



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 27 October 2011

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

Raising Attainment and Ambition (Young People)

The Presiding Officer (Tricia Marwick): Good morning. I remind members to switch off all mobile phones and electronic devices.

The first item of business is a debate on motion S4M-01134, in the name of Angela Constance, on raising attainment and ambition for all Scotland's young people.

09:15

The Minister for Children and Young People (Angela Constance): I am delighted to open this morning's debate. Apart from allowing me to outline the Government's ambitions for all of our children and young people, it also gives me the opportunity to share a debate with Alasdair Allan for the first time in 20 years. I suppose that it is also the first time that the Cabinet Secretary for Education and Lifelong Learning has let the two junior education ministers out to play.

The two core and inextricably linked aims of the education team in this term of government are to raise attainment and improve the life chances of Scotland's children. At the heart of everything we do and of all our aspirations for our children is to ensure that we have happy healthy bairns who reach their full potential. The guiding principle for us all as parliamentarians in making decisions and expressing views should be that if something is not good enough for our own sons and daughters, it is not good enough for any child or young person growing up in Scotland. Educational attainment is the passport to social, cultural and economic prosperity and we are absolutely focused on the child's needs throughout their learning journey from the early years to young adulthood.

I point out from the outset that in seeking to raise educational attainment we do not have a doom-and-gloom agenda. We have strengths and successes to build on. That said, I reassure the chamber that there is no room for complacency and when it comes to improving the life chances of our looked-after children I will not beat about the bush: the report card for all corporate parents at all levels of local and national Government says, "Can and must do better." We also need to focus attention on reducing the gap between the lowest and highest attainers in education.

Although we can celebrate the fact that our education system performs well internationally; that we have excellence in higher education; that our 15-year-olds perform above the Organisation for Economic Co-operation and Development average for reading and science; that we have record levels of young people in further and higher education; that statistics and qualifications show that our young people are performing better than at any point in the past; and that—this is for Mr Macintosh, in particular—class sizes are at a record low, I reassert that there is still a job of work to do. That is why, among other things, the cabinet secretary Michael Russell has brought together a small group of headteachers with an excellent personal track record of raising attainment in their own schools across a range of circumstances. The group's members will distil from their own real-life work experience what works to help our young citizens to be high attainers. It is crucial that we understand and share innovative practice and the group's work will be concluded speedily.

I will also discuss the specific issue of looked-after children with the attainment group. Although I know that next week there will be a debate on permanence planning for looked-after children and that the Education and Culture Committee is holding a very welcome inquiry into the issue, I flag up to Parliament the learning hub. That is a strand of work that is being undertaken by the looked-after children strategic implementation group, which will oversee a variety of activities to boost and drive improvements in educational attainment.

Over and above our specific measures on attainment, how will we achieve systematic and radical change for our children, our country and our communities? For me, the starting point is the early years—the foundation years. When it comes to babies and very young children, including pre-birth, we will reap what we sow. If we are serious about giving our children the best start in life, we need to be serious about the fundamental shift both in philosophy and of resources into the early years, early intervention and preventative spend.

Apart from independence, preventative spend is the most radical and exciting agenda that the Government is pursuing. It cuts across all arms of Government, both local and national, and across universal and targeted services. This Scottish National Party Government has been brave and bold enough to grasp the agenda, despite the financial constraints that we are all living with.

I am currently finalising arrangements with local government and health partners in establishing the early years task force that will oversee a joint change fund of more than £270 million. That will be used to transform the lives of children and

communities and to begin to unlock the potential of our universal services, whether in education or health, in prevention as opposed to cure, implementing that transformational change at a local level as envisaged by the early years framework.

Our wider programme of reform, including our legislative ambitions, is central to improving attainment. In essence, our future children's services bill is about how to get all agencies to work together better in making smarter and quicker decisions for all our children.

I was struck by recent comments by Professor Buchanan, director of the centre for research into parenting and children at the University of Oxford, when she said that the job of universal services is to grow brains. I could not agree more. GIRFEC—getting it right for every child—and attainment go hand in hand, and improving attainment cannot be divorced from ensuring that children are safe, loved, happy, healthy, included and nurtured, have opportunities to play and are valued and respected.

There is a strong synergy between GIRFEC, the curriculum for excellence and the personalisation of services.

