complete business.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 10 minutes.—[*Andrew Welsh*.]

Motion agreed to.

17:37

Alex Johnstone (North East Scotland) (Con): It would be remiss of me not to take this opportunity to say some nice things about Angus College. The college has come a long way since the days when it would have described itself as a technical college and now offers a wide range of qualifications, with a diverse prospectus. It truly is Angus College, with learning centres in Brechin, Forfar, Montrose and Kirriemuir, as well as the headquarters in Arbroath. That makes it easier for students in a largely rural, low-income area to learn.

The local economy benefits hugely from the skills that are provided in the college environment. I pay particular tribute to the training restaurant, Restaurant 56, which provides hands-on training for those who would like to enter the hospitality industry, which is so important to the local economy. Another community benefit is the Inspire hair and beauty salon, where local men and women allow students to experiment on them. That is a terrible thing to say—no one has any problems with it.

The college also engages closely with the community and has been involved in raising money for charity in a number of ways. A few years ago, representatives of the college came to the Parliament as my guests in an attempt to collect as many pairs of shoes as possible from members of the Parliament. Their objective was to create the longest line of shoes that had ever been made; I believe that they succeeded in doing that.

I donated a few pairs of shoes. My wife engaged enthusiastically in the project; in fact, at one point, she was down to her last 35 pairs.

Angus College enjoys an excellent relationship with many organisations in Angus, especially Angus Council, where students have the opportunity to experience on-the-job training. Like many community colleges in Scotland, it plays a vital role in providing qualifications and training, including evening classes, that fit in with students' lives, jobs and family commitments.

However, not all on the horizon is rosy. It has been mentioned that a campaign is taking place on bursaries. I have had approximately 600 e-mails from people in the north-east on the subject and it is notable that Angus College students are well represented among those correspondents. A solution to that problem will need to be found.

One way in which Angus College has offered help to the community is by giving people a second chance to gain increasingly important qualifications. Many mature students choose to attend college to brush up their skills or pursue an entirely new career path. That second chance is extremely important for some, particularly the prisoners at Noranside open prison, who have enjoyed a good working relationship with the community college and have taken advantage of the opportunities that it provides. However, the threat that hangs over the prison means that that link may be about to come to an end.

Finally, I will do as many members have done and pay tribute to Andrew Welsh. As many members will know, I have stood against him in the Angus constituency at the past two Scottish Parliament elections. I finished second but, in all honesty, I was some distance behind the incumbent. After he beat me last time, I remember being interviewed by a journalist from Radio Tay, who stuck a microphone under my nose and said, "Well, that's twice he's gubbed you. What are you going to do now?" Searching for something to say, I said that I was going to change tack and attempt to outlive him. I take this opportunity to say to Andrew that I wish to go on competing with him at that level for many years to come.

17:42

Elaine Smith (Coatbridge and Chryston) (Lab): I congratulate Andrew Welsh on securing the debate and, like others, wish him all the best for the future. I would also like to associate myself with the motion, which acknowledges the role of Scotland's FE colleges in providing important skills and training across a wide range of professional and practical areas.

Scotland's colleges play a central role in delivering high-quality skills to help to grow and shape new industries. They also place the learner at the heart of the education that is delivered.

By allowing greater flexibility and part-time learning, Scotland's FE institutions also have an important part to play in assisting mothers who wish to re-enter education or the workplace, because they can help them to gain new qualifications and increase their confidence levels. On-site crèches and nurseries are vital in supporting them.

As other members have said, Parliament should recognise the major social contribution that colleges make in encouraging people back into education by accepting learners at all levels and helping them to develop their full potential.

I commend Coatbridge College in my constituency for the important contribution that it makes to the prospects of local people. Coatbridge College is Scotland's oldest college; it celebrated its 145th anniversary last year and has more than 250 members of staff and about 7,000 students. I was proud to attend its recent graduation ceremony in the prestigious Glasgow royal concert hall, at which it also celebrated the anniversary. At the ceremony, the new graduates were presented with their qualifications by the principal, John Doyle, in front of an audience of about 1,200 people. That demonstrated the strength of support for the college.

Coatbridge College has adapted well over the years to meet the needs of the people of the town and the surrounding areas. At the time of the decline of heavy industry under the Tories, the college was forced to change its traditional focus on industrial courses, so work began in the 1980s to extend the original college building to create computing suites, hairdressing and beauty salons, a refectory, a theatre and sports facilities.

In the past few years, the college has again begun a large redevelopment, after it was awarded funding by the Scottish Further and Higher Education Funding Council to address accessibility. There is a new entrance and a main reception area will lead to an integrated student services provision, a new learner resource centre, a coffee shop and a new refectory. In addition, there will be lift and stair access to all floors throughout the college, which will allow all users to get to all areas of the campus, which is very important. I am delighted that the first phase of the building work is expected to be completed on time and on budget. I was pleased to support the college in its efforts to gain the funding to redevelop and I look forward to seeing the completed campus and the benefits that it will bring to my constituency.

