



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 30 June 2011

Session 4

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Scottish Parliament

Thursday 30 June 2011

[The Presiding Officer *opened the meeting at 09:00*]

Renewable Energy

The Presiding Officer (Tricia Marwick): Good morning. The first item of business is a statement by Fergus Ewing on the 2020 route map for renewable energy in Scotland. The minister will take questions at the end of his statement, so there should be no interruptions or interventions.

09:00

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Scotland's renewable energy story can be traced back to the period following the second world war and the vision and determination of Tom Johnston. As a Highlands MSP, I am well aware of the impact of the hydro programme, which began in the 1940s, in transforming the lives of families and the fortunes of the region. In the period since devolution, renewable energy has become linked with the growth of modern Scotland, and the rapid pace of progress has allowed us to be ever more ambitious about the contribution that a wide range of renewable sources can make towards our energy needs.

The Government has introduced a target to meet 100 per cent of Scotland's electricity demand from renewables by 2020. That is not all that we produce; it is equivalent to all that we consume. We will produce up to twice as much as that. The target reflects scale, strength and value: the scale of our natural resources; the strength of our energy capabilities; and the value that we place on that high-growth sector of our economy. The achievement of that target and our ambitions for renewable heat and sustainable transport will mean that we can meet at least 30 per cent of our overall energy demand from renewables by 2020. With our emissions reduction targets and our aim to reduce consumption by 12 per cent by 2020, it is clear that, as a nation, we are at the forefront of the global shift towards sustainable, low-carbon development.

However, we need to go further and faster to secure our place as a European leader in renewable energy. Therefore, the renewables route map, which is being published today, sets out the key actions that are needed to achieve our new targets and to seize the opportunity for Scotland to research and develop, design, construct and service the technologies that will power the 21st century.

The headlines from the route map speak for themselves. We have a challenging electricity target and actions to meet it, but it is not just about electricity. Our route map sets out progress towards the target to meet 11 per cent of heat demand from renewables by 2020 and our commitment to ensure that impacts on existing biomass users are mitigated as demand continues to grow, including through our forthcoming review of support for large-scale electricity-only biomass under the renewables obligation (Scotland). We do not believe that large-scale biomass electricity-only plants, which require the transglobal shipment of wood, are good for the planet or the economy.

We have made a commitment to set up an expert commission on the development of district heating, and we have set a new target to meet 30 per cent of overall energy demand from renewables by 2020 and a new target of 500MW community and locally owned renewable energy by 2020. That is a transformational opportunity for the local ownership of energy that is set within our wider aspiration to support community asset ownership. To help to meet that challenge, we undertake to work with investors to establish a new green equity fund for community renewables. We will follow up our securing the benefits consultation to provide greater clarity for community benefits from commercial schemes, and we will enhance our commitment to small-scale and rural renewables through the development of a microgeneration strategy and an agri-renewables strategy.

We do not underestimate the challenges. In particular, there is a need to ensure that the United Kingdom electricity market continues to provide the right level of incentives. We are working constructively with the UK Government to highlight areas in which we have a legitimate devolved role in setting the support framework for developing low-carbon generation, especially protection of our role in determining financial support for renewables and, in future, for carbon capture and storage.

We need to continue to work to secure adequate connection with European Union neighbours to ensure that UK demand is not a limiting factor on the ability of Scottish generators to dispatch and export their electricity.

Good progress has been made on renewables employment opportunities. The picture is fast moving, but the latest projections from Skills Development Scotland are for up to 40,000 new jobs in the sector by 2020. I am sure that we all recognise the potential of renewables for the Scottish economy.

We must address the range of technology and market failures that may act as a barrier to deployment and tackle the many infrastructure,

skills and supply chain barriers to deployment. We need to ensure that Scotland secures adequate economic and social benefit from renewable energy deployment. Lastly, we need to secure the funding required for all those ambitious plans.

The route map goes further in scope and ambition than any previous strategy for renewable energy in Scotland. It sets out a comprehensive path towards achieving our ambition to be the green energy powerhouse of Europe. Taken alongside our electricity generation policy statement, which is currently being updated, the route map sets the course for a rapid expansion in renewables capacity, complemented by greater energy efficiency, advances in energy storage and the development of carbon capture and storage technologies.

This Government will continue to listen and to make the most of the expertise of all parties in Parliament, including the Economy, Energy and Tourism Committee, to ensure that we get our energy policies right for Scotland.

However, we see no place for new nuclear power, because it is an expensive technology of the last century that offers Scotland no competitive advantage. We welcome the recent announcement by the German Government of a decisive move to phase out nuclear by 2022, alongside a huge expansion of its already significant renewables capacity. That announcement adds to the growing international realisation of the difficulties associated with nuclear power.

Renewable energy provides perhaps Scotland's greatest economic and environmental opportunity this century. Our new route map sets out what we need to do collectively to write the next chapter in Scotland's renewable energy story. I hope that Parliament will unite behind it to ensure that we grasp the opportunity in front of us.

Richard Baker (North East Scotland) (Lab): I thank the minister for the advance copy of his statement and welcome the scale of the Scottish Government's ambition for our country to be a world leader in renewables.

Having set that ambitious target, ministers face the key question of how they will achieve it and how they will show in this session of Parliament that they are on course to deliver on the 2020 pledge on renewables generation, which changed rapidly from a target of meeting 80 per cent of demand to one of meeting 100 per cent of demand.

The road map, too, is welcome, but the projections for renewable electricity generation show the steep increase required in the years ahead to meet the target, particularly between 2015 and 2020.

How often will the minister provide updates on the progress that is being made? What interim targets will he set in this session to show that the Scottish Government is on course for the overall 2020 target?

The road map refers to the £70 million national renewables infrastructure fund, which is welcome, but it is likely to be a fraction of the investment required. How will the Scottish Government ensure that improvements in the infrastructure of our ports and other facilities—improvements that are necessary to realise the targets—are delivered?

We still require more detail from ministers on how they will ensure that Scotland's economy benefits from increasing manufacturing in the renewables sector. Will the minister bring further plans on that to Parliament, as it is vital if we are to reap all the rewards that we should reap from Scotland's natural advantages in what is a vital industry for the future?

Fergus Ewing: I thank Richard Baker for his questions and the tone with which he put them. I commend his colleague Sarah Boyack who, when she was a minister, set targets that at the time appeared ambitious but which were all achieved, as we discussed yesterday in a briefing session for members. Equally, although our targets are ambitious, we believe that they are achievable. In the foreword to the route map, I point out that more than a quarter of Scotland's electricity needs already come from renewables. I also make the important point, which is perhaps not widely appreciated, that renewables projects and operations that are under construction or have consent will provide almost 60 per cent of our electricity needs. So, although there is a mountain still to be climbed, we are a good way up that mountain.

Richard Baker asked how frequently we will report back to Parliament. We will report back to Parliament as frequently as is necessary and certainly when there are major changes. Timing in the next six to 12 months will be absolutely crucial. There will be negotiations and discussions with the United Kingdom Government about electricity market reform. Project transmit and the unfair charges from which Scotland currently suffers and the issues surrounding operation and investment will all be considered in the next six months. In fact, we might be seeing the biggest set of changes in the energy sector since the electricity privatisation of 1989. The next six to 12 months will be absolutely critical. We are working with the UK Government to get the best possible deal for Scotland.

The member's final question concerned the industrialisation of Scotland and where the jobs and investment will come from. Plainly, we believe

that the investment should come from several sources. We are negotiating for the return of the fossil fuel levy—currently at £200 million—from the Westminster Government, which has already drawn down some of England's share of the levy. We are working with many companies, including Mitsubishi, Gamesa and Doosan, which are world-leading companies in the manufacture of turbines, and negotiating with them to try to persuade them to invest heavily in our ports. We will use the £70 million fund towards that aim.

I hope that those rather long comments answer all of Mr Baker's questions.

Jackson Carlaw (West Scotland) (Con): I, too, thank the minister for providing an advance copy of his statement. On behalf of the Scottish Conservatives, I admire the Government's ambition. Indeed, for the members of his party congress who are with us this morning, I say that the Scottish Conservatives support, applaud, embrace and will ring the bells for the Government's ambition in this regard. We will do all that we can to support the Government, business and industry in realising Scotland's natural renewables potential.

Although the minister's statement was full of the poetry of ambition, the targets are tough, the timeline is fixed and the actions are conditional. I hear what the minister said about new nuclear capacity, which was rather a slap in the face for President Obama and his Administration, which has invested \$500 billion in new thorium nuclear capacity. To paraphrase the minister, that is new technology for this century that offers the world, and particularly the most disadvantaged countries, a tangible competitive advantage.

Does the minister rule out completely the lifetime extension of Scotland's existing nuclear capacity and, in particular, Hunterston B, during this session of Parliament?

Fergus Ewing: Jackson Carlaw accuses me of being poetic, which is not an accusation that I have hitherto faced. He goes on to say that our targets are ambitious and, yes, they are. I think that I recognise his snatchets from the initial renewable energy debate in this session of Parliament. The targets are ambitious, but they are not quite as ambitious as those of another party in its 2011 manifesto, namely the Welsh Conservatives. That manifesto states that the Welsh Conservatives wish to "Generate More Renewable Energy" and goes on to say that they will

"Promote a diverse range of renewable energy sources—including solar, wind, marine, small scale biomass, and microgeneration technologies with an aim to produce 100% of our energy needs from renewable sources by 2025."

I commend the ambition of the Welsh Conservatives; and I commend it in particular to the Scottish Conservatives.

I was asked about the extension of the life of nuclear power stations—an issue that we accept must be considered rationally. We are perfectly open to an extension of the life of the existing nuclear power stations, providing that the case is justified on economic and environmental grounds. That case exists, and it exists because of the need for security of supply. We have always acknowledged that, although we are clearly opposed to the building of new nuclear power stations. I hope that my answer has given some assurance to Jackson Carlaw.

The Presiding Officer: Many members have requested to speak, and I would like to get every member in. I therefore remind members that their questions should be brief, and I remind the minister that his answers should be brief too.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Will the minister confirm that the exciting renewables revolution that he has outlined this morning will translate into a massive boost for job creation? When does he expect significant employment opportunities to come on stream? Will my constituents in south and east Ayrshire have as much access to those opportunities as people anywhere else in the country?

Fergus Ewing: As I said in my statement, the prediction of the Office of the Gas and Electricity Markets is for 40,000 more jobs in the renewable energy field. In the low-carbon sector, the target is 130,000. Of course, low carbon covers more than renewable energy; it also covers environmental jobs, and jobs related to waste and the efficient use of energy. That is all to be welcomed.

We believe that there is an environmental case for renewable energy—which can also answer the question of the volatility of gas prices. As has been debated in this Parliament, one utility company has made substantial increases.

We also believe that renewable energy will transform job opportunities in the Scottish economy. I have already mentioned three of the largest companies in the world in the manufacture of offshore wind turbines, and they are all interested in coming to Scotland. One reason for that is precisely our setting of ambitious targets. That has aroused, stimulated and secured the interest of the leading companies in the world, and that must be a good thing.

Rhoda Grant (Highlands and Islands) (Lab): I want to ask the minister about some of the targets in the 2020 document. The Scottish Government proposes 375 new electric vehicle charging points; we in the Labour Party have proposed 10,000 charging points by 2015. Will the Government

review its commitment, bearing in mind that 20 per cent of carbon emissions come from transport?

The Government's target for renewable heat is also reasonably modest, at 11 per cent by 2020. Current output is ahead of the Government's trajectory, so will the Government increase that target too?

Fergus Ewing: We certainly wish to achieve the greatest possible success in transport and we are happy to work with the Labour Party on that. I am well aware of the Labour Party's ambitious commitments and I would like to continue a dialogue on how, in practice, we can exceed our hopes and aspirations on all those fronts.

I hope that we will make progress with the announcements that I have made today. For example, I would like to develop the strategies on microgeneration and agri-renewables and to get them in place before the end of the year, if possible. I am willing to work with all members to secure that objective.

Nigel Don (Angus North and Mearns) (SNP): Will the minister expand on his comments on the green equity fund? I think that he connected it with community and locally owned facilities.

Fergus Ewing: We want to encourage community renewables schemes, which is why we have set the target of 500MW. At the moment, we are in the region of 180MW—so, again, we have set an ambitious target.

One of the ways in which we think it would be sensible to stimulate such projects is by having a green equity fund that would focus on the community side. We debated the green investment bank in Marco Biagi's members' business debate some weeks ago and focused on large-scale investment. The purpose of the green equity fund is to fill a gap for small-scale community schemes. Members might ask: how much will this fund be? I thought that somebody would have asked me that, but since no one has, I will answer the question anyway. We have not yet set the fund total because we want to see how successful we are in securing the return of the £200 million fossil fuel levy, which, thus far, the Chancellor of the Exchequer and the Chief Secretary to the Treasury have been unwilling to return to us. We hope that that will change, and when it does, we hope that the green equity fund will include a reasonable proportion of the levy to develop community schemes.

Sarah Boyack (Lothian) (Lab): The minister's targets are set out in the route map. Does he accept that fuel poverty now affects 40 per cent of Scottish households? Will he use his leadership to ensure that households benefit from affordable local and community renewables? Will he commit to considering the Birmingham City Council model,

which is delivering energy bill reduction, a massive increase in local renewables and energy efficiency all at the same time? There will be a big payback for that council over the next 25 years using the feed-in tariff. In our manifesto, we committed ourselves to supplying 10,000 houses with renewable energy over the next four years. Will the minister commit to match that or go further than us? I know that the Government has a target to meet by Christmas. The Birmingham model already exists and works, so we are keen to accelerate that target.

Fergus Ewing: There is a consonance of objectives between the Government and the views that Sarah Boyack has expressed, as I have already tried to make clear. Since the introduction of the fuel poverty programme, we have seen, through the energy assistance package, more than 150,000 people on low incomes reduce their energy bills and keep their homes warm now and for years to come. It is plain, however, that the recent increases in electricity and gas prices will hit the most vulnerable hardest. That is an area in which I expect to work with all members to see what can be done practically to help those families.

Liam McArthur (Orkney Islands) (LD): I thank the minister for the advance copy of his statement and welcome both the route map and the content of his statement this morning. I welcome particularly the reference in the route map to microrenewables and storage.

The minister talked about an aspiration to support community asset ownership. The document refers to the Forestry Commission in Scotland leading the way on the public estate. The minister will be aware of concerns about the way in which the Forestry Commission has gone about harnessing the assets at its disposal and that it has not always been to the community's benefit. Perhaps the minister will let the chamber know where lessons have been learned in that regard.

Following the constructive tone of his response to Rhoda Grant, will the minister advise the chamber when we might see the low-carbon vehicle action plan, which would go some way towards addressing some of the concerns that Rhoda Grant raised?

Fergus Ewing: In response to the member's first question, I am aware of the issue, which was raised by Sarah Boyack in the renewable energy debate when she alluded to her concern about the Forestry Commission tendering process not availing communities of opportunities in that regard. Given that we have made a commitment this morning to introduce a microgeneration strategy and that we want to develop community initiatives as far as possible by the end of this year, I have decided that it would be reasonable to

engage fully and directly with the Forestry Commission to see what lessons we can learn for the future.

In response to the second question about low-carbon vehicles, we want to see what progress can be made as quickly as possible. Since Liam McArthur has raised the matter today, I will raise it with the Minister for Housing and Transport, Keith Brown, and the Minister for Environment and Climate Change, Stewart Stevenson, so that we can take it forward. We will get back to Liam McArthur and give him a specific answer on timing if we can.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I hope that the minister can clarify with urgency permitted development rights and the guidelines on the noise window for wind turbines, so that local planners, who have held up numerous consents in my constituency for over nine months, can adopt a can-do approach to small-scale and community wind projects.

Fergus Ewing: I am aware that this problem has been reported in various parts of the country. Parliament supported the introduction of permitted development rights for domestic microgeneration equipment in 2009-10 and for non-domestic equipment this March; nevertheless, inconsistencies in local planning decisions have been reported to us. Planning decisions are made locally, but we have produced guidance on these matters and will be looking closely at the situation to see whether we can do anything more, especially on the consistent treatment of noise. The issue has been reported to us and we look forward to working with Rob Gibson and other members who are rightly concerned about it.

Claudia Beamish (South Scotland) (Lab): I welcome the minister's statement. The route map states that microenergy schemes are most cost-effective and effective at reducing carbon emissions and energy bills only when combined with energy efficiency measures such as insulation. How does the minister propose to ensure that that vital link is maintained, including for those on low incomes? Will he also be more specific about the microgeneration targets? After all, the industry needs certainty if it is to grow.

Fergus Ewing: We certainly wish to encourage microgeneration and to that end we will introduce and work with all members on the strategy.

On energy efficiency, which every member has mentioned, plainly we want to encourage all means by which people might use less energy. At a recent housing expo in my constituency, pioneering design in the efficient heating of housing was demonstrated across a whole range of renewable resources, including solar and geothermal energy. I wish to avoid stating the

obvious, but the benefit of renewables is that they are renewable. There will be no volatility in the price of the sun, the waves or the wind. The benefits are clear and we will do all that we can to drive forward measures to reduce energy consumption, with a particular focus on the most vulnerable.

Marco Biagi (Edinburgh Central) (SNP): Will the minister outline in more detail the steps that he intends to take to secure community benefits from renewable projects, in particular those accruing to the community of the whole nation from the tremendous potential of the North Sea offshore resource?

Fergus Ewing: Section 3.1 of the route map, which I looked at earlier this morning, spells out the massive opportunity for Scotland's needs to be powered by offshore wind many times over. I see Jackson Carlaw almost nodding in agreement.

We wish to bring greater clarity to the arrangements for community benefit from onshore wind. Doing so would help to reduce some of the difficulties and tensions that can arise from time to time over applications for onshore wind farms.

Patrick Harvie (Glasgow) (Green): I, too, thank the minister for an advance copy of the route map. However, I encourage him to go a little further on the ownership of renewables. I welcome his comments about the forest estate and I hope that they imply that, instead of forest land simply being handed over to big energy companies, communities bidding for it will be prioritised in the process.

Moreover, why is it so hard to find a mention of Scottish Water? Just last year, we heard commitments from the First Minister—

The Presiding Officer: You are asking a question, Mr Harvie, not giving a speech.

Patrick Harvie: —on a publicly owned energy company becoming one of the biggest renewable energy generators in the country. Is the Scottish Government still committed to that and, if so, why is it so hard to find in the route map?

Fergus Ewing: I think that the route map that we have produced is broadly welcomed by Patrick Harvie—at least I hope so. We will ensure that all bodies in Scotland, including Scottish Water, are playing their full part towards achieving the objectives that the route map sets out.

We have set an ambitious new target for community renewables this morning, and that is good. I get the sense that that is broadly welcomed. We all want more communities to benefit. Many schemes in the Highlands and Islands have benefited many communities greatly. In Shetland, for example, energy costs have been

reduced, compared with the cost of fossil fuels, through a district heating scheme.

I am sure that Patrick Harvie and I will work shoulder to shoulder in the years ahead on all those matters.

Hanzala Malik (Glasgow) (Lab): The minister will not need reminding that we are a nation of inventors. The proposed new community schemes are excellent and very welcome, but I hope that we will have provision to protect any new schemes that come forward, particularly when it comes to international patenting and so on. Community groups will not have the appropriate resource to back up any inventions that they come up with.

Secondly, the reporting back to the Parliament needs to be more focused. The challenge for us as a nation is huge, and we should not just say that there will be reports back as and when we need updated; I think we should have a regular arrangement, so that we can focus on where we are going and monitor and benchmark our success.

Fergus Ewing: Mr Malik is absolutely right to praise the achievements of Scottish inventors; indeed, some people argue that Scotland invented the modern world.

Through the work that they do, our universities, including the University of Strathclyde, are leading the way—Jim McDonald briefed members on these matters yesterday. That is why Gamesa has already committed to research jobs in this country—precisely because of the intellectual know-how, capability and leadership in the field of research into renewable energy. That is very much to be welcomed.

We will certainly update Parliament as regularly as appropriate, and my door is always open.

Scotland Bill (Supreme Court)

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-00447, in the name of Kenny MacAskill, on the Scotland Bill—the role of the Supreme Court in Scots criminal law.

09:32

The Cabinet Secretary for Justice (Kenny MacAskill): I pay tribute to Lord Rodger of Earlsferry, who sadly died earlier this week, following a short illness. I am sure that members will wish to join me in acknowledging the outstanding contribution that he made to public life in Scotland over the course of a distinguished career, including as a judge and as Lord Advocate. The First Minister noted on Monday that Lord Rodger was held in the highest regard by all those who worked with him in public service. That is an assessment that I and, I am sure, many other members share.

I turn now to the subject of today's debate. Scotland has a unique legal tradition, which is many centuries old and is proudly independent. The existence of a distinctive Scots law predates the treaty of union by centuries. The old Scots Parliament was making laws for Scotland, and those laws were being applied in Scotland's courts, long before 1707. The distinctiveness of Scots law has been at the heart of our national identity, and it is something that we have a duty to preserve and uphold. I know that that view is widely held—it is not a party-political point. It is critically important that we maintain the identity and the substance of Scots law—they are the foundations on which our legal institutions stand, and they are part of our civic democracy. That identity and independence was constitutionally guaranteed by the treaty of union and it has been cherished and preserved for centuries since.

Until 1998, the High Court of Justiciary was at the apex of the Scottish criminal justice system. There was never any real intention that devolution would or should change that situation. The mechanisms that were built into the Scotland Act 1998 to deal with devolution issues were narrowly drawn and limited in intent, but in practice we have seen a steady encroachment since 1999. That has meant the emergence of a novel jurisdiction under which the United Kingdom Supreme Court, in which Scottish judges are in the minority, has come to exercise increasing influence over Scots law.

As Ian Smart, a former president of the Law Society of Scotland, has said,

"There is disquiet right across the legal profession that we have drifted into a situation where there is a second layer of

appeal ... The Court of Criminal Appeal is the final appeal court in Scottish criminal procedure. ... Nobody intended that routine cases should be dealt with in the Supreme Court."

This is not about apportioning blame but about recognising the situation that has arisen.

James Kelly (Rutherglen) (Lab): Does the cabinet secretary dissent from the view expressed by the Law Society that only 23 cases have gone to the Supreme Court in the past 14 years so the practice is not as frequent as he is trying to make out?

Kenny MacAskill: I do not think that I mentioned frequency. What I said was that cases have gone to the Supreme Court and those cases have been of fundamental significance, as they include the Cadder case, which Mr Kelly and everyone else in the chamber knows. Indeed, 14,000 devolution minutes have been marked. There is significant input and the consequences and effects are manifest and radical.

As the Court of Session judges noted in 2008 in responding to the Calman commission, the practical consequences of encroachment have included delays to trials and appeals and additional expense for all concerned. Indeed, Mr Kelly might well recall that the First Minister commented in the chamber that printing costs in one instance were in the region of £80,000 or £90,000 simply for the Crown.

I am therefore in no doubt that there is a problem here that needs to be addressed. The evidence is overwhelming.

Let me be clear: this is not a debate about our commitment to human rights. Scotland's belief in the fundamental values that are reflected in the European convention on human rights is not in any doubt. Notwithstanding some of the comments that have been bandied about in the chamber, I am not aware of anyone who is elected or who sits in this chamber who does not support human rights being applied here in Scotland.

Furthermore, this debate is not fuelled by our well-known desire for constitutional change because, although that is part of the ethos of the party that I represent, we equally have a duty to ensure that we preserve good order in our court systems.

Johann Lamont (Glasgow Pollok) (Lab): Given that the cabinet secretary said that we have a commitment to human rights, does he agree that having those rights enforced through the Supreme Court is more accessible than having to wait to be heard at Strasbourg?

Kenny MacAskill: We are trying to ensure that we get the appropriate balance. Strasbourg is the place where these matters are ultimately dealt

with. I prefaced my comments by saying that I believe that everyone has accepted that the ultimate court of criminal appeal in Scotland should be the High Court of Justiciary. As I was going to say in relation to Lord McCluskey's review, it is about how we strike the right balance between having the ECHR and the Strasbourg court, which apply both north and south of the border, and preserving the integrity of our centuries-old legal system, which has a duty to apply the criminal law.

What we are discussing today is the self-evident fact that the existing devolution settlement requires structures that work and which avoid unforeseen and unintended negative impacts. The simple fact is that there are significant problems with those existing structures. That is why we have sought to promote public debate and why we have asked some of Scotland's most eminent legal minds to examine the current difficulties and to provide their expert advice.

We have had passionate and sometimes outspoken public debate in recent weeks, but it is now time to move that debate on to a considered examination of the options that are available. I am, therefore, pleased to welcome the first report prepared by the independent review group led by Lord McCluskey. I welcome him and his colleague Sheriff Charles Stoddart to the chamber. That eminent group draws on the vast experience and in-depth knowledge not only of Lord McCluskey but of Sir Gerald Gordon, Sheriff Charles Stoddart and Professor Neil Walker. It has been asked to work independently of Government, without fear or favour.

What the group has given us in its first report is objective and measured, and has been informed by an unparalleled level of expertise. The report provides a sound and sensible basis for debate.

James Kelly: I do not doubt what the cabinet secretary says about the experts on the group, but he tells us that the interim report has been informed by an "unparalleled level of expertise". How can he say that when the group could not conduct any interviews because of the short timescale in which it had to produce its report? *[Interruption.]*

The Presiding Officer: Before the cabinet secretary answers that, I ask whoever has the phone that is switched on to switch it off now, and I ask all other members to check that all mobile devices are switched off.

Kenny MacAskill: We should remember that we are talking about an interim report and that a final report will be produced later in the autumn. We should also remember that Lord McCluskey and his review group had the opportunity to look at representations that were made to the Advocate

General for Scotland's review group by the Law Society of Scotland and others, and that they have made it clear that they will be happy to take evidence subsequently. Therefore, it seems to me that an appropriate level of information was out in the public domain and was accessed by the review group. Many members believe that there comes a time when we need to cease having consultations and start providing solutions. That applies to other developments that are under way, but I certainly think that the interim report is based on sound evidence. It will be subject to further debate and discussion, which is the purpose of this morning's debate.

The group is clear in its view that Scots criminal proceedings have been "unexpectedly" brought under review in the Supreme Court. As the group observes in its report, because of the lack of parity of appeal mechanisms, the High Court of Justiciary

"has been placed under a broader and, in the light of developing practice since 1998, a more intrusive jurisdiction than has been created for the rest of the UK in relation to ... human rights issues in criminal cases."

It does not recommend ending the current jurisdiction of the Supreme Court. In providing that advice, the group recognises the "constitutional realities" of the current settlement, which I accept. We are where we are, even if it is not where we seek to get to ultimately.

However, it is crystal clear that what emerges about existing arrangements is that the statutory basis in the Scotland Act 1998 is unsatisfactory; that the position of the High Court of Justiciary is anomalous and significantly weaker than that of equivalent courts elsewhere in the UK; that the proper role of the Supreme Court—if it is to continue to have a role in Scottish criminal cases—lies in defining and clarifying constitutional and human rights law; and that it is for the High Court to apply that law in practice, in the context of the individual cases that come before it. There is an urgent need to resolve those problems.

The review group has already identified some potential solutions, including further amendments to the Scotland Bill, which now require more detailed development. It is clear from the report that the High Court should remain at the apex of the Scottish criminal justice system. There is a clear distinction between the role of the High Court and that of the Supreme Court. It is for the Supreme Court to rule on the most challenging and complex human rights questions, subject to the overarching jurisdiction of the European Court of Human Rights in Strasbourg, but it is the proper function of the High Court of Justiciary to apply the law of Scotland in accordance with rulings by the other two courts.

Those are distinct and separate functions. The jurisdiction of the High Court is different from that of the Supreme Court or of the court in Strasbourg. None of them is in competition with the others. In fact, the work of all three courts should complement, not conflict. There is no question but that the High Court can be relied on to apply the law consistently with the determinations of the Supreme Court. It is every bit as capable of applying the law in accordance with the conclusions reached by the European Court of Human Rights.

The challenge that we face lies in ensuring that the existing structures deliver the right results for criminal justice in Scotland and that they do not result in the unintended erosion of the role of the High Court or the distinctive character of Scots law. The suggestions by the review group in this first report help us to address the challenge, but they are not final conclusions.

As I said earlier, I welcome Lord McCluskey's undertaking to explore in further detail the issues that he has identified. Those are issues that will need to be satisfactorily addressed by the UK Government in the Scotland Bill when it reaches the House of Lords in the autumn. As Lord McCluskey highlights, the changes under debate engage reserved and devolved interests. For our part, we have already made it clear that there are elements of the Advocate General's existing proposals that we welcome and support. However, the final shape of the bill must properly reflect the concerns—and the solutions—identified by Lord McCluskey. Those provisions will need to gain the confidence and support of this Parliament if they are to be credible and successful.

Lord McCluskey's group will continue its work over the summer. I look forward to the outcome of that work and to a further report from the group in due course. I also look forward to the opportunity for constructive dialogue with the UK Government. With that in mind, I believe that we should all be able to work together to take forward the review group's recommendations and to see a package of proposals in the Scotland Bill that we can all support.

I move,

That the Parliament welcomes the interim report of the independent specialist group led by Lord McCluskey; believes that it provides a constructive and well-informed basis for further detailed consideration of the role of the UK Supreme Court in Scots criminal law, and looks forward to receiving the further advice and final report of the group in autumn 2011.

09:47

Johann Lamont (Glasgow Pollok) (Lab): I associate my party with the cabinet secretary's comments on the sad death of Lord Rodger and

recognise the significant contribution that he made to Scottish public life. We send our condolences to his family at this sad time.

I am happy to contribute to the debate. The role of the Supreme Court is a complex one. The interim report of the review by Lord McCluskey and his colleagues is an interesting and valuable contribution to our understanding of the issues involved. I do not pretend to be a legal expert on those issues, and I recognise that those with expertise in and experience of our judicial system and Scots law are engaged in significant debate about the role of the Supreme Court. It is evident that, in the next period, as Lord McCluskey moves towards a fuller report, there will be disagreement and debate about the group's conclusions. Perhaps it is unfortunate that the interim report has been constrained in its access to information simply by a timetable imposed by the Scottish Government.

The issue of the need for leave to appeal to the Supreme Court requires further consideration, but we should be alive to the fact that that change is not universally accepted. There are those who would not agree that this is an issue of parity. However, it will be important to reflect on the effect and impact of such a change and to understand what its consequences might be.

What we should be able to agree on today is that this report by the First Minister's group, led by Lord McCluskey, is a rebuttal of the stance of the First Minister and the Cabinet Secretary for Justice. If members recall, the First Minister and the cabinet secretary argued that there should be no role for the Supreme Court in Scotland's judicial system—not when we get independence but now.

There was an argument that the Supreme Court was somehow predatory upon the Scottish courts, that the Supreme Court routinely sought to interfere and that Scottish judges, sitting in London, were not able or competent enough to address issues of Scottish law. Indeed, it was argued that the English judges, no matter how learned they were, were not capable of understanding the Scottish legal system, and that their understanding was limited to excursions to the Edinburgh fringe. There was an argument that the Scots would be better served by access to Strasbourg than to London, even if that access meant many more years of uncertainty. The review group clearly rejects that position and the cabinet secretary's new focus on appeals is the inevitable fallback for someone whose argument has been roundly refuted.

Kenny MacAskill: Does the member think that Cadder-type situations, which require the kind of emergency legislation that we had to introduce,

are beneficial either to Scots law or to good order in this country?

Johann Lamont: Some have argued that if the Scottish judicial system had been more alive to such issues earlier and had responded at a certain point, emergency legislation would not have been required. Nevertheless, I am not sure whether it is appropriate to judge the quality of courts on the consequences of individual decisions, which is precisely the point that is being made in this debate.

Of course certain interesting issues have to be resolved, but that will never happen through foghorn diplomacy. Given his own intemperate comments, the cabinet secretary's claim that he was promoting public debate somewhat stretches credulity. He must acknowledge that his approach to this complex issue has been entirely inappropriate. The language that he and the First Minister have used has demeaned their office, insulted individuals' integrity and, worryingly, introduced the MacAskill principle of government, which is that he who pays the piper calls the tune. In that respect, I am interested to hear whether the same principle applies to, say, voluntary sector and other organisations that might wish to comment.

The main reason why the approach taken was problematic was that it was counterproductive and obscured the real debate. Of course, this debate has been driven not by judicial dilemma but by the simple politics of a nationalist Scottish Government, whose innate nationalism defends all things Scottish on the basis of their being Scottish and is hostile to anything south of the border. The problem with the Supreme Court is not what it does but where it sits. Such a conservative defence of the Scottish legal system is odd, given Scots law's historically strong willingness to learn from other jurisdictions and approaches. Indeed, Mr MacAskill himself has introduced provisions from the English legal system into the Scottish system and, even as we speak, Lord Carloway is considering issues of fundamental historic significance to Scots law such as the question of corroboration. Given the challenge to providing victims of crime with access to justice, we must never allow a complacent view that resists change in a changing world.

Indeed, that is where we must focus: the role of the Supreme Court and, more broadly, the legal system itself in protecting victims and ensuring fairness. At the height of the First Minister's excesses in railing against the Supreme Court, his position shifted significantly from an attack on a perceived wounding of the Scottish legal system by an English court to what seemed to be an attack on the way in which human rights legislation protected and gave succour to perpetrators of

crime, not their victims. That issue is important for all of us who want human rights to be protected in our courts and communities. We still have to address the hostility that is felt by many people in Scotland and beyond towards a human rights agenda that compensates prisoners for slopping out while appearing to offer no protection to families under the cosh from aggressive neighbours and unresponsive public services that do not address their needs. We have to rehabilitate the case for human rights and ensure that it protects the victims of crime instead of being used as an alibi for agencies that have failed to protect them. In that regard, we on this side of the chamber are more than happy to engage in a debate on rights and responsibilities and various balances and understandings in relation to human rights legislation. We must talk about human rights for those in care homes, our schools or wherever and about the balance of rights and responsibilities in our communities.

We regret the tone in which this debate began and the fact that it was driven by a political agenda, not by an agenda concerned with the legal system. However, we acknowledge the significant contribution made by Lord McCluskey's report and the challenge that it presents and, indeed, welcome Lord McCluskey's comment in the report that the debate cannot be confined to the legal profession. Although it should be informed by the profession and although we should recognise that people with great expertise in the field hold a range of views on the matter, there has to be a buy-in from far beyond the legal profession. After all, if there is a gulf in understanding between the views of the legal profession, the courts and judges, and the experience of the people in our communities, we are all diminished. In that respect, the human rights issues are significant.