Liam McArthur (Orkney Islands) (LD): The minister will be well aware that there is cross-party support for what is set out in GIRFEC. She may also be aware that the Education and Culture Committee has received evidence on GIRFEC to say that, although the objectives are well established, the way in which it is working across local authority areas leaves something to be desired. Will she touch on those concerns in her remaining remarks?

Angela Constance: Liam McArthur is right that, despite the fact that Scotland is a small country, the implementation of the early years framework and GIRFEC is uneven. That is simply not acceptable. Although this Government is not about micromanaging health boards and local authorities, it is unacceptable that there are uneven outcomes and that children have different prospects depending on the part of the country in which they live. That is why we have a commitment to a children's services bill and the focus on preventative spend, which goes hand in hand with GIRFEC and the early years framework.

I stress that working with and supporting parents is imperative. Parents are the first teachers and the biggest single influence on a child's educational aspirations and attainment. Continuing our play, talk, read campaign is crucial, as will be the development of a national parenting strategy and ensuring good parental involvement and engagement in the curriculum for excellence.

Curriculum for excellence is being successfully embedded and implemented. It is the biggest educational reform in a generation, and its focus on deep and connected learning and continuous improvement will equip our children and young people with the skills for life, learning and work. New qualifications are being developed on time, and a programme is in place to support the workforce and leadership.

The McCormac and Donaldson reviews have highlighted that the quality of teaching is central to improved attainment, and the development of a reflective teaching workforce that is ready to innovate and share successful practice is key. I want also to stress the contribution of other professionals to the curriculum for excellence, in particular the community learning and development workforce, which will make a valuable contribution to the post-16 agenda.

Sixteen to 19-year-olds are an absolute priority for this Government. As the First Minister said, no young person should go through school only to become an unemployment statistic at the age of 16, and we will not allow that to happen. That is why, through our opportunities for all initiative, all 16 to 19-year-olds who are not in work will be offered a learning opportunity or a training place. We recognise that staying in learning beyond the age of 16 is a young person's best means of improving their long-term job prospects, and our policies are working to support that.

We are driving long-term, systematic improvement through curriculum for excellence, 16-plus learning choices and the transition planning model for the senior phase of curriculum for excellence. That will ensure that all our young people have the necessary personal, financial and career advice, guidance and support to access and sustain an appropriate place in post-16 learning. Our post-16 education reform programme of those education and learning sectors aims to better meet the needs of individuals and employers in changing labour markets, whether through improving the learning journey or ensuring appropriate and sufficient provision.

Ken Macintosh (Eastwood) (Lab): I cannot disagree with the intent behind the minister's words, but I question the actions that are being taken and the implementation. With regard to post-16 reform, how will the 20 per cent cuts to college budgets—following last year's 10.5 per cent cuts—help to widen access?

Angela Constance: As Mr Macintosh well knows, this Government, through its work with the Scottish Further and Higher Education Funding Council, will ensure that the £2 billion that we continue to spend on higher and further education and on the skills agenda will meet this

Government's priorities. Mr Macintosh is also well aware that this Government has given an assurance on student places.

There is much that we can do in the college sector. We want to equip the college sector to ensure that it is in a stronger position in this difficult financial climate. The college sector has not had any substantial change in terms of how it operates since Margaret Thatcher was in government. What I detect, from my meetings with and exposure to the college sector, is that there is a desire for reform and change and putting students very much at the heart of the learning journey.

Ken Macintosh: In the middle of that answer, the minister said that the Government is still committed to maintaining student numbers. Could she further clarify that point? Maintaining student numbers was a manifesto commitment. However, her colleague, the Cabinet Secretary for Education and Lifelong Learning, refused to repeat that commitment in the Education and Culture Committee the other day and said instead that the Government would simply meet demand. Meeting demand is not the same as maintaining numbers. Which is it?

Angela Constance: We are meeting our commitments and we will be doing the best by children and young people, starting in the early years and going right through to post-16 education. There is a job of work to do in the college sector. We will be listening carefully to students and to those who work in the college sector. There is a desire to change things; there is no desire for the status quo in the college sector.

The really interesting thing is that, over our two terms in government, we will have invested more than £4 billion in the funding of further education, which is £1 billion more than was invested during the two previous Labour-Liberal Democrat Administrations, despite the fact that their budget went up and ours has been slashed by £3 billion. We should celebrate that.