The motion refers to the current economic climate. It is essential that we continue to invest in

education so that we do not repeat the mistakes of the 1980s, when a generation of young people were unable to find work or training. The job prospects that are provided by colleges such as Coatbridge are crucial to the local economy and to the lives and future prospects of our young people. A key aspect of the second phase of the redevelopment of Coatbridge College will be new facilities such as a first-class conference area, which will support economic development in North Lanarkshire.

On that theme, and to reiterate a point that other members have made, the proposed budget for this year seeks to cut the FE settlement, which will present challenges to the sector, a major one of which will be on student support. The NUS has found that almost two thirds of students last year found bursaries to be inadequate. Its president, Liam Burns, said:

"College bursaries were already failing, but with this cut we could risk a meltdown in the system."

In recognising the importance of our FE colleges to the economy, we must agree that their funding should reflect that importance. I hope that members from all parties can agree on the need for continued investment in our FE institutions. Once again, I congratulate Andrew Welsh on the debate.

17:46

The Minister for Skills and Lifelong Learning (Angela Constance): I, too, congratulate Andrew Welsh on securing the debate. I say with pleasure that the Government certainly endorses the motion. I am glad that members from across the political spectrum have showcased colleges in their constituencies, as we have much to celebrate.

It is important to reflect on Mr Welsh's opening remarks when he spoke of Angus College punching well above its weight. The college is rightly renowned for the high quality of learning opportunities that it delivers to the people of Angus. It is indeed a sector-leading institution and one of which many people in Angus, including Andrew Welsh, are justifiably proud. It is a successful and well-run college and, as has been said, an award-winning one. Under John Burt's leadership, the college gained not one, but two gold prizes at the recent college award ceremony. One feature that interested me is that Angus has the highest percentage of school leavers going into further education. As Alex Johnstone and Johann Lamont reflected, colleges give a second chance in learning, but they are most certainly not the second-best option.

We all know that there will be significant challenges ahead for all our colleges. As well as celebrating our successes, members are right to speak of the challenges that institutions in their constituencies and across the sector face. Next year, Angus Council will have to bear its share of the consequences of the reduction by Westminster of £1.3 billion in Scotland's block grant, as will other councils. I believe that that budget reduction is too much, too soon, and that it will bring unnecessary pain and challenge to many institutions and put our economic recovery in jeopardy.

Notwithstanding that, the Government has protected student support at record levels. In 2009-10, £79 million was invested in student support, which was a record level, and the figure for 2010-11 is £84 million, which is again a record level. The draft budget seeks to protect that. However, the NUS campaign is compelling. Among the quotations on the NUS website, one student says:

"Having a bursary while I was a ... National Qualification ... student was the difference between eating and not eating."

We cannot help but be affected by that. Another student says:

"When I decided to go to college, it was for a couple of reasons. One was to better myself and the other was so that I could get a job that paid higher than minimum wage so that as a single mother I could provide for my children better than I was at that time."

That shows the life-changing potential of Scotland's colleges.

Elaine Smith talked about the importance of the college sector to young women and young mothers.

As we know, budget discussions are on-going. The Government is a listening Government and we all await the result of the budget negotiations. Of course, the budget is finite. We do not have unlimited resources and, as John Swinney reminds us all, the budget ultimately has to be balanced.

A number of interesting points were made in the debate. For example, we heard that 55 per cent of college students are women. Although the rate of youth unemployment is lower in Scotland than it is in the UK, we cannot fail to be concerned about the rising number of unemployed young women. During the past year there has been a 12 per cent increase in the number of unemployed young women. We must consider the drivers for youth unemployment. The overarching point about the need for greater integration of employability and skills was well made by Margaret Smith and must be pursued.

Johann Lamont: Will the minister commit to asking officials to scrutinise the budget choices that have been made, precisely because, as she

said, there are socioeconomic and gender aspects to the issue? We must ensure that we are not making cuts without thinking about the disproportionate consequences for some of the most disadvantaged people in our communities.

Angela Constance: I reassure the member that such scrutiny is currently being undertaken in some detail.

Our colleges have a track record of rising to challenges, which is why we asked them to refocus their activity so that the current volume of core activity can be maintained next year. I am pleased to say that colleges agreed to that undertaking, which is no small feat, and I commend colleges for their commitment. The approach will provide the space for us to take a critical and robust look at how colleges can continue to deliver for learners this year and next year, as we must do. Many members, not least Elizabeth Smith, talked about the need for more collaborative working.

We all know that the reduction of the block grant by £1.3 billion will have consequences. Colleges have huge ambition to do more of what they already do excellently, and some of that ambition might be frustrated. I regret the prospect of job losses and redundancies, as I said.

Andrew Welsh said that Scotland's colleges are "the engine for skills" at home and abroad. He was right to say that colleges have their finger firmly on the economic pulse. The Government has a strong track record of listening to what colleges tell us and acting on what we have heard, including by providing extra resources to address specific pressures.

I conclude by paying tribute to Mr Welsh. He has had a long and distinguished career as a parliamentarian. He has been a first-class representative of and advocate for Angus, and he is a great exemplar of what every constituency member should aspire to. He said that in Scotland we have colleges and students that we can be proud of. In Andrew Welsh we also have much to be proud of.

Meeting closed at 17:54.

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