We would therefore welcome further reporting from Lord McCluskey and engagement with the UK Government, particularly with the Advocate General. We urge the Scottish Government to engage in quiet diplomacy, rather than the foghorn diplomacy of the past. That did not inform or shape the debate; rather, it prevented the debate from proceeding constructively. We are open to an interrogation of the present system and to change that protects access to justice. Above all, we urge the cabinet secretary to debate the issues of justice in terms of justice and not as a convenient hook on which to attach the Government's political mission. I look forward to the debate.

I move amendment S4M-00447.2, to leave out from "believes" to end and insert:

"further welcomes the group's reaffirmation of the continuing role of the UK Supreme Court in constitutional and human rights issues affecting Scotland; recognises that the interim report and the work of the expert group set up

by Lord Wallace raise some important questions in relation to devolution issues; regrets the inappropriate language of the First Minister and the Cabinet Secretary for Justice with regard to highly respected judges of the UK Supreme Court and the threat to withdraw funding from the court, and believes that wider consultation and discussion on proposals for change are vital in order to allow proper, well-informed, thorough and detailed consideration of all the relevant issues and implications of reform."

09:56

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I am pleased that we have reached the stage of a parliamentary debate on the important issue of the Supreme Court and how it relates to Scots law. Although the workings of the Supreme Court are beyond the legislative competence of the Scottish Parliament, the court's decisions have had a bearing on high-profile legal cases in Scotland, so it is important that we have a proper debate on the issue. That much I warmly welcome. However, the issue has undoubtedly become marred in recent weeks by much tub thumping and name calling on the part of the Scottish Government, which has done little to foster the mature debate that we need on such important issues. Whatever the merits of the argument, encouraging incendiary headlines in our newspapers is not the way to conduct a meaningful and rational discussion on an issue of such importance. The Government ought to argue its case on the basis of facts rather than personal slurs on senior Scottish judges.

We in the Conservatives pay tribute to the talent and service of Lord Rodger, who died earlier this week. Along with his colleague Lord Hope, Lord Rodger served as one of two Scots on the UK Supreme Court. From the tributes that have been paid to him this week, it is clear that Lord Rodger brought a substantial talent to his role. His death is a great loss to the Scots legal profession. In the context of today's debate, he brought a great deal of knowledge of the Scots legal system to the Supreme Court.

We are indebted to Lord McCluskey and his team for their interim report, not least because of the timing demands that the Scottish Government placed on them. They have produced a clear and concise summary of the key issues in a short space of time. However, it is not clear what the Government's rush is to have a debate on the issue. Of course it is important, but why not wait for the final report, by which time the review group will have had time to engage properly with experts and stakeholders in the field? Holding a debate when we have only an interim report suggests that things are being rushed for some reason.

No one denies that there are issues with how the Supreme Court engages with Scots law in determining points that relate to human rights.

After all, those issues are hugely complicated, given that they deal with the legal relationship between the High Court, the Supreme Court and the European Court of Human Rights in Strasbourg. That relationship between the workings of a Scottish court, a UK court and a European court demonstrates simply that Scotland is part of the United Kingdom and the European Union. The Scottish Government is clearly uncomfortable with one of those facts—for political and ideological reasons—but they are the facts, and the Scottish Government needs to learn to deal with the national and international legal obligations by which we are bound.

That said, we fully support any effort to tidy up the way in which our courts operate and to establish the most effective working relationship between the institutions. The interim report identifies a number of issues in the relationship between the courts. However, it clearly backs the UK Supreme Court's jurisdiction to rule on human rights in Scottish criminal cases. Furthermore, the report goes on to argue that if, as is the Scottish National Party's preferred option, the European Court of Human Rights in Strasbourg is used instead,

"there is the potential for further uncertainty and delay."

I am sure that all members agree that we certainly do not want that when dealing with important human rights cases.

Stewart Maxwell (West Scotland) (SNP): I commend the member's view that we must try to make access to justice as speedy as possible and that going to Strasbourg would create too much delay. Therefore, does he agree that it would be much speedier in an independent Scotland if we kept the apex of our judicial system here and did not have to go through the extra step of going to London?

John Lamont: I do not quite follow the logic of that. The delay in hearing cases in the European Court of Human Rights is significant—tens of thousands of cases are waiting to be heard. Claimants—people trying to secure their human rights—will not get access to justice any more quickly. Indeed, they will have to wait longer. The consequences of Cadder could have been far reaching if the delay before the case was heard had been much longer than it was at the Supreme Court. Access to justice has been achieved much more quickly under the current system of the Supreme Court than it would be achieved under the system preferred by the SNP.

Unlike the First Minister, the report does not say that the Supreme Court does not know or understand Scots criminal law. Some of the best Scottish judges are appointed to the court. It is insulting to suggest that they are unable to

consider Scots cases correctly. If the concerns are really about the need to have Scottish judges to determine Scottish appeals, a solution would be to appoint one further Scottish judge to the Supreme Court and thereby produce a majority in Scottish appeals.

The report also stresses the need for coherence in the way in which human rights laws are applied both north and south of the border. The UK Supreme Court undoubtedly provides a mechanism to ensure that that happens.

I understand that the Advocate General will consider the interim report from Lord McCluskey, and I know that he will be paying close attention to the contributions in today's debate. However, I have no doubt that he will also draw on the conclusions of his own expert group and the evidence given by the Scottish legal community when they were consulted on these matters.

I am sure that this will be a helpful debate in establishing some of the facts surrounding the relationship between the High Court and the UK Supreme Court. Too much of what we have heard from the Scottish Government on this issue in recent weeks has been either devoid of facts, or a deliberate distortion of facts.

I move amendment S4W-00447.1, to insert at end:

“; notes the realistic conclusion of the interim report that “the Supreme Court would continue to make final and binding rulings on human rights issues including those arising in criminal cases from Scotland”; calls on the Scottish Government to accept this central conclusion, and further notes and expresses its appreciation of the outstanding contributions to Scottish public life and the Scottish legal system made by Lord Hope of Craighead and the late Lord Rodger of Earlsferry”.

10:02

Nigel Don (Angus North and Mearns) (SNP): I, too, am grateful to Lord McCluskey and his review group. I start with paragraph 42 of his first report, which says:

“Those who prefer to see the essence of the arguments distilled will find that that has been expertly done in the Expert Group Report. It would be superfluous to repeat their summary here.”

So he does not repeat it.

I would like to go back to the expert group convened by the Lord Advocate, under Sir David Edward, which reported last November—and offered, as it were, the view from the other side. The expert group had slightly longer to consider the issues. I will start with a quote:

“It is sufficient for present purposes to note that the House of Lords”—

which preceded the Supreme Court—

"on more than one occasion, held that a criminal appeal to the House from the High Court of Justiciary was not competent. This was put beyond doubt by the Criminal Procedure (Scotland) Act 1887. The Criminal Procedure (Scotland) Act 1995 provides that decisions of the High Court of Justiciary '... shall be final and conclusive and not subject to review by any court whatsoever.'"

A little further down, the report notes that the Supreme Court, under the Scotland Act 1998, is a court with "constitutional" jurisdiction, ensuring the legislative competence of the Scottish Parliament and the devolved competence of the Scottish ministers. The cause of the problem is that Scottish ministers include not only those who are obviously Scottish ministers but the Lord Advocate and the Solicitor General.

What are devolution issues? The report says that they have to do with "legislative competence". I do not think that that is in dispute—which is one of the reasons why the Supreme Court will remain. The report also says that devolution issues are questions about

"the exercise (or purported or proposed exercise) of a function by"

a minister, and questions about the

"failure to act by a member of the Scottish Executive"

and whether that

"is incompatible with a Convention right or EU law."

That, of course, is a point to which we will return.

It is because, and only because, the Lord Advocate is a member of the Scottish Executive that his or her acts are subject to review as a devolution issue. There is no parallel in other parts of the United Kingdom.

I apologise, Presiding Officer, for the speed with which I am going through this, but time is not on my side.

On page 12—

Johann Lamont: Will the member take an intervention?

Nigel Don: Forgive me. As I have just said, time is not on my side, and I really want to get this on the record.

The expert group's report says on page 12:

"Any tension between the tests applied by the Supreme Court and the High Court was effectively resolved by the decision of the Supreme Court in *McInnes*—"

which was in 2010.

"In that case, the Supreme Court also made clear that where a case raises special features of Scots criminal law and practice, the Supreme Court 'must be careful to bear in mind the fact that the High Court of Justiciary is the court of last resort in all criminal matters in Scotland'."

I emphasise that that was the Supreme Court saying that.

The report goes on:

"In adopting this approach the Supreme Court recognised what has been repeatedly emphasised by the European Court, namely that it is not concerned with substantive domestic law but only with ensuring compliance with the rights secured under the Convention. Devolution issues only properly arise where there is an issue of procedural unfairness."

However, the report of the expert review also notes, on page 14:

"in reviewing a devolution issue, the Supreme Court has (at least in certain circumstances)—"

and this is prior to the recent Fraser case—

"effectively reviewed the whole merits of a decision. It is unsatisfactory that such a wide jurisdiction should be the by-product of interpretative ingenuity applied to the concept of the expression 'act of the Lord Advocate'."

That would perhaps be fine if the Supreme Court was made up exclusively of Scots judges. I go back to John Lamont's comments—I am not sure why having a majority of Scottish judges would help; they should really all know what they are doing.

Lord Hope's personal response to the expert group is cited on page 15 of the report, at paragraph 3.16, which notes:

"Lord Hope concludes by saying:

"For the most part the fact that the Supreme Court draws its membership from several jurisdictions has not given rise to difficulty. In practice the other justices defer to the expertise of the Scots on matters of Scottish criminal law and procedure that may come under scrutiny, and I am confident that this will continue to be the case."

Others will argue about other problems, but I take from the quotes that I have read out the point that the Supreme Court itself recognises that it is reviewing, although it should not be. It now finds itself with just one Scottish judge, sadly, although there will no doubt be two again ere long. The majority of judges in that court are simply not experts on the subject, but on occasion—albeit it might not be very often—they are asked to review the whole merits of a case. As far as I am concerned, that is what should not be happening, and the Supreme Court itself recognises that it should not be happening. Furthermore, every statute that I have cited recognises that that should not be happening. We absolutely have to address that.

10:08

Graeme Pearson (South Scotland) (Lab): I acknowledge the contribution of Lord Rodger of Earlsferry to the wellbeing of Scottish justice. I also acknowledge his humanity and the way in which he dealt with members of the public in the performance of his duties.

This is one of the last debates before the summer recess, and I would have imagined that we would be dealing with an issue of great concern to the ordinary members of the public of Scotland. I thought that it might have been about the 200,000 Scottish children who are living in homes that have been designated cold and damp and who are suffering from fuel poverty, or about the 20,000 children who reside in homes with adults who are affected by drug abuse.

No. We find that we are dealing with the role of the Supreme Court, a subject so significant to our future that the First Minister, in his interview with *Holyrood* magazine, focused his wrath on the institution in terms that one could only describe as unprecedented and unparliamentary. The attack on Lord Hope of Craighead, who is an acknowledged leading light in Scottish jurisprudence, was astonishing in its venom, and indeed in its inaccuracy. Taken in concert with the justice minister's assertion that

"He who pays the piper ... calls the tune",

it presented Scotland's Government in an undignified light, creating an atmosphere for debate more akin to that of the football terraces than that of political discourse.

The First Minister's attack on

"the vilest people on the planet"

does nothing more than play to gut prejudice. He well knows that prisoners are in our prisons not because of who they are but because of what they have done.

One can only imagine that the immediate thrill of its success in the election caused the Scottish National Party Government to lose the place—although hopefully it did so only momentarily. At least the First Minister has since recognised common sense by delaying his sectarianism legislation. Perhaps he now realises the error of his ways in his management of this issue, too, and perhaps the cabinet secretary will follow his example.

Is the function of the Supreme Court of such import that it required the First Minister's immediate attention? Apparently not. The genesis of the current situation emanates from the Scotland Act 1998 and the Human Rights Act 1998. The First Minister, who was then a member of the Westminster Parliament, presumably recognised the significance of section 57(2) of the Scotland Act 1998, given that it introduced a role for the Judicial Committee of the Privy Council in reviewing the acts of the Lord Advocate. At the time, Mr Salmond harshly described the Judicial Committee of the Privy Council as consisting of many members who had held political office and owed their appointment to the council to politics.

It has been 13 years since the Scotland Act 1998 and six years since the creation of a non-political Supreme Court, yet only now is the Scottish Government overcome by the absolute imperative of ensuring that Scottish courts are maintained in the fiction that they exercise their function in total isolation and that external courts should have no influence on the Scots law tradition. Depending on which part of his speech one listens to, the justice secretary's position is either that the Supreme Court deals with routine cases or that it deals with fundamentally significant cases.

It is curious that at this time we should find our attentions diverted from the real issues that are important to normal people.

Kenny MacAskill: Did the member take that view when we had to have emergency legislation in relation to Cadder? Does he think that we should just have viewed that as routine? Does he not recognise that some of the matters decided by the Supreme Court cause such significant issues that we have to deal with them as emergency legislation? Does he wish that situation to continue in the future?

Graeme Pearson: I obviously recognise that the decisions taken by the Supreme Court are of fundamental import to Scots law, but the issues arising from the Cadder decision were flagged up earlier by a decision in relation to a Turkish case. That should have been acknowledged and acted on much earlier.

The reality is that when the United Kingdom signed up to the Human Rights Act 1998, each jurisdiction in the UK became subject to responsibilities in relation to the Strasbourg court and the European convention on human rights. It seems to me that instead of denouncing a London-based court, which had two pre-eminent Scottish judges on it, Lord Hope and Lord Rodger, the Government would have done better to examine the ends at which the arrangement was aimed—swifter and better justice—and not become overwhelmed by the means by which the court's decisions were arrived at.

The Government's concentration on both the court's location and the nationality of the judges who are involved reduced Scotland's position to one akin to hillbilly politics—and not for the first time. The substantive issue of having proper procedures while acknowledging the Supreme Court's right to rule on appropriate Scottish matters was lost in the brouhaha. Common sense and decorum were abandoned as insults were flung and aspersions were cast.

The McCluskey report offers a sane interim before the next stage: proper measured discussions involving experts who can advise best

on the way to arrive at an appropriate solution to the current administrative lacuna.

Be in no doubt: the independent report by McCluskey states that the Scottish Parliament has no power to alter the jurisdiction of the Supreme Court in human rights matters. The report states—with the expert group's agreement—that the Supreme Court should continue to have jurisdiction over human rights issues in Scottish criminal cases.

For me, the key issue is to get the Government's agreement on a way forward that acknowledges the Supreme Court as a valuable mechanism for deciding human rights matters affecting Scottish courts. Only then is it likely that, as the Cabinet Secretary for Justice suggested, a line can be drawn under this matter.

The Deputy Presiding Officer (John Scott): You must close now, Mr Pearson.

Graeme Pearson: The Government has diverted our attention away from the real issues and, as such, I support Johann Lamont's amendment.

10:15

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): My speech is in three parts, covering the historical perspective; Lord McCluskey's review, which, as most will acknowledge, sets out a reasonable way forward for the UK Supreme Court, especially with regard to parity between the various jurisdictions; and the ECHR itself.

Could we have foreseen the reach that the UK Supreme Court would have? Certainly not. In the debate on the Sewel motion on the UK Supreme Court's establishment that we had in 2005, the motion was moved by Hugh Henry, the then Deputy Minister for Justice. At the time, he said—and I am being fair though selective in my quotations:

"Those areas relate to the rights of appeal in civil cases from the Court of Session on non-devolution issues."

That is what people were focusing on. Mr Henry also said:

"We must also ensure, as Pauline McNeill said, that the independence and integrity of Scots law are maintained. The separate nature of the Scottish legal system is an important part of how Parliament can operate differently, reflecting the needs and aspirations of the Scottish people."

He also mentioned that the Justice 2 Committee

"proposed that there should be enshrined in legislation the requirement for a Scottish majority in the supreme court for cases that emanate from Scotland that give rise to devolution issues."

Those issues were aired in the debate at the time. The Conservatives opposed the move—indeed, there is a delightful comment from Bill Aitken about happening to find himself for the first and perhaps last time on the same side as the then shadow minister for justice, Kenny MacAskill—with Annabel Goldie making it clear that their opposition was based on the fact that the legislation was rushed, that no royal commission had been set up and that there was no real consideration of the proposal. Mike Pringle of the Liberal Democrats supported it, but even he focused on civil cases. Everyone had their eye on the House of Lords's dual judicial and legislative purpose and it was felt—appropriately, I think—that there was a conflict of purpose and interest in its sitting as a legislator and as a court of appeal on Scottish civil court cases. As far as I can see, no one in that debate seemed to think for a moment about criminal cases.

That was the position in 2005 and, as a result, I think it really rather impolite to say that a senior bench of Scottish judges should have seen this train crash coming down the track. They know a lot more about Scots law than anyone sitting in the chamber and if they could not see it coming, I do not know how anyone else was supposed to.

I also find it ironic that, in that earlier debate, the current Cabinet Secretary for Justice said:

"Ultimately, we have to ensure parity."—[*Official Report*, 19 January 2005 ; c 13629-33.]

Of course, he was talking about civil cases; as we now know, the flow has been the other way. As Nigel Don pointed out, criminal jurisdiction has partly shifted towards the House of Lords in a way that, I think, was never envisaged.

I welcome the interim report from Lord McCluskey's review group and look forward to the publication of the final report in August. However, I say to Johann Lamont that she should take a look at some of the cases that are before the UK Supreme Court. One particular case, which involves AXA General Insurance Ltd and others as appellants against the Lord Advocate and others, seeks to reduce the effect of legislation on pleural plaques, an act of this Parliament that her party campaigned for. They are attempting to challenge the Parliament's competence in passing that legislation under the European convention on human rights. As we know, every bill that comes before Parliament has to be certified as competent under ECHR, but the fact is that all those people who are waiting for damages under that legislation are not getting them anymore.

We need to consider the unforeseen breadth of the cases that are coming before the Supreme Court. For example, one case, referred to as *Her Majesty's Advocate v Ambrose* (Scotland), relates

to the evidence obtained when an accused person responded to police questioning at the roadside without any legal presence. That is where this is taking us.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Taking the example that the member has highlighted, I point out that tobacco companies, for example, take us to court to delay the implementation of legislation. What would happen if the Supreme Court did not exist? Would the matter not go to Strasbourg? If so, would that not result in much longer delays?

Christine Grahame: With respect, I think that the member misses my point. The Supreme Court is challenging the Parliament's competence to deliver its own acts and is, in fact, reviewing our own legislation. The legal advice that we received on this particular legislation, which as I recall was passed unanimously, was that it was ECHR-compliant; however, that is now being reviewed. No one envisaged that happening.

I turn, in my final minute and a half, to the convention itself, which the Council of Europe established when it had only seven members. I fully support the principles and rights that are embodied in the convention, but the Council of Europe now has 47 member states, all of which have very different cultures, economies, jurisdictions and rules. In Scotland, people have a right to silence, from which guilt cannot be inferred. In Scotland, independent corroboration is necessary in criminal cases. In Scotland, people have access to criminal legal aid. In Scotland, people have a right to apply for bail in certain cases. Does all that apply in other nation states? I do not think that it applies across the board.

I suggest that, after 60 years of the ECHR, rather than challenge the rights and duties that exist under it, we should ask for a review of its operation across nation states to take account of the different jurisdictional checks and balances that are applied in those nations. That way, we might avoid judgments coming through that are not sustainable.

10:21

Kezia Dugdale (Lothian) (Lab): I very much welcome the opportunity to take part in today's debate on the Supreme Court.

I am conscious that we all walked past Public and Commercial Services Union members who are on strike as we entered the building this morning. I am aware that many of the staff who work in our court system are PCS members, and it would be wrong to discuss the work that they do without recognising their hard work and dedication to public service. They are striking today because of the serious attack on their living standards that

is the result of measures that the UK Government has taken, and I encourage members to sign my colleague Drew Smith's motion in support of their position.

In preparation for today's debate, I read the interim report of the group that is chaired by Lord McCluskey, who is supported by Sir Gerald Gordon, Sheriff Charles Stoddart and Professor Neil Walker. I was fortunate enough to have been taught constitutional law by Professor Walker at the University of Aberdeen a decade or so ago, and I admit that I had hoped that I had left late nights of reading legal opinion for his class behind me but, alas, that is not the case.

Like the SNP, I am very proud of Scotland's legal system and its proud history, which is one of the first things that students learn about at law school. We are different, and our system has been admired and plagiarised, in the best possible way, around the world.

However, I fear that the SNP, through its attempts to chastise the Supreme Court for the role that it plays, has done our legal system a disservice. Let me develop that point. The McCluskey report is right to recognise the fact that Scotland is the only devolved authority in the UK for which the Supreme Court has an unqualified right to grant special leave when the court below has not granted leave. That is an anomaly, which the report is right to raise, but it does not amount to a constitutional crisis that demands the levels of hysteria that have been displayed by the justice secretary and the First Minister.

For me, the answer is not to narrow the role of the Supreme Court in Scotland, but to refine it by addressing the anomalies that exist and to use it to our advantage. For as long as Scotland is part of the UK, which is the signatory to the convention and is therefore accountable for its application, that is the right and proper way to function.

The McCluskey report argues that the Supreme Court should have a role in identifying the law that the criminal courts apply, but that that law should be remitted back to the High Court for application. Paragraph 60 of the report says:

"Once the Supreme Court has defined and expressed the law applicable in response to the point of general public importance raised in the certificate, the High Court of Justiciary should be able to apply that law to the case in hand. This method of proceeding would ensure that the Supreme Court, in dealing with its human rights jurisdiction in criminal cases, would concentrate on identifying and articulating clearly the relevant law contained in the Human Rights Act and would not proceed to decide the case as if it were the High Court of Justiciary. In this way the traditional role of the High Court of Justiciary would be preserved."

That might make uncomfortable reading for Government ministers, coming, as it does, in a report that they commissioned, but it strikes me, at

this early stage, as being a sensible and legally sound position to adopt.

The report goes on to discuss briefly the prospect of the High Court seeking a ruling from the Supreme Court on a point of human rights law before trial. Actively seeking the Supreme Court's guidance on the application of human rights law prior to the commencement of a trial could, arguably, speed up the justice process and improve the finality of decisions. That is an extremely interesting prospect, and I look forward to reading more on the detail of that idea in the final report of Lord McCluskey and his team. I acknowledge that, as other members of my party have said, the report that we are discussing is an interim report and that much more evidence needs to be gathered before any real conclusions can be drawn.

I do not accept that the integrity of Scots law is under attack from an English court. I am firmly of the view that the application of our law needs to be read alongside our duties under human rights legislation, and I am as proud of our country's human rights laws as I am of the Parliament. Freedom of expression and the right to privacy, life, freedom from torture, a fair trial and freedom of thought, conscience and religion are all fundamental to a free and fair society. The Supreme Court exists to protect those rights, and we will undermine them if we choose to make this debate about a constitutional question about Scotland's relationship with its neighbour. We have a duty as parliamentarians to reaffirm why those rights exist and to recognise that there is no hierarchy of rights between law-abiding and law-breaking individuals. As my colleague Graeme Pearson said, "vile people"—the First Minister used that term—go to jail not for who they are, but for what they have done. When we send people to prison, we remove their liberties, but not their rights. That said, the public debate about human rights in action would benefit from more positive stories about their capacity to protect victims and vulnerable people.

The Scottish people's choice of Government is indisputable, but their future constitutional preference is not. Government ministers' attempts to cut off the Supreme Court and remove it from the jurisdiction of our land to raise the spectre of independence are not just poor politics; they border on abusing the rule of law. That is why I welcome Lord McCluskey's thoughtful and sound interim report and look forward to seeing the continuation of the debate surrounding the Supreme Court.

10:26

Alison McInnes (North East Scotland) (LD):
The Scottish Liberal Democrats, too, mark the sad

death of Lord Rodger by paying tribute to his work and his contribution to the Scots legal profession.

I join other members in thanking Lord McCluskey and his group for working so quickly to get their first report to us in time to inform this debate, which is taking place just before the summer recess. I also welcome the language in the Government's motion. It is fair to say that it is somewhat more considered than what the Cabinet Secretary for Justice and the First Minister have said in recent weeks.

It seems to me that the Government has found itself in a slightly awkward position in that it is being forced to welcome a report that it disagrees with. I sense that SNP members will make interventions and try to claim that that is not so, but the First Minister has said that the Scottish Government believes that

"the UK Supreme Court should have no role in matters of Scots criminal law".

He has said:

"It is our firm view that the final appeal court for any Scottish criminal case should be in Scotland".

In fact, he set up the review group expressly

"to examine how best to achieve that."—[*Official Report*, 2 June 2011; c 305.]

Perhaps now, having been forced to beat a hasty retreat for the second time in a week, Government ministers will think twice before they pronounce on issues using the tawdry language that showed so much disrespect to the Supreme Court, its judges and our legal system. It should be a matter of great concern to everyone that ministers, who play a role within our judicial system, should launch attacks on judges and their judgments. Respecting the judiciary's independence is a fundamental responsibility of the Government, and I hope that ministers will take that duty more seriously in the future.

The truly disappointing aspect of the debate is that the intemperate comments from Mr Salmond and Mr MacAskill have served only to distract us from the real issue at hand. The main issue that we should be concerned with is not where the Cadder or Nat Fraser ruling was made; we should be far more worried about the deficiencies in our criminal law and procedures that are creating doubts about the legitimacy of convictions in the first place. Those cases and other recent cases have not been examples of a foreign court imposing itself into Scottish criminal proceedings; rather, they have been a warning that we need to look closely at our body of law and review exactly how it sits in relation to our ECHR responsibilities.

In its briefing for this debate, Amnesty International rightly pointed out that

"It is unfortunate that most public, or even political, engagement with the ECHR centres around criminal cases",

with the consequent

"assumption that human rights exist principally to benefit"

the criminal classes. That perception of the ECHR is not the reality, of course, but it lingers and in many ways makes the discussion about how it should work in relation to Scots law more difficult. However, that difficulty is not a reason to ignore it. The recent cases have demonstrated that we must look to address the matter with some urgency.

Christine Grahame: I want to pick up on the point about our focusing on the criminal. Does the member consider the AXA case to be hugely significant? It is a civil case in which a huge insurance company is relying on the right to possessions—in other words, its funds.

Alison McInnes: I understand the points that the member raises in relation to that case, but if we have established a robust position, we should not be frightened of defending it.

If any court identifies holes that leave Scots law open to successful appeal on human rights grounds, we cannot assume that they are isolated issues and hope for the best. We must take a proactive approach and act to close any further gaps that might remain. I therefore wholeheartedly endorse the Law Society of Scotland's call to set up a full audit of the compatibility of Scots criminal law with the ECHR. The people of Scotland must have confidence that our laws will hold up to human rights challenges. I hope that the cabinet secretary will set in motion such an audit at the earliest possible opportunity.

I have a few concerns in relation to the McCluskey report. Although, as I said, we are all grateful for the speed at which the group has worked to meet another of the Government's needlessly rushed deadlines, that speed has necessarily come at the expense of full consideration. For example, I am forced to wonder why we seem to be giving the report the same weight and significance as the Advocate General's expert group's report. That report was put together over several months and on the back of evidence taking and discussions with a wide range of experts and interested parties.

I am certainly not opposed to receiving a second opinion of sorts on the optimum solution for how the relationship between the Scottish courts and the Supreme Court should work. However—I say this with the greatest respect for the members of the review group—it is not possible to consider the issues and implications fully without the detailed consultation that the Advocate General's group carried out. It is something of an oddity that we are having this debate about a hurried interim report

that was commissioned on the back of rash comments from Government ministers that deflected attention from a failure of our legal process to properly protect a citizen's human rights.

There is certainly discussion to be had on the role of the Supreme Court in Scotland, but that discussion has largely been had already. We have had a full detailed report and amendments that will readjust and clarify the Supreme Court's role. Perhaps, given time to fully investigate the situation, the review group will recommend that the discussion should be reopened. Until then, I cannot help but feel that we would have been better served discussing what needs to be done to stop so many human rights issues arising in Scots criminal cases in the first place.

10:32

Graeme Dey (Angus South) (SNP): As the First Minister has made clear, the Government does not claim a monopoly on wisdom, be it on the issue that we are discussing or on any other matter. However, it is interesting to note the long list of legal experts—including, to name but two, Paul McBride and Elish Angiolini—who have echoed the Government's concerns about the Supreme Court.

I am mindful of the wise counsel of a constituent of mine who has a long-standing interest in matters legal. He has made clear that

"There is a perfectly adequate system within Scotland for criminal justice appeals to be taken in Edinburgh."

I do not agree on everything with that constituent. Indeed, I am sure that he was not among the 16,000 or so people who chose to vote SNP in my constituency in the recent election. However, just because Lord Fraser of Carmyllie remains misguided politically, that does not mean that his opinion on the Supreme Court is unworthy of respect. After all, Peter Fraser is a former Lord Advocate and Solicitor General and someone who, on legal matters at least, ought to know what he is talking about.

So, too, one would think, is Ian Smart, who is a former president of the Law Society of Scotland. As the Cabinet Secretary for Justice mentioned, he has stated:

"we have drifted into a situation where there is a second layer of appeal which was never anybody's intention.

The Court of Criminal Appeal is the final appeal court in Scottish criminal procedure. If anybody had any intention of changing that, it would have been changed in Statute. Nobody intended that routine cases should be dealt with by the Supreme Court."

Perhaps so, but that is where we found ourselves.

The Government's opposition to what is happening is not, as Iain Gray has claimed, "constitutional grandstanding". It is not, as Johann Lamont said, driven by a political agenda; it is about standing up for Scotland's distinct legal system and seeking to prevent further erosion and interference.

Johann Lamont: Does the member agree that there are people in the legal profession who do not take the same view and that we should recognise that there is a range of views in the profession? Does he agree that we should try to come to a resolution through co-operating, rather than by picking folk who agree with us and saying that there is an issue of principle?

Graeme Dey: The member is right that there is a range of opinions. I have here a list of people who tend to agree with the Government.

The issue is not about seeking special treatment; it is about ensuring that our legal system enjoys the same respect and status as exist in other parts of these isles. The unionist parties in the Parliament are happy for Scotland to be part of Britain, so why are they seemingly prepared to accept that Scottish defendants can appeal to the UKSC without leave from our High Court, while English defendants require no equivalent permission? Where is the equality of partnership in the union in that? As a Parliament, we would be failing in our duty if we sat back and accepted a situation where a court in another UK jurisdiction can intervene in our judicial system.

Enshrined within the act of union is the principle that courts outside our borders should have no jurisdiction over Scottish criminal matters. Are those who defend the union really saying that the act that underpins it—or at least an aspect of it—can be ridden roughshod over? Perhaps independence is closer than we thought.

The interim report of Lord McCluskey's independent specialist group is to be welcomed, at least to the extent that it recognises that there is a need to put the High Court on an equal footing with its counterparts in England and Wales by requiring the granting of a certificate that says that the case raises a point of general importance before a Supreme Court appeal can proceed. The report does not go far enough, in the view of some of us in the chamber, but we are where we are and we need to make the best of a bad job.

I want to address Johann Lamont's amendment and some of the comments that have been made. We require to move on in this matter. I agree that it would have been preferable if we had been spared the use of words such as "arrogance", "conceit", "bile", "intemperance" and "sneering disregard" in relation to this issue. Unfortunately, the leader of the Conservatives was unable to

exercise restraint while participating in First Minister's question time a couple of weeks ago. That was then; this is now. Let us focus on the issue being debated and the options for resolution.

10:36

James Dornan (Glasgow Cathcart) (SNP): Scotland has many things that distinguish it from the rest of the British Isles: our education system, our history, our culture and, of course, our independent legal system, which was so cherished by us Scots that we ensured that its independence was enshrined in the act of union in 1707. Surely on this issue we can all agree that we lose the independence of our legal system at our peril.

However, here we are more than 300 years later debating why a decision made unanimously by seven Scottish bench judges in a Scottish court is being overturned by a court outside Scotland—the UK Supreme Court—where the majority of judges are not experts in Scots law.

John Lamont: Is the member seriously arguing that the European Court of Human Rights would have taken a different decision than the one that the Supreme Court took? Is he saying that, if the case had gone to the European Court of Human Rights, that court would have reached a different conclusion?

James Dornan: It is very difficult for me to answer such hypothetical questions.

We have heard the background. Prior to 1999, the judiciary of Scotland were the final arbiters of all things criminal in Scottish law. Even though the Supreme Court was written into the Scotland Act 1998, it was never meant to be able to take on the role that it appears to have taken on.

It is my view that the electorate put us in this chamber for two main reasons: to stand up for our constituents and to stand up for the interests of our institutions and the Parliament. The way that the Supreme Court has behaved recently is a blatant attack on both.

Scotland is not some region of England to be dealt with under English law; it is a proud nation with a long history of a unique and treasured legal system and it deserves to be treated in the same way as every other legal jurisdiction across Europe, with the Strasbourg court as the final option for judgment when required.

James Kelly: Will the member give way?

James Dornan: No, sit down.

By now, members will have had the chance to familiarise themselves with the findings of Lord McCluskey's interim report. He rightly points out that the High Court of Justiciary—the highest court of appeal in Scotland—should be seen as equal

and not subordinate to its counterpart south of the border. Yet, since 1999, the Supreme Court has overturned the decision in a Scottish criminal appeal in nine cases and upheld the Scottish decision in six cases. It is important to stress that Strasbourg cannot quash convictions so, although the two courts have similar remits, they are not the same.

How can it be right that a court where the majority of judges are not experts in Scots law should have the power to overturn a decision that is made by seven eminent judges who are experts in Scots law?

Johann Lamont: How many experts in Scots law are sitting in Strasbourg? How long would it take to get cases there and how long does the SNP think is acceptable for people to have to wait for access to an appeal?

James Dornan: What I do not think is acceptable is that Scotland is unique among all the legal jurisdictions in Europe in that it has to ask its big brother for permission before cases can go to Strasbourg. What we are asking for is parity for the people of Scotland and for the Parliament.

Quite simply, the current situation is not right. Clearly, I am not alone in that assertion. Lord Fraser of Carmyllie, a former Tory MP, who has already been quoted, said:

"Mr Salmond is spot on ... There is a perfectly adequate system within Scotland for criminal justice appeals to be taken in Edinburgh."

I know that Lord Wallace is seeking to amend the Scotland Bill with regard to the Supreme Court, but he does not go far enough to protect the integrity of the Scottish judiciary. It should concern him, as it concerns some members of this Parliament, that the High Court can be challenged in a way that was never possible before devolution and was never intended to be possible after devolution.

We all know the background to the Cadder affair. Peter Cadder appealed his sentence on conviction, because the evidence that had been used against him was collected before he spoke to his lawyer. That was common practice in Scotland, although I never heard anybody from the Labour benches complaining about it.