I am aware that time is growing short. I want to emphasise that children get only one childhood and we therefore have only one chance to get it right. With the golden threads of our work in the early years, the curriculum for excellence and the post-16 agenda, we will do all that we can to improve attainment and the life chances of all of Scotland's children so that we can get it right for every child in every community.

I move,

That the Parliament supports the Scottish Government placing rich attainment at the heart of its approach to enable all Scotland's young people to improve their life chances and fulfil their ambitions; agrees that for a young child this means giving them the best start so that their

cognitive, social and emotional skills enable them to successfully enter and progress in school, and agrees that for a young person this means recognising and affirming successful learning and giving them a passport to future opportunities and that for Scotland it will deliver improved competitiveness and increased opportunity for all.

09:30

Ken Macintosh (Eastwood) (Lab): I am pleased to have the opportunity to debate attainment and the achievements of our young people. This is the first chance in the current session of Parliament to discuss what is happening in our schools and the direction of the Government's education policy. At any time, policies will be under development, but I am slightly alarmed that we seem to be moving from one policy to another without acknowledging the change or having achieved any of the goals. Specifically, we are moving from an emphasis on lower class sizes to one on teacher quality. I seek clarity from the ministerial team and a sense of the direction that is being taken to achieve the attainment levels that we all want.

We all agree that attainment levels are not high enough. I have no wish to play the blame game, and it is only fair to recognise the attempts of both Administrations. The aim of raising attainment was the key driver behind the reforms that Labour put in place during our time in office. It was behind the investment in the teaching workforce and school refurbishment and rebuilding, and it was behind the schools of ambition programme and our expansion of further and higher education. The motivation behind virtually everything that we did was to try to get more young people, particularly those from deprived and non-traditional backgrounds, to make the most of their abilities. In recent years, the work of Glasgow City Council in establishing nurture groups has been recognised as making a terrific contribution to tackling the lack of opportunity and underachievement.

We talk about the tradition of the democratic intellect in Scotland—the idea that the laird's son has always sat down with the ploughboy—and we pride ourselves that we Scots have an altruistic streak that is slightly more prominent than in some other countries. However, let us not hide the fact that, even in Scotland, education has long been of greater benefit to those with greater economic means.

Whatever the attempts and difficulties that we faced in the past, I am more concerned about what we are doing now. In every year in which we were in office, slowly but surely, we reduced class sizes across the estate. The Scottish National Party was elected on a specific commitment to reduce to 18 the class sizes in primaries 1 to 3. I am afraid to say that there is no point in pretending that the Government came close. That

flagship policy of the previous SNP Administration was based on the argument that the way to improve results and attainment is to invest in the early years. The argument is still used—the minister used it this morning when she talked about the importance of early intervention and preventative spend. We agree on that agenda, but the new policy on class sizes that was announced in this year's budget is simply to keep teacher numbers in line with pupil numbers. In other words, no progress can be made in reducing class sizes or, if it is, it can be made only at the expense of rising class sizes in the upper years.

I understand the financial pressures that the Government faces, but education policies should not be based on funding decisions alone. The Government is either committed to reducing class sizes because it is the right thing to do, or it is not. Smaller class sizes in P1 to P3 either make a difference, or they do not. Most people who are listening to the ministers would believe that the Government has abandoned its policy on class sizes in favour of an emphasis on teacher quality. I do not necessarily disagree with that, but we should have formal recognition that that is the case. Education authorities, teachers and parents deserve to know what is happening in our schools and what the education minister expects.

Unfortunately, the rather half-hearted commitment to reducing class sizes has left a chaotic legacy. We have a legal class-size maximum of 25 in P1. We have guidance, which I believe is still in place, that class sizes should be reduced to 18 in P1 to P3. Most recently, an agreement was forced through—I repeat that it was forced through, otherwise local authorities would have had a less generous funding settlement—under which only 20 per cent of classes in P1 to P3 should be of 18. What a mess. In many schools, that has meant that, as a pupil progresses up the school, he or she is likely to go from a small class to a large one, to a composite class and then back again. It cannot be a good experience for any child to lose their peer group and to go up and down in that way.

The education policy reflects decisions that have been taken to cover political embarrassment. The only reason why we have the 20 per cent target was to try to give the SNP cover as it went into the recent election, but there is no logic to the policy whatever. The figure of 18 was pretty arbitrary in the first place and the 20 per cent target is similarly arbitrary. The whole adds up to a picture of confusion.

On top of those issues we have the success of the curriculum for excellence in primary schools, but there are huge question marks over its implementation in secondary schools. In particular, there are outstanding concerns over the transition

from the curriculum for excellence to the examinable curriculum. How many times do we have to raise that issue in Parliament before we get some answers? I remind the minister and the chamber that one of the reasons for our introducing the curriculum for excellence was that, although those at the top do well—and for them exams can be quite a motivating factor—a huge group of young people are silently disengaged and a similarly huge group at the bottom of the system has very little prospect of getting any exam results at all. Those young people are at the centre of our discussion this morning and as they progress through secondary school, they can become increasingly disenchanted and quite difficult for schools to manage. In fact, I am slightly surprised that the debate centres so much on the term “attainment”, because I thought that we were moving away from solely assessing attainment to talk of broader achievement and fulfilment. Those are the terms of the curriculum for excellence.

Teaching and learning have to be about progression, but there is very little progression among that group of young people. If we are to improve attainment or achievement and make the most of curriculum for excellence, it is essential that we get its implementation right.

I have argued previously that, in my estimation, the McCrone agreement was one of the most important achievements of the last Labour Government. There are others who believe that we did not get as much return for our investment as we should have done, but we raised morale in the teaching profession, we reaffirmed our faith in teaching as a profession, we put an end to industrial discontent, and we reversed the withdrawal of good will for supporting out-of-hours working by teachers and far more. The net effect transformed our schools. The atmosphere in the staffroom and the classroom changed because we made it clear that we valued teachers.

If we are now making the argument that the quality of teachers is essential to improving attainment, the cabinet secretary and ministers have a duty to be a bit clearer about what the post-McCrone or post-McCormac settlement will look like. During the previous parliamentary session, all too often we heard the cabinet secretary saying that decisions are for local authorities and that local government is the employer. I absolutely accept that we have to work in partnership with the local authorities and that it is not for us to dictate to them, but the Government should not use that as an excuse to abdicate responsibility; it should set clear guidance about what is expected.

There is simmering discontent in our staffrooms, primarily because of pension changes but also because of anxiety over McCormac and the

demands for teachers to become a more flexible workforce. Does the minister agree that supply teachers should be paid the cheapest rate possible rather than one befitting their experience? Will she oversee the end of the chartered teacher programme? That was a huge investment and a similarly huge commitment for many teaching staff. Would it not be more sensible to make the chartered system work rather than get rid of it altogether?

Perhaps most important, we are talking about raising attainment but time and again we are reminded that the background from which a pupil comes is the key determinant of how well they will do at school. We have this fantastically equitable school system that is recognised in all sorts of reports, from the OECD to this week's *Sunday Herald*. Too often, however, our system fails to overcome the disadvantage of a home that has no books, perhaps no working parent, and perhaps no ambition for further or higher education.

Even when children and young people are encouraged to make the most of themselves, children from deprived communities are most likely to go to college, not university, and yet we are now reducing colleges' funding by a further 20 per cent. The cabinet secretary has accepted that that will not help to widen access so why is the SNP Government doing it? If we wish to raise attainment, why have the minister and his Government decided to prioritise the old universities—institutions that are dominated by the already high-achieving middle classes? The post-93 institutions are being starved of resources and colleges are actually being cut.

Angela Constance: I remind Mr Macintosh that this Government has invested £4 million in activity agreements that have reached out to children who are furthest away from education and employment. This Government has invested in more than 300,000 training opportunities. That hardly sounds like a Government that is a bastion of vested interests in higher education. Should the member not just give up the ghost and welcome the fact that the Government has retained a higher education system that is based on the ability to learn and not the ability to pay?

The Presiding Officer: Mr Macintosh, you can be assured that, following that very lengthy intervention, you will get additional time.

Ken Macintosh: Thank you very much.

My argument was not that the Government is in hock to vested interests; it was that it is taking a rather elitist approach to education. That is genuinely my worry. We are talking about attainment, but the decisions that the Government is taking—

Angela Constance: What is elitist about our leadership on and investment in the early years? We are the first Government to really grasp the nettle of preventative spend, which will radically change this country.

Ken Macintosh: If the Government were committed to early years intervention, we would be with it entirely, but the trouble is that the talk is there, but the £50 million change fund over four years will not even begin to compensate for the cuts to local authorities, which are the main providers of early years intervention. [*Interruption.*]

The Presiding Officer: Can we hear the member, please?