When the UK Supreme Court found in favour of Cadder, Lord Hope gave the lead opinion, saying:

"It is remarkable that, until quite recently, nobody thought that there was anything wrong with this procedure."

What I find remarkable about it is that Lord Hope was Lord President from 1989 to 1996. We might have thought that, during that period, such a supposedly glaring deficiency would have come to his attention.

There have always been other safeguards in Scots law, of course, including corroboration, but Lord Hope and his colleagues clearly decided that that was irrelevant.

This issue is of huge importance to the Scottish legal profession and to members of the public, particularly the victims of crime. The Cadder decision alone is thought to have affected up to 40,000 detentions a year. Some of the people who were charged with the most serious of offences have had those charges dropped. How is that good for Scotland?

Scotland deserves the right to be treated as any other ordinary country. We do not need big brother keeping an eye on us in case we get it wrong. I accept that, as long as we are part of this union, which has far outlived any usefulness that it might once have had, the Supreme Court has to be dealt with. I therefore strongly support the McCluskey recommendation that, as happens in England, no appeal can be dealt with by the Supreme Court unless leave is given by the original court of appeal. *[Interruption.]*

When it comes to being treated as equals, I will believe that when I hear about the Supreme Court dealing with a case where someone in England believes that their human rights have been abused because they were not given the safeguard of corroboration, such as we have here in Scotland. However, I suspect that we will be waiting a while for that.

I urge members to support the Government on this crucial issue.

The Deputy Presiding Officer: We are getting interference through the sound system again. I would be grateful if members did not use their BlackBerrys or mobile phones in the chamber.

10:41

Gil Paterson (Clydebank and Milngavie) (SNP): I am very much a supporter of the European Court of Human Rights. The history of Europe tells us that individuals and communities have been persecuted, and that has not stopped—it continues. I firmly believe that the individual should be protected from the state, so that they can get on with their lives without being picked on.

However, my support is not unqualified. I have grave reservations regarding some aspects of how human rights legislation is implemented. Voices have been raised in that regard, and I point in particular to the Tories, who are consistent in their approach to some of the issues that have arisen.

I call this the European straight-banana syndrome, whereby measures are so bizarre when they are implemented that they bring into question the whole system of human rights. Having said

that, I am still very much a supporter. I am confident that the areas of concern will be examined, and that things will be changed.

The establishment of the Supreme Court has created a rights issue in Scottish terms. Some members have mentioned the treaty of union. In effect, the United Kingdom has an unwritten constitution, but the nearest thing that we have to a written constitution is the treaty of union and the act of union that followed. The treaty itself discusses the parity between Scots and English law, and with good reason. That is not there, as some members might think, as some gift to the Scots—as some protection from which only the Scots would benefit. It is the United Kingdom, and the two legal systems are entirely distinct from each other. It would be farcical if the law in England was interfered with by Scots law. That has been the case for 300 years, and the arrangements have worked extremely satisfactorily.

However, we now have what is in effect an English model and system interfering with Scots law. In English law, for instance, there is the House of Lords, which has no jurisdiction whatever in Scotland. I can prove as much because in a case that I eventually took to the European Court of Human Rights I was required first to exhaust all domestic legal remedies. I was not required to go to the House of Lords; after I took the case through the Scottish courts, I went straight to Europe, which demonstrates that Europe itself recognises the uniqueness of Scots law.

No matter how many good, hard-working Scottish judges sit on it, the Supreme Court is still, in my view, an English court. I find it strange that, even though I am a firm believer that the only way that Scotland can move forward is through independence, I am, because of the treaty of union, standing here having to defend the union while the very folk who are supposed to be unionists are letting it disintegrate willy-nilly by allowing all this to happen. Given that there is no way the treaty of union can be amended in law, I believe that this court has been set up in a fundamentally unlawful way. I challenge my own ministers and the Law Society of Scotland to go back to first principles—or, in other words, the treaty of union. If English law, as I see it, is gazumping Scots law in this fashion, it should stop doing so immediately in order to protect the union.

The Deputy Presiding Officer: Before I call Dr Simpson, I should inform the chamber that as one or two speakers have finished early we have a little time in hand, so I can give members a generous six minutes.

10:47

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I, like many others, pay tribute to Lord Rodger of Earlsferry, who shared with me a love of the east neuk; indeed, he derived his title from that very area. Rightly considered to be one of the finest legal minds of his generation, he made a profound and outstanding contribution to the Scottish legal system and the Scottish legal profession is poorer for his passing.

I want to consider the role that the UK Supreme Court should play in Scots law. Some of the comments made by the First Minister and the Cabinet Secretary for Justice have been unhelpful; to be frank, I think that some have been disgraceful and certainly amount to nothing more than constitutional wrangling with an incorrect understanding of the real issues.

I accept that, historically, only civil appeals from Scotland went to the House of Lords and that the final court of criminal appeal was always the High Court of Justiciary. However, one should not be surprised that, with the advent in 1999 of devolution and a new legislature and Executive, there needed to be a fundamental shift in the legal system to accommodate such things. It remains the case that the Scottish Government is accountable to a legislature with limited powers; as a result, it is more limited in power than the UK Government, which is accountable to a sovereign legislature.

Under section 57 of the Scotland Act 1998, the Scottish Government is prohibited from carrying out any act that would be incompatible with the ECHR. Originally, an appeal on such grounds would have been made to the Judicial Committee of the Privy Council, but that responsibility was transferred to the UK Supreme Court when it was set up. I do not think that such a change was as groundbreaking as Gil Paterson has suggested. Given that the judges who were on the judicial committee are the same as those who now sit on the Supreme Court, the power that is being wielded over the Scottish Government is not new, and the only conclusion that we can draw is that the Government is behaving in this particular manner because of the Cadder appeal and, more recently, the appeal by Nat Fraser. However, I believe that, instead of accusing the Supreme Court judges of being “ambulance chasers” and threatening to cut funding, we should engage positively with a system that protects the human rights of everyone in this country.

In our manifesto, Scottish Labour pledged to set up an audit of Scots criminal law to ensure that we never have to repeat the rush of panic legislation, costly compensation claims and mass appeals that followed the Cadder judgment. I hope that the Scottish Government will take that plan forward.

We support the European convention on human rights. Some members seem to be implying that they do not. I am sure that that is not their intention. Those rights have made a huge contribution to justice throughout the 46 jurisdictions in Europe, which remain distinct.

Kenny MacAskill: Whose human rights are being protected in the AXA case? Should we not be protecting the human rights of those who suffer from pleural plaques and upholding the dignity of this Parliament, which correctly acted to protect them?

Dr Simpson: I will answer that question a little later.

The ECHR has made a huge contribution to justice throughout the 46 different jurisdictions in Europe and has established an appropriate set of principles. There is a requirement for consistency across vast areas of the European jurisdiction.

Scottish Labour welcomes the McCluskey report's support for the Supreme Court to continue to hear criminal appeals on human rights grounds as

"a necessary means for securing 'consistency' throughout the distinct jurisdictions within the union that constitutes the UK."

We accept that there is room for improvement and we hope that the McCluskey group now engages in much wider consultation on how that can be achieved before it makes its final report.

Far from encroaching on the independence of Scots law, that approach simply means that the ECHR is one of the latest improving influences on our unique—but not isolated—legal system, which has evolved from a huge number of different sources and traditions. Indeed, as Lord Hope pointed out, Scotland's early exclusion of evidence elicited under torture demonstrates the way in which Scots law has evolved over the years; presumably, it will continue to evolve. Some SNP members have implied that our legal system is preserved in aspic. I disagree. That was not the case when it said that we should not take evidence elicited under torture and it will continue to evolve and to recognise the ECHR.

Gil Paterson: The member misdirects the chamber. Members on this side of the chamber did not suggest that Scots law has never evolved. It has evolved from within and has taken some leads from other jurisdictions. The distinction here is that it is interference rather than evolution.

Dr Simpson: I think that it was Professor Neil Walker who talked about interpenetration between the English and Scottish systems, rather than one dominating the other—one does not tell the other what to do. It is about retaining our uniqueness

while nevertheless accepting that there will be a degree of alignment and interpenetration.

I understand fully that there is understandable public concern, referred to by other members, about the uncomfortable imposition of coherence associated with the ECHR, and the apparent greater protection given to the accused than to the victim. While we probably all feel that to some extent, it is not an excuse for attacking the system.

The first act of this Parliament was to deal with the Ruddle case. As those members who were here at the time will remember, the case presented us with the serious prospect of serious and violent offenders being released from our state hospital. It was the incorporation of the ECHR that led to that situation, and a number of uncomfortable decisions have been made since. However, that does not make these decisions inappropriate. That is important. We take a risk if we begin to suggest that, because of their uncomfortable nature, such decisions are wrong, which is what some members have implied in today's debate. I suspect that the intemperate language of the Cabinet Secretary for Justice has more to do with the campaign for independence than that justifiable public concern or the protection of our system.

As an independent state, we would still need a supreme court or to revert to Strasbourg. Strasbourg has a massive backlog of cases, so the Government party intends to subject us Scots to inordinate delays in achieving justice under the ECHR by removing or changing the Supreme Court. I welcome the McCluskey judgment that we should continue with it, and I hope that there will be wide consultation in trying to reduce some of the anomalies.

I support the amendment in Johann Lamont's name.

10:55

Stewart Maxwell (West Scotland) (SNP): I begin by thanking Lord McCluskey and his group for their interim report. Comments have been made this morning about the lack of consultation, but point 77 in the final part of the report says:

"We are prepared to consult interested parties on the way forward following publication of this Report and the subsequent Parliamentary debate."

The group clearly intends to consult before producing a more detailed analysis. It is unfortunate that some members have focused on a lack of consultation, rather than on the issues in the report.

Johann Lamont: The point being made is serious. A timetable has been unnecessarily imposed by the Scottish Government, and we are

debating a report on which final conclusions have yet to be reached. The review group says that it wants to consult further, so it would surely have been logical for us to wait for that, rather than addressing the issue on a timetable determined not by the review group but, for whatever reason, by the Scottish Government.

Stewart Maxwell: I am rather surprised by that comment. I have been here for eight years, and the member has been here for 12, so we both know that it is not unusual for us to have debates before the start of a consultation, during a consultation, and after a consultation. Having the debate today does not seem entirely inappropriate. The Presiding Officer has spoken about suggestions for improving debates in the chamber and in committees, and it might be a good idea if committees sometimes initiated debates before beginning a consultation or writing a report. There are many ways of doing things; we do not necessarily have to await a final conclusion or report before speaking about a matter. What the member said was rather misguided.

I agree with what the report says about the realities. For those of us who do not wish to remain part of the UK state, the retention of the Supreme Court is, of course, anomalous. That is my starting point, and that is the SNP's position. However, we are where we are. As has been said before by many people, we have to deal with the situation as we find it.

Richard Simpson concluded by saying that it would be terrible if Scots were denied justice because of delays or backlogs in Europe. Strasbourg seems good enough for the other 46 or 47 independent countries but, for some reason, it would not be good enough for Scotland. It is rather strange that every other independent jurisdiction and state accepts the role of the Strasbourg court, but the Labour Party thinks that we would be better off if we went to London.

I welcome some of the comments made by the review group in its report. Paragraph 44 says that the expert group thought that

"the existing statutory basis for bringing human rights issues to the Supreme Court was seriously flawed—'constitutionally inept' was the term used."

Of course, the review group agrees.

I am surprised that some members today have ignored some of the comments in the review group's report pointing out that there have been flaws and that there are anomalies—in fact, it talks about "striking" anomalies. I welcome the fact that Kezia Dugdale acknowledged that there was an anomaly that the review has attempted to address. However, I certainly did not agree with many of her other comments.

I thank Christine Grahame for reminding us of the history of this debate. The SNP did, indeed, argue against the creation of the Supreme Court.

We want a level playing field for our country and parity and fairness for our legal system. We certainly do not want uniformity; indeed, that is one of the dangers we face. On 8 February 2011, the then Lord Advocate Elish Angiolini told the Scotland Bill Committee:

"there is a real danger that we will have not just harmonisation of our criminal law on procedure and evidence but, indeed, a complete loss of identity for Scots law".—[*Official Report, Scotland Bill Committee*, 8 February 2011; c 479-80.]

Our concern is not just about giving parity to Scots law but about the danger of uniformity and loss of independent action in it. We ignore such critical matters at our peril.

Of course, it is not only the SNP that has opposed some of the issues that the Supreme Court has raised; many others, some of whom have already been quoted, have made clear their opposition, including Ian Smart, the former president of the Law Society, and Paul McBride QC, who has suggested that in law the First Minister is right on this issue. Moreover, in October 2010, Lord Hope, who sits on the Supreme Court himself, said:

"This has ... brought the Scottish criminal justice system under judicial scrutiny in London in a way that was not, to the best of my recollection, anticipated when the Scotland Bill was being examined in Parliament."

We have consistently repeated that argument: the original intention has been changed by the introduction of the Supreme Court and its actions. Every member in the chamber, not just SNP members, should be concerned about that. Indeed, as Graeme Dey said, we should all be standing up for the independence of the Scottish legal system.

Finally, I remind the Liberal Democrats that, when the Parliament was having this debate back in 2004 and members were arguing over whether the Supreme Court's introduction would be a good or bad thing and discussing the impacts that it might or might not have on Scots law, they were pressed on the question whether judges from another legal jurisdiction should have a say in Scots law. Margaret Smith, who I believe was their justice spokesperson at the time—if I am incorrect, I apologise—said in the chamber:

"if the supreme court is considering a peculiarly Scottish case, there is no question of Scottish judges being in the minority."—[*Official Report*, 29 January 2004; c 5312.]

That is exactly what has happened in every Scottish case that has come before the Supreme Court. Scottish judges are—and are always—in the minority. I ask that, in summing up, the Liberal

Democrats withdraw that remark, apologise for it or change their position and support the proposal that, if the Supreme Court is to continue—which is obviously going to happen while we remain with the UK—Scottish judges should be in the majority when dealing with Scottish cases. That would certainly be helpful.

This is an important matter; it is not a matter for petty politics or personal abuse. I accept that there has been intemperate language both from our side and from members of other parties, but we must try to draw a line under the issue and deal with the matter in hand. It is important that we not only accept but defend the continuation of the independence of Scots law. If we lose that, we will lose one of the most precious things that we have and we will be cursed and damned by future generations for ever.

11:03

Roderick Campbell (North East Fife) (SNP):

First of all, I, like others, wish to acknowledge the substantial contribution made to Scots law by the late Lord Rodger of Earlsferry, which is in my constituency. I am a member of the Faculty of Advocates; in accordance with its traditions, Lord Rodger was my great-grandfather and I knew him as a man to whom detail was very important. He had a distinguished career as an advocate and then as Lord Advocate, and from being a judge in the Court of Session, he had a meteoric rise to become Lord President and Lord Justice General. Following that, he became a law lord in the House of Lords and latterly a Supreme Court judge. Whatever our reservations about the Supreme Court's role, we should acknowledge Lord Rodger's substantial contribution to that court and to law in general.

Of course, Lord Rodger sat on the Cadder case. In the Cadder judgement, I was particularly struck by his analysis of the Thomson committee report and the history of the passage of sections 2 and 3 of the Criminal Justice (Scotland) Act 1980, which was consolidated in the detention provisions of sections 14 and 15 of the Criminal Procedure (Scotland) Act 1995, which have caused such difficulties. His analysis was that the thrust of the Thomson committee's view in the 1970s was that the public interest in the detection and suppression of crime outweighed any disadvantage to the detainee in being questioned in the absence of a solicitor. He believed that that was no longer compatible with European human rights law jurisprudence.

The High Court of Justiciary looked at the same issue in *HMA v McLean* and drew an entirely different conclusion as to compatibility with the European convention on human rights following the *Salduz* judgment.

Times move on. Human rights law jurisprudence is not static. As human rights lawyers know, the European convention on human rights is a living instrument. Although article 6 of the convention—the fair trial provision—makes no specific reference to the right not to incriminate oneself, that should now be considered an essential element of it.

Lord Rodger suggested that there was not the remotest chance that, had the European Court of Human Rights heard the argument, it would have accepted that, despite the absence of the safeguard of legal representation during interview, the detention procedure would somehow be considered to be compatible with article 6 because of the other protections of Scots law. That view is almost certainly correct, albeit that it is far easier to say that with the benefit of hindsight.

That argument was of course never tested in Europe. The European Court of Human Rights is not a criminal appeal court; it exists to ensure that minimum standards on human rights apply across its signatory countries. It does not try cases. Its primary impact is providing just satisfaction to a complainer where it finds that there has been violation of the convention. It is for the contracting state to bring about appropriate changes to domestic law that has given rise to the violation.

Accordingly, the European Court of Human Rights differs from the Supreme Court as it now exists in the UK. Notwithstanding the eminence of its members, that court has played a much greater role in Scottish criminal law than was ever realistically envisaged at the time of the passage of the Scotland Act 1998.

We have no written constitution in the UK. Had we had one, the provisions of the treaty of union in relation to criminal law could not perhaps have been so easily disregarded.

In their submission to the Advocate General for Scotland's review of devolution issues and the acts of the Lord Advocate, the Scottish judiciary stated:

"By a series of incremental decisions ... a major constitutional change has already been brought about in relation to the existence of a right of appeal from a decision of the Criminal Appeal Court to the Supreme Court, and that without the public consultation and careful consideration that such a major constitutional change might have been expected to receive. We cannot regard that as a satisfactory situation."

Moreover, in criminal matters, the Supreme Court clearly does not operate on an equal footing in the different criminal jurisdictions of the United Kingdom. In that respect, the recommendation of the review group headed by Lord McCluskey that only cases certified by the High Court of Justiciary as raising a point of general public importance proceed to the Supreme Court is to be welcomed.

There really should be no basis for allowing a second bite at the cherry for ordinary criminal appeals.

It is also inappropriate that, in relation to its fair trial review, the Supreme Court has the power to quash convictions, whereas the High Court may quash a conviction only on the basis of a miscarriage of justice. That issue needs further examination.

A central issue remains: how do we ensure that Scotland provides the level of human rights protection to its citizens that the convention requires? Although the expert group under Lord McCluskey agreed that the existing statutory basis for bringing human rights issues to the Supreme Court is seriously flawed, it does not suggest an alternative to Supreme Court jurisdiction.

Kezia Dugdale said that the group suggested in its report that the Supreme Court's role may be to define and express the law applicable in human rights terms and then send the case back to the High Court of Justiciary to apply the law. As Lord McCluskey infers, that would also be an application in practice of the margin of appreciation principle that is central to European human rights law, which allows states—in this case, that ought to be Scotland—to apply the law in the context of their separate legal systems. Of course, that is not what we in my party would ideally prefer, but it requires further examination, which I believe the expert group indicated that it intends to carry out. I look forward to its further report in due course. I urge members to support the motion.

11:10

David McLetchie (Lothian) (Con): It has been a pleasure to see the cabinet secretary back in the chamber. Having ducked the opportunity to lead for the Government on its bill on offensive behaviour at football, a subject on which he was well qualified to speak, he has now turned up in a debate on the role of the Supreme Court, a subject on which his former remarks demonstrate that he is very ill qualified to speak.

However, at least the cabinet secretary is now a lot better informed, given that, as Johann Lamont pointed out, Lord McCluskey's report has, in essence, endorsed the approach to the role of the Supreme Court that is being taken in the Scotland Bill by Her Majesty's Government and, in particular, by the Advocate General for Scotland, Lord Wallace of Tankerness, who is a former Deputy First Minister and distinguished member of this Parliament. I remind members that that approach is to remove acts of the Lord Advocate in his role as prosecutor from review under section 57(2) of the Scotland Act 1998, and to strictly limit

the role of the Supreme Court to dealing with human rights issues that arise in Scottish criminal cases.

As we know, and as we have heard throughout the debate, the Government is doing its utmost to highlight the differences between how the Supreme Court handles appeals derived from English criminal cases and how it handles those derived from Scottish criminal cases. Accordingly, the Government's focus is on the technical recommendations in the McCluskey report on the issues of leave to appeal and special leave to appeal.

It is, of course, ironic that the reason for the different treatment of appeals north and south of the border is not disdain for the Scottish legal system or rejection of the principle that our High Court of Justiciary is the highest court in Scots criminal law—far from it. As we will see, the difference in approach arises out of respect for our system of law.

The McCluskey report rather panders to the Scottish Government's prejudices by stating that what the Scottish Government regards as an anomaly has been neither noticed nor explained. The implication is that, somehow, the matter has been completely overlooked by Her Majesty's Government, its expert group and the Advocate General, but it has not been overlooked at all. In fact, the Advocate General explicitly consulted and took evidence from others on leave to appeal and special leave to appeal. As Alison McInnes pointed out, such evidence taking did not form part of the McCluskey review. Interestingly, the Faculty of Advocates and the Scottish Human Rights Commission were strongly of the view that the proposed changes to the Scotland Act 1998 should not alter the present arrangement whereby the Supreme Court remains the ultimate arbiter of whether it hears a case.

Furthermore, if Scotland were to be put on the same footing as England and Wales as regards the handling of criminal cases by the Supreme Court, all criminal cases in Scotland—not merely those that deal with ECHR or Community law points—could go for appeal to the Supreme Court, as is the case in England. That has been ruled out, quite rightly, by Her Majesty's Government. Accordingly, it is Her Majesty's Government that is demonstrating a great deal more respect for Scots law, Scots lawyers, Scots judges and the Scottish legal system than the SNP Government, which falsely masquerades as their champion.

Nigel Don: I apologise for interrupting Mr McLetchie's flow, which is always wonderful, but I put it to him that he has just skipped over the fact that it is the result of the Cadder ruling that any procedural aspect of an investigation is reviewable and the result of the Fraser review that any

evidential issue is reviewable. Are we not now in the position in which practically any Scottish criminal case can be appealed to the Supreme Court?

David McLetchie: No. I am afraid that that is nonsense. A limited number of cases could be appealed under the current system, and they will be further reduced when the reforms that are proposed in the Scotland Bill are enacted.

We have heard a lot about parity, but the argument might just be false. We have heard a great deal about how we have to maintain and sustain the distinct characteristics of Scots criminal law and procedure—in other words, we should be treated differently—but in the next minute, the call is for procedural parity with England. I am sorry, but we cannot have it both ways. No doubt there will be further detailed discussion about the intricacies of leave and special leave to appeal and about what is or is not appropriate in that context, and the arguments may be highlighted in the McCluskey group's final report, but those arguments should be based on the fundamental principles of the rule of law and human rights, and not rooted in the girning grievance politics of Scottish nationalism.

No amount of exaggeration by Mr MacAskill and the SNP can disguise the fact that the McCluskey report is first and foremost an endorsement of Her Majesty Government's approach. Its conclusions have made fools of the cabinet secretary and the First Minister on the issue, although they were already making a pretty good job of that all by themselves.

I remind members that the report states:

"We do not suggest that the jurisdiction of the Supreme Court should be ended."

The report underlines the need for coherence in how human rights laws are applied north and south of the border and says that, if we had to resort directly to the European Court of Human Rights in Strasbourg, there would be potential for further uncertainty and delay. It points out that, far from cell doors being unlocked, cases are remitted back to the courts in Scotland for decision once the human rights issues have been adjudicated. Last but not least, it expressly acknowledges that the Supreme Court would continue to make final and binding rulings on human rights issues, including those that arise in criminal cases from Scotland.

Those are the conclusions of the report that was commissioned by the Scottish Government. They mean that it is game, set and match to Her Majesty's Government, which is the Government that really respects Scots law and Scots lawyers.

11:17

James Kelly (Rutherglen) (Lab): I welcome the opportunity to take part in the debate. Like other members, I associate myself with the comments that have been made and the condolences on the sad death of Lord Rodger, who clearly made a substantial contribution to the Scottish legal system all the way back to his initial task as an advocate in 1974.

I thank Lord McCluskey and his working group for their work on the report, which addresses a number of matters, as the cabinet secretary likes to say. As Mr McLetchie said, the clear view on the Supreme Court playing a role in these issues is central to that report. Alison McInnes was correct to point out that the First Minister made it absolutely clear a few weeks ago that he thought that there was no role for the Supreme Court. The working group's interim report is therefore a slap in the face for the First Minister.

Kezia Dugdale was correct to point out that it was logical for the working group to have reached such a conclusion. We are signatories within the UK to the European convention on human rights, and it makes absolute sense that there is a Supreme Court to ensure that the convention is applied consistently throughout the UK.

Some speeches from SNP members seemed to suggest that members still have their football scarves on from last week's debate; it was as if we would all turn up at the Supreme Court and cheer on our preferred point of view. However, if we consider the details of some of the Supreme Court's judgments, we see that the court is seeking to apply the law. Some SNP members have suggested that the judges sit down and think, "How can we make this awkward for Scotland? Can we come up with a judgment that will cause difficulty north of the border?" Mr Dornan protests, but that is how his contribution characterised the work of the Supreme Court.

Stewart Maxwell painted a picture and suggested that if only we were independent and, like other countries in the European Union, had access to Strasbourg, everything would be fine and dandy. However, Strasbourg has a backlog of three and a half years. If cases were referred to Strasbourg from Scotland, decisions would take three and a half years. That would add to costs and would create considerable uncertainty in the Scottish legal system.

In recent weeks, clear issues have arisen to do with the use of language and a lack of respect. The cabinet secretary mentioned outspoken public statements, but what he did not tell us was that he had been at the centre of many of them. As Graeme Pearson said, the cabinet secretary threatened to withdraw funding from the Supreme

Court, claiming that he who pays the piper should call the tune. That was immensely disrespectful. Again, a footballing analogy comes to mind: the cabinet secretary and the First Minister have lost the match, but now they want to take away the ball so that it will not happen again.

Listening to the cabinet secretary's comments on Monday, I felt that he had tried to row back from his position. I hope that the First Minister will row back from his disrespectful comments about Lord Hope. Such comments do not help the debate at all.

I feel sorry for SNP members in the way that policy has lurched back and forward in recent weeks; I am glad to see that Ms Cunningham has just joined us. Exactly a week ago, SNP members were on their feet telling us that we needed emergency legislation on sectarianism, and they characterised those of us who wanted to extend the timetable as being not fully committed to erasing the blight of sectarianism in Scotland.

Christine Grahame: Will Mr Kelly kindly acknowledge that some people on this side of the chamber shared his view on the timetable and made their views plain—perhaps even before Opposition members did so?

James Kelly: I take that point—but this time last week, members such as John Mason were saying that if we did not get the emergency legislation through it would be a disaster.

As I said, some public comments have now been rowed back from. SNP members must be looking forward to the recess. I hope that when we come back, the Government will have a more considered and stable view.

On human rights issues, I acknowledge the work of Sir David Edward and his group. Nigel Don referred to them as “the other side”, as if they were some dark, plotting group. There is a substantial archive of opinion there, which helps to inform this morning's debate. That debate can be properly informed only if a consultation takes place—as it now will, under the stewardship of Lord McCluskey's group. I do not understand why, once the group had been set up, there was a rush to produce an interim report. Some of the issues that we have discussed this morning are fundamental to the Scottish justice system. It would have made good sense to interview the appropriate people, to speak to the Edwards group and to take stock before reaching firmer conclusions.

There is an issue of ensuring that we get the law right. Richard Simpson and Alison McInnes highlighted the importance of an ECHR audit to ensure that we comply with the ECHR in any decisions that we make. It is also important that we provide proper training and support to our

judges to ensure that they are adequately briefed on ECHR issues in order to minimise the instances in which Scottish law does not comply with the ECHR.

I endorse the Law Society's view that we must take our time on these issues. We need a more considered, reasonable and well-informed debate. Scottish Labour supports proposals that make the justice system more effective and which are more supportive of the rights of victims. I look forward to the results of the work that the group will do over the summer and to its further deliberations ahead of producing a more comprehensive and complete report, informed by appropriate consultation.

11:27

Kenny MacAskill: In the main, I welcome the contributions from members. I think that there has been widespread acceptance of the issue and welcome for Lord McCluskey's report. In a mark of respect from around the chamber, members paid tribute to Lord Rodger. It is appropriate that Lord Rodger's passing should be marked today by elected representatives and that we should put on record our gratitude for his contribution and our sadness at his passing.

Whatever Mr McLetchie may care to say, we welcome the report. As he is aware, the perspective of the Scottish Government and the SNP is that Scotland should be an independent nation, as with other nations that are represented in Europe, in the Union and in other institutions such as the European court. The court is not, as Mr Lamont seemed to suggest, an EU institution. Ultimately, we seek to be an independent nation and to have the same rights and powers.

While we welcome Lord McCluskey's review, it is not the position that we necessarily seek for an independent Scotland. It is a constitutional issue that will be debated again in the chamber and ultimately decided by the people of Scotland in a referendum. However, in the interim we have to deal with the good governance and management of our legal system, and the protection of those matters that are fundamental to our civic society and democracy. We think that the present situation is the best that we can achieve in a devolved Scotland, so we are grateful for the review.

I will come to the issue of whether there should have been any delay. First, I want to deal with a point raised by Graeme Pearson, who queried why we were debating the issue. This is a matter of fundamental public interest. Those of us who were members when we had to deal with emergency legislation because of Cadder and the situations that that gave rise to are aware that that was one of the drivers not just for the Advocate General's

review group, but for Lord McCluskey's group. They are aware that circumstances continue to cause great difficulties. Indeed, there is a question from Christine Grahame at First Minister's question time relating to the matters that trundle on from Cadder.

Dr Simpson raised the issue of AXA. That is a case based not on human rights per se but on a challenge to the competence of this Parliament. However, such matters are of fundamental relevance to the people of Scotland, to the ability of this institution and indeed to the ability of those who work in Scotland to govern.

We should not underestimate these things. I understand that the number of devolution minutes is not 14,000 but 11,700, but that figure is probably rising by the hour. This is a fundamental issue that has to be debated, which is why we are here today and why we asked Lord McCluskey and his team to consider the matter.

Concerns have been expressed that the timescale for the review group's work is too tight and that this is simply another case of the Government rushing to take action when a more leisurely period of reflection and inquiry might have served. However, we believe that the report itself is ample evidence that such concerns are unfounded. Lord McCluskey and his eminent colleagues have made it quite clear that there is a significant problem to address. Moreover, we believe that such major issues should be brought before Parliament. Indeed, as Stewart Maxwell has pointed out, the Presiding Officer has already suggested that such matters should be taken care of in advance rather than in arrears and in any case we think that when this kind of interim report is published we should consider it.

Clearly, this process will continue. Lord McCluskey and the members of his group will be listening to the points that are made in this debate. I believe that Alison McInnes expressed concern in that respect but, as I have said, it has been made clear that further evidence can be taken. Of course, as others have pointed out, Lord McCluskey and his colleagues looked at the evidence that had already been taken. They did not just get together on a whim or fancy. Significant evidence had been submitted both to them and to the expert group and although some might disagree with some of Lord McCluskey's directions of travel, no one, not even Amnesty International or the Scottish Human Rights Commission, has disputed that there was an issue that had to be discussed and debated. We welcome the current position and approach.

Johann Lamont said that the situation regarding leave to appeal is not universally accepted. That is the case with some in the Scottish Human Rights Commission and elsewhere; however, even Brian

McConnachie, who is vice-chairman of the Faculty of Advocates criminal bar association and someone who has been quite critical of the First Minister, said in *The Times* that, with regard to certification, it would be very difficult to argue that we should have something different here. Even those who might disagree with Lord McCluskey's direction of travel or this Government's desires recognise that this issue has to be addressed.

Johann Lamont: We can all pick people to reinforce our position. The view on the Labour benches is that there is an argument to be had and that we need to reflect on the serious views that have been taken from a range of people about what the solution might be. It is inaccurate to say that there is a need to establish the leave to appeal in the way that the cabinet secretary has suggested. Instead of simply pulling out people to support our individual position, which does not progress the matter at all, we want people to come to a judgment by having an open mind and listening to all the evidence.

Kenny MacAskill: That is precisely why we are having this debate. Labour members cannot have it both ways; I do not think that they can criticise us for not providing an opportunity to discuss matters and then criticise us for having this debate at all. If we were not having this debate, the issues would not be brought out. I am sure that Lord McCluskey and his colleagues will consider these issues over the summer as they receive further evidence and representations, and it is a tribute to them that they have come along to listen to the debate. The points that have been raised will undoubtedly be borne in mind.

A number of Opposition members have clearly taken some comfort from the suggestion that the report does not go in the direction that would be taken by a Government in an independent Scotland. However, we should recognise that the current direction of travel—that the current situation is untenable and that we have to make progress—is becoming the majority position and has certainly been endorsed by Lord McCluskey and his colleagues.

David McLetchie seemed to be hiding behind the fact that there are clearly differences between Lord McCluskey's review and the report of the Advocate General's expert group. However, let me be quite clear: the review group report has taken explicit account of the work that the Advocate General's advisers have carried out and, in doing so, has developed and moved beyond that analysis. The review group has identified what it has described as "a striking anomaly" in the current arrangement governing leave to appeal and I am sure that Johann Lamont will take that point on board. As the report makes clear, there is no evident reason why the High Court of Justiciary

should be subject to a regime that is significantly different from that which applies in England and Wales and in Northern Ireland.

Despite a clarity of insight that identified the root of the problems in the Scotland Bill, the Advocate General's advisers did not pursue the full implications of their analysis. What was lacking from the advice on which the Advocate General based the amendments that were tabled to the Scotland Bill was a proper exploration of the discrepancy in which leave to appeal can be granted. Those are crucial points of detail.

The review group's work was robust and convincing, and it is practical in its application. The speeches from this morning's debate tell me that I am not alone in thinking that, and I am confident and convinced that the further work that the group intends to do over the summer will produce further refinements to its advice, which will provide a sound, reliable basis on which more relevant legislative changes to the Scotland Bill than are currently on offer from the UK Government can be pursued. That is another point that Ms Lamont must take on board.

Those matters do not exist in isolation from what is happening elsewhere. The Advocate General—as trumpeted by Mr McLetchie—is tabling amendments to the Scotland Bill. If it is perceived that those amendments are deficient—and that is clearly the case, judging from what Lord McCluskey and many others have said—we require to ensure that appropriate further amendments are tabled. If we were not having this debate, there would be a danger of not having appropriate time to consider, reflect and prepare amendments.

The matter cannot be delayed. There will doubtless have to be further discussions, whether they are on the report that is before us or on the Scotland Bill as it goes through Parliament. These matters require to be dealt with, in any event.

I point out to Mr McLetchie that, as Lord McCluskey said, the Faculty of Advocates and the Scottish Human Rights Commission said that they were not really satisfied with the position—I think that Lord McCluskey took that on board. That point is being addressed.

We must be conscious that there is a difficulty, and that is why the review group was set up. I say to Alison McInnes that the group was set up with terms of reference that were prescribed not by us but by Lord McCluskey. The group was not tasked simply with determining the matter of final appeals in Scotland; it was to consider how the Scottish legal system should be protected and how it can work in the current devolved system of the United Kingdom.