Ken Macintosh: Glasgow City Council, which has been trying for years to invest in nurture groups, is continually criticised by the Government for the work that it does. [*Interruption.*] The Government criticises Glasgow City Council constantly, and it is taking away far more from local authorities, which are the key providers of support in this area, than it is putting in. The idea that the flimsy £4 million in activity agreements somehow makes up for what the Government is robbing from elsewhere—[*Interruption.*] The minister constantly boasts about the Government's promotion of education maintenance allowances, unlike the Government down south, but the SNP Administration has cut EMAs drastically. There is no more of the retention money in EMAs.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Will the member give way?

The Presiding Officer: The member is over his time.

Ken Macintosh: The basic EMA is still there, but all the additional money to retain people has gone.

Schools of ambition have gone, colleges' funding has been cut, EMAs have been cut back and local authorities—the main providers—have been hammered. I am not sure that the language, which we support, is backed up by the Government's actions. I would like to hear from the minister, when he sums up, what other actions he intends to take.

I move amendment S4M-01134.3, to leave out from "supports" to end and insert:

"believes that more needs to be done to raise attainment and achievement levels among young people in Scotland; remains acutely concerned that even Scotland's equitable school system fails to overcome socioeconomic deprivation for too many Scots; recognises the success of various initiatives, such as Glasgow's approach in supporting nurture groups; believes that the Parliament can reach agreement on the importance of early intervention and tackling illiteracy, but, given the abandonment of the SNP government's flagship policy on class sizes, calls for clarity

on which Scottish Government policies will now be the key drivers in raising attainment and opening up opportunity for all."

09:42

Liz Smith (Mid Scotland and Fife) (Con): I will refocus attention on the subject of the debate. I do not think that there is a more important subject for debate than how we should raise attainment for pupils in Scotland.

I do not doubt that good things are happening, as the minister said. Scotland is a leading light when it comes to teacher training, we are leading the way when it comes to the process of pupil self-evaluation and there are imaginative developments in the early years, as well as signs of some improvements in attainment levels, so I am not prepared to share the view of some who write on educational matters that our schools are always seen to be struggling; neither am I prepared to accept, however, some of the Government's extraordinary rhetoric when it comes to the reality of certain trends in Scottish education.

How extraordinary it is that, on a subject as important as attainment, we have such a benign Government motion that does not flag up the key policy directions. A wealth of excellent work has been done in the recent Donaldson, McCormac and Cameron reviews that has been given only passing mention this morning. We should be focusing all our attention on two important recommendations from those reports. First, we must ensure that we have the best teachers and headteachers in all our schools. Secondly, we must ensure that we can raise the motivation and aspiration of all our pupils from the youngest age.

As McCormac said in his report, we need to do far more to tackle some of the disturbing evidence from Her Majesty's Inspectorate of Education and from other countries, which makes for such sober reading. The fact that just over half of Scottish school leavers finish school without receiving a higher is nothing to be proud of, nor are the statistics on the extent of the attainment gaps that exist between geographical areas and socioeconomic groups, which were so brutally exposed in the *Sunday Herald* at the weekend.

I am very clear indeed that the evidence before us from those reports suggests that raising attainment is not all about money. If that were the case, we would be well ahead, because since 1999 we have doubled the amount of spending on schools, yet we have not seen comparable changes in attainment and, sadly, there has been little improvement in our performance according to international measurements. Although I believe that comparisons with other countries can be useful—and, in some cases, extremely useful—

the most important measurement is often how much better we are doing against ourselves, and that is why we must be prepared to look at much more than just the efficiency of public spending on our schools.

I suggest that a combination of five things, if delivered together, will raise attainment levels among pupils—especially those in our most deprived communities who, for me, must be our priority. It is simply not acceptable to say that weaker local economies, or more disadvantaged communities, are necessarily an excuse for poor performance. Of course the challenge is greater—no one would deny that—but so, too, is the prize of being able to deliver better educational outcomes for those pupils.

Let us not be shy about telling the truth and being up front about what needs to be done. First, let us consider carefully not only the broad principles of the combined reports of Donaldson, Cameron and McCormac, but some of the small print too—because that is where some of the most important comments lie. They make it clear that, as well as increasing professional support for teachers, leadership in schools is crucial. I am talking not simply about the usual traditional concept of leadership, which most people think lies with the headteacher, but about leadership in our classrooms and among our pupils. The issue is competence—and confidence in that competence.