Alison McInnes raised the question of an audit of Scots criminal law. It has previously been examined by the Crown, but the First Minister has said that, in his view, that would not necessarily be a bad idea. In discussion with the Lord Advocate, and once we have seen Lord Carloway's review, we will be happy to consider where we can take that idea.

John Lamont seemed to suggest that we should appoint a further Scottish judge to the United Kingdom Supreme Court. As was pointed out by Stewart Maxwell, we do not have that right—that is a matter that goes through formal procedures, which are not the responsibility of the Government. It is only a convention that there should be two Scottish judges in the court—there is nothing in statute about it. In any event, it is our understanding that, when the court sat, it was a bench of seven.

That covers the position that we find ourselves in. The situation is not one that anybody anticipated—whether at the time of the signing of the treaty of union or at the time of drawing up the Scotland Bill that set up this institution. It is not a question of apportioning blame on individuals about where we are; it is about realising that there is a fundamental concern. The Cadder position caused concern and, whatever Graeme Pearson might say about *Salduz v Turkey*, the matter had been considered by a High Court of seven judges in Scotland, and the position was accepted as being appropriate in Scots law and as being compliant. That started not under my Administration, but when there was a Liberal-Labour Administration. No justice secretary and no Lord Advocate under that previous Administration thought that the Scots judges were out of kilter. For those parties to criticise the Scottish judges for not acting, when they formed the Administration, is frankly unacceptable. There is an issue there.

Scots law has to be given parity with jurisdictions elsewhere in the United Kingdom. That is accepted by the likes of Brian McConnell, who is no supporter of either myself or, indeed, the First Minister.

The Supreme Court has a role in a devolved Scotland, as we accept, until that is changed by the outcome of a referendum. It should be for the High Court of Justiciary ultimately to apply the law in Scotland. Matters can be considered and the law decided by the Supreme Court; the ultimate applier of it in Scotland has to be the High Court of Justiciary. That is what was meant when we signed up to the treaty of union. That is what was meant when we signed up to the Scotland Act 1998 and to forming this Parliament. That is what was meant when the Human Rights Act 1998 was passed and the Supreme Court was established. That is why there has to be change. That is why this matter has been brought before the chamber.

Scottish Executive Question Time

General Questions

11:40

Transport Infrastructure (South-east Scotland)

1. Jim Hume (South Scotland) (LD): To ask the Scottish Executive what plans it has to improve the transport infrastructure of the south-east of Scotland. (S4O-00082)

The Minister for Housing and Transport (Keith Brown): The Scottish Government is taking forward a range of transport infrastructure improvements that will benefit the south-east of Scotland. The Forth replacement crossing and the Edinburgh to Glasgow railway improvements programme are progressing well. We are fully committed to delivering the Borders railway project, which will reconnect communities in Midlothian and the Scottish Borders to the national rail network for the first time in more than 40 years. We have recently completed significant road improvements on the A68 Dalkeith bypass and the A7 at Auchenrivock. Our motorway and trunk road programme contains further planned improvements for the A68 and the A702. In the longer term, the strategic transport projects review has identified a number of transport improvements that will benefit the south-east of Scotland.

Jim Hume: When work began on the Haddington to Dunbar expressway nine years ago, it was claimed by the then deputy transport minister that it would

“plug the dual carriageway gap between Edinburgh and Dunbar”

and benefit local communities between Dunbar and the border.

The Presiding Officer (Tricia Marwick): Can we have a question, Mr Hume?

Jim Hume: Yes, of course.

On the Scottish A1 section, 40 per cent of accidents were between Dunbar and the border. Will the minister provide some welcome good news to the communities of East Lothian and the Borders and confirm that the Government will finally explore the feasibility of plugging the remaining gap in the dualling of the A1?

Keith Brown: I am happy to meet the member to discuss that, but I have just laid out some positive news for the people of the Borders and the south of Scotland. The Forth replacement crossing is a not insubstantial project and nor is the Edinburgh to Glasgow railway improvements

programme, which is costing around £1 billion. The Borders railway project, which has been progressed under this Government, will connect the area to the network for the first time in 40 years at a cost of about £300 million. I also mentioned road improvements, which I know are deeply appreciated in that part of the country. However, I am happy to meet the member to discuss the issue that he raises.

Paul Wheelhouse (South Scotland) (SNP): Another pressure in the south of Scotland is that on the provision of rural bus services. Does the minister agree that, if pressure is to be taken off rural bus services, which are struggling to cope with high fuel prices, it is time that the Tory and Lib Dem coalition in Westminster took action to reduce those prices?

Keith Brown: That is certainly a huge issue. When we debated it in the Parliament, we had a remarkable degree of consensus across the parties—I believe that the Liberal Democrats were part of that consensus, as were the Conservatives. Of course, we have still not had the action that we asked for, which was a meaningful reduction in fuel duty. The fuel duty rate is putting up prices not just for passengers but for all members of the public. The member is right to highlight that.

The Presiding Officer: I remind members who ask a supplementary question to keep it brief. We do not expect speeches; we expect a question.

Crown Estate (Freshwater Salmon Fishing Rights)

2. Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): To ask the Scottish Government what its position is on the future ownership of freshwater salmon fishing rights in Scotland held by the Crown Estate. (S4O-00083)

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Last week, the Scottish Government published proposals to amend the Scotland Bill to devolve responsibility for the Crown estate in Scotland. That will ensure that Scotland's assets are managed in Scotland for the benefit of all Scotland's people. Once management of the Crown estate is devolved, the Scottish Government will consult stakeholders and the wider public on proposals to involve local authorities and communities in decisions about our marine resources, including Scotland's iconic salmon fishing rights that are held as part of the Crown estate.

Adam Ingram: No doubt the minister will be aware of the work of the Highlands and Islands-based Crown estate working group back in 2006. Among the recommendations that the group made was that the Crown's feudal rights be abolished

and that ownership of salmon fishing be transferred to the Scottish ministers and a scheme introduced for appropriately constituted local angling associations to acquire the beats that they currently tenant.

The Presiding Officer: Get to the question, Mr Ingram.

Adam Ingram: Does the cabinet secretary agree?

Richard Lochhead: The member highlights some very good points that go right to the heart of the debate about why the Crown estate should be managed in Scotland and not by Westminster. Of course, the Liberal Democrats, who supported the report that was published by Highland Council, can now stick to their word and fulfil their promise to support the devolution of the Crown estate to Scotland.

Of course our angling clubs and others should have a role in the consultation that we promised to hold in this Parliament once the Crown estate is devolved. We all agree that we have to democratise the management of our salmon fishing rights and the other assets managed by the Crown Estate in Scotland.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Does the Government have any plans to review salmon fishery boards in order to get more democratic control and transparency, in the interests of all species in each river catchment area?

Richard Lochhead: That is another good point. Yes, we have plans to review this whole area over the course of this session of Parliament, as outlined in our manifesto. We can all agree that there have been some improvements to the composition and role of the fishery boards in recent years, but it remains the case—I think that many of them would accept this—that their structures are outmoded. We need structures that are fit for purpose in the 21st century.

Tourism (Growth)

3. Gavin Brown (Lothian) (Con): To ask the Scottish Executive what plans it has for promoting growth in the tourism industry. (S4O-00084)

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): The Scottish Government is determined to maximise the growth of tourism and attract new visitors to Scotland. In doing so, we are committed to supporting the tourism industry and we continue to work with it and our agencies to develop and promote Scotland as an all-year-round tourism destination. Just this week, I brought together key players in business tourism from across Scotland to review what opportunities there are to grow this sector.

We are also determined to make the most of our key tourism assets and are committed to further developing and promoting activity, ancestral, cultural and food and drink tourism.

Gavin Brown: What is the current status of the ambition for 50 per cent growth of the tourism sector by 2015?

Fergus Ewing: We are of course ambitious for Scotland to achieve even greater success in tourism. The 50 per cent target was set before the onset of the global recession, as Gavin Brown will know. The figure was based on the then estimates of world tourism growth. Despite that, however, Scotland has done pretty well in tourism of late. In spite of the recession, the heavy snowfall and the volcanic ash cloud, which brought our airports to a standstill, overall visitor spend in 2010 was down by less than 1 per cent compared to 2009. We are of course looking towards the winning years in securing a number of world-class events for Scotland, including the Ryder cup, the Commonwealth games and the year of homecoming in 2014. There is much to be positive about.

Geothermal Energy

4. Colin Beattie (Midlothian North and Musselburgh) (SNP): To ask the Scottish Executive what plans it has to promote the development of geothermal energy. (S4O-00085)

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): The “2020 Route Map for Renewable Energy in Scotland”, which I published today, states that we will commission a study to examine the potential of deep geothermal in Scotland.

Colin Beattie: Is the minister aware that—as far as I can discover—the most recent comprehensive feasibility study on geothermal opportunities in the Lothians was carried out some five years ago? I have no doubt that he is aware that Scotland’s industrial heritage has resulted in a large number of flooded mine workings, including in my constituency of Midlothian North and Musselburgh—

The Presiding Officer: Can you get to a question please, Mr Beattie?

Colin Beattie: Given the huge increase in energy prices, does the minister consider that there might be an opportunity to revisit the feasibility of that energy source?

Fergus Ewing: I was aware that the research is now five years old. That is why we are commissioning further work to provide certainty for the industry to exploit this potential. We fully recognise that, in particular, ex-mining areas offer great opportunities for geothermal energy. We are

therefore determined to take that form of renewable energy forward.

Scottish Water (Coastal Pollution)

5. Roderick Campbell (North East Fife) (SNP): To ask the Scottish Government what recent discussions it has had with Scottish Water in connection with coastal pollution in Fife. (S4O-00086)

The Minister for Environment and Climate Change (Stewart Stevenson): The Scottish Government has regular discussions with Scottish Water regarding its operations and the delivery of its capital investment programme.

Roderick Campbell: The minister should be aware that there is a Scottish Water waste pumping station adjacent to the shore in Pittenweem, which is designed to transport waste to the treatment works at Pathhead. Overflow pipes from that facility are designed to carry material into the sea during those periods when the pumping system is over capacity. Given the worsening problems with effluent leakage from those overflow pipes—

The Presiding Officer: Can you get to a question, please, Mr Campbell?

Roderick Campbell: —directly on to the beach, will the minister undertake urgent discussions with Scottish Water?

Stewart Stevenson: We are looking at including waste sewage in the programme for Scottish Water from 2015. The previous programme focused on internal sewage flooding, but it is increasingly important that we regard external flooding as important. Ministers are already in discussion with Scottish Water on that subject.

High-speed Rail Link

6. James Dornan (Glasgow Cathcart) (SNP): To ask the Scottish Government what recent discussions it has had with the United Kingdom Government regarding the possibility of a high-speed rail link with Scotland. (S4O-00087)

The Minister for Housing and Transport (Keith Brown): That is the subject of on-going dialogue. Officials held a meeting with the Department for Transport and the High Speed Two company as recently as last week, on Thursday 23 June. For my part, I have spoken with the Secretary of State for Transport on the issue, and we plan to hold further ministerial discussions in the near future.

James Dornan: Does the minister agree that a high-speed rail link would greatly benefit Scotland's economic growth and would do so far

more than the proposed tram system in Edinburgh, which is a shambles, or the hugely expensive Glasgow airport rail link, both of which were supported by all the main Opposition parties in the chamber?

Keith Brown: The important point that the member raises is about costs and benefits. He is right to say that the high-speed rail option really only makes sense for Scotland if it comes here—that is when Scotland will get the biggest dividends—so it should do so.

I will leave it to others to talk about the benefits of trams in Edinburgh.

It is a question of ensuring that the benefits are disproportionate to the costs and that we gain a massive advantage from the project, which has happened with the M74. The same can happen with high speed 2 if there is the political will at Westminster to make it happen.

John Scott (Ayr) (Con): Improved rail connections between Scotland and England would be very welcome, but it is equally important to improve rail connections within Scotland. On that basis, could the minister provide an update on the Scottish Government's plans in the strategic transport projects review to increase the frequency of rail services on the Ayr to Glasgow line, which is an improvement that is vital in the interests of local rail commuters and in support of the growing Ayrshire tourism economy?

Keith Brown: Yes, I could, although it would take some time. As the member will know, the frequency of those trains has increased and there have been improvements in the infrastructure. I will be happy to write to the member on the detail of that, if he would like.

Research and Development Investment (South of Scotland)

7. Paul Wheelhouse (South Scotland) (SNP): To ask the Scottish Government how much it and the Scottish Further and Higher Education Funding Council invested in research and development in the south of Scotland in 2010-11 and what share this represented of such investment across Scotland. (S4O-00088)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The Scottish funding council invested £305 million in research across universities in Scotland in the academic year 2010-11. That included support for the Scottish Borders campus of Heriot-Watt University and the Crichton campus of the University of Glasgow and the University of the West of Scotland. An additional £140 million in Government and business research and development was invested in Scotland in 2008-09,

the most recent year for which figures are available.

Paul Wheelhouse: A report that I co-authored in 2008 for Scottish Enterprise indicated that just 0.2 per cent of the research and development funding that was invested through universities was invested in the south of Scotland. Will the cabinet secretary meet me to discuss the significance of that issue for the competitiveness of the south of Scotland economy?

Michael Russell: I would be very happy to meet the member. Although the situation is patchy, there are some significant investments. For example, the chemical company DuPont Teijin Films is being supported to invest in a research and development programme in Dumfries that aims to understand polyester chemistry with a view to delivering the desired weatherability. The Agenor Technology investment in information technology is highly significant, too, as is some of the spending on the college and university sector, including that on the new aeronautical engineering centre that has been built in collaboration with the University of the West of Scotland in Ayr. However, I would be happy to meet the member to discuss the issue further.

Antisocial Behaviour

8. Linda Fabiani (East Kilbride) (SNP): To ask the Scottish Government what sanctions are available to local authorities in cases of antisocial behaviour by tenants of private landlords. (S4O-00089)

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): The Government's approach to tackling antisocial behaviour, "Promoting Positive Outcomes", was published jointly with the Convention of Scottish Local Authorities in March 2009. That approach was most recently debated, and agreed, by the Parliament in December 2010.

A number of sanctions are available to local authorities in tackling antisocial behaviour. Specifically, antisocial behaviour notices provide powers for a local authority to act against a private landlord in connection with the antisocial behaviour of the tenant or other occupant.

Linda Fabiani: Does the minister agree that, too often, victims are evacuated instead of perpetrators being evicted, and that home owners can feel well and truly stuck? Might it be worth while to have a joint information campaign involving Government and local authorities so that this menace in too many of our communities can be dealt with?

Roseanna Cunningham: A joint information campaign would obviously be helpful because it seems that the range of options that are available

to local authorities is not particularly well known to the local authorities or those on the other side of the matter. Applications can be made by the local authority to the sheriff court for orders, and if there is a misunderstanding by local authorities about their powers in that regard, it would be helpful if I could have a discussion with the member so that we can try to resolve that misunderstanding.

Uncollected Fiscal Fines

9. James Kelly (Rutherglen) (Lab): To ask the Scottish Executive what action is being taken to collect uncollected fiscal fines. (S4O-00090)

The Cabinet Secretary for Justice (Kenny MacAskill): The Scottish Government brought forward the legislation enabling the appointment of fines enforcement officers and fully supports the Scottish Court Service's robust approach to the enforcement of financial penalties. Payment rates are improving all the time as offenders realise that they cannot hide from their responsibility to pay their fines. In addition, we have commissioned an independent evaluation of the fines enforcement process to explore the effectiveness of the provisions and inform further developments in practice.

James Kelly: Recent Scottish court statistics showed that there are more than 11,000 payments in arrears, which are worth £4.6 million. What mechanisms are in place to identify frequent fine defaulters and assess whether they are appropriate for fiscal fines?

Kenny MacAskill: Operational responsibility for the collection of fiscal fines is a matter for the Scottish Court Service, which is an entirely separate body. As the Scottish Court Service has explained, collection rates for fines that are imposed vary, and the point refers to individuals. These are matters in which we have to strike a balance. There are those who might be described as dysfunctional and on whom it might be difficult to impose a fiscal fine. Equally, it would be perverse if they were to be put through a system that would not necessarily apply to others. As I said, there is a matter of balance. We must allow those at the front line in the court system to exercise discretion. The constable must exercise discretion in the first place, and the sheriff must exercise discretion with regard to the issuing of fiscal fines. They must consider the circumstances relating to the offence, the effect on the victim and the situation of the perpetrator.

The current review will seek to improve matters. In discussion with the Scottish Court Service, we are always open to new and innovative measures, such as confiscating vehicles, as well as simply enforcing the fine.

Judges (Appointment)

10. Margo MacDonald (Lothian) (Ind): To ask the Scottish Executive whether it plans to legislate for the election rather than appointment of judges. (S4O-00091)

The Cabinet Secretary for Justice (Kenny MacAskill): The Scottish Government has no plans to legislate for the election rather than appointment of judges.

Margo MacDonald: I am relieved by that reply. My concern was that, during the recent exchange of opinions with some on the Scottish bench, an inference was drawn that the First Minister had referred to the possible election of judges. I am glad to hear that that was a wrong inference.

The Presiding Officer: Would you like to respond, cabinet secretary?

Kenny MacAskill: Yes. I am grateful for the tenor of Margo MacDonald's reply. Earlier, the chamber united in its sympathy for the loss of Lord Rodger of Earlsferry, and I think that there is a measure of respect between ourselves and the judiciary.

First Minister's Question Time

11:59

Engagements

1. Iain Gray (East Lothian) (Lab): To ask the First Minister what engagements he has planned for the rest of the day. (S4F-00086)

The First Minister (Alex Salmond): If I may, Presiding Officer, at this last meeting of the Parliament before the summer recess, I would like to say a few words about Iain Gray. He has served his party with great distinction, as a minister and as leader of the Opposition. His approach on key issues has been constructive. Recently, he has offered support to tackle sectarianism and to deal with the problems that are associated with alcohol in our society. Relevant to today, he has joined us in expressing concern about the United Kingdom's approach to public sector pensions. His approach has certainly been appreciated and I hope that his successor, whoever that may be, will continue in the same distinguished vein. The Parliament owes Iain Gray a debt of gratitude for his public service. *[Applause.]*

Iain Gray: We have not set a date for the election of my successor yet, but nonetheless I take those remarks in the spirit in which they were made.

In the time in which we have faced each other, the First Minister and I have often talked about the national health service. The First Minister and Nicola Sturgeon have told us that they are protecting the NHS, yet this week we found out that, in the past six months, 1,600 NHS jobs have gone. Of those, 700 are nurses and midwives—the very people on the front line of patient care. The Royal College of Nursing called that “unsustainable”. Why is the First Minister not protecting the NHS as he promised he would?

The First Minister: As Iain Gray knows, we have guaranteed that all consequentials will go to the national health service. That was not a universal view when the issue was debated last autumn. I remember that Iain Gray himself, on “Newsnight Scotland” on 8 September 2010, said:

“We wouldn't ring fence the health budget.”

The protection of the health budget has meant that, even in these difficult times, health employment in every single category—through medical consultants, general practitioners, dentists and nurses to allied health professionals—is substantially up today on the level that we inherited in 2007.

Iain Gray: The First Minister needs to examine the statistics that he has given to make sure of

their veracity. The fact is that there are fewer nurses and midwives in the NHS now than there were at the end of 2007-08, which was the period of the last budget of the Labour Administration that was in office up to 2007.

It was not just nurses who got big promises that the First Minister would protect them. In March, he announced:

"if the people return me as first minister, then I will secure that prize—of no compulsory redundancies".

He said specifically that he was talking about local government, schools, colleges and the health service. Fifty staff at Edinburgh's Telford College are facing compulsory redundancy. The chances are that some of them voted for Alex Salmond on the basis of that promise. He has his job as First Minister, but they are getting P45s. This Tuesday, Michael Russell told a parliamentary committee,

"I have no power to enforce the policy",—[Official Report, Education and Culture Committee, 28 June 2011; c 26.]

so why did Alex Salmond make the promise?

The First Minister: I want to correct Iain Gray on the health service statistics. The number of consultants, on a full-time equivalent basis, is up by 20 per cent from September 2006.

Members: 2006!

The First Minister: Well, that is on the basis of the term of the previous Scottish National Party Administration.

The number of general practitioners is up by 7.2 per cent, the number of nursing and midwifery staff is up by 383; the number of dentists is up by 20 per cent and the number of allied health professionals is up by 9 per cent. That is a comprehensive increase. Even under the most difficult and severe Westminster-induced budgetary cutbacks, our decision to pass on the full consequential and to ring fence the national health service budget shows that we are maintaining and sustaining that level of investment in our staff in the national health service.

As Iain Gray well knows, the no-compulsory-redundancy pledge was made to our 30,000 central Government staff and to the hundreds of thousands of people who work in the national health service in Scotland. That pledge is not available elsewhere in the United Kingdom and nor, incidentally, is that a new phenomenon. I have quotes here from 2006 when Tony Blair, the then Prime Minister, said in answer to a question that it was all right, because there would be only a few hundred compulsory redundancies in the national health service in England. Do not let us believe that compulsory redundancies south of the border started as a Tory-led initiative.

We have applied the policy in the areas that we directly control. As Iain Gray well knows, the colleges, thanks to a statute passed by the Labour Party when it was in government, are independently run in Scotland. The Cabinet Secretary for Education and Lifelong Learning gives them advice. I hope that colleges throughout Scotland will take that advice.

Iain Gray: Mike Russell was right and the promise was worthless.

As for directly employed employees, what about the 16 Caledonian MacBrayne workers who are redundant today? CalMac is a company that is wholly owned by the Scottish Government. Those workers are employed by a company that is owned by the Scottish Government and they are redundant today.

If promises to nurses and college staff were worthless, what about teachers? Paul Bisland is a newly qualified teacher who, no matter how hard he tries, cannot get a job, and 80 per cent of his colleagues are in the same boat. Mr Russell wrote personally to Paul Bisland in January and promised him that

"there will be a sufficient number of vacancies for all teachers seeking employment in 2011",

so where are they?

The First Minister: Can I just correct Iain Gray? As a point of fact, there are no compulsory redundancies in Caledonian MacBrayne. I hope that he accepts that. It is not appropriate to come to the chamber and make an announcement that is absolutely not true. There are no compulsory redundancies.

There are areas in which our advice to other public bodies has prevailed. I am thinking of James Watt College, which, after some debate, accepted the policy of no compulsory redundancies. Recently, I even heard the leader of Inverclyde Council on air reversing his policy of compulsory redundancies. Iain Gray should not underrate the ability of exhortation of ministers in this Administration to persuade even the most recalcitrant Labour authority to follow such a policy. Incidentally, among the groups that we have not yet convinced of the value of our policies are some Labour-led councils in Scotland that, as we know from many previous debates, are responsible for the vast majority of the decline in teacher numbers in Scotland.

Iain Gray: This is the pattern, is it not? The First Minister makes the promise and then blames someone else when he breaks it.

When the First Minister made his announcement of no compulsory redundancies in March, he said that he would spend every day trying to deliver the policy. Is the problem not that

he has spent every day doing something else? I do not deny that he has been busy, what with non-stop constitutional bickering over his referendum, gratuitously insulting Supreme Court judges and, let us not forget, introducing a bill on sectarianism so badly drafted that his own minister could not explain it.

There has been intransigence, intemperance and incompetence, and, all the time, indifference to cuts in the number of nurses, redundancies in colleges and teachers on the scrapheap. All they get are excuses. When is he going to get off his personal agenda and start paying some attention to the promises of jobs and services that he made to the people of Scotland only six weeks ago?

The First Minister: I recognise that rhetoric—it is a throwback to some 50 days ago. It is what Iain Gray was arguing in the election campaign.

Let us reflect on some of the things that have happened since the election campaign. Unemployment fell by 10,000 over the quarter—the seventh consecutive reported fall in Scotland. Official statistics show that, for the fifth successive year, Scotland is in a stronger budgetary position than the United Kingdom as a whole. What about some specific announcements that I know Iain Gray is dying to welcome? Amazon has created 900 jobs in Scotland. State Street has established its European centre of excellence here. Gamesa, one of the great companies in the renewables revolution, has announced the start of its recruitment programme in Scotland. I know that, in his current position, Iain Gray is not able to welcome those signs of positive achievement under the most adverse circumstances, but I also know that when he is in a different position—when he is less committed and is able to take a judicious view of such matters—he will be the very first to welcome the positive achievements of this Administration.

Prime Minister (Meetings)

2. Annabel Goldie (West Scotland) (Con): To ask the First Minister when he will next meet the Prime Minister. (S4F-00077)

The First Minister (Alex Salmond): If I may, Presiding Officer, at this last meeting of the Parliament before the summer recess I would like to say a word or two about Annabel Goldie. Last month, I said that I will miss enormously the wit with which she pursues her case and her cause at First Minister's question time, although I might not miss being on the receiving end of it so often. Under her stewardship in the previous parliamentary session, the Tories supported the Government in delivering 1,000 extra police on the streets of Scotland, the small business bonus and greater support for and co-ordination of Scotland's drug rehabilitation programme, subjects that I

know are very close indeed to Annabel's heart. I have thoroughly enjoyed my weekly jousts with her and wish her every success in all her endeavours in the future.

Annabel Goldie: I thank the First Minister for his very gracious comments. I am glad that he has enjoyed the experience of the exchanges with me at First Minister's questions, because I am coming back in September. From his adulation, I felt a little apprehensive that he might not be. Nonetheless, I thank him for his comments.

Why, according to a recent report from the United Nations, does Scotland top the list of world cocaine use? Why are there 712 fewer nurses and midwives in Scotland than there were last year? Why is childhood obesity escalating? Why do only 7 per cent of reported rapes end in conviction? Clearly, the First Minister has taken his eye off the ball, preferring to grandstand on the Supreme Court, pick fights with Westminster and provoke constitutional tension. Why has he allowed this appalling catalogue of failure to happen right here in Scotland under his watch?

The First Minister: I do not accept Annabel Goldie's strictures in that respect. However, I am delighted to find that she will be back after the recess to upbraid me more on these issues. Incidentally, I hope that she reconsiders her entire position and decides to make her comeback permanent. The Conservative Party would be well advised to compare Annabel's talents with the available alternatives. [*Laughter.*]

Miss Goldie has nevertheless given me ample opportunity to talk about certain things that she will have noticed. With regard to the health service, in particular, the most recent announcement on waiting time targets, which came at the end of last month, showed that 99.9 per cent of patients are waiting 12 weeks or less for their first out-patient appointment. People with drugs problems continue to access treatment more quickly; indeed, waiting times show that 94 per cent are offered an appointment within four weeks of referral. Although many of the issues that Annabel Goldie has referred to are deeply structured in Scottish society, I know that she will be the first to welcome the positive signs of improvement.

In fairness, Miss Goldie will acknowledge that we face extraordinarily difficult times in public spending in Scotland. That might—just might—have something to do with the £1,300 million of cuts that the Westminster Government is implementing.

Annabel Goldie: Time and again, the First Minister has proclaimed the virtues of free university education, with his mantra being

“the ability to learn, not the ability to pay”.

However, he never told us that his mantra comes with the small print, "Does not apply to students from England, Wales or Northern Ireland and does not plug the funding gap". Is that not the most brazen and barefaced sell-out of his so-called political principle? It is patently divisive; hypocritical, because it would not even be possible in an independent Scotland; hugely damaging to the welcome tradition of United Kingdom students studying in Scotland; and utterly ineffective in plugging a widening funding gap of more than £200 million. Will he abandon his little Scotlander mindset and bring forward serious proposals for the long-term funding and sustainability of our Scottish universities?

The First Minister: Annabel Goldie knows full well that the circumstances in which we have been placed by decisions of the Conservative-Liberal Administration at Westminster mean that we cannot possibly fund the fees of students from elsewhere in these islands, no more than we can fund free personal care or prescription charges for the people of England. I do not understand why Annabel should think that we have ever argued anything other than that. The only change is that we wanted to have a £6,000 fee across the board, but we were persuaded by the university principals and Universities Scotland that the better way to go was the one that was outlined by the Cabinet Secretary for Education and Lifelong Learning.

I therefore find what Annabel Goldie has said surprising. Time after time, she has upbraided me with quotes from principals from across Scotland who have not been in support of our policy—she has said. Virtually every principal in Scotland has supported Michael Russell, as has the Scottish Youth Parliament. I have with me quotes from Tim O'Shea of the University of Edinburgh, Professor Ian Diamond, the principal of the University of Aberdeen, and professors at the University of Glasgow, Robert Gordon University and the University of the West of Scotland, all supporting the announcement that the education secretary made yesterday.

I will quote from one of them—from Annabel Goldie's very favourite principal, Anton Muscatelli. She will recall promoting the views of Professor Muscatelli as she was attacking Government policy last autumn. He said today:

"We fully support the Scottish Government moving quickly to address the issue of non-Scottish UK student fees in light of the UK coalition Government's increase of fees south of the border ... The measures outlined by the Scottish Government play a part in ensuring Scotland's universities maintain their world class offering."

Why has Annabel Goldie deserted Anton Muscatelli at this crucial time? She will remember quoting him and upbraiding me about my lack of Latin only a few short months ago. I say to Annabel on what she does with regard to the

future leadership of the Conservative party, *carpe diem*—seize the day.

The Presiding Officer (Tricia Marwick): We will now have constituency questions.

Marco Biagi (Edinburgh Central) (SNP): The First Minister will be aware of today's announcement by Lloyds Banking Group of 15,000 job losses, focused on offices rather than branches. Many of those offices are in my constituency. I ask the First Minister to contact Lloyds urgently for reassurances and clarity for Scotland-based staff, who woke up to uncertainty this morning.

The First Minister: We have pursued meetings with Lloyds Banking Group, and we have been in touch with Lloyds again this morning; John Swinney will be speaking to its representatives again this afternoon. I hope that it helps the constituency member if I say that Lloyds has given us a statement saying that it expects the reductions to take place without using compulsory redundancy. Lloyds pledges to

"continue to work with the Scottish Government's Financial Services Jobs Taskforce to ensure maximum levels of employment are retained across the wider financial services industry in Scotland."

These are difficult times for Lloyds staff. If I can offer one element of hope, however, I have with me a set of workforce statistics for the financial sector. After the financial crisis, employment in the financial sector in Scotland fell from 107,000 right down to 92,000. According to the latest statistics, which were released just last week, the number had risen back to 106,000, thanks to many announcements from a range of financial services companies in Scotland. Some of the work that has been done, both in promoting the financial services sector in Scotland and successfully attracting jobs, and in placing people who had been released from our major clearing banks, is thanks to the Financial Services Advisory Board and the task force that was established to make that possible.

I am pleased that, in these difficult circumstances, Lloyds Banking Group has said that it will work fully with the financial services jobs task force to minimise compulsory redundancies and to maximise levels of employment in the Scottish financial sector.

Siobhan McMahon (Central Scotland) (Lab): Is the First Minister aware of the recent decision to withdraw preferred bidding status from St Philip's secure unit in Plains? Is he aware that, as a consequence of the decision by the Cabinet Secretary for Justice, the unit will cease to operate tomorrow, resulting in its 259 staff being made compulsorily redundant, leaving many vulnerable children without the necessary support services?

Is he aware that, although the staff were advised by Alex Neil that a task force was being set up, Skills Development Scotland has denied that? What support is the Government offering to the staff at this time? What transitional arrangements are in place for the children?

The First Minister: It is a difficult situation with regard to the secure estate. As most people who have followed the issue well understand, there has been substantial overcapacity. I assure the member that meetings are being held to establish the best way to secure the maximum employment, as well as fulfilling the primary purpose, which is to ensure that care is available for the children in the secure estate.

I have been involved in meetings about the issue, and I know that the Cabinet Secretary for Justice, and indeed the member, have been strongly involved in the matter. Everybody is working their best to secure the best outcome for the staff who are employed at the unit and for the children in the secure estate.

Legal Profession (Cadder Ruling)

3. Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): To ask the First Minister what discussions the Scottish Government has had with the legal profession regarding the attendance of solicitors during interviews following the Cadder ruling. (S4F-00084)

The First Minister (Alex Salmond): The Scottish Government has had regular discussions with the Law Society of Scotland regarding the provision of police station advice following the Cadder ruling. Once we have seen the results of Lord Carloway's review of the law and practice of detaining and questioning suspects in criminal investigations, the society will continue to be fully involved in discussions on longer-term changes that might need to be made.

Christine Grahame: I welcome the continuing discussions with the Law Society of Scotland and recognise that Scotland's legal system is clearly capable of adapting quickly to the demands that are placed on it, but does the First Minister agree that, at the very least, Scottish courts must be given parity of referral, under certification, to the United Kingdom Supreme Court as soon as is practicable?

The First Minister: Yes, I do. I place on record my thanks to Lord McCluskey and his expert team for producing such a thorough and well-considered report in such a short timescale, in order to inform today's parliamentary debate on the subject, the debate that will take place over the summer and the definitive report, which will be produced in the autumn.

As Christine Grahame correctly identifies, a key recommendation of the report is that Scotland's highest court of criminal appeal, the High Court of Justiciary, must be placed on a level footing with other courts across the UK when it comes to appeals before the UK Supreme Court. I welcome that recommendation and the recommendation that amendments be made to the Scotland Bill to limit the role of the UK Supreme Court by ensuring that referrals from the High Court of Justiciary can be made only on the same basis as referrals from courts south of the border. That anomaly must be addressed, and the appropriate amendments to the Scotland Bill should be made after Lord McCluskey's group publishes its final report this autumn.

Johann Lamont (Glasgow Pollok) (Lab): I bring the First Minister back to the original question's reference to the attendance of solicitors during interviews. He will be aware that the Law Society of Scotland has estimated that the proposed Scottish Legal Aid Board helpline will cost twice as much as the amount that is currently spent on police station advice. In addition, it has advised that solicitors are voting with their feet, by moving away from the new process. In the interests of achieving value for money, will the First Minister agree to investigate the matter? Will he resist the development of any system that can be shown to be more costly and less effective?

The First Minister: That is precisely why Lord Carloway has been asked to review the law and practice of detaining and questioning suspects in criminal investigations. I am sorry that Johann Lamont does not understand, or does not want to understand, why these matters are relevant. She should look at Lord McCluskey's report, which says that many aspects of Scottish criminal proceedings have unexpectedly come before the UK Supreme Court on a basis that the report describes as "seriously flawed". That, says the report, has created "real problems".

That is where the problems came from. We hope that the solution will lie in implementation of the McCluskey recommendations when the final report comes before us, and in Lord Carloway's review. That is precisely the way in which to deal with such matters. I know that Johann Lamont really supports the actions that we are taking; she is just finding it a wee bit difficult to say so.