Let us not dismiss the concerns raised by Graham Donaldson when he said that too many young teachers have issues with literacy and numeracy, which has a major impact on their teaching abilities—even if many of them have many of the other talents that can help to make them outstanding teachers. The problem cannot be ignored, nor can the issue of literacy and numeracy at large, because it is nothing short of a disgrace that one in six pupils leaves school without being functionally literate. Although I think that there is genuine intent to tackle the problem, I still do not believe that we are doing enough to ensure that the best practice of teaching traditional methods, and testing accordingly, is more widespread—methods that in local authorities such as West Dunbartonshire and Clackmannanshire have produced better results, for weaker pupils just as much as for more able pupils.

Secondly, it is becoming patently clear that comprehensive education beyond S2 has failed. The one-size-fits-all approach is not working. It does not provide the flexibility and diversity that we need. Our system is too centralised and too overregulated. We need greater flexibility so that we can do much more to expand the vocational

and technical training that this country so desperately needs.

There are more lessons to be learned from David Cameron's review of devolved school management, particularly as he binds together the underlying philosophy of curriculum for excellence with the need to allow heads to have greater control over the provision that they make for their pupils. He points out that the curriculum for excellence is not compatible with the existing structure of school management. How much I agree with him on that point.

Claudia Beamish (South Scotland) (Lab): As a former teacher, I find Liz Smith's arguments about the inability of the present management structure to connect well with curriculum for excellence extraordinary. Perhaps she would explain her arguments further.

Liz Smith: David Cameron put the argument across strongly when the Education and Culture Committee took evidence. The curriculum for excellence allows individual schools to have much more control over how they organise their subjects and over how they deliver education to pupils. Logically, that must allow us to devolve more management to schools. I entirely agree with that principle.

I will finish by combining some comments from the Donaldson report and the programmes of Teach First, which have worked so successfully in England, America, Australia and Germany, especially when it comes to helping pupils from poorer backgrounds and raising their aspirations. Donaldson makes it very clear indeed that he thinks that the teaching profession will have to be much more adaptable than ever before, and that it is time to attract a greater diversity of backgrounds into the teaching profession.

I do not take issue with the Scottish Government's motion, except in that it is far too bland about the key points that will improve attainment.

I move amendment S4M-01134.1, to insert at end:

“, and believes that there are important recommendations contained in the recent Donaldson, McCormac and Cameron reports, which, when implemented, will raise standards in Scotland's schools, deliver a school system that is much more responsive to the demands of pupils, parents and teachers and will provide greater incentives to turn around failing schools.”

09:49

Paul Wheelhouse (South Scotland) (SNP): Although members around the chamber might disagree about the means by which to achieve this, we as parliamentarians are all motivated by our strong desire to ensure that our beloved

Scotland can be the best country that it possibly can be and a land of opportunity for all who live here. It should shame us all as politicians that in 21st century Scotland far too many people still have little opportunity to achieve their potential—we share that characteristic with other parts of these isles. Often those individuals are dismissed as failures when, in truth, it is previous generations of politicians who have failed them.

For far too many young people and their parents, life is a struggle and there is little real hope on the horizon to spark and fuel their ambition. Sadly, our young people can have their life outcomes determined at birth by where they live rather than by their own inherent talents and potential. As Save the Children has stated, breaking the link between growing up in poverty and poor educational outcomes is vital to achieving the goal of raising attainment and ambition for all our young people.

If we as a Parliament are serious about doing that, I invite everyone in the chamber to welcome and support the Scottish Government's initiatives in relation to the Scottish futures fund. In particular, I welcome two elements of the fund. First, the youth talent fund will encourage the very best of talent in all parts of the country. It represents an investment in young people of £50 million, which will help to widen opportunities in the arts and creative apprenticeship programmes for the young, where job opportunities in their area do not match their generation's enormous talent and ability. Secondly, the sure start fund, which will also receive £50 million, has at its heart a determination to transform the life chances of thousands of newborn Scots. The SFF therefore includes commitments to provide financial support for young people right through from birth to adulthood.

The Scottish Government has signalled a decisive shift towards preventative spending measures, which are about investing now to save money and reduce negative social outcomes later. Those measures will be of particular benefit to Scotland's young people. In giving evidence to the Finance Committee yesterday, the Royal Society of Edinburgh and the Centre for Public Policy for Regions supported that shift and praised the Government for that brave decision. That is a view shared by the Labour MP for Nottingham North, Graham Allen MP, who stated in his evidence to the Finance Committee:

“As for where the balance lies, I do not wish to flatter the committee, but Scotland has achieved a much better balance than England.”—[*Official Report, Finance Committee*, 28 September 2011; c 105.]

I believe that Parliament should echo those sentiments and I welcome the Scottish Government's wider investments in and

commitments to young people. Some have been mentioned already: the spending review will fund a record number of 125,000 modern apprenticeships over the next five years; Angela Constance has mentioned the activity agreements; and the Government's "Putting Learners at the Centre" paper, published in September, reaffirms the Scottish National Party's commitment to young people. We have a long-standing commitment to do everything we can to lessen the risk and harm of unemployment for young people.

I know all colleagues across the chamber will also recognise the importance of Scotland's colleges in delivering the training and skills to help our young people fulfil their ambition. Clearly, in these difficult times, the Scottish Government has been forced to make some difficult decisions, which I acknowledge will be a challenge for the sector. However, the college sector has always been a can-do sector and I hope that by enhancing existing interregional collaboration the colleges will rise to that challenge.

In light of Ken Macintosh's animated intervention earlier on college sector funding, I want to expand on a point I made in the Finance Committee yesterday, when we heard from representatives of the CPPR and the RSE. It is true that over the period from 2011-12 to 2014-15, there will be a 13.6 per cent decrease in college sector funding in cash terms in Scotland—that is, a reduction from £545 million to £471 million—but the comparable decrease in funding for the United Kingdom Government's spending in England's college sector is from £4.3 billion to £3.2 billion, or a fall of 25 per cent in cash terms, even before allowing for the impact of inflation. In other words, the fall in spending on the college sector in England is almost double that in Scotland, despite an implied 25 per cent Barnett consequential.

Ken Macintosh: Does Mr Wheelhouse simply judge the success or failure of Scottish policies on whether they are better than English policies?

Paul Wheelhouse: No, indeed not. This debate has been characterised by reference to Scottish Government cuts and people need to recognise that, within a tight financial settlement, the Scottish Government has done more than comparable authorities in the British isles to protect spending on the college sector.

The Scottish Government has also made and fulfilled a commitment to plug the gap in university budgets left by the effective privatisation of England's universities and the introduction of up to £9,000-a-year tuition fees. It is essential that young people are supported financially, whether they are in education or training, so that they can help the Scottish economy to flourish in years to come.

In contrast with the UK Government, the Scottish Government has committed to retaining the education maintenance allowance, as we heard earlier, so that young people do not leave education prematurely. We are also able to keep university tuition fees free for all Scotland-domiciled students and have proposed a minimum student income of £7000 per annum. Indeed, the latter proposal and the wider post-16 reforms have been warmly welcomed by Robin Parker, the NUS Scotland president, who said:

"Students across Scotland will be delighted that the Scottish Government has placed such a clear priority on improving student support and making access to education fairer."

Given the challenging financial times for the Scottish Government's budget as a result of reductions of £1.3 billion in Scotland's block grant, we should recognise that the spending review demonstrates the solidarity of the Scottish Government with—I dare say—the wider SNP and Scotland's students. Would we have wished to be able to provide even greater support to both colleges and universities? Undoubtedly, but the Scottish Government has delivered a better settlement than has been offered in England and we should recognise that.

09:55

Jenny Marra (North East Scotland) (Lab): A report that was published in the *Sunday Herald* last weekend, which has been referred to many times already in the debate, showed just how clear the link between attainment and poverty remains in the Scottish education system today. There is little doubt that inequality still mires our education system. From the early years through to university level and beyond, the socioeconomic status of our children is much more likely to determine their ambition and attainment at school, college, university and beyond. To propose that the situation is otherwise, as the motion unfortunately does in glossing over that important issue, is really to ignore the facts.

The gap in attainment between school leavers from disadvantaged backgrounds and their more affluent peers cannot be overemphasised. The attainment of school leavers from the most deprived areas of Scotland is a staggering 65 per cent lower than the Scottish average and 137 per cent below that of the richest pupils in Scotland—this is today, in 2011, in our democratic and sophisticated country. Those figures are unacceptable.

Figures published just last week show that some children can be nearly 18 times more likely to attend university than those who live and are educated just seven minutes away. Everyone