Borrowing Powers

4. Derek Mackay (Renfrewshire North and West) (SNP): To ask the First Minister what recent discussions the Scottish Government has had with the United Kingdom Government on the issue of borrowing powers. (S4F-00091)

The First Minister (Alex Salmond): On 20 June, the Cabinet Secretary for Finance,

Employment and Sustainable Growth, John Swinney, presented proposals to the Chief Secretary to the Treasury on borrowing powers in the Scotland Bill. Those proposals reflect the consensus across the Scottish Parliament for a robust, substantial and sustainable borrowing framework for Scotland.

Derek Mackay: I look forward to those proposals being considered by the UK Government.

It is clear that there is now consensus in the Parliament for the urgent transfer of borrowing powers. Does the First Minister share my belief that Scotland must have access to more economic levers to boost economic activity and support jobs? Does he welcome the comments by Lord Foulkes that the time has now come for Scotland to have full fiscal responsibility?

The First Minister: It is extraordinary that, in four years in this Parliament, Lord Foulkes hardly ever mentioned a sensible idea but, as soon as he went back to the House of Lords full time, he came up with a cracker. I have it here:

"I think that the time has now come when we must seriously consider a more radical change in funding devolved Governments. It is described by some as full fiscal autonomy; I would describe it more appropriately as full fiscal responsibility; so that the responsibility for raising money as well as spending it goes to the Scottish and other Governments."—[*Official Report, House of Lords*, 15 June 2011; Vol 728, c 857.]

Out of the mouths of babes and innocents and Lord Foulkes comes a declaration that the Labour Party in Scotland would do well to follow.

Jim Hume (South Scotland) (LD): On the Forth road bridge, does the First Minister welcome the United Kingdom Government's allowing of prepayment, which will, of course, allow other infrastructure projects in Scotland to go ahead?

The First Minister: We welcome initiatives, but I remind the member that prepayment will amount to the ability to advance borrow perhaps £100 million or £200 million. That money is not a gift; it must be paid back. The Forth crossing, even under the rigorous financial control that the Cabinet Secretary for Finance, Employment and Sustainable Growth is exerting, which has resulted in substantial savings to the Scottish purse, will cost more in the order of £1.5 billion. However, any contribution and sign of flexibility is welcome. I know that, with his long-standing support not only for fiscal responsibility but for fiscal federalism even, the member well understands why prepayment is no substitute for real financial and economic powers.

Care Homes (Inspections)

5. Jackie Baillie (Dumbarton) (Lab): To ask the First Minister what action the Scottish Government will take in response to figures showing that one in 10 care homes have been assessed by Social Care and Social Work Improvement Scotland as weak or unsatisfactory in at least one area of inspection. (S4F-00087)

The First Minister (Alex Salmond): As Jackie Baillie knows, the Government has already taken action. It was this Government that introduced the grading system to which she refers. That system showed that, in 2008-09, 10 per cent of care homes for older people were unsatisfactory or weak under one of the five new quality measures. The figure for 2010-11 has fallen by nearly a quarter. That is good progress, which I am sure Jackie Baillie will be the first to welcome. There is still room for improvement, of course, and we will strive to make further progress.

Jackie Baillie: If a significant proportion of our care homes are being assessed as weak or unsatisfactory, that is still a matter of concern, as we all want the best standards and the best possible quality of care for our older people.

The new care inspectorate has a key role to play, of course. A couple of weeks ago, the Cabinet Secretary for Health, Wellbeing and Cities Strategy was adamant that the cut in that inspectorate's budget was 1 per cent and that I was wrong to say that it was 25 per cent. This week, the inspectorate's corporate plan for 2011-14 shows a 25 per cent cut in its budget, and let us not forget the 20 per cent reduction in staff. Who should we believe—the cabinet secretary or the care inspectorate? Will the First Minister now act, reinstate the budget and stop the staff cuts, so that we can protect the quality of care for Scotland's older people?

The First Minister: Who should we believe on these matters? Certainly not Jackie Baillie. The care regulator's budget for 2011-12 is £35.444 million, which is a reduction of 1 per cent in the combined budget of the three predecessor organisations for 2010-11. Jackie Baillie well knows, as the Labour Party has consistently demanded details on this, that budgets for future years are looked at as part of the spending review and against a framework that considers the risk and inspection regime. The crucial point that Jackie Baillie has chosen not to inform members about is that the new inspections are unannounced and risk based. That is a much better framework, and we should have some satisfaction that the new regime has resulted in a fall in the number of unsatisfactory homes. Jackie Baillie will find that her fears are again misplaced, I am afraid, as future budgets are announced. The 1 per cent figure is detailed and verified.

Bob Doris (Glasgow) (SNP): The Health and Sport Committee has just announced that it will conduct an inquiry into how care for the elderly is regulated, which is a serious attempt to play its part in improving that care, as opposed to engaging in the cheap point scoring that we have just heard. Will the First Minister encourage all those who have concerns to submit evidence to that inquiry and, more important, will the Scottish Government take into account any conclusions that are drawn from it to inform policy and reform?

The First Minister: The debate on care for the elderly is hugely serious. The Parliament, the Government and every single one of us owe an obligation to older people. It is not helpful to deliberately quote a figure from 2008-09—10 per cent—for the number of care homes for older people that are unsatisfactory and not acknowledge that the 2010-11 figure showed substantial improvement. That was acknowledged not in Jackie Baillie's question, but after I had pointed it out.

That level of debate does not do this subject proper justice. The Government, the Parliament and the parliamentary committees owe it to the older people of Scotland to increase in every possible way and sustain the inspection regime to ensure that performance throughout the care home sector is satisfactory. That is a joint obligation and undertaking. I look forward to the parliamentary committee investigating the matter, because it will see that that commitment is held by all the parties represented in this chamber.

Ambulance and Fire Service Crews (Attacks)

6. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the First Minister what action the Scottish Government is taking to reduce the number of attacks on ambulance and fire service crews. (S4F-00096)

The First Minister (Alex Salmond): Any attacks on emergency service staff are deplorable and we condemn them in the strongest possible terms. As Murdo Fraser knows, we have provided significant financial support for initiatives aimed at protecting emergency workers. For example, the Scottish Government has provided £37 million for a new firelink system that allows fire service staff to utilise a priority call function requesting urgent police assistance if they come under attack and, in 2010, we provided £350,000 to health boards to fund projects to counter violence and aggression in the workplace, which of course, will extend to ambulance workers.

Murdo Fraser: I agree that everyone must condemn these attacks. However, figures published earlier this week show that ambulance crews in Tayside and Fife have been assaulted more than 50 times in the past three years and

such incidents are increasing. How will the Scottish Government ensure that the laws protecting those to whom we owe so much are rigorously enforced and that those who carry out such attacks are severely punished?

The First Minister: One of the reasons why we have such full statistics is the special status that emergency workers received through legal changes under the Emergency Workers (Scotland) Act 2005, which was passed under the Labour-Liberal Administration, and the 2008 provisions extending that protection to cover a range of other emergency and support staff. Taking into account our agreement that any verbal or physical abuse of our emergency service workers is totally unacceptable, I know that Murdo Fraser would not like to give the impression that the trend is rising. I note, for example, that in 2006-07 there were 283 of these deplorable attacks in Scotland; the most recent figures, which are for 2010-11, show that there were 265. However, no matter whether the figure is 283 or 265, it is still far too many. I hope that Murdo Fraser will acknowledge the welcome for the firelink initiative from the Chief Fire Officers Association Scotland and the Fire Brigades Union, indicating that they appreciate that it is an extra tool for the necessary protection of our emergency workers.

The Presiding Officer: That ends First Minister's question time.

“The Scheme”

The Deputy Presiding Officer (John Scott):

The next item of business is a members' business debate on motion S4M-00193, in the name of Willie Coffey, on “The Scheme”. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the interest in, and issues raised by, BBC Scotland's programme, *The Scheme*; considers that the programme, almost exclusively highlighting people with drug and alcohol addictions, gave an unfair impression of the wider community of Onthank; recognises the many challenges facing people with addictions and leading chaotic lives all over Scotland, and supports measures to assist those leading such lives who want to break the cycle of addiction and return to a normal life.

12:34

Willie Coffey (Kilmarnock and Irvine Valley)

(SNP): I lodged the motion to help to restore some balance to the story that the BBC told about my community in Onthank. Despite the film makers' initial promises that the film would be balanced, it turned out to be nothing of the kind. We did not expect a gloss-over of many of the problems and issues that can be seen anywhere else in Scotland, but we were entitled to expect some balance from a publicly funded broadcaster that takes money from people in licence fees only to turn against them by depicting their community in such a way. It was tabloid TV at its worst.

Local people were kidded and conned by the venture. They feel used and abused, and many who agreed to be filmed now wish that they had not done so. It simply is not good enough to say that it was an exposé of chaotic lifestyles and an insight into addiction. If that was the case, why was it necessary to accompany the stories with the depressing visuals of water running down the drains on a rainy day and graffiti-covered walls and shots of privately owned derelict flats? That was what upset so many local people. The film showed vulnerable, at-risk people parading and playing up in front of the camera, but showed the wider community in a very poor light, too. As recently as a few weeks ago, local children who were playing football for their school team were jeered as “The Scheme” team. There is no defence for that, and there has been no hint of an apology from the BBC.

We will not find out the impact on the community as a whole if we read the brief from Ian Small from the BBC, as it does not mention that. I take it from that that the BBC is not interested in how the community in Onthank feels about the programme that it commissioned. All that we got was the usual stats about how good the viewing figures were. If

the programme is the best thing that the BBC has done in Scotland for 10 years, that raises questions about what on earth it has been doing with its public funding for so long.

It was wrong and dangerous to expose on TV for nothing more than public entertainment people who are already at risk and lead chaotic lifestyles. I am sure that the public are following with some alarm the progress made by a few of them since the programme was shown. What will happen to those people when the interest fades, the interviews end and the money runs out? Who will look after them? It certainly will not be the BBC; rather, the decent, honest folk of Onthank, the local authority and voluntary staff will pick up the pieces from those chaotic lifestyles and try to help people to recover some kind of normality. How dare people breenge into our community, do that to us and then swan off into the sunset, leaving behind nothing but an angry community and broken hearts.

Mr Small has claimed that what was on screen was neither contrived nor constructed. How on earth did the camera crew manage to be in a house when the kids were already late for school, with their mother still in her bed? Did they have a key to get in? Did the mother let them in and then go back to bed to get a better camera shot? During all that rubbish, why did nobody think about the kids and get them to school on time? I suppose that the film makers and then the BBC opted for the dramatic rather than thinking about vulnerable kids. It was convenient that the camera also just happened to be rolling for another scene in which a girl came out of her house to slap another person in the face, perfectly on cue. That was purely a coincidence, of course.

If the programme had stuck strictly to the characters only, there might have been a case for it, even with the concerns that I have expressed for their long-term welfare, but it did not. It strayed beyond them to show in the worst possible manner the community that I was born and brought up in, and that was wrong.

Anybody who bothers to look will see that Onthank is a wonderful place to live in. The schools in it—Mount Carmel and Hillhead—are booming and local families are queueing up to get their kids into the local primary and nursery schools. Only on Tuesday, I attended the prize giving at Onthank primary school, which has a thriving Gaelic unit. The event was packed to capacity with proud parents, grandparents and youngsters. I know that the BBC was not interested in telling that story.

I would like a clear message to go out to the BBC from this debate that, in the whole controversy, it is the one body that is open to severe criticism. Everybody else has an excuse for

their part in the programme. The programme makers are clearly in the business to make money, and they certainly did that on the back of some of the most vulnerable people in Scotland, especially as they were able to sell the programme for broadcast outside Scotland.

When the BBC was comparing the edited programmes with the apparent objective of the series, it should have demanded changes, not least to the title of the series. There was no one scheme in the programme, and there never was. Those who appeared on screen did not all come from Onthank, and the programmes gave no sense of the complexity of life in Onthank or in any other scheme in any meaningful sense. When the BBC realised that it was being given a programme that focused almost entirely on the lives of people directly and deeply affected by drugs, alcohol and crime, it should have insisted that the families were drawn from a much wider area and that a single scheme and its residents should not bear the brunt of the media focus. The people at the BBC who flunked that decision should hang their heads in shame, and their subsequent failure to acknowledge the error is an example of the media at its worst—being prepared to exercise the power of the press without taking responsibility for the consequences.

The BBC has a duty to come back to Onthank and repair the damage that it has done to the community. We did not deserve to be treated like that. In a perverse way, the programme has galvanised the community by giving us a keener sense of identity and a determination to promote the many positives that we share in Onthank. Let us see if the BBC is up to the challenge of helping us to recover, and perhaps a new film about Onthank will be its next best seller.

12:40

Margaret Burgess (Cunninghame South) (SNP): I thank Willie Coffey for bringing the debate to the chamber because it raises some important issues. Unlike Willie, I am not from Onthank, but I know the community well. I worked with the people of Onthank and others in Kilmarnock for more than 24 years. One of the first things that I learned when I took up my job was that Onthank considers itself to be a community. The people see themselves first and foremost as residents of Onthank.

I remember that when I started working there, I suggested to someone that Onthank is still Kilmarnock; I was corrected and I never made that mistake again. Onthank is a very proud community and the people do not deserve to be treated in the way that they have been by the BBC.

Vulnerable people were exploited and, as my colleague Willie Coffey has already said, they regret it now. Some of them are living with the consequences of their day of fame.

The people of Onthank are proud of their community. They also know that there are problems in the community. They know about the drug and alcohol problems and that some people lead chaotic lifestyles, but they are a small minority of the residents. The people of Onthank, the community groups, the local authority, the health board and voluntary agencies are working actively to address those problems, which are not exclusive to Onthank; they are in every community in Scotland. We have a duty to work together to find long-term solutions to the deep-rooted problems in all our communities.

My issue with the BBC is about the name of the programme. "The Scheme" focused not on a problem but on an area, and that was wrong. It concentrated almost exclusively on the problems of a small minority of people who are living chaotic lifestyles. There was no balance between that and all the good things that happen in Onthank, such as the schools that Willie Coffey talked about. This week, I read about the nursery school in Onthank getting a glowing report from the care commission, and that the parents were congratulated on their input and the effort that they put into the nursery school. A lot of what is going on in Onthank is good.

Willie Coffey is right about the impact that the programme has had on the people and their families—I saw it. They took it as a slur on their community, which was portrayed as a community blighted by drugs and alcohol, as if there was nothing else there. That was very insulting to them. They saw the spectacle of people from many parts of Scotland driving around Onthank expecting to see a rammy in the street or people taking drugs in public, which, of course, they did not see. They saw a housing estate like any other housing estate in our towns and cities, with people going about their business as they would do anywhere. That is the reality of Onthank.

The programme did highlight some important issues about drugs, alcohol and deprivation. Society needs to know about those issues and we must address them, so I do not have an argument with the BBC about that. My argument is with the way in which it tried to build that into some sort of reality TV programme.

The programme had a negative impact on the majority of the Onthank residents, and on the wider community of Kilmarnock. The people saw their community turned into something akin to a soap opera. I urge the BBC and any other programme producers who want to raise issues in future to consider the impact that the programme

will have. When they leave the town and walk away, they will, I hope, consider the problems, the negativity and the way that people are left feeling, and I hope that they will consult the wider community before they try to put a programme like that on again.

12:44

Ruth Davidson (Glasgow) (Con): First, I declare an interest in that I used to be employed by BBC Scotland, although I was never employed by the factual department in charge of the documentary "The Scheme". In addition, I have never watched the programme. Having read a write-up of it, I had no wish to watch it. I agree that it sounded like tabloid television at its worst—a number of newspapers have called it "poverty pornography"—and that is not my kind of show. Therefore, I do not have the intimate knowledge of the programme that some members in the chamber have when talking about it.

However, I know that nobody wants to see their community misrepresented, particularly on screen to a wide sector of Scottish society. I grew up in Fife and went to school in Buckhaven. I know that there are myriad ways in which communities can be represented. There were high levels of deprivation, drug abuse and economic inactivity in the areas of Methil, Buckhaven and Kennoway, but that was not the whole story for me when growing up. My school delivered a fantastic extra-curricular roster of activities that helped all the children at the school to make the most of their talents. Mr Coffey is right to refer to the Onthank school and the great work that it does at the heart of the community.

The programme has, however, provoked a debate in Scotland about not just poverty and the representation of the people in the programme but addictions. I note that the text of Mr Coffey's motion refers to recognising the challenges for people who suffer from addictions and lead chaotic lifestyles and to measures to assist those who lead such lives.

Within Mr Coffey's wider point, I want to talk about the new drugs strategy for Scotland, which a number of my Conservative colleagues helped the previous Scottish National Party Government to implement. The strategy is based on treatment and abstinence, and is a step forward. However, there are grumblings that the strategy's implementation on the ground does not live up to its aims and ethos. A recent report from Audit Scotland, entitled "Drug and alcohol services in Scotland", referred to the scale of the problem of drug and alcohol abuse in Scotland. We have a high level of such abuse, particularly compared with other European nations: its incidence has doubled in the past 15 years. The latest figures

show that in 2007-08, £173 million was spent on combined drug and alcohol abuse services.

That is not the whole story, however, because Government policy and wider health policy concentrate too much on inputs in drug and alcohol services for tackling what are complex and conflicting problems and not enough on outputs and—most importantly—outcomes, which are far harder to quantify. I hope that the Government recognises the merits of the suggestions in the Audit Scotland report on what we can do better to measure our progress on the ground in order to offer help to the large number of agencies involved in addressing alcohol and drug addiction in co-ordinating their work.

It is entirely appropriate that we, as legislators in the Scottish Parliament, discuss the serious issues of poverty and drug and alcohol abuse, which affect all areas of Scotland and not just Onthank, and I thank the member for Kilmarnock and Irvine Valley for bringing the debate to the chamber.

12:49

Paul Wheelhouse (South Scotland) (SNP): I, too, welcome Willie Coffey's bringing of the debate to the chamber. I speak not as somebody who has a direct connection with Kilmarnock, although Willie Coffey is aware of my genetic connection to the area, but as somebody who represents the south of Scotland and, therefore, felt that I had a responsibility to the community of Onthank to state my view.

Like Willie Coffey and Margaret Burgess, I have a number of concerns about the BBC programme. The main thing to highlight is the programme's visual impact, as Willie Coffey rightly said. I was a neutral observer of the programme and I watched only one episode—that was enough for me—but I was struck by the frequent, low-angle shots from the gutter, which showed cans rolling around in the alleyways, and by the focus on graffiti. I thought that the approach was unhelpful and exacerbated the negativity of the programme.

The BBC sent us data about the viewing figures and made great claims about the programme's popularity demonstrating how good a documentary it was. I interpret the figures slightly differently. The BBC said that the programme had 840,000 viewers on average, which was significantly more than is typical for programmes that are shown at that time of day, which usually attract 230,000 viewers. I congratulate the BBC; it generated a lot of viewing. However, if the BBC is right to suggest that the programme stimulated a debate, why was there a gap of 500,000 between the number of people who viewed the programme and the number of people who viewed the programme about the issues that followed? It is clear that

500,000 people watched the programme for reasons other than those that the BBC claimed.

There was a degree of exploitation—albeit perhaps unintended—of the people of Onthank for entertainment. Members who, like me, use Facebook regularly will have seen hundreds of negative posts about the residents in “The Scheme”. We can conclude only that the programme was about entertainment. It was a reality TV show; it was not genuinely about presenting serious issues for debate. I take Ruth Davidson’s point and I hope that she is right that a genuine debate about the issues will follow, but I suspect that half a million viewers of the programme did not think about the issues and simply enjoyed the programme for entertainment.

The BBC said:

“Concerns were raised around the graphic nature of certain scenes. However, the fact that some people were so shocked surely underlines the need to reveal and inform. Sometimes a powerful image can provoke more response and engagement than any number of words.”

That might be true. However, Willie Coffey is right; the BBC exploited negative aspects. For example, the issue to do with the state of the community centre building was presented in a way that almost suggested that the residents who were part of the group that was trying to restore the centre were going about things in a cack-handed way. When people turned up at the drop of a hat to see the person who was inspecting the building, the programme suggested that that was inappropriate.

Douglas Hamilton, head of Save the Children in Scotland, said:

“The only way to understand deprivation is to see it through the lives of those who experience it on a daily basis.”

I was disappointed by his comments about “The Scheme”, which failed to reflect the exploitative nature of the programme. As Margaret Burgess said, people who visit the estate realise that it is a pretty normal Scottish estate, but anyone who watched the programmes would draw anything other than that conclusion.

I support Willie Coffey’s motion and I hope that the BBC will reflect on the criticisms that have been made in the Parliament.

12:53

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I, too, congratulate Willie Coffey on securing the debate. We heard him give a passionate defence of his community. That was an example of an elected representative doing exactly what an elected representative should do, so I doubly congratulate him in that regard.

The common theme in the debate was the widespread perception of a lack of balance in the programme. I will return to that, but as Willie Coffey and other members know, my ministerial responsibilities do not extend to broadcasting, so I am a little wary of stepping into a minefield by making a critique of broadcasting. It would be hard to defend such views in anything other than an individual sense. I heard the individual responses from members and I am bound to say that as an individual I have great sympathy with what they said.

Like Paul Wheelhouse, I saw some but not all of the series, for exactly the same reason that he and Ruth Davidson gave—it really was not something that I particularly wanted to watch. I do not know whether Willie Coffey would regard that as copping out or whether he is grateful that there were people who felt that the programme just was not appropriate and who did not want to put it on their viewing schedule.

I will say a few words about the Government’s perspective on the important social issues raised in the programme, to which members have referred. We as a Government recognise the role of strong, cohesive and innovative communities in collectively tackling issues around drugs, alcohol, deprivation and social exclusion. Margaret Burgess and Willie Coffey both gave examples of that happening in Onthank, which the programme makers did not really cover.

With our partners, we are supporting safer and stronger communities throughout Scotland. As I said earlier, almost all members talked about balance. There was perhaps one small redeeming feature of the programme: the final episode focused a little more on hope, rather than hopelessness. We saw the beginnings of a sense of recovery from drugs and alcohol and the impact that a few inspired individuals can have when they work together to meet a community need. Both Willie Coffey and Margaret Burgess talked about those people.

We know the importance of the early years in offering the very best start in life for all Scotland’s children. Although I did not see the bit of the programme that involved the young girl in one of the families, it obviously hit home very hard for those who did see it.

Every Scot has a fundamental right to live in a safe and strong community.

We should examine more closely the potential, the strengths and the social innovations that exist in all communities throughout Scotland and not define a community solely by the challenges that it faces. It is the case—Margaret Burgess pointed this out—that the problems focused on could be found in many communities in Scotland. She could

have gone much further; she could have pointed out that such problems are manifest in communities not just throughout the whole of the United Kingdom but throughout Europe, too. In one sense, the difficulties, challenges and problems faced within Onthank are faced by many other communities. It was a little unfair to single out a community and to suggest that it was somehow special. That is where the issue of balance comes in. The real issues of drugs, alcohol and deprivation should not be about entertainment, because many of our communities face serious and important challenges in that regard.

Progress is being made and it is a pity that more emphasis was not put on recovery from drugs and alcohol abuse. Communities that support sustained recovery from drug and alcohol addiction are flourishing across Scotland. Those communities are of interest. They belong to the individuals who are in recovery, the network of workers, peers and families involved and others who support those individuals more widely. Those communities welcome all those who aspire to recover; they support them to change their lives and become contributing members of the community. I believe that Willie Coffey, Margaret Burgess and other members would have liked to have seen more focus on those individuals, that contribution and that support, rather than what we got from the programme makers.

As Ruth Davidson said, the Government is very much part of the whole drug programme, the road to recovery, which is beginning to have an impact, although we face a massive challenge. Big improvements are being made: waiting times for access to treatment are coming down significantly. If Ruth Davidson had been in the Parliament four years ago, she would have known that the issue of waiting times for access to treatment is massive in many parts of Scotland. We have made huge inroads in that regard, just as we have made huge inroads in relation to investment to tackle Scotland's relationship with alcohol.

There is a very great deal to be done, but it is not just about Onthank; challenges are faced right across Scotland and the UK. I warmly congratulate Willie Coffey on his positive contribution about the people he represents.

13:00

Meeting suspended.

14:15

On resuming—

Scottish Executive Question Time

Health, Wellbeing and Cities Strategy

Social Care and Social Work Improvement Scotland (Capacity)

1. Siobhan McMahon (Central Scotland) (Lab): To ask the Scottish Executive what its position is on the capacity of Social Care and Social Work Improvement Scotland to carry out its duties in light of recent budget changes. (S4O-00092)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): The change from the combined budgets of Social Care and Social Work Improvement Scotland's predecessor bodies in 2010-11 to its budget for 2011-12 is from £35,894 million to £35,444 million, which is a reduction of just over 1 per cent. The care inspectorate maintains the required skill mix and experience to provide the necessary assurance as to the quality and standards of regulated care services. The budget for future years will be set in the context of the spending review and will be driven by the need to ensure a robust system of inspection.

Siobhan McMahon: Is the cabinet secretary aware of the worrying data that SCSWIS has released in response to Labour's freedom of information request? Does she know, for example, that in North Lanarkshire four privately owned care homes were revealed to be weak on quality of care and support and that eight privately owned care homes are either weak or unsatisfactory in at least one inspection area? That means that 23 per cent of North Lanarkshire stock is falling short of the required standard. I am sure that the cabinet secretary will agree that that is unacceptable.

The Presiding Officer (Tricia Marwick): Can we get to the question?

Siobhan McMahon: Does the cabinet secretary agree that cutting the budget for SCSWIS, the organisation that is tasked with supporting improvement and signposting good practice, will not improve matters, will inhibit the organisation's capacity to carry out the duty and will lead to further deterioration in standards?

Nicola Sturgeon: I say to the member seriously and genuinely that that is a serious issue and I appreciate any member who comes to the chamber to raise it. We should all be aware of our responsibilities on the issue and pledge to do what

we can to ensure that older people have the standards that they have a right to expect. However, the press release that Siobhan McMahon issued yesterday had inaccuracies in it. For example, it said that there were eight care homes in North Lanarkshire, when in fact there are 36 care homes there. The situation is that four services had grades of 1 or 2 for care and support out of a total of 35 assessed care homes for older people in North Lanarkshire. That is 11 per cent of those care homes, not 100 per cent, as was implied in the press release that Labour issued yesterday. Fifty-six per cent are graded good or very good.

I repeat the comments that the First Minister made at First Minister's question time. We want to ensure the highest standards for every older person in care homes. However, it does nobody in Scotland, including older people and their families, any service to use information that is not factually accurate. The Government will continue to take the necessary action, including on the budget of the care inspectorate, to ensure that older people know that there is a robust inspection regime in place to ensure that we have the standards that all of us want older people to have.

The Presiding Officer: I call Derek Mackay.

Derek Mackay (Renfrewshire North and West) (SNP): To ask the Scottish Executive whether procedures are in place to ensure that national health service medical staff seek a full employment history for all new mesothelioma cases.

The Minister for Public Health (Michael Matheson): That is question 6, Presiding Officer.

The Presiding Officer: Sorry.

I call Mary Scanlon to ask a supplementary to question 1.

Mary Scanlon (Highlands and Islands) (Con): Given the lack of commitment in the past by the Scottish Commission for the Regulation of Care to following up problems that were identified in care home inspections, I ask the health secretary whether all reports and follow-up reports by SCSWIS can be reported electronically to constituency and regional members within seven days to ensure that all members of the Parliament have the same information on care homes as we currently receive for school inspections.

Nicola Sturgeon: I absolutely agree with Mary Scanlon on the importance of transparency and appropriate follow-up, which are vital components of the inspection regime. If weaknesses are identified, that is a sign of the success of the regime, but we should expect those weaknesses to be followed up and rectified. I am more than happy to relay Mary Scanlon's specific suggestion

to SCSWIS to discuss its practicality. If appropriate, and if it is acceptable to Mary Scanlon, I will get back to her on that point in writing.

Measles Outbreak (Mainland Europe)

2. Stewart Maxwell (West Scotland) (SNP): To ask the Scottish Government what steps it is taking to warn parents about the measles outbreak on mainland Europe and the dangers of taking abroad children who have not had two doses of the measles, mumps and rubella vaccine. (S40-00093)

The Minister for Public Health (Michael Matheson): Health Protection Scotland has undertaken a range of activities to raise awareness of the measles outbreak in mainland Europe. Travax, the travel health advice website for national health service professionals that Health Protection Scotland maintains, has been updated to reflect the current situation.

Health Protection Scotland has written to professionals across the NHS several times—it wrote as recently as last week—to provide updated advice. In May, it wrote to directors of education to provide advice that was to be passed on to all parents on the importance of ensuring that children are protected against measles before any travel or school trips to Europe. Similar advice was also provided to universities and further education colleges. Health Protection Scotland continues to monitor the situation and will update its advice as required.

Stewart Maxwell: I thank the minister for his detailed answer. I welcome the fact that the latest quarterly figures published by ISD Scotland—for the quarter that ended on 31 March 2011—show that uptake at five years of age of one dose of the MMR vaccine is 96.2 per cent, which once again exceeds the 95 per cent target. However, uptake at five years of age of the second dose of the MMR vaccine is only 89 per cent. Given the public health concerns that could result from a low uptake of the MMR vaccine, what does the Government intend to do to encourage parents to ensure that their children receive the vital second dose?

Michael Matheson: Stewart Maxwell raises a worthwhile point. For children to have the proper protection from measles, it is extremely important that they complete the two doses of the MMR vaccine.

Practice nurses and general practitioners have done a considerable amount of work to recall parents and their children for the second dose. As a result of such initiatives, uptake of the second dose is 93 per cent at the age of six.

It is clear that there is more progress to make, but I assure Stewart Maxwell that uptake of the first and second doses of the MMR vaccine is higher in Scotland than in any other part of the United Kingdom. It is important that parents recognise that their children need to complete both doses of the MMR vaccine to be properly protected from measles.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The minister will be aware that I raised the issue more than once in the previous parliamentary session and that I have done so in recent parliamentary questions. I welcome the fact that uptake levels have always been higher in Scotland than in the rest of the UK and that the figures are approaching a satisfactory level, but I ask the minister to reconsider a written answer that I was given in the previous session to a question about England's catch-up campaign. I admit that the situation there started from a lower base, but we have not had such a public campaign to encourage parents to vaccinate children whom they did not get vaccinated—partly because of the approach of Opposition parties during our time in power of attacking the combined MMR vaccine. Will he reconsider the approach, which led to low uptake? Significant numbers of older children are unvaccinated.

Michael Matheson: I would have thought that the MMR vaccine was a matter of importance that went beyond party politics. It is clear that significant progress has been made to meet the 95 per cent target at which we aim. Uptake among six-year-old children is 93 per cent, and our level is still significantly higher than that in other parts of the UK.

We are making progress. GPs and practice nurses have done considerable good work to encourage parents to return. I am confident that that work will continue and that we can continue to make progress. I hope that we can continue to make progress on a cross-party basis, too.

The Presiding Officer: I remind all members that supplementary questions should be brief. I would appreciate ministers' co-operation in making their answers brief, too. In that way, we will get through most of the questions in the *Business Bulletin*.

NHS Dumfries and Galloway (Meetings)

3. Alex Fergusson (Galloway and West Dumfries) (Con): To ask the Scottish Executive when the Cabinet Secretary for Health, Wellbeing and Cities Strategy last met officials from NHS Dumfries and Galloway and what issues were discussed. (S4O-00094)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I last met health board chairs in Edinburgh on 27 June. A range of issues of importance to the people of Scotland were discussed. My officials meet regularly with officials from all health boards, including NHS Dumfries and Galloway.

Alex Fergusson: In 2009, 39 men in the NHS Dumfries and Galloway health board area died of prostate cancer, which is almost double the number 10 years previously. That is a worrying trend, especially as only one in three men over the age of 50 has ever heard of the prostate-specific antigen test that can detect prostate cancer.

Is the cabinet secretary aware of the Prostate Cancer Charity tour ride that will come to Dumfries in early September? Perhaps more important, what assurances can she give that the charity's efforts in raising funds for and awareness of prostate cancer are matched by the Scottish Government's efforts to ensure that the male population is made aware of the PSA test and given sufficient information to enable men to decide whether to take it?

Nicola Sturgeon: The Government is always keen to work with charities to do everything that we can to improve the general population's awareness of cancer symptoms and understanding of the actions that can and should be taken to prevent cancer and ensure its earliest possible detection.

I am aware of PSA testing. We take advice on general population screening programmes from the national screening committee, and we will continue to follow any advice that it gives on PSA testing. I am happy to write to Alex Fergusson in more detail about the benefits of and issues surrounding the test. I am sure, given his interest in the subject, that he would find that information useful and interesting.

More generally, our detect cancer early initiative—details of which will be announced soon—is about doing everything that we can to improve earlier detection of cancer. It will focus initially on the three big cancers in Scotland—lung, breast and colorectal—but it has great potential to ensure the earlier detection of all cancers in due course. I am happy to correspond with Alex Fergusson on the specifics of his question and keep him fully up to date with progress.

Detect Cancer Early

4. Joan McAlpine (South Scotland) (SNP): To ask the Scottish Government what is being done to implement the detect cancer early initiative and how it will work in practice. (S4O-00095)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): That is a very topical question given the previous exchange.

Cancer waiting times targets are being met ahead of schedule, and in our view the time is now right to launch an ambitious new programme to save more lives. We are developing a draft implementation plan for the detect cancer early initiative and will engage with key stakeholders from this week. We expect to launch the full, detailed plan by September.

To achieve earlier diagnosis of cancer, the initiative will encourage improved participation in screening programmes and increased awareness of symptoms and suspicious signs of cancer. It will also encourage referral at an earlier stage.

Joan McAlpine: Can the cabinet secretary elaborate on which social groups might benefit from the earlier detection of cancer? It is my understanding that the lower socioeconomic groups will benefit most.

Nicola Sturgeon: Joan McAlpine is absolutely right. We know from looking at the screening programmes in Scotland that those from lower socioeconomic groups and those who live in deprived areas are less likely to access those programmes and are therefore less likely to have their cancer diagnosed at an earlier stage. The detect cancer early initiative will focus on ensuring not only that we improve early detection rates in general, but that we seek to address the health inequality that often exists between different groups in Scotland.

I referred in my answer to Alex Fergusson to the meeting of health board chairs that was held earlier this week. One of the key issues under discussion was the detect cancer early initiative, and a number of chairs emphasised the importance of ensuring that we get the messages across firmly and effectively to people in those groups.

I am grateful to Joan McAlpine for raising that important issue, and—as I offered to do for Alex Fergusson—I am happy to keep her up to date with progress.

Nanette Milne (North East Scotland) (Con): The cabinet secretary will be aware of the work of the Rarer Cancers Foundation. Does she agree that one of the detect cancer early initiative's key pillars should be that it addresses the obstacles to treatment that patients diagnosed with rarer cancers, such as osteosarcoma, still face because they are diagnosed late? In the case of osteosarcoma, that is often due to difficulties in identifying the symptoms in young adults; indeed, the initial symptoms can be similar to those for a

sprain. Will she make identifying rarer cancers much earlier a priority?

Nicola Sturgeon: Absolutely. Given her background, Nanette Milne probably knows better than I do of difficulties in diagnosing all very rare illnesses, not just cancer. By definition, general practitioners and other medical and health professionals do not come into contact with those illnesses regularly, and part of the detect cancer early initiative is to raise awareness of common early signs of cancer among not just the public but GPs and other health professionals. The importance of that with regard to cancer in general is well understood, but Nanette Milne is right to highlight its importance with regard to rarer cancers and I assure her that we will keep the matter firmly in mind.

Health Budget 2011-12 (VAT Increase)

5. Gil Paterson (Clydebank and Milngavie) (SNP): To ask the Scottish Government what impact the increase in VAT has had on the health budget for 2011-12. (S4O-00096)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): The estimated implication of a VAT rise from 17.5 per cent to 20 per cent for national health service boards in Scotland is £26 million.

Gil Paterson: Given that that additional burden is being placed on a fixed budget, should the increase not be termed a cut? Will the Scottish Government be seeking dialogue with the United Kingdom Government to address the matter?

Nicola Sturgeon: Gil Paterson has raised a very important issue. The Scottish Government and I have highlighted in the past the impact on the NHS of changes in taxation that we in this Parliament do not control. I have responded to the question about the increase in VAT, but I point out that changes to national insurance contributions are also impacting on the pressures bearing down just now on our NHS. I assure Gil Paterson that we will always seek to ensure that our NHS's interests are fully articulated to the UK Government.

Of course, this all serves as a reminder that the pressures on our health service and other parts of the public sector that people are experiencing are down to the £1.3 billion cut that has been imposed on Scotland by the Westminster Government. I am sure that people will be reflecting on that matter given that, at the moment, Scotland's resources contribute greatly to the UK Treasury.

Rhoda Grant (Highlands and Islands) (Lab): The cabinet secretary will be aware that, due to distances that have to be travelled in the Highlands and Islands, health boards in those

areas will incur further costs with the increase in VAT on fuel. Will she join us in calling on the Westminster Government to reduce VAT on fuel?

Nicola Sturgeon: The Scottish Government has made its position on these matters very clear indeed. Rhoda Grant and Gil Paterson are right to raise the issue. Notwithstanding the protection of the health budget that the Government has assured by passing on consequential increases in VAT, national insurance contributions and the cost of energy are all putting pressure on health boards and are outwith this Parliament's control. I think that that provides a very powerful, real and tangible reason for increasing the Parliament's powers—indeed, for making this Parliament independent.

The Presiding Officer: Would Derek Mackay now like to ask question 6?

Derek Mackay (Renfrewshire North and West) (SNP): He would, Presiding Officer.

Mesothelioma Cases (Employment History)

6. Derek Mackay (Renfrewshire North and West) (SNP): To ask the Scottish Executive whether procedures are in place to ensure that national health service medical staff seek a full employment history for all new mesothelioma cases. (S4O-00097)

The Minister for Public Health (Michael Matheson): Although there is no specific guidance on or recommended procedures for mesothelioma in general or taking an occupational history from patients with mesothelioma in particular, medical practitioners' awareness of the condition is now much greater, and it is considered good practice to undertake this procedure with any patient suspected of having the condition.

Derek Mackay: Recent reports have highlighted a 20 per cent increase in the number of women who have contracted mesothelioma, which is cancer caused by asbestos. However, the fact is that, all too often, women are not asked about their full employment history to find out where the exposure to asbestos took place. Asking all new cases specifically about their employment history not only ensures better outcomes for compensation cases but provides a better picture of asbestos exposure across Scotland. Is the minister able to comment on the legislation that the Supreme Court is considering in relation to compensation cases?

Michael Matheson: Although the increase in the instances of cancer is relatively small, it remains a matter of concern, which is why cancer remains a top priority for the Scottish Government. The cabinet secretary outlined the initiative we are taking with the detect cancer early initiative, which will be backed by an additional £30 million to help

to ensure that we get early diagnosis of conditions. That type of approach will help to improve the outcomes for those who are diagnosed with the condition.

Although I mentioned to the member that there is no specific guidance in relation to taking down someone's occupational history, I understand that clinical practice for dealing with individuals who may have a lung condition is often to consider their occupational history as a matter of course. However, if the member believes he has evidence of cases in which that has not been properly carried out, I would be more than happy to consider that.

With regard to the member's final point about the case that is before the Supreme Court, it would obviously not be appropriate to comment on a matter that is live before the court. However, the Scottish Government continues to believe that the legislation is right in both principle and law. I hope that the Supreme Court comes to a judgment soon on that matter.

Dementia (Care Home Places)

7. John Wilson (Central Scotland) (SNP): To ask the Scottish Government what discussions it has had with national health service boards and local authorities regarding care home places for people with dementia. (S4O-00098)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): We are working nationally with all key stakeholders through the national development group for older people's care to enhance the quality and consistency of care for older people.

Most people with dementia wish to remain in their own home. The national dementia strategy aims to help people to stay living independently for as long as possible by improving both post-diagnostic support and care in acute general hospital settings so that they are not unnecessarily discharged into a care home.

The national care home contract between the Convention of Scottish Local Authorities and Scottish Care is being strengthened to enhance the quality, consistency and stability of the commissioning of care from the independent sector.

John Wilson: Would the cabinet secretary care to meet me to discuss what appears to be a particular problem regarding the treatment of individuals who attempt to leave hospital and their placement in appropriate residential care provision by the local authority? I refer to, in particular, the delays and apparent obstructions to finding appropriate residential care accommodation.

Nicola Sturgeon: On the first part of John Wilson's question, I would be happy to meet him to discuss any particular constituency concerns he has on that issue. I am always concerned, as I am sure everyone in the chamber is, when I hear about any older person facing delays in receiving appropriate care. People should not have to spend a day longer in hospital than they need to, and they should not find themselves discharged from hospital into an inappropriate care setting.

I am sure that members will acknowledge the huge progress that we have made over the past four years in reducing the level of delayed discharges. However, we are not complacent. One person delayed too long is one too many, and one person discharged into the wrong care setting is also one too many. We are determined to take further action on that. This year, we introduced the change fund, giving £70 million to help partnerships to redesign services so that older people can be helped to remain independent in their own homes, focusing on reducing unnecessary hospital admission and speeding up discharge after a crisis. We continue to work with partners as we look ahead to the integration of health and social care to ensure that we have continued improvement in that area of care.

Mary Fee (West Scotland) (Lab): What assurances can the minister give members and families throughout Scotland who are concerned about recent evidence that care homes are struggling to cope and have been found to be drugging patients—as happened in the case of Mrs V, for example—and that one in 10 care homes are providing weak or unsatisfactory care? What steps are in place to integrate health and social care for the elderly, particularly those with dementia, to prevent events such as those at Elsie Inglis nursing home and Ninewells hospital?

Nicola Sturgeon: There were a lot of different aspects to that question, so I will try to be as brief as possible. I am more than happy to follow up any particular aspect in writing if I do not do it justice in my answer.

Mary Fee referred to drugging patients, and the use of antipsychotic medication is a sensitive issue. The national dementia standards that I published a few weeks ago set out standards for the use of such medication. It is essential that it is not used with any older person just because it is the easiest way to control someone who is displaying difficult behaviour. It should be used only when it is the best and most appropriate form of treatment for an older person.

On the other aspects of Mary Fee's question, the Government has made clear its commitment—I detect cross-party support for this—that health and social care should be integrated. We are looking carefully at the best way of achieving that

objective, and we will come forward with our further thinking and our plans in due course. I genuinely hope to build consensus in this Parliament not only on what we are trying to achieve but on the route to achieving it.

Mary Fee referred to the Mental Welfare Commission's report on the elderly patient in Ninewells hospital. That is one of the events that have taken place in recent weeks that have helped to have create often understandable concerns about the standard of care for older people, whether in hospitals or care homes. That is the main reason why the Government has said clearly that the issue is a priority for us. As Parliament would expect, it is one that I intend to give my personal attention to, to ensure that we are addressing all the issues effectively.

Young Carers

8. Claudia Beamish (South Scotland) (Lab):

To ask the Scottish Executive what role it considers specialist young carers services have in implementing the young carers strategy. (S40-00099)

The Minister for Public Health (Michael Matheson): Dedicated young carers services have an important role. They can help to implement the young carers strategy by providing a range of support to young carers across Scotland, including short breaks, emotional support, counselling and leisure activities. Our commitment to young carers is demonstrated by the range of funding that we provide in support of those services.

Through the strategy, we have encouraged local authorities to continue the core funding of young carers services. Health boards have also provided support to young carers services by using some of the £4.9 million that we have allocated to them for such work in this financial year.

Claudia Beamish: Research from the Princess Royal Trust for Carers shows that for every pound spent on specialist carer services, more than £6 can be saved. Can the minister confirm what support the Scottish Government is providing to local authorities to support such services, many of which I understand face frozen or falling budgets and rising costs and which are creating waiting lists for young carers? Can he also please reassure us that a specific classification of young carer will be introduced as part of the 2011 school census, so that schools will be supported to look at their policies and practices to support young carers?

Michael Matheson: On the member's final point, I confirm that we intend to include that classification in the school census. Later this year,

we will bring forward a carers charter, which will look to provide further support.

On the specific support that we are providing to young carers services, we are supporting a range of initiatives, from the young carers festival to a programme that I recently launched, called the Eryc and Trayc toolkit, which is for primary school children and is intended to help identify young carers who are at primary school.

It is important that there is greater awareness among education staff of the pressures that young children who are carers may be under. For example, if they are late in arriving for school or late with their homework, it may be because of that caring responsibility. Therefore, it is important that we continue to raise awareness of the number of young people who are involved in caring.

We continue to encourage local authorities to prioritise the need to support young carers. It is clearly for each individual local authority to determine how it utilises its budget but, as a Government, we have made it clear that young carers and carers in general remain a priority, given the important role that they play in our society. I encourage all local authorities to recognise that they need to support young carers in the best way that they can.

Commonwealth Games 2014 (Multiculturalism)

9. Bob Doris (Glasgow) (SNP): To ask the Scottish Executive whether it considers that the 2014 Commonwealth games in Glasgow offers an opportunity to promote multiculturalism in Scotland. (S4O-00100)

The Minister for Commonwealth Games and Sport (Shona Robison): The Scottish Government is committed to creating a vibrant, multicultural one Scotland and to using the 2014 games to bring communities together and make stronger links across the Commonwealth. As part of the curriculum for excellence, we are already using the games to provide an excellent context for learning and to enable young people to develop as responsible global citizens.

Bob Doris: I work with many communities from various ethnic origins in Glasgow as part of my constituency casework. Recently, I worked with the African and Caribbean community in Glasgow. I should declare an interest, as I am a referee for a live funding application for the African and Caribbean Network. I would be delighted if the minister would come along and visit its centre in Glasgow to see what worthwhile role it could play in promoting multiculturalism and getting a legacy for the diaspora from the 2014 Commonwealth games.

Shona Robison: I am certainly keen that all communities in Glasgow—and, of course,

throughout Scotland—are as involved as possible with all aspects of the Commonwealth games. I am keen that the African and Caribbean community is also involved in that, and I would be delighted to visit the centre in Glasgow to hear more about the African and Caribbean Network's work.

Murdo Fraser (Mid Scotland and Fife) (Con): What action is the Scottish Government taking following the resignation of the well-regarded chief executive of the Commonwealth games organisation?

The Presiding Officer: I am not sure that that has any relevance to multiculturalism.

Murdo Fraser: I was about to get to the point, Presiding Officer, if you will bear with me just for a second. How are we going to find a replacement chief executive for the Commonwealth games organisation of a suitable calibre in order that the planning for the games, including planning for multiculturalism, can continue on track?

The Presiding Officer: Minister, would you like to answer?

Shona Robison: The priority for the organising committee will be to find a replacement chief executive as soon as possible because of the importance of delivering the games. That is what the organising committee is all about, and it is doing a very good job in that regard.

I make members aware—if they are not already aware—that we announced today that the BBC has been appointed as the domestic rights holder for the 2014 Commonwealth games. That brings a welcome contribution to the games budget. I hope that that is something that Murdo Fraser and members from all parties will welcome.

Sports Development

10. Richard Baker (North East Scotland) (Lab): To ask the Scottish Executive what steps it is taking to support sports development across Scotland. (S4O-00101)

The Minister for Commonwealth Games and Sport (Shona Robison): The key steps towards supporting sports development and increasing physical activity levels were set out in our manifesto, and we are working with our stakeholders to deliver them during the current session of Parliament.

Richard Baker: Does the minister share my concern that gross expenditure on sports development by Aberdeenshire Council is due to fall from nearly £1 million in 2009-10 to zero from 2012-13? Does she agree that investment in sports development throughout Scotland is vital as we look ahead to the Commonwealth games, and that Aberdeenshire Council's decision is

concerning, as such activities will apparently need to be self-funded in future? Will she discuss the matter with Aberdeenshire Council to ensure that there is appropriate investment in sports development in the future?

Shona Robison: I will certainly look at Aberdeenshire Council's support for sports development. I am aware that sportscotland has put in a lot of effort in speaking to all local authorities about their sports development plans. It is important that there is a good relationship between sportscotland and local authorities, because the active schools network is delivered in partnership between them. The active schools network is performing well in all local authorities. However, I will look into the issue that the member raises and write to him.

Preventative Health Messages

11. George Adam (Paisley) (SNP): To ask the Scottish Government what measures are being taken to ensure that local communities are involved in the delivery of preventative health messages. (S4O-00102)

The Minister for Public Health (Michael Matheson): Since 2007, the Scottish Government has demonstrated a strong commitment to engaging, supporting and working in partnership with local communities to deliver improved health and wellbeing outcomes for Scotland's citizens. We have supported a co-ordinated and strategic approach to building community capacity and enhancing local practice and solutions in the delivery of community-led health improvement. We provide financial support to a range of third sector health organisations with a view to supporting and developing the community-led approach to health improvement.

George Adam: The minister has already kind of answered my supplementary question, but I will go on anyway.

The Presiding Officer: You do not have to.

George Adam: It is important. Does the minister agree that delivery of the service should be more outcome led and that local authorities and community groups can be much more actively involved in the preventative aspects of wellbeing in communities, alongside health boards and community health partnerships? A local example of that involvement is the work of Reaching Older Adults in Renfrewshire, which keeps older people active and healthy within the community for longer.

Michael Matheson: All the partners who have a role to play in improving outcomes for older people or for anyone who requires adult care or childcare are important. That means that, in trying to meet people's needs in the most appropriate way, there must be a partnership among local authorities, the

health boards, the third sector and independent sector.

The member referred to a specific initiative in his constituency. It is one that—I must be honest—I am not entirely familiar with, but I would be happy to learn more about it from him. As we go forward, it is extremely important that a greater focus is given to the need to ensure that we prioritise outcomes. Part of our approach to the integration of health and social care is about trying to ensure a joined-up approach across different agencies that focuses on improving the outcomes for people within the community.

Cancer Drugs

12. David McLetchie (Lothian) (Con): To ask the Scottish Executive whether it is satisfied with the availability and provision of drugs to treat cancer. (S4O-00103)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): We have robust, independent arrangements for the appraisal of newly licensed cancer medicines. They focus on patients in all parts of Scotland having access to clinically and cost-effective medicines to treat all conditions, including cancer, on an equitable basis in accordance with clinical need.

National health service boards in Scotland are responsible for providing NHS services in accordance with national and local priorities and in line with the health needs of the populations that they serve.

David McLetchie: The cabinet secretary will have noted the United Kingdom Government's response to its consultation on a cancer drugs fund and, in particular, the number of cancer charities that have welcomed the fund and the commitment to improve access to cancer drugs that underpins it. Given that and the fact that there are now 20 medicines routinely available to patients in England that are not available to patients in Scotland, is it not now time that we set up a cancer drugs fund here in Scotland and followed that excellent example?

Nicola Sturgeon: This is a serious issue, and I have always said that I am open minded and will consider any way in which we can genuinely improve access to drugs. In the last parliamentary session I worked very closely with the Public Petitions Committee, and that work has had some tangible outcomes that have improved the processes in place.

I am more than happy to write to David McLetchie on his point about 20 medicines that are not available in Scotland but are available elsewhere, because behind the headlines we often find a picture that is not quite as stark as is

presented. In fact, we often find that medicines, although not approved by the Scottish Medicines Consortium here, are still available to patients through exceptional prescribing routes and that medicines that are said to be routinely available in England may not be—they may be available in one part of England but not in all parts. I am happy to enter into correspondence on some of the detail.

I proffer to David McLetchie two serious issues of equity in the cancer drugs fund approach—I have discussed them openly with cancer charities in Scotland. One relates to cancer itself. Drugs are of course very important in the treatment of cancer but, increasingly, surgery, radiotherapy and other ways of treating cancer are involved. We need to be careful that we do not skew resources towards one method to the detriment of others.

Secondly, I get a lot of letters—as I am sure that other members do—about people wanting access to cancer drugs, and I understand absolutely the position that those patients and their families are in. I also get a lot of letters from people who suffer from Alzheimer's or other serious illnesses and who want access to drugs. It is important that, whatever processes we have in place, we ensure equity for patients regardless of their diagnosis or condition.

I will always consider those issues, and I will never close my mind to different approaches to improve the processes that we have in place, but I will also do everything that I can to ensure equity across Scotland and between different patient groups.

NHS Greater Glasgow and Clyde (Meetings)

13. Paul Martin (Glasgow Provan) (Lab): To ask the Scottish Executive when it last met representatives of NHS Greater Glasgow and Clyde and what issues were discussed. (S4O-00104)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): Ministers and Government officials regularly meet representatives of NHS Greater Glasgow and Clyde, and we discuss a range of issues of importance to local people.

Paul Martin: Has the minister discussed with national health service Greater Glasgow and Clyde the future of Lightburn hospital and its proposed closure? When will she take a decision in respect of the report that the health board will provide to her by the end of August? Did she also receive the 10,000-signature petition on the hospital's closure? Finally, does she share my concerns that the hospital provides a valuable

service and that we should take every opportunity to ensure that those services are protected?

Nicola Sturgeon: I have said before and will no doubt say again that I always appreciate the efforts of people who campaign for their local health services. Health services do not stand still. The way that we provide them changes so that we continue to improve the services that people receive.

On Lightburn hospital, I am aware—not only as Cabinet Secretary for Health, Wellbeing and Cities Strategy but as a member representing a constituency in the city of Glasgow—of the strength of feeling on the issue. However, as Paul Martin knows, NHS Greater Glasgow and Clyde has been conducting a formal public consultation on the future of the hospital and the board has yet to respond formally to that consultation or agree any final proposals. It would be inappropriate for me to say anything further on the issue at this moment because any final proposals will ultimately be subject to my approval or otherwise. However, I am happy to assure members and local people that I will take full account—as I always do—of all the available information and representations in considering the final proposals when they come to me.

The Presiding Officer: Members will wish to note that the next debate is heavily undersubscribed, so I intend to take a further few questions on the health theme.

Diabetes Action Plan 2010

14. Humza Yousaf (Glasgow) (SNP): To ask the Scottish Government what progress has been made on the actions set out in the diabetes action plan 2010. (S4O-00105)

The Minister for Public Health (Michael Matheson): Our “Diabetes Action Plan 2010: Quality Care for Diabetes in Scotland”, which was published in August last year, includes more than 50 actions that are designed to support our ambition for a world-class diabetes service.

The National Health Service boards' diabetes managed clinical networks have all provided comprehensive reports to the Scottish diabetes group. They show that, overall, good progress has been made and that the MCNs are on track to achieve the vast majority of actions for which they are responsible. The reports have been published on the diabetes in Scotland website.

Humza Yousaf: A couple of weeks ago, people across the country took part in diabetes week. I am sure that the minister wants to put on record the good work that is done by many organisations that work hard to raise awareness of diabetes in Scotland, including Diabetes UK Scotland, which has an exhibition in the Parliament today.

I am pleased to note from recently published data that the Greater Glasgow and Clyde NHS Board area has one of the lowest rates of undisclosed diabetes in Scotland. What more can we do to take that figure down to zero?

Michael Matheson: I am happy to agree with Humza Yousaf on the important work that Diabetes UK plays in raising awareness of diabetes. I visited its stand earlier this afternoon and had a go on what could only be described as the biggest game of Operation that I have ever come across. It is a good initiative that is being used for children from primary 6 to secondary 2 as part of the Diabetes UK live for it initiative, which is embedded in the health aspect of curriculum for excellence.

The diabetes action plan highlights the need for people who may have diabetes to be diagnosed early and then access treatment and care as appropriate. It is also run in partnership with the keep well programme, through which some 90,000 people have had health checks carried out since 2008.

In March 2010, we announced that the keep well programme would be mainstreamed across all health board areas. That will help to address some of the inequalities that need to be targeted and to ensure that primary prevention activity becomes normal practice within the national health service.

The Presiding Officer: Question 15 was not lodged.

Smokers

16. Nigel Don (Angus North and Mearns) (SNP): To ask the Scottish Government what progress is being made in reducing the number of smokers. (S4O-00107)

The Minister for Public Health (Michael Matheson): Smoking prevalence has dropped from 30.7 per cent in 1999-2000, to 24.3 per cent in 2009-10. In 2010, we supported 31,456 smokers to quit with the help of NHS Scotland smoking cessation services, which is up almost 12 per cent on the 2009 figure.

Nigel Don: I thank the minister for his encouraging response. Could he give me an understanding of what NHS Tayside and NHS Grampian will do for my constituents in Angus North and Mearns? The area is between the big cities of Aberdeen and Dundee but the services there are still, of course, important.

Michael Matheson: All health boards have a responsibility to ensure that they provide smoking cessation programmes in their individual areas. For example, in NHS Tayside, they give it up for a baby initiative targets in particular women who are

pregnant and continue to smoke. Some of the initial outcomes from that initiative are encouraging, but we must wait to see its final outcome.

Other initiatives are being undertaken by a range of health boards in Scotland, but the Government remains committed to reducing the number of people in Scotland who smoke. We also give priority to matters relating to pregnancy, trying to encourage young mothers not to start smoking again should they have been able to quit during their pregnancy. Progress has been made on reducing smoking in Scotland, but there is more to be done and the Government is committed to ensuring that more action is taken on that.

Stewart Maxwell (West Scotland) (SNP): Is the minister aware of the latest campaign to prevent smoking in cars, in order to protect vulnerable children travelling in the back of those cars from the dangers of second-hand smoke? Has he yet had a chance to look at that campaign and form a view on whether the Government is likely to support it?

Michael Matheson: I am aware of the campaign and the debate that took place at the British Medical Association earlier this week. We are trying to add to our initial strategy on reducing smoking in Scotland and, as part of that work, we will consider a range of initiatives to address the level of smoking in Scotland. No doubt, the debate on the issue will continue over the weeks and months ahead.

NHS Highland (Cowl Hospice)

17. Jamie McGrigor (Highlands and Islands) (Con): To ask the Scottish Executive what discussions it has had with NHS Highland regarding the future of Cowl hospice in Dunoon. (S4O-00108)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): The planning and provision of local services are for national health service boards, in line with Government policy. I assure Jamie McGrigor, however, that I am fully aware of the strength of local feeling in support of the Cowl hospice.

NHS Highland and its planning partners are actively considering how best to provide local palliative care and end-of-life services. It is important to note that that consideration is ongoing and that no decisions have been made. The board has assured me that all local stakeholders will continue to be fully engaged and involved with the work as it moves forward.

Jamie McGrigor: The minister is right that there is an enormous amount of high feeling about the

issue. Does she agree that it is not surprising that people want local accessibility to high-quality palliative care services and that those are a key factor in a place such as Dunoon?

Nicola Sturgeon: I absolutely endorse the concept of full access to good-quality palliative care services. That is at the heart of living and dying well, our palliative care strategy, which is being successfully implemented.

As I said, in answer to a question a few moments ago, the delivery of healthcare does not stand still. If we compare the situation today with the situation some years ago, we see that many more people are choosing to—and are able to—receive palliative care and die at home than are opting to do so in a hospice. As a result, many hospices are now delivering day care services as well as in-patient services.

Services do not stand still, but I absolutely understand the strength of local feeling. I assure Jamie McGrigor that the constituency MSP, Michael Russell, is ensuring that his constituents' views are well represented on the issue. No decisions have been taken. As I have previously said in the chamber in response to Jamie McGrigor, it is vital that the health board consults with stakeholders and, most important, local people before producing any firm proposals.

Rural Connectivity

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-00448, in the name of Richard Lochhead, on rural connectivity. I will give members a few moments to swap places. As the debate is undersubscribed, the Presiding Officers will be slightly more generous in allocating time. If members want to take interventions, we will do our best to ensure that they are not disadvantaged by that.

15:04

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Thank you, Presiding Officer. I take it that you want this to be a 2G debate in which we all speak slowly as opposed to a 4G debate in which we go very fast and deliver next-generation speeches. Thank you for the allocation of ample time. If I do not take it up, Stewart Stevenson certainly will in his winding-up speech.

Last week, the Parliament had the opportunity to debate the future of rural Scotland. A major theme was rural connectivity in the context of next-generation or high-speed broadband. In that debate, I said that if we can

“connect our communities to the rest of the world, we can offer rural Scotland and the whole nation a brighter future.”—[*Official Report*, 22 June 2011; c 888.]

The purpose of today's debate is to provide members with the chance to focus on the increasing importance of digital connectivity in rural Scotland. There is cross-party support for the view that a lack of ambition on the part of the United Kingdom Government should not be allowed to create a situation in which rural Scotland misses out on the digital revolution.

The absence of connectivity can hold back our rural communities and businesses, as I was reminded only last week when, like many other members, I was at the fantastic Royal Highland Show. I met the owners of a small, farm-based rural business in the Borders, who had received a modest amount of Scotland rural development programme funding to establish their butchery business, which sells premium produce that they have reared. They told me that the biggest obstacle to their future was the lack of broadband connection in their area. They want to offer an online ordering service, because they know that that is where the future of their business lies, but they cannot compete on a level playing field because—in the 21st century—the infrastructure has not found its way to rural Scotland. As many members will recognise, that is a consistent message from communities and businesses the length and breadth of rural Scotland.

Members will recall the speak up for rural Scotland consultation that the Scottish Government conducted just last year. The fact that respondents consistently identified connection to high-speed broadband as their highest priority has been acknowledged in the Government's response to that consultation, which was outlined in our policy paper, "Our Rural Future".

High-speed broadband is essential to keeping rural businesses viable and competitive in the future, but there are wider community benefits from greater connectivity in rural Scotland. If rural communities are left behind, that could lead to greater isolation, so the digital revolution can deliver social as well as economic benefits.

We have all seen the phenomenal rise of social media. I speak as a recent convert to tweeting and Facebook—I can give members who want to follow me my details later on. Of course, the issue is important not just to politicians and ministers. It is particularly important to today's young people, including those who live in rural Scotland, because young people seem to organise their social lives through their PCs and their smartphones in a way that none of us would have predicted just a few years ago.

How far we have come from the days when, in a former life, my colleague Stewart Stevenson programmed computers that filled a room but had only 1kB of memory—I wanted to use that analogy before Mr Stevenson reminded us of his experiences in his wind-up speech. How far we have come in a short space of time can also be illustrated by looking back to the early days of this Parliament, in 1999, when the first mobile phones that could send e-mails had just come on to the scene. Twelve years later, we all know how important BlackBerrys, iPhones and so on are to the business community, to politicians and to people in many other walks of life, who think that they simply could not do without them.

Digital communications, mobile phones and broadband internet access are game-changing innovations. That is why connectivity will be the cornerstone of our activity on rural development throughout the session. A connected Scotland will be the ideal location for investment. Our digital strategy sets out to ensure that all of Scotland, regardless of how rural or remote it might be, will have access to next-generation broadband by 2020, and that significant progress will be made by 2015. We believe that a world-class broadband infrastructure will underpin the digital economy in Scotland, and we want to equip all our rural communities with what they need for future economic development in the 21st century. Our focus must be on ensuring that rural areas are not left behind as next-generation broadband is rolled out across the nation.

Early projects are already under way in the Highlands and Islands and in the south of Scotland. Highlands and Islands Enterprise is leading the first of those projects, which is receiving UK Government broadband funding, following a successful bid from the Scottish Government. It will deliver next-generation broadband to around 50 towns and communities spread over the region, which include key population centres, areas of low employment and towns with fragile areas. The procurement phase started earlier this month, and it will run for a year. We will begin to see improvements being delivered in the region within the six months after that.

At the other end of the country, a co-operative association between Dumfries and Galloway, the Scottish Borders and Scottish Enterprise is developing a strategic broadband plan for the south of Scotland. The project is being championed by the chief executives of two councils in particular; they are fully behind the project team.

The next-generation broadband pilot in Annan is exploring how the existing network that is available to public sector buildings can be opened up to the wider rural community. That has been made possible by a grant of almost £0.25 million from the Scottish Government.

Close working between the Scottish Government and both project teams is ensuring that they receive the support that they need from us. We want to replicate that right across the rest of Scotland and we are working with many local authorities and the enterprise agencies to take forward a more strategic national broadband plan. That will, in turn, be informed by the findings from John McClelland's recent "Review of ICT Infrastructure in the Public Sector in Scotland", which confirmed that we need to collaborate across the public sector to get maximum value from our resources. He also tells us that we need to ensure that our public sector investment has wider benefits for the citizens, which is exactly the kind of project that is being explored in Annan.

Progress is being made, but there is a lot more to be done. Thankfully, the Scottish Government already has an impressive track record of getting Scotland connected. As a direct result of our intervention, basic broadband availability is now at 99 per cent in Scotland. Our digital strategy and national broadband plan seek to address directly many of the concerns that were raised in the speak up for rural Scotland consultation that I mentioned earlier.

Earlier this year, I chaired a rural broadband summit to highlight our objective and promote solutions to ensure that rural Scotland joins the global connected economy. That was followed just

last week by a rural broadband workshop, and we will continue to work in partnerships with all Scotland's local authorities, enterprise agencies and other stakeholders to develop regional broadband strategies that will, in turn, contribute to the national broadband plan that I mentioned earlier.

We need to ensure that rural Scotland accesses as much of the available United Kingdom funding as possible to enable all that to happen. As members will be aware from last week's debate, the UK Government has allocated £530 million to the roll-out of next-generation broadband for rural areas. We all agree that it is important to work very hard to obtain the best possible share of that fund for Scotland.

At the same time, we must be realistic and accept that, during the coming years, that will be only a fraction of the overall cost of getting next-generation broadband to all of Scotland's rural communities. That is why it is important to look at how we can leverage in additional funding, including, of course, from the private sector. That will be critical if we are to maximise the return from our investments.

Connecting rural Scotland to a 21st century communications network will connect rural Scotland to the world. That is true of not just broadband, but mobile phone coverage, which is something that we should push higher up the agenda over the coming years. Scotland's 3G coverage is only at around 66 per cent of the population and 41 per cent geographically. The roll-out obligation for the current 3G network required only coverage of an area in which at least 80 per cent of the population of the UK live. The figures show that a large proportion of the missing 20 per cent, who are not covered, happen to live in Scotland. Last year, the UK Government directed the Office of Communications to increase its obligation to 90 per cent. Although that is a welcome move, it will still leave many people across large parts of Scotland with inadequate coverage. We have to demand a specific coverage obligation for Scotland. We want 90 per cent of Scotland to be covered to match the UK's 90 per cent, but we should at least have a specific target for coverage in Scotland. That would allow the Parliament to have an informed debate about the future, and to hold operators to account at the same time.

The Scottish Government is working with the industry and Ofcom to identify further barriers to increased mobile phone coverage in rural Scotland, and to make improvements as we implement our own strategy during 2011 and beyond.

Ofcom's own recently published research quoted families who are living in rural Scotland

talking about the challenges that they face. For example, one lady who lives on a Highland estate in the north of Scotland said,

"we get post three times a week ... I would expect telecommunications to be of a greater standard."

She went on to say,

"it would be a great benefit to get better coverage."

The situation even affects public safety. Gamekeepers cannot always be contacted when they are out in the glens. As part of the Ofcom research, someone said when interviewed,

"I have had to call the helicopter out twice when people haven't returned, when a direct call to their mobile would have done it."

Those are some of the challenges that people living in rural communities face day in, day out, due to a lack of connectivity, whether mobile phone coverage or broadband.

The current arrangements allow for incremental improvements, such as mast sharing and roaming agreements, which are helping to improve coverage in areas that are poorly served by the networks. However, I am absolutely clear that although we are doing all we can on this very important matter, we are restricted in what we can do. Telecoms policy, including mobile coverage, is reserved to the United Kingdom Government. That includes matters relating to the licensing of mobile telecoms operators and mobile coverage obligations. As a consequence, the Scottish Government has limited power to require mobile operators to extend their coverage beyond the current levels. The UK position on mobile coverage does not meet the needs of rural Scotland.

It is vital that the UK Government works with us to develop the specification for the next generation of mobile services—the 4G mobile network. Indeed, 4G has huge potential to overcome many of the current problems experienced by rural communities, whether families or businesses. We see that as crucial in getting next-generation broadband coverage to Scotland's rural areas. We must not repeat the mistakes that we made with 3G roll-outs.

In the absence of any interventions, I shall touch on a couple more themes. The potential benefits to Scotland from the next round of digital innovation can be very substantial indeed. Digital advances are vital to the development of our world-leading creative industries, our life sciences, remote health care and distance learning. In my constituency of Moray we are piloting digital health care. If that is to work, it is vital that we have up-to-date infrastructure for broadband and mobile services. That is one example of how people's

health can benefit if we take advantage of 4G in the years ahead for rural Scotland.

Lewis Macdonald (North East Scotland) (Lab): I am very grateful to the cabinet secretary for taking an intervention at this stage. The example that he gave is a good one. Will he confirm that, although telecoms may be reserved in the main, there are many respects in which the roll-out of broadband can go together with elements of infrastructure for which the Scottish ministers are responsible and those opportunities should be taken?

Richard Lochhead: I agree that those opportunities should be taken. That is one area where progress has been made. Many public sector buildings are now giving local communities access to their information and communication technology infrastructure. I agree that there is probably a lot more to do. The John McLelland review, which I mentioned earlier, referred specifically to the issue of how we use public sector resources to help citizens, not just the public sector.

Improving digital infrastructure, skills and participation will help us to build on all the successes and provide opportunities throughout Scotland for every community, whether remote, rural or whatever, to flourish. That has to be the aim of everyone in this Parliament.

A Scotland that is well connected digitally is a Scotland that is well connected economically and intellectually. It is also about attracting inward investment, allowing our businesses, particularly in rural areas, to become much more competitive by raising their productivity, and driving innovation and international trade.

A rural Scotland punching above its weight in contributing to our success brings better jobs and more vibrant communities that attract and retain young people and families. This debate goes right to the core of the issue of how we attract and retain young people and young families in jobs in rural Scotland. If we get the ICT infrastructure that we need in the coming years, that will be a huge step forward for Scotland and for the quality of life of people living here. I commend the motion to the Parliament.

I move,

That the Parliament welcomes the Scottish Government's wish to see a rural Scotland that is outward looking and dynamic with a diverse economy and active communities and notes that key to that is the Scottish Government's Digital Strategy, which wishes to see all businesses and people throughout Scotland, particularly in all rural areas, fully connected to the global economy through next generation broadband access and mobile phone coverage.

15:18

Elaine Murray (Dumfriesshire) (Lab): Due to the welcome delay to stages 2 and 3 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, the first term of the Parliament is ending with an unexpected debate on rural connectivity.

Addressing digital exclusion is an increasingly important issue, so it is, in a way, a pity that the debate has been scheduled for an afternoon when many MSPs from the two largest parties perhaps have business elsewhere.

I decided to lodge an amendment to the motion not because I disagree with its aspirations, but because, quite frankly, I feel that it is very badly expressed—to the extent that it does not even mention the name of the Government's digital strategy document. I was tempted to amend the part about welcoming the Government's wish—which is a curious concept for a parliamentary motion—but who could disagree with a desire for a “rural Scotland that is outward looking and dynamic with a diverse economy and active communities”?

So, I desisted from putting my red pen through that part of the motion.

However, I could not resist amending the rest of the motion because it is, frankly, waffle. The purpose of a strategy is to plan how to make things happen and not just to wish things to happen. I do not understand why ministers should be coy on the issue. The motion does not mention the name of the strategy document or its aspirations to deliver next-generation broadband to all by 2020. Even more strangely, the motion does not mention the £50 million commitment from the Scottish futures fund. I have not corrected that omission in my amendment, although I think that I have bigged up the Government enough in my amendment, as it is.

Most important, however, is that the motion and, to an extent, the strategy document do not seem to acknowledge adequately the pressing nature of the problem or the possible solutions. In that respect, the Royal Society of Edinburgh's “Digital Scotland” report and Reform Scotland's “Digital Power” report, both of which were published last year, make much stronger contributions. The strategy is high in aspiration and mentions many of the benefits that new technologies can bring, including efficiency savings for public services through simplified recruitment and e-procurement. Technology can also provide the public with better information from, access to and interaction with service providers. Telehealth care can help people remain for longer in their homes, for example, through health and fitness monitors that are connected to call centres to access medical assistance.

Technology can allow housebound people to maintain social contact. E-learning provides training opportunities for people who live in geographically remote communities and who would otherwise have difficulty attending colleges or universities. Telecommuting can enable people to work from home and to work flexible hours. That benefits workers in rural areas, reduces car travel to work and enables people who have caring responsibilities to re-enter or enter the workplace.

Businesses, too, can benefit from reductions in transaction costs, access to global markets, improved data collection and analysis, and better interaction with their customers. "Scotland's Digital Future: A Strategy for Scotland" contains many examples of the benefits of digital access and several examples of good practice. For example, Innerleithen is to be congratulated on being one of the six winners, and the only one in Scotland, of BT's race to infinity campaign, which will result in the town's exchange being upgraded to 40 megabytes per second by early next year.

Highlands and Islands Enterprise is to be congratulated on its successful bid to broadband delivery UK to implement one of the four UK superfast broadband pilots. I issue those congratulations through slightly gritted teeth, as the south of Scotland alliance also bid for the project but was not successful. However, the Government is working with partners in the south of Scotland to deliver a local broadband plan, building on the pathfinder project. A wee problem with the pathfinder project is that, unfortunately although it has delivered for the public sector, small and medium-sized enterprises are unable to access it because of state-aid rules. The cabinet secretary mentioned the new initiative in Annan in my constituency.

The strategy is too vague. I welcome the ambition to make

"next generation broadband ... available to all by 2020",

but even that is a bit unspecific. It does not indicate what speed is considered to be the next generation or what "available to all" means. BT and Virgin Media are rolling out upgrades that are capable of delivering between 40 megabytes per second and 100 megabytes per second to more than 50 per cent of the UK by next year and to 65 per cent by 2015. However, an estimated 40 per cent of the Scottish population will be excluded from the plans because their inclusion would not be commercially viable.

The Minister for Environment and Climate Change (Stewart Stevenson): I apologise for making this intervention but, just so that people do not get too excited, those speeds are measured in megabits per second, which is one eighth of the speed to which the member referred.

Elaine Murray: I apologise, although I think that the proportions remain the same.

At present, the average connection speed in rural areas of the UK is 27 megabits per second. Rural communications could enjoy particular benefits through telehealth care, e-training and telecommuting. Members should just consider how disadvantaged those communities will be if their broadband delivery speeds are one fifteenth to one fortieth as fast as speeds in parts of the central belt and the rest of the UK. The issue is not just a rural one because some suburban communities outside cities have limited broadband access, and it is well known that access is low in areas of deprivation.

Page 34 of the strategy states:

"There could be a role for government in helping to raise demand for broadband services in areas that are not commercially viable"—

such as rural areas—

"to a level that will trigger industry investment."

What about areas in which there are just too few people to provide that demand, or even where people might want it but cannot afford it? Of course, it is not only fibre optic cable broadband that is unavailable in much of Scotland. As the cabinet secretary said, 3G mobile coverage is also patchy.

The digital strategy recognises that rural areas will suffer if left to the market alone and that there is a need to develop a robust plan for the roll-out of next-generation broadband across Scotland. Its summary of actions indicates that a more detailed financial analysis of the cost of roll-out will be carried out by August this year and that, in October, working with industry, priority areas will be identified for future intervention. When he sums up, the minister might be able to advise us what will happen after that.

A lot of detailed work on cost and possible models of public sector involvement was published in 2010. One of the issues that were flagged up by Reform Scotland, the Royal Society of Edinburgh and BT as militating against investment in rural areas concerned business rates on optical fibre, which is currently rated by the kilometre. Clearly, that adds to the cost per consumer in more remote and less populated areas, so I wonder whether ministers have given any consideration to how that issue might be resolved.

There are many examples of good practice in other parts of the UK, such as in Wales, and in other parts of the world, including in New Zealand, Sweden and Finland. The Royal Society of Edinburgh's document, "Digital Scotland", estimates that an additional 2,500km of new cable is required to link all our communities. The cost for

rural areas varies between £15 and £40 per kilometre, depending on whether existing trunking can be used or whether new trunking and cabling has to be laid alongside roads. Those costs are substantiated by the Welsh experience, and lead to an estimate of £100 million of initial capital—

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Is the member aware that there are other ways of providing connectivity besides cabling, and that we need to consider methods involving wireless and satellite technology?

Elaine Murray: Indeed I am, and those aspects come into the Royal Society of Edinburgh's calculations. At the moment, however, I am talking about the initial part, which is the rolling out of high-speed broadband.

About £10 million a year will be required for operations and maintenance. If connection charges are taken into consideration, the funding costs average about £25 million a year, over 15 years. That investment would bring a rural fibre optic connection to all communities that have populations of more than 2,000, and a copper or wireless connection to the smaller communities, which relates to Fiona McLeod's point. The Royal Society of Edinburgh reckons that that could be implemented over five years, with investment reaching islands and remote communities in years 4 and 5. That means that, if we want it, we could have that in place by the end of this parliamentary term.

The Royal Society of Edinburgh suggests that the costs could be met by a number of methods. Businesses could be charged £25 a year, domestic users could be charged £125 a year or council tax or business rates could be increased by 1.25 per cent. Alternatively, it could be met through the efficiency savings that new-generation technologies could provide. The total budget of the health and wellbeing department is £11.8 billion this year, and the grant-aided expenditure of local government is £11.2 billion. An efficiency saving of slightly more than 0.2 per cent would fund the investment in new-generation technology across Scotland.

The Scottish Government has already committed £50 million to new-generation activity through the Scottish Futures Trust. That is halfway towards the initial capital cost. The idea that we are talking about is doable. If it is not done, Scotland will continue to fall behind. This matter must be addressed as a matter of priority.

Investment will provide better services for Scottish residents, efficiency savings for the public sector and global opportunities for rural businesses. The time for warm and woolly words is over. Let us get on with making this happen.

I move amendment S4M-00448.2, to leave out from "and notes" to end and insert:

"; welcomes the aspiration expressed in *Scotland's Digital Future: A Strategy for Scotland* that next generation broadband will be available to all by 2020; notes however that market forces alone will not deliver next generation broadband and mobile phone access to much of rural and suburban Scotland and that without public sector involvement the digital gap will widen, and therefore urges the Scottish Government to develop its strategy for investment in the necessary infrastructure throughout Scotland as a matter of priority."

15:28

Alex Johnstone (North East Scotland) (Con): As well as supporting my amendment, I intend to support the Labour amendment. In the spirit of end-of-term co-operation, we will also be voting for the Government's motion, whether it is amended or not. It is important that we send out a strong signal that there is unity on the need to improve digital connectivity, in rural Scotland in particular.

I will begin by reminiscing about the period a few years ago when issues around mobile phones formed a significant part of an MSP's mailbag. There were two main complaints: one was that someone was trying to build a mobile phone aerial near the person's house and they wanted it stopped immediately; the other was that there were not nearly enough mobile phone aerials and connections were difficult.

The extension of the mobile phone system, especially into rural areas, and the opportunity to provide 3G in the near future and—ideally—4G in the longer term will go a long way towards solving many of the current problems with the limitations of wired systems. Experiments in Scotland have demonstrated that wireless systems can operate effectively in places where laying of cable is prohibitively expensive or geographically impossible.

I want to make it clear that mobile phones are an important element before I talk about the more significant element, which is the extension of broadband across a larger area of Scotland. No one underestimates the importance of a high-quality broadband service in the modern rural environment. Anyone who has moved to the country from a city only to find that the high-speed service that they previously enjoyed has been replaced with speeds that they have not experienced since the days of dial-up, and any farmer who is required to fill in forms and submit information online at speeds that mean that the exercise takes hours, will know exactly what I mean. For most people, high-speed broadband is as vital as mains electricity or indoor plumbing, so it is unfortunate that many parts of Scotland are operating in the previous century in that regard.

The United Kingdom Government has made it clear that the whole country should be able to share in the benefits of broadband and that it is determined to make that happen by the end of the parliamentary session. That is why it is investing more than £500 million to ensure that superfast broadband is available to everyone—"everyone" should be in inverted commas, because its meaning varies depending on the nature of the discussion, as members have said.

It is anticipated that the broadband industry will, on commercial grounds, provide the service to around two thirds of the country, but the Government thinks that it is essential that the whole country share in the benefits of high-speed access, so it has allocated £530 million to bring superfast broadband to the remaining third of UK homes and businesses, which would otherwise miss out. The Government's ambition is to create the best broadband network in Europe by 2015, providing everyone in the UK with access to broadband speeds of at least 2 megabits—I found out the difference between bits and bytes today—with superfast broadband being available to 90 per cent of the population. However, I am the first to acknowledge that a 2 megabit service, although it is like gold dust for many rural customers, is well below the average that is achieved in our towns and cities.

In the UK Government, the Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt MP, is responsible for making that happen. He has said that the Government is committed to the implementation of superfast broadband across the UK and is in discussion with the Scottish Government on how it should go about that in Scotland. It is anticipated that the UK Government will announce specific provisions for Scotland this month or next month.

Scotland's Cabinet Secretary for Rural Affairs and the Environment, who opened the debate, gave the Scottish Government's position at last week's meeting of the Rural Affairs, Climate Change and Environment Committee, when he said:

"to underpin economic development in the coming years we must rise to the challenge of connecting rural Scotland to the world through high-speed broadband".—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 22 June 2011; c 27.]

I agree that we must address the challenge.

In advance of the Scottish election this year, the Conservatives costed the objective at £135 million of investment over the parliamentary session to supplement the expected investment by the UK Government and the private sector. The aim was to focus expenditure in a way that would maximise economic and social return on investment in areas in which other investment was unlikely. The

Scottish Government took a slightly different approach and said in its manifesto:

"We will ensure fair access to the digital revolution with a £50 million digital connectivity initiative, called the Next Generation Digital Fund, with the aim of accelerating the roll out of superfast broadband to rural Scotland",

as part of the Government's £250 million Scottish futures fund. Working with the enterprise agencies and local authorities, the Government intends to achieve that objective.

However, the programme's objective is that next-generation broadband will be available to all by 2020—a significant challenge, which I freely acknowledge the market will find difficult to achieve. The difference in the level of funding between that which is proposed UK-wide and that which is necessary in Scotland is down to simple geographical spread and population sparsity. It is, therefore, inevitable that whatever we do and whatever we achieve, it will be more expensive to achieve that in Scotland than it is throughout the rest of the UK. That is why we must work together, rise to the challenge and ensure that, at the end of the process, we have a smooth movement to a situation in which rural broadband in Scotland is at least as good as—if not better than—it is in the rest of the UK.

I move amendment S4M-00448.1, to insert at end:

"; further welcomes the UK Government's commitment to implement superfast broadband across the whole of the United Kingdom, and calls on Scottish and UK ministers to work together to achieve the best possible coverage for rural Scotland".

15:35

Fiona McLeod (Strathkelvin and Bearsden)

(SNP): It is interesting for me to take part in the debate, because my first speech in the Scottish Parliament, in 1999, was as a librarian talking about seamless access to information for all. Here we are, 12 years later, and the situation has not advanced greatly in that time.

Vicky Nash, the director of Ofcom Scotland, has said that, in terms of connectivity, Scotland is a country of contrasts. Only 37 per cent of Scots have cable access, whereas the figure is 48 per cent across the UK. That leads to problems with fixed broadband not-spots, as they are called, most of which are, as members know, in rural areas. Yet, the demand exists for access to broadband. Through the broadband reach project that the cabinet secretary has spoken about, we can look at the statistics and find that there is equal take-up in urban and rural areas when broadband is available. That goes against the UK trend.

There is still much to do. We have heard about the £50 million from the Scottish futures fund, but it is vital that Scotland get its requisite share of the £530 million in the UK Government's Britain's superfast broadband future strategy. I say "requisite share" because, as we have less connectivity, we should get more than our population share of that money. Other members have referred to the fact that figures for mobile coverage and connectivity are similarly problematic. I direct members to how Norway has managed to provide mobile connectivity through NetCom, which is a private company there.

For me, this is not a technical exercise; it is about a means and a method of delivering services. I will concentrate on telehealth, to which a few members have referred. Telehealth is telemedicine and telecare in their totality. Last year, the Health and Sport Committee produced a report entitled "Clinical portal and telehealth development in NHS Scotland", in which the committee made it absolutely clear that telehealth is of great value to Scotland and especially to our remote communities. The changing demographics of Scotland, especially our growing elderly population and the growing populations in our rural and remote communities, mean that telehealth is one of the ways of providing health and care services to the many people who need them.

The Scottish centre for telehealth has reported on some groundbreaking projects—the cabinet secretary referred to one in Moray. I draw folks' attention to the telestroke project that is centred in Orkney, the teledermatology project in the Western Isles and the telecardiology project in mid-Argyll. Those are all interesting projects that show the value of telehealth in looking after people where they live, but ensuring that they still have access to the highest level of consultants throughout the country. I have a friend in Skye who has a pacemaker in his heart that sends messages to Germany, which are sent back and analysed by his consultant in Aberdeen, who then tells his general practitioner in Portree how to treat him. That is the method and magic that we want to ensure everyone can access.

One of the most interesting ways that we can move on telehealth is towards the care of long-term conditions and the remote monitoring of conditions such as chronic obstructive pulmonary disease and hypertension. That will enable folk to remain in their communities while still being monitored and referred, as appropriate, to their local general practitioner.

Paragraph 78 of the Health and Sport Committee's report states:

"A key piece of infrastructural development necessary to support such telehealth services is the availability of high-speed broadband internet access. As with many other

aspects of the public services, broadband access is especially important in remote and rural areas."

It is timely that we are having this debate to ensure that we get connectivity throughout all our rural and remote communities, not only for the sake of it but to ensure that we can get high-quality public services to everyone in Scotland who needs them.

We have the vision for, and evidence of, what connectivity can deliver for our communities. Today I am speaking specifically about health, but we need that infrastructure generally. I hope that members on all sides of the chamber can work on that and agree to support the Scottish Government in its representations to the UK to ensure that we receive the necessary funding to get that connectivity.

15:41

Rhoda Grant (Highlands and Islands) (Lab): I welcome this debate, which is of crucial significance to many of my constituents who would dearly love to have access to broadband. There are particular issues with regard to connectivity in rural areas.

Peter Peacock, in his speech to Parliament last year, welcomed the "Digital Britain" report's recognition that private markets would not provide broadband to large parts of the UK. He spent a long time fighting for recognition of the need for broadband in our rural areas, and I am happy to continue that work. I am pleased that the issue appears to have won recognition among all the parties, and that members are aware of the significance of such infrastructure and the need for access.

In rural areas, connectivity will allow us to break down geographical barriers and save costs in service delivery. It can boost our economy by encouraging businesses in, and it can improve the competitiveness of our indigenous businesses. It can also allow access to jobs through teleworking, on which companies such as BT have led the charge, with many of their employees working from home.

Connectivity is important for the delivery of education. The University of the Highlands and Islands has been a leader in online education, but we are only scratching the surface in that regard. Due to numbers, rural schools do not have the same depth of curriculum choice as urban schools do. If we co-ordinated timetables across a number of schools, that would allow pupils more choice because they could access classes in other schools through information technology. They would have access to education without having to travel large distances.

Fiona McLeod talked about telehealth, which hardly needs an introduction. Connectivity can deliver health benefits close to home in rural areas at a fraction of the cost, and that is just a flavour of the benefits that it can provide. However, the Government's targets for Scotland lack ambition. Private markets will not provide broadband to rural Scotland without Government intervention, so the Government's offer to facilitate collaboration is not enough, and nor is the target that it sets out in the report "A Digital Ambition for Scotland" of getting superfast broadband to all by 2020. As Elaine Murray said in her opening remarks, the Royal Society of Edinburgh's "Digital Scotland" report is far more ambitious and suggests that it would be possible to provide that access by 2015.

We must look at what other countries are doing. Finland has made access to broadband a legal right—95 per cent of its population already have access—but it is legislating to ensure that the hard-to-reach areas are not left behind. It has vowed to have everyone connected to at least 100 megabits by 2015.

Richard Lochhead: Rhoda Grant seems to connect the Scottish Government's digital strategy to the fact that other small countries in Europe are able to legislate on targets. Does she accept that we cannot, in our digital strategy for Scotland, commit to legislate, as unfortunately that power lies with Westminster and not yet with this Parliament?

Rhoda Grant: I am aware that the power lies with Westminster, but I would like the ambition of this Parliament and this Government to be for us to have what other countries have promised and developed. France's courts have declared that access is a human right, and the United Nations shares that view. We need to be more ambitious. We need to ensure that, within our powers, which are many, we have a target that is ambitious for Scotland.

There are challenges, in that the technology moves on quickly. The Government has invested in solutions—connected communities and Avanti are two—but they are not a panacea because the technology keeps moving on. I am delighted that HIE has received funding from broadband delivery UK to pilot delivery of superfast broadband in rural areas. That is now out to tender.

It is clear to me that, in order to bring connectivity to rural areas, we require a mix of technologies. Communities have often taken matters into their own hands—examples include the Tegola project in Skye and the Rutland project in Leicestershire—but Government sometimes hampers those efforts. The Tegola trial in Knoydart, which was capable of delivering speeds of 100 megabits, was hampered and halted by bureaucracy. Highland Council refused to allow

access to its pathfinder network until its security and contractual concerns could be satisfied. That is bureaucracy standing in the way of progress.

Last week, I received an e-mail from a constituent saying that he was reconsidering a business move to the Western Isles due to the lack of broadband service. The Tolsta community council in Lewis secured some LEADER funding back in December to provide two broadband relay sites to enable an extension of connected communities. Fortunately, my constituent is now going ahead with the move after we advised him of that. That example highlights the fact that communities have the will to find solutions. The LEADER funding is welcome, but we need more of it.

Improvements to the mobile networks are also essential. Mobile telephone company 3 has four 3G masts in the Western Isles and it has told us that it is keen to expand services in the area. It believes that there is a demand for that, and so do I. However, such expansion depends wholly on its ability to acquire low-frequency spectrum in next year's mobile spectrum auction. I sincerely hope that Ofcom follows through on the proposal to stimulate competition in the mobile markets. The recent consultation on opening up mobile spectrum is most welcome.

I welcome the Scottish Government's commitment to broadband, but it needs to do more. It needs to use all the resources that are available to it. This is probably the most important infrastructure development that we will have in the current decade. I will meet Scottish and Southern Energy in the next few days to discuss how spare capacity in the fibre optic cable that will run on the Beaulieu to Denny line can be used to improve connectivity. The SNP stated in its manifesto that it would provide £50 million from the Scottish futures fund. That is a start, but more will be needed.

Private industry alone will not sort it out. If sufficient public funding is in place, the industry will invest. BT has given us a briefing on its investments, but we also need the Government to become involved. It needs to lever in more investment than it proposes at present. That should be a priority for the new borrowing powers, given that the investment can create savings to the public purse. Failure to act will leave our rural communities at a great disadvantage both socially and economically.

The Deputy Presiding Officer (John Scott): I call Paul Wheelhouse, to be followed by George Adam. We have a little time in hand, so there is time for interventions.

15:48

Paul Wheelhouse (South Scotland) (SNP): I said in my maiden speech that one of the strengths of the Scottish Government's economic strategy is that it seeks to deliver economic growth while enshrining the principle of cohesion between regions and not leaving regions behind. That was reflected in the Government's publication of "Our Rural Future", and indeed the SNP election manifesto made clear the desire to close the gap between rural and urban Scotland.

Before the SNP came into office in 2007, the south of Scotland alliance was formed between key partners in Dumfries and Galloway and the Scottish Borders. The introduction to its "South of Scotland Competitiveness Strategy 2007-13" states:

"We have become accustomed to referring to ourselves in the South of Scotland as the 'forgotten' or 'hidden' part of Scotland."

It is true that the region had largely been ignored. Although I am delighted that much progress has been made since 2007, there is still much to do. The cabinet secretary recognised that in his speech.

In the introduction to the competitiveness strategy, the alliance identified a number of key points in its approach to regional competitiveness. The document states on page 6 that the rural agenda is about

"Diversifying and growing the rural economy in its own right through focusing on growth as opposed to lifestyle businesses, and adding value to the primary assets, services and goods produced in our rural areas by: increasing focus and support on growth and economically significant companies in rural areas ... developing a complementary rural proposition to attract mobile investment".

It will be key for us to develop a truly attractive proposition and address the deficiencies in rural broadband.

As the competitiveness strategy indicated, Dumfries and Galloway and the Scottish Borders sit in an area between five key cities: Belfast, Glasgow, Edinburgh, Newcastle and Carlisle. That is an economic opportunity, but we are at a competitive disadvantage because we do not have a 21st century infrastructure.

Priority 6 of the strategy, which refers to building "a ... high quality sustainable place to live, work and visit,"

recognises that there must be a focus on infrastructure such as broadband and the role that it can play in making market towns in the region more vibrant and dynamic, and that there must be support for the development of quality business locations that can compete on a level playing field with urban Scotland. It is important for areas such as the south of Scotland to deliver that kind of

strategy and to focus on developing our key market towns. That should be regarded as complementing investment in the physical transport structure, which we have already debated in the current parliamentary session, and the two aspects should work together.

The Government report "Scotland's Digital Future: A Strategy for Scotland" was published in March. On rural economic growth, it stated:

"We recognise that good broadband connectivity is an enabler of economic growth in rural areas. However, we are aware that parts of rural Scotland are not able to exploit or benefit fully from digital opportunities."

I welcome the cabinet secretary's comments about recognising the importance of that issue. It is worth reminding people that there has been investment in the pathfinder project to the tune of £90 million, which has provided connectivity to more than 1,200 public sector sites—including schools, council offices and libraries—in seven local authority areas, including the Scottish Borders and Dumfries and Galloway.

The primary objective of the pathfinder project was to deliver high-quality, scalable broadband in order to improve significantly connectivity for Scotland's most rural regions. As Elaine Murray acknowledged, the project has delivered high-quality bandwidth for public sector sites. However, I share her concern and perhaps criticism that to date it has not benefited the private sector, in particular the business community.

In that regard, there is the example of a business in Eyemouth; I will not name it, because I have not sought permission to do so. The business has a number of clients across Scotland and provides back-office call centre data storage for growing businesses. However, its growth is constrained because it can get only limited broadband speeds in Eyemouth. It has expressed its frustration that it has not been possible so far to make greater use of the pathfinder investment to allow the private sector access to the spare capacity that is not currently used.

I appreciate that procurement, contractual and state-aid issues intervene here and that it is not possible at this time to exploit that opportunity. However, the Scottish Government has announced that it will explore how the pathfinder south network may be utilised for the wider benefit of the community, which will certainly be of considerable value. I welcome the investment in Annan, which is in Elaine Murray's constituency, of £0.25 million to assess what can be done there. Of course, the Scottish digital futures fund will supplement money from the United Kingdom Government to develop the potential of rural broadband in the south of Scotland.

The issue is rebalancing rural and urban economic growth in Scotland and ensuring that some of our market towns, such as Hawick, Dumfries and Kelso, can compete on a level playing field with urban Scotland. I hope that there will be better utilisation of business parks in such areas in the future, so that we will hear not just a succession of good news stories about investments in Glasgow and the central belt, but about one or two major investments in areas in the south of Scotland.

15:54

George Adam (Paisley) (SNP): As many members know, I am the member for Paisley, so it may seem unusual that I am in speaking in the debate, given that Paisley does not have many rural areas. I have found out to my cost this week that our connectivity in Renfrewshire is very good—I might wish that it had gone down at one point last week, but in the end that is not what happened.

A large part of Renfrewshire is rural and it has problems similar to those in the constituencies that other members have discussed. My colleague Derek Mackay represents that part of Renfrewshire. There are a few not-spots, as Fiona McLeod described them, in Renfrewshire, in 3G or within the broadband network. When going cross country from west to east in the train, it is noticeable that the 3G signal is patchy all the way; I have experienced that difficulty. In my case that might be a good thing, but it is a problem if we cannot even have such connectivity in the central belt of Scotland on the main rail connection between our two major cities.

A couple of weeks ago, I spoke about Scottish broadcasting and the Scottish digital network. I spoke of a woman called Sandra Webster, who has two autistic sons and is a carer. To me, she is a hero, because she spends all her time with her children, trying to ensure that they have a quality of life. She is lucky in that, because she lives somewhere such as Paisley, through social networking she can contact many of her friends and fellow carers, talk about things and have company when she goes home at night, the door gets locked and the boys get put to bed. It is not only in urban Scotland that such situations exist. The cabinet secretary is correct to say that it is important that we have social integration when it comes to broadband.

As I have said, I am quite lucky now. Back in the days when we had dial-up, I remember trying to download the Scotland Act 1998 when it was published. I left it overnight but eventually gave up and went to the library to read the act, because downloading it was next to impossible. Access to broadband is vital for business, because we must

ensure that the whole of Scotland is competitive and that we can showcase our goods and wares to the rest of the world. If we get left behind on connectivity, in rural Scotland or in urban Scotland, we will get left behind. We cannot afford to let that happen.

I am pleased with the Scottish Government's national broadband plan. The Scottish Government is working with Scottish Enterprise, Highlands and Islands Enterprise and local authorities to develop a strategic national broadband plan to ensure the roll-out of the next generation of broadband in all parts of Scotland. That is vital when we are dealing with issues for businesses.

Earlier today, I went to an STV breakfast at which representatives from STV talked about the multiplatform way in which they deliver news and everything throughout Scotland. They highlighted that it is important for us to ensure that everyone in our communities will be able to access such services in the future. It might be an idea for us to look at that, so that the whole of Scotland can have such provision.

It is important that we continue actively to seek further powers. We in this Parliament are the individuals who must ensure that broadband connectivity can be supplied for the people in our communities, because companies throughout the world will not be interested in various parts of rural Scotland. We must ensure that they want to talk about it and that we have the power to deliver, so more powers on the issue would be welcome.

I agree with the Scottish Government's realistic commitment to provide broadband for all our rural communities. In order for Scotland to compete on the international stage, we must ensure that the whole of our nation has access to broadband and that our nation can engage with the rest of the world and be competitive.

15:59

Jim Hume (South Scotland) (LD): The Liberal Democrats will support the Government's motion, but we also approve of Elaine Murray's amendment, which strengthens the motion. Of course, we will also support Alex Johnstone's amendment.

In the 21st century, digital connectivity will prove to be as vital to businesses and communities as transport connectivity was in the previous century. Like many, I live in a rural area, so I understand as well as anyone how vital it is that we improve connectivity throughout Scotland.

One of the Government's biggest challenges throughout the parliamentary session will be to improve rural Scotland's digital infrastructure by

expanding opportunities for people in rural communities to enjoy the benefits of superfast broadband and by working with Ofcom and mobile network operators to improve mobile phone coverage dramatically and tackle what are called not-spots. I welcome the consideration that the Government appears to be giving the issue.

According to the Federation of Small Businesses in Scotland, one in 10 of its members still does not use the internet for work purposes—the equivalent figure in London is just one in 20. Broadband uptake by Scottish households stood at just 61 per cent last year, which—unfortunately—led Ofcom to describe Scotland as the least-connected nation in the UK. That is why the coalition Government in Westminster must be congratulated on including the Highlands and Islands as one of the four pilot areas that will experience superfast broadband. I hope that the Scottish Government will follow suit.

Businesses in Scotland are at a clear disadvantage internationally to our competitors in Germany, Sweden and the United States of America, and our rural businesses are also at a disadvantage to their urban competitors nationally. The Scottish Chambers of Commerce said earlier this year that

“For rural areas, the immediate priority is to extend the reach of broadband.”

The reasons for doing so are obvious. More and more business is conducted online, and rural businesses are increasingly unable to tap into what could be a lucrative revenue stream for them. We recognised that in our manifesto, in which we made a commitment to £250 million of investment to deliver superfast broadband to all parts of Scotland.

The availability of high-speed broadband is key to developing telehealth services, which Fiona McLeod mentioned. Expanding broadband coverage into rural areas will be instrumental to widening the scope of telemedicine and e-health services. For people who live in remote and rural communities—particularly those who are chronically ill—a trip to a health practice can be a considerable undertaking. The advent of telehealth solutions has allowed patients to be cared for locally. Telehealth services can empower those with long-term conditions and provide confidence to patients who are enabled to self-manage their condition. We want Scotland to be the first country to establish a national-scale telehealth service. The Government should look to mainstream the use of telehealth in delivering patient care.

It is worth highlighting how improved mobile phone coverage in rural areas can benefit public safety. I know from discussions with the Tweed Valley Mountain Rescue Team that, because of

poor mobile coverage, pagers have to be used to call out members of that team to an emergency. Through the team's experience, it believes that network coverage in Iceland's hills is superior to what can be expected in elevated positions in Scotland. Mobile phones can prove instrumental in a rescue because of the ability to locate someone who is stranded by using so-called cell triangulation. That reduces the risk to searchers and saves countless precious hours.

The Government's manifesto speaks of identifying

“barriers to increased mobile coverage”,

but the reason for the barriers is fairly clear—it is cost. I have argued that we should encourage widening the scope of operator partnerships, to spread the cost of building and maintaining new masts in remote and rural locations that have inadequate coverage. It is a sad fact that building a mast in the Highlands or in some parts of the south of Scotland costs substantially more than building one in Edinburgh does. Given that, why not encourage all operators to share the burden of building and maintaining rural masts?

The economic case for improving broadband and mobile coverage is clear. The social reasons for improving rural Scotland's digital infrastructure are no less compelling. To the average 16 to 24-year-old, the internet has become an essential part of daily life. To those with broadband and favourable 3G mobile coverage, accessing websites presents no problems, but those in rural communities often encounter major difficulty with that.

Scottish Government social research that was published last year revealed that, although rural areas have experienced net migration in every age demographic in the past three years, accessible and remote rural areas have—unfortunately—experienced a net loss in 16 to 24-year-olds. From 2005-06 right up to 2008, the loss in the percentage of the 16 to 24-year-old population in remote rural areas was slightly greater than 5 per cent. The research also revealed that one of the push factors often highlighted by young migrants was social detachment. Young people are hampered in their attempts to access the internet, such as Facebook—as George Adam knows—and to utilise their mobile phones like their friends and relatives in more urban areas do. The Scottish Government's research suggested that policy interventions were required to minimise the associated risks of rural migration and improve the digital infrastructure. That is one way to tackle that feeling of detachment and end that drain of young people from our rural communities.

16:05

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I am pleased to take part in the debate as I have been a long-time campaigner in the Highlands and Islands for a proper broadband service to enable the needs of many communities to be met. We need to discuss how to deliver and what to deliver, and what partners to seek to enable us to do that.

When I was a Highlands and Islands member, I took a survey in the south of Orkney, around Invergordon and up in the north-west of Sutherland. I had a phenomenal response to the consultation in the north-west of Sutherland area—postcode IV27. Nearly a third of households responded, nearly half of which had used broadband for the purpose of both business and pleasure. They were among the most disadvantaged in the whole of the United Kingdom.

I am pleased that HIE won the competition to start to roll out next-generation broadband. In the Highlands and Islands project, next-generation broadband and points of presence should be made available to at least two towns in each local authority area by 2013. By 2014, there should be next generation broadband and points of presence in 50 towns and villages. By 2015, those 50 towns and exchange activate communities should be covered to within a 20km radius with about 2 megabits per second. By 2020, there should hopefully be next-generation broadband for all.

The £10 million that HIE won will not cover that. In fact, the partnerships may have to release £190 million more to be able to achieve some of those targets. What is the problem? We know that BT has 1,070 telephone exchanges in the country, which, with the exception of 21 exchanges in the Western Isles, offer wireless broadband services. However, 83 of the very small exchanges—many of them in the constituency that I represent—offer only a half a megabit service at present.

Since other exchanges can offer up to 8 megabits a second, we really need to ask whether the way in which the services for broadband are funded by consumers is fair. I have tackled BT about that matter. The situation is unfair on people who are getting half a megabit, because they have to pay the same as people who can get up to 8 megabits. BT needs to be held to account for taking people's money under false pretences. British Telecom? It is only a bit of Britain, because a large part of the north has a very poor service indeed. Members should realise the urgency of what I have said. That urgency is recognised by our development agency, which realises that it has a huge job to do.

One woman told me, about her receipt of any kind of service, "I live at the end of a very thin copper wire." That is a poignant little statement, but it is the experience of many people at the moment. We have to consider the partnerships that were formed in places such as Finland, which was mentioned earlier, in which local communities used their assets to roll out their own fibre in the areas beyond the points of presence that I mentioned earlier.

On the island of Eigg, it is possible to run electricity cables on the surface between the 30 or so houses because it is a small island with very little transport. We must find ways for people to lay their own cable if at all possible. The cable cannot be put underground that easily because, in many of the communities that I am talking about, there are no waste water or sewerage systems as there are in Dundee.

Why do we need to do that? The village in which I live is relatively near an exchange, and we can just about pick up the BBC iPlayer. That is the situation with the current broadband. We are saying that that ought to be not a gold standard, but a basic standard. It has to be delivered by landline because the satellite versions are too intermittent. We must know whether the money to deliver that kind of broadband will be made available in the schemes that have been mentioned, so we have to interrogate those schemes carefully to find out exactly what they will deliver. I suggest to members of all parties that we must find a way of asking the bodies that are bidding for the contracts that are being let in the period leading up to 2012 whether they will deliver that kind of service, or whether, as with the pathfinder, some of the services will be delivered by satellite because some places do not have proper telephone services.

We have to look to BT to find more money for the process because, for a long time, it has been taking money from people who are not getting the service that BT advertises. We also have to find other partners to do that.

As we look at the Government's proposed community empowerment and renewal bill, I suggest that we also look at communities that have assets such as benefits from wind farms to see whether they might act as partners with others to create the access to broadband that we know they deserve and require. Many people want to expand businesses in my area, so it seems to me that if we could get partnerships in place, it would be possible to turn the £10 million in the competition into the £200 million that we actually need.

16:12

Jenny Marra (North East Scotland) (Lab): I was intrigued by the minister's choice of verb in the motion. Packed with enthusiasm, drive and commitment to this important issue, the minister merely wishes rural Scotland to have good broadband connections. It reminds me of Michael Russell's assertion at the Education and Culture Committee this week:

"it would be useful to apply in the colleges the policy of no compulsory redundancies."—[*Official Report, Education and Culture Committee*, 28 June 2011; c 24.]

Today, at First Minister's question time, the First Minister said that his Cabinet Secretary for Education and Lifelong Learning gives colleges "advice". That is very good of him, but it is not good enough to match his manifesto commitments to college staff.

The Government was not elected to wish, to advise or to think things useful; it was elected to make things happen. At what point will the minister stop wishing for better connectivity? There is no genie here to make those wishes come true. Only policy with commitment to pass legislation and make suitable investment and a sound framework will deliver the Government's commitments on connecting rural Scotland to broadband.

Wishes are not good enough because connection to the internet can no longer be a luxury for the rich. Such are its advantages today that people who do not have good connection become more financially excluded. PriceWaterhouseCoopers estimated that getting 4 million socially deprived people across the UK on to broadband would contribute £22 billion to the UK economy through increased education and employment.

We can see it in the college sector as well. Many of the recent cuts in colleges have seen a move towards delivering courses through ICT and distance learning. However, the change in capital spending rules that means that ICT can no longer be purchased from the capital budget but must come from the revenue budget, which has been cut by 10.4 per cent by this Government, means that reliance on ICT is more of a challenge. Poor connectivity exacerbates that challenge, and distance learning is a vital education service. Of course, in rural areas with a lack of access, it is much more important.

In everyday life, the best deals for insurance, travel, clothes, household items and books are most regularly now found online. The average family, which includes rural families throughout the country, misses out on savings of £560 a year if it does not use the internet. It was only last week that I discovered that I could save £200 on my car insurance online—the insurers have clearly not

seen me drive. Such savings should be available to all, especially at a time when families are feeling the pressure of increased utility bills, the price of fuel—which is more of a problem for people in rural communities—and the increased price of food.

I understand why the focus of the Government's policy is to rely on private sector investment in financially constrained times—there is clearly a financial incentive for the private companies to deliver broadband services—but there must be back-up. Patchy service delivery is not limited to rural communities. In my home city of Dundee, the fibrecity project has collapsed. More than one Dundee household in three was said to have signed up for the network and work was initially expected to start in summer 2009 and be completed within two years. However, work started only last summer and, within weeks, Fibrecity Holdings temporarily halted it, 52 staff lost their jobs and nothing has happened since to put the cables in for the network.

The UK Government has committed only £830 million of public funding to superfast broadband until 2017. We can compare that with much greater sums in other advanced nations. For example, the French Government has already spent £1.7 billion and has committed another £570 million per year until 2025. With the cost estimate for deploying fibre networks to every UK household ranging from £5 billion to £28 billion, the UK Government's commitment looks woefully inadequate.

The Scottish National Party announced a £50 million investment for the Scottish futures fund that aims to deliver superfast broadband in rural areas. However, we have only to look at Cornwall—which has a population 10 times smaller and a geographical area 20 times smaller than Scotland and where £132 million has been invested in high-speed broadband—to see that the £50 million investment by the Scottish Government falls far short of what is needed.

The Government needs to stop wishing and bring all the players together to make things happen.

16:18

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I am pleased to participate in this debate, although other members have already covered much of what I might have wanted to say.

That said, it is appropriate to bring to the Parliament the perspective of one of my constituents, Gerry Frew from Lendalfoot. Gerry wrote to me shortly after the election as follows:

"Please let me advise you of my current problem with broadband connections. I have recently been in

consultation with my provider Talk Talk at a very high level about the huge bill that I am paying annually to them for broadband and phone—approximately £500. This is very difficult for an old age pensioner like me and is mainly due to the fact that BT have not upgraded the Lendalfoot exchange which holds approximately 120 lines (only those with about 1000 lines appear to have been upgraded).

My information from Talk Talk is that it will likely never be upgraded although locals making enquiries over several years were led to believe if they waited it would be done by April 2011.

I am asking please that you do all you can to put pressure on BT to do something for us. Particularly after all the hype that we have heard about bringing rural customers into line with people in towns and cities of our nation.

We are not only being discriminated against by receiving an inferior service but are having to pay inflated prices to our providers compared to that which is available to the lucky man. Just take a look at the many adverts on TV for phone and broadband packages. My package would be reduced by **50 per cent!** Just another case of how those living in a rural area like ours have to pay so much more than town dwellers."

Naturally enough, I followed up Mr Frew's case with BT. The gist of its reply was that although BT is investing £2.5 billion in the roll-out of superfast broadband, it will only be economically viable for it to reach two thirds of the UK population by 2015. The remaining third—among whom Scottish customers will be disproportionately represented, given our greater rurality and sparsity of population—will benefit from high broadband speeds only through partnership working between the public and private sectors.

I recognise that the UK and Scottish Governments appreciate the need for intervention support. I would be interested to hear from the minister whether the Scottish Government has discussed the possibility of a bid for a whole-Scotland project to Broadband Delivery UK, which, I understand, has up to £830 million to distribute by 2017. The Highland pathfinder is welcome, but many of us represent rural constituencies outwith the Highlands or, indeed, the south of Scotland alliance area, so might it not be a good idea for the Scottish Government to use the £50 million from the futures fund to help to put together a joint financial package to fund a big-bang project?

I understand that the Cabinet Secretary for Infrastructure and Capital Investment is to meet his UK counterpart in the near future to discuss the development of digital infrastructure, and I know from experience that Mr Neil can be extremely plausible and persuasive in promoting the Scottish case—he defines a fair share for Scotland as being what he asks for. I understand that BT would regard a pan-Scotland project as an ideal scenario. Such a project would bring economies of scale and would ensure future proofing and consistency of technologies.

There is also the prospect of tapping into European funding. Ms Marra mentioned the Cornwall experience, but I think that she was being a little disingenuous when she suggested that Cornwall was putting £130 million into high-speed broadband because, of that £130 million, £53.5 million came from the European regional development fund. That was combined with a further investment of £78.5 million from BT, which was won on a competitive tender basis. That investment will result in 10,000 businesses in Cornwall being connected to superfast broadband; indeed, 80 to 90 per cent of businesses and homes in Cornwall will be connected by 2014.

I would be grateful if the minister could give an indication of whether the Scottish Government would be prepared to consider a more radical approach, along the lines that I have outlined, to address the issue of rural connectivity.

16:23

Joan McAlpine (South Scotland) (SNP): The debate is about connectivity, not just broadband. For many people, their connection comes from the telephone. It seems incredible that it was only in 1985 that the first mobile telephone call was made, by Vodafone, on a device that was probably the same size as the average lady's handbag—we know how big they can be these days. Since then, mass ownership has made much smaller handsets more commercially available, and the mobile phone is now ubiquitous. In fact, the take-up of mobiles is now greater than that of fixed-line phones. That is especially the case in Scotland, which has the largest proportion of mobile-only households in the UK. Ofcom's research shows that mobile-only households are more likely to be poor—26 per cent of DE households are entirely dependent on mobiles, compared with only 9 per cent of ABC1 homes.

I want to consider the old-fashioned technology that we now call 2G, which provides a basic voice and text service and has been around since the days when mobiles looked like bricks. It is also the technology that many poor families depend on. However, our coverage is still antediluvian. In Scotland, there is 2G coverage in 64 per cent of our geographical area, whereas that figure is 91 per cent in the rest of the UK. We are living in an age of digital and geographic inequality.

Alex Johnstone earlier compared broadband to vital services such as electricity and plumbing. If someone does not have access to a phone, it is like not having access to healthcare and education. As was mentioned earlier, we are finding that a great number of rural areas suffer from the digital black holes called not-spots, where people cannot access mobile services. Another Ofcom report, from last November, blamed

commercial factors for the existence of those not-spots in rural areas and said that they seem likely to persist, to some degree. The impact of not-spots ranges from inconvenience, such as a postponed or missed call, to personal or business cost implications. Ofcom's report included case studies, one of which struck me as indicating the potentially life-threatening implications of not-spots. It involved the case of a farmer who died in the hills during snowy weather, whose body lay for two days without being located. That happened in an area where there was no mobile phone coverage. Another lady in Scotland who drove a rural school bus pointed out that she had no way of dealing with any problems that might arise during her long journey, which involved dropping off lots of children in various locations.

For a lot of operators, 2G coverage is not a priority, as they are moving into more lucrative areas. However, 3G coverage is even worse than 2G coverage. In Scotland, we have 41 per cent 3G coverage, compared with 76 per cent across the UK. It is surely no coincidence that the figure for the rest of the UK is lowered by poor coverage in devolved areas, a point that was repeatedly made in the Ofcom report on UK connectivity that was published last November. There might just be a connection between our lack of connection and our lack of political control. Scotland, Wales and Northern Ireland have the poorest service. We are entirely in London's hands on this matter. We depend on politicians there to license telecom operators properly, to regulate them and to place obligations on mobile operators to deliver specified levels of coverage.

As the poor 2G and 3G coverage demonstrates, the record of London in meeting the needs of Scottish rural areas is extremely poor. For example, in 2000, when 3G licences were distributed, the UK Government determined that operators were required to achieve 80 per cent coverage of the UK as a whole, increasing to 90 per cent by 2013. At the time of that licence consultation, the Scottish Government—a Labour-Liberal Democrat coalition—quite rightly pressed the UK Labour Government to specify coverage on a regional basis, and said that there should be 90 per cent coverage per region. However, the Scottish Government was rebuffed by the London Government and it continues to be rebuffed.

Richard Lochhead said that 4G, which will be auctioned in the near future, will help to solve some of the problems of the past with 2G and 3G connection. Again, however, we can only make representations that no one—not the Government nor Ofcom—is obliged to heed.

It seems to me that this is all a matter of where power lies. One of the problems is that the UK Government has decided to focus on competition

for the next 4G spectrum auction. However, the case that the Scottish Government has made is that, for much of rural Scotland, unbridled competition is not the way forward. There could be three companies competing in one area while another area gets nothing. Members have commented on the inadequacy of the private sector in providing broadband and mobile phone service coverage in Scotland. In many ways the situation is similar to the situation in the Victorian period, when utilities such as gas and water were being put in and the work was entirely in the hands of private enterprise. Competing companies were digging up roads and there was no strategic overview, so in places such as Glasgow and Birmingham the city councils stepped in to ensure that provision would be closer to being universal.

If we want a universal system, we need control of telecoms in Scotland. If that does not happen, we will not be a hot spot and we will continue to have far too many not-spots.

The Deputy Presiding Officer (Elaine Smith): We move to closing speeches. Alex Fergusson has around seven minutes.

16:30

Alex Fergusson (Galloway and West Dumfries) (Con): I will see what I can do for you, Presiding Officer.

I am delighted to wind up the debate on behalf of the Scottish Conservatives, but I must begin by agreeing, to a large extent, with Elaine Murray and Jenny Marra on the wording of the motion. I do so with considerable relief. A little over 12 years ago, as a new and somewhat naive politician I lodged the first non-Executive motion in the Scottish Parliament, which eventually resulted in the establishment of time for reflection. It was described at the time by no less a figure than the late Donald Dewar, our first First Minister, as quite possibly the worst-worded motion that it had ever been his misfortune to encounter—or words to that effect.

Ever since then, I have proudly held on to the title of lodger of the worst-worded motion of all time. However, I think I know when I am beat, and in the spirit of pre-recess generosity that Alex Johnstone mentioned I am prepared to concede my title to the cabinet secretary whose name is attached to the motion that is before us today. In the motion we are asked to welcome a wish and to note that key to that wish is a strategy that wishes something else, particularly in terms of rural wishes. There are so many wishes in the motion that I am afraid that I must describe it as somewhat wishy-washy. To be frank, I wish that it had been better worded.

Despite the quality of the motion, the subject of debate is important for all members, and particularly for members who represent rural constituencies, as so many members pointed out in excellent speeches. We are happily talking about providing next-generation technology and superfast broadband across the nation, but—like, I am sure, many members—I have constituents who are still marvelling at the wonders of dial-up technology. Indeed, I had an e-mail only last week from a constituent who runs a bed and breakfast in a remote part of Galloway, whose provider had contacted him to inform him that his dial-up service, which is the only service that is available to him, is about to be discontinued because there is no longer a demand for it. He will be left with nothing, while we comfortably talk about the massive improvements that are to come.

It is to be hoped—dare I say “wished”?—that massive improvements are to come, and soon, because I do not think that it is overstating the case to say that the regeneration of the rural economy largely depends on such improvements. I was impressed by what Elaine Murray said about how we can go about securing them and by Rob Gibson's more cautionary approach in pointing to some of the challenges in that regard.

I am sure that we all agree that there is a wealth of entrepreneurial talent and spirit abroad in rural Scotland and that constituencies such as mine, Galloway and West Dumfries, offer the finest workplaces for small and micro-sized enterprises. However, without a level of connectivity that at least challenges if not equals connectivity in our urban areas, rural entrepreneurs and wealth creators have to start out at a huge competitive disadvantage. If we want to walk the talk of releasing people's full potential, we simply have to give them the connectivity that will allow that to happen.

On mobile phone coverage, the admirable community of the Isle of Whithorn in Wigtownshire in my constituency established one of the earliest first responder units in the south of Scotland. The unit's wonderful volunteers turn out whenever they are called on to do so by the Scottish Ambulance Service, and it is no exaggeration to say that each time that they are called out they could be saving a life. The call-out on which they depend comes by way of a Vodafone pager, for which the signal in the area is, as with all other networks, desperately patchy. At a nearby caravan site, which is hugely popular in summer, there is no signal at all. Lives are potentially put at risk because of that. Vodafone is deaf to appeals to put up a mast, simply on the grounds of cost.

Despite my considerable sympathy with George Adam's occasional desire to be out of range of any signal whatever, I can think of no better example

of why we need mobile coverage for the whole of this country, not just the 90 per cent of it to which the cabinet secretary referred. I am sure that that will come, but it simply cannot come fast enough for the Isle of Whithorn's first responder unit.

This has quite rightly been a largely consensual debate—that is understandable—and I am delighted that the south of Scotland has been mentioned as often as it has. As a south of Scotland member, I often feel that debates such as this are very effectively hijacked by the Highlands and Islands members, but that is not the case this time. Others have mentioned other parts of Scotland, too: this a national issue—there is no doubt about it.

Although the debate has quite rightly been consensual, I want to address one point that the cabinet secretary made in his opening speech. He stated—I think I have got this right—that it is important for the UK Government to work with us. I gently suggest that the Scottish Government must also ensure that it works with the UK Government, as our amendment suggests. I hope that the process will become a two-way process—a process of partnership, which surely has to be the right way forward, rather than a process that carries the danger of the Scottish Government sitting back, waiting to be included and then complaining bitterly if it is not. I have no doubt that the UK will not allow that to happen. I hope that the Scottish Government will be proactive in the process and not just reactive. I believe that that is the way forward. I hope that it is the way forward for a better Scotland.

16:36

Sarah Boyack (Lothian) (Lab): I think that there is some agreement that the motion does not go far enough, although, as ministers will have picked up, there is no hostility to the proposals on the table; the concern is more about seeing them implemented. The Government's strategy is important, but so are the funding, action and partnership working to deliver it.

As many members have said, the public investment is crucial. There is in fact complete unanimity in the chamber about that, which is pretty rare. I heard the Conservatives argue for public sector investment because the private sector cannot deliver on its own. Let us capture that moment, celebrate it and turn it to our advantage.

We need sufficient investment and Government action to make it happen. The RSE report was absolutely clear about that. It said that it will cost proportionately more to connect rural Scotland than to connect the rest of the UK. That is why we need our fair share. If we are part of the UK, one

of the benefits has to be that we get our fair share. That needs collaborative work. It is not just about collaboration between Governments—for which reason we will support the Conservative amendment—but about private and public expertise working together to get the best value for everybody.

The cabinet secretary made a very powerful case for rural businesses to be able to sell their products and services, but an interesting comment was made about how things have changed. Before I was elected to the Parliament I used to teach town planners. At that time, this whole issue was not even our agenda, in the same way that renewables were not on our agenda. Many of our leaders in the public sector were not trained to deal with such issues—they are totally new. That means that a level of expertise, continual learning and investment in skills are needed not just to build things but to negotiate deals. People's capacity to negotiate good deals is fundamental. If we are relying on the private sector to help us deliver, we need to ensure that the public sector capacity is there to make things happen. Sometimes, the public sector is too cautious. Some of our procurement processes are so lengthy that they militate against our getting a good deal. There is a real challenge there.

Elaine Murray quite rightly mentioned the need to act and said that the RSE's report stated that work was doable by 2015. So, why is the target for 2020? This is something that matters to us now. There are so many Government policies that connectivity would help us deliver, which makes the case for faster action. Alex Johnstone made that point well.

Fiona McLeod's speech about the impact on health services and the potential in relation to health services was very good. The example that she gave of one of her constituents was striking.

Rhoda Grant continued on the same theme and added the education sector element. I am thinking about the models to which we aspire. There are countries across Europe and across the world that are making this happen. What distinguishes them is not the powers that they have but how they use them and how they work together. The Organisation for Economic Co-operation and Development's analysis of which nations are doing well and which are doing less well shows that it is not about size—that is one of the striking things—but about the work that is done within nation states and regions. It is all about setting the right political priority.

It has to be a question of focus. In our manifesto, we suggested that we should have a digital champion—that we should task someone with the job of making it happen and give them the resources to do so. Will ministers do that? This is

the second or third time that we have debated the issue with ministers, and they have a lot on their plate. It is crucial that we find a way to make connectivity a priority alongside renegotiating reform of the common agricultural policy and the common fisheries policy and delivering on our climate change targets. On that basis, I am delighted that we are debating the issue on the last day of term. I hope that that will give a bit of a push to ministers and their support system to make it happen.

One of the most telling statistics that we heard today came from Jim Hume, who said that one in 10 businesses in rural communities does not use the internet at all. That is a stark statistic and we should reflect on it. Those businesses cannot be successful without the internet and without decent connectivity to the internet.

Rob Gibson's speech was bang on in focusing on how, what and with whom we deliver, and it had a sense of urgency. He talked about thinking about what we can do to deliver to communities from the top down, and to empower them to deliver what is needed faster themselves. That is about partnership, focus and priorities, and there are real challenges there.

Jenny Marra mentioned the Cornwall connection: even without an organisation like the Scottish Parliament to lobby and argue, and to organise and deliver funds, Cornwall has managed to wrinkle money out of the European Union and get support from the UK Government. That has to be an achievement, given the number of people who live in Cornwall and the area's rurality. We need to look at other models and at how others overcome obstacles, because they can be overcome if there is a will.

Adam Ingram's points about a pan-Scotland approach were very persuasive. We need to come up with an approach that is about more than just saying, "If only we could do this." We need to decide that we need it to happen, say who we need to work with, decide on whom to task with the job, and use our collective energy and political interest to make it happen. It is partly a question of leadership from the Scottish Government pulling people together to get action taken. We need some fresh thinking. Our contribution to the mix is whether we should have a digital champion. Fresh thinking is also needed on the relationship between the private and public sectors, and on cutting through some of the difficult procurement issues that are meant to be fair and to deliver access for everyone but which sometimes involve slower processes and deliver a poorer outcome—while the private sector, which needs such projects, does not get its share from the public sector.

We need to get our fair share of the cake, which means ministers banging the drum. You have been given the opportunity today to bang the drum constructively. The Parliament is clearly minded to be consensual today, from the SNP back benchers through to the Conservative and Labour members, and I hope that, in the spirit of the debate, you might be tempted to support our amendments. There is no requirement on you to do that, but they are constructive amendments—they are not all about deleting and inserting. From the tone of the speeches that I have heard today, there is a desire to work constructively with the Government.

We should think about who lives in our rural communities and social exclusion, not just between urban and rural communities but within rural communities. Some people cannot afford a computer, never mind a broadband system, whether decent or poor. As the Royal Society of Edinburgh report indicates, some older people, some people on lower incomes, and some people with disabilities are not even at the starting point of getting access to any form of IT or digital connection. Projects across the country that work with such groups are partly about social justice and partly about the public sector wanting to include such people. For many people, libraries are the bedrock of access to the internet.

Financial changes are being made—I refer to the Christie commission report. When such changes are being made to public sector service delivery, we should not forget those who are less well-off.

In education and health, digital connection presents an opportunity, but we need to have it on the agenda. The issue is not just about the kit, although that is vital and it is right that the debate has focused on it; the issue is also about the people who access that kit and their ability to do so. The Government can take a lead on that and help to deliver, not just at the national level, but by working with local authorities and the voluntary or third sector.

There are big opportunities. The ministers are being offered consensus, which I suspect will not last for the entire parliamentary session. Let us use the consensus to drive a sense of urgency and priority and ensure that we deliver together.

The Deputy Presiding Officer: I remind members that they should speak through the chair and should not address one another directly across the chamber. Thank you.

16:45

The Minister for Environment and Climate Change (Stewart Stevenson): It is a delight to speak on a subject that kept me in gainful

employment for many years and finally deposited me here. Despite a powerful and impressive speech from Alex Fergusson, I intend to support the motion in the cabinet secretary's name. I assure colleagues that, having looked carefully at the amendments, we are prepared to support them. We have slight reservations about some of the wording in the Labour one, but let us not get diverted into a discussion about bits of the debate. Incidentally, in my intervention on Elaine Murray, I made the distinction between bytes and bits, so, before I move to more substantive matters, I will expand members' knowledge by saying that, in the trade, half a byte—which is four bits clustered together—is referred to as a nibble. There we are.

The debate has been useful. The cabinet secretary and I and our colleagues will be tramping many distant corners of Scotland, hoping for good weather and for adequate mobile phone signals and the ability to communicate with our officials using broadband, whether wireless or fixed. I am sure that members of other parties and members of our party who are not in the Government will be doing something similar.

Like the cabinet secretary, I welcome John McClelland's review of public sector ICT. The debate is about delivering a wide range of benefits to rural Scotland by having the right communications in place. It is clear from the debate that those benefits are not simply economic. We need to equip our communities and the people and businesses in them with the appropriate technologies, if only to level the playing field. That will create an opportunity to avoid further disadvantage, and it will create advantage. Improving rural communications is very much central to our purpose.

I want to say a few words about history generally and the role of communications in it. Eight thousand years ago, the human race was in essence a herdsman culture. At that time, in Sumeria—there are debates about where and when it happened, but I adhere to the view that it was in Sumeria—the settled culture that is the basis of our culture today first appeared. From that point, communication became important because, as people did not travel around, they needed to send messages to other communities to communicate with them.

The world started to change. We had the invention of money, which involved the tying of knots on string when people put grain into grain stores. Many things that we have today started then. In the city of Jerash in the middle east, one can find the cart tracks that are still there in the main street from 2,000 years ago. Transport, which was one of the first instruments of connectivity, became important. As I mentioned last week, the Romans created an empire that

endured for between 400 and 500 years, partly because they created a system of hilltop signalling that enabled messages to go from a corner of the European empire back to headquarters in Rome in about six hours. Communication was important, too, for Scotland. The reformation and the introduction of the Bible printed in English drove communication and education in Scotland.

An awful lot has happened in a relatively short space of time. When I was involved, at 11 am on 25 January 1985, in the launch of the first universal access home banking system to allow people to look at their bank accounts, the speed at which that system worked, delivering huge value to people, was 1,200 bits per second down to the customer and 75 bits per second from the customer up to the bank.

Alex Johnstone: The minister has raised a subject that I believe continues to be a problem with broadband provision to this day. The upload speeds that are generally provided are as little as 5 per cent of the available download speeds—can he tell me why? He obviously has greater knowledge of that. Is it simply a historical anomaly, or is there a technical reason? We are finding that there are many more reasons why higher upload speeds would be of value as we develop the broadband system.

Stewart Stevenson: The member is absolutely correct, although I will try not to be overly tempted by the question. A range of technologies could have been chosen when we developed broadband, but the technology that is used is called asymmetric digital subscriber line—ADSL. It was felt that the pressing need was to get data out to people. However, the reality is that, in rural areas in particular, we need good speeds back to the centre because businesses are serving other customers through that relatively slow connection. As we move to fibre, there will be opportunities to work with different technologies—essentially, symmetric technologies—that will provide an answer to the problem for those who use ADSL on copper. I do not know whether anybody else in the chamber understands that, but I hope that Alex Johnstone does.

Even with regard to telephones, the world has changed enormously. In 1958, when my father made the first transatlantic call from our house—it was on business: one of his patients was very ill and he had to communicate with her husband, who was in the United States—it had to be booked a day in advance. It was to last precisely three minutes—he could not get any longer—and it cost three guineas, which was approximately one third of the average weekly wage. Now, people can use a mobile phone and for 6p can call the States on demand. A lot has happened in a short space of time and a lot more will happen.

Many interesting technologies have been developed in local situations. In the Swiss Alps, yodelling was a way of communicating using the human voice. Alexander Graham Bell demonstrated the telephone in 1876. The Bank of Scotland installed its first telephone only five years later, in 1881, when there were already 300 subscribers in the Edinburgh telephone directory. Mind you, when the bank installed its telephone, the board required that the telephone not be used to conduct business.

The Deputy Presiding Officer: Minister, I must stop you for a moment. I ask that members who are coming into the chamber do so quietly, please. If you want to have conversations, I would be grateful if you would have them outside the chamber. Thank you.

Stewart Stevenson: The first electronic digital communication between Edinburgh and London was installed in 1868. It was a telegraph, and the telegraph is what opened up the west of the United States and made it the prosperous area that it now is. Those are just some of the many historical examples of how communications have helped.

Elaine Murray said that 3G coverage in Scotland is patchy, especially in rural areas. Where I live, I pray for 2G coverage—3G coverage is a distant hope. The map of my constituency has two tiny blue dots on it, which indicate where 3G touches. Frankly, for most of Scotland we could hold up a blank sheet of paper with a few wee blue bits on it representing 3G coverage. That is why it is important that, when we go to 4G coverage, we take a different approach. Whatever Government does it, we will be creating huge commercial opportunities for the operators of 4G networks, just as we did for the operators of 2G and 3G networks. In exchange for giving access to those huge commercial opportunities, we should place different conditions on the operators. One that might suit Scotland well is the condition that 4G phones should, at no additional cost, roam between different companies' masts. Why should they not? It would not cost the companies much to ensure that and it would reduce the number of masts that there would need to be—reducing the costs to the companies responsible for the 4G networks—as well as delivering a better solution for Scotland. That would probably not be of great interest in densely populated areas, though. Those are some examples of what we can do.

We have moved on from the election that I fought in 1987, when I had to carry tuppences in my pocket and know where every telephone box in the constituency was. In 1992, we had the first generation of analogue mobile phones, and in 1997, we had the first digital phones. Every time

there is an election, things have moved on, and things move on very fast.

Sarah Boyack: Where does the minister think we will get to by 2015?

Stewart Stevenson: The answer depends partly on how our relationship with the UK Government develops. We will work with it closely and proactively—we will not be passive—and consider the achievements of countries such as Finland, which Rhoda Grant mentioned. We have ambition, but we will work with other people to ensure that things happen.

Rhoda Grant noted that Highland Council had put in a fibre network but that it was difficult to access it for other purposes. We need to ensure that standards are in place for the exploitation of private networks—even when they are licensed—to create the technological solutions to allow other people to access the available services.

Paul Wheelhouse discussed the difficulties in the Borders, which a number of members have described. The Government's major investment in the development of the Borders railway will help one aspect of communication in that rural area, but electronic communications make a real difference.

For small businesses that deliver goods to market via carriers, we must look at getting the carriers to pick up in rural areas, as we have had significant difficulty in getting them to drop down. Paul Wheelhouse referred to business parks as a potential source of connectivity for many businesses and for people who work in rural areas, and I am sure that that is the case.

George Adam spoke about Sandra Webster's two autistic sons and about social integration, and there is something very important in that. It is a fact that people in rural areas are more isolated but, increasingly, the existence of communication technologies can shrink that distance. As families have moved all over the world, communication has become an important part of keeping them together, and it is the same as families move throughout Scotland, so George Adam is right to highlight that.

Jim Hume and other members talked about telehealth. It is difficult on a snowy night to get a doctor, a nurse or a midwife to a particular location, but if a video camera can be used via Skype or other services to help or provide advice to someone, that is a real life saver. It is important that we focus on that as one of the many benefits that we can deliver.

Rob Gibson mentioned that, although there are more than 1,000 BT exchanges in Scotland, some people are paying for 8 megabits per second and getting only half a megabit per second.

The Presiding Officer (Tricia Marwick): I ask the minister to begin to wind up now.

Stewart Stevenson: Rob Gibson is correct to say that there is huge variability in speed, and that we need transparency in what is paid for and what is delivered. That is very important indeed.

Joan McAlpine reminded us that it was only in 1985 that Vodafone permitted the first mobile call. Things are going to move fast, and we must ensure that we support the potential of the outward-looking and dynamic communities that exist in rural Scotland. Our farmers, our fishermen and all the people who live in the country contribute to world-famous industries such as our food and drink industry, and the potential of our wave and wind power is vast.

However, there is more potential in rural Scotland that can be realised through the delivery of effective digital communications. It is this Government's ambition and determination that we will do that, by working with the UK Government and private companies, but most of all by working with those who live and work in our rural areas.

Finance (No 3) Bill

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-00444, in the name of Richard Lochhead, on the Finance (No 3) Bill. I call on Richard Lochhead to move the motion.

Motion moved,

That the Parliament agrees that provisions of the Finance (No.3) Bill 2011, introduced in the House of Commons on 31 March 2011, in relation to Scottish agricultural levies and local taxes and relating to the transposition of Directive 2010/24/EU on mutual assistance for the recovery of claims relating to taxes, duties and other measures, so far as these matters fall within the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.—[*Richard Lochhead.*]

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

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are seven questions to be put as a result of today's business.

The first question is, that amendment S4M-00447.2, in the name of Johann Lamont, which seeks to amend motion S4M-00447, in the name of Kenny MacAskill, on the role of the Supreme Court in Scots criminal law, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 43, Against 63, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The next question is, that amendment S4M-00447.1, in the name of John Lamont, which seeks to amend motion S4M-00447, in the name of Kenny MacAskill, on the

role of the Supreme Court in Scots criminal law, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)

Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 43, Against 63, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S4M-00447, in the name of Kenny MacAskill, on the role of the Supreme Court in Scots criminal law, be agreed to.

Motion agreed to,

That the Parliament welcomes the interim report of the independent specialist group led by Lord McCluskey; believes that it provides a constructive and well-informed basis for further detailed consideration of the role of the UK Supreme Court in Scots criminal law, and looks forward to receiving the further advice and final report of the group in autumn 2011.

The Presiding Officer: The next question is, that amendment S4M-00448.2, in the name of Elaine Murray, which seeks to amend motion

S4M-00448, in the name of Richard Lochhead, on rural connectivity, be agreed to.

Amendment agreed to.

The Presiding Officer: The next question is, that amendment S4M-00448.1, in the name of Alex Johnstone, which seeks to amend motion S4M-00448, in the name of Richard Lochhead, on rural connectivity, as amended, be agreed to.

Amendment agreed to.

The Presiding Officer: The next question is, that motion S4M-00448, in the name of Richard Lochhead, on rural connectivity, as amended, be agreed to.

Motion, as amended, agreed to,

That the Parliament welcomes the Scottish Government's wish to see a rural Scotland that is outward looking and dynamic with a diverse economy and active communities; welcomes the aspiration expressed in *Scotland's Digital Future: A Strategy for Scotland* that next generation broadband will be available to all by 2020; notes however that market forces alone will not deliver next generation broadband and mobile phone access to much of rural and suburban Scotland and that without public sector involvement the digital gap will widen, and therefore urges the Scottish Government to develop its strategy for investment in the necessary infrastructure throughout Scotland as a matter of priority; further welcomes the UK Government's commitment to implement superfast broadband across the whole of the United Kingdom, and calls on Scottish and UK ministers to work together to achieve the best possible coverage for rural Scotland.

The Presiding Officer: The final question is, that motion S4M-00444, in the name of Richard Lochhead, on the Finance (No 3) Bill, which is United Kingdom legislation, be agreed to.

Motion agreed to,

That the Parliament agrees that provisions of the Finance (No.3) Bill 2011, introduced in the House of Commons on 31 March 2011, in relation to Scottish agricultural levies and local taxes and relating to the transposition of Directive 2010/24/EU on mutual assistance for the recovery of claims relating to taxes, duties and other measures, so far as these matters fall within the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

The Presiding Officer: Members will of course know that this is the final day of business before recess. I hope that all members manage to get a break over the summer and come back fully refreshed.

Meeting closed at 17:05.

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e-format first available
ISBN 978-0-85758-705-3

Revised e-format available
ISBN 978-0-85758-720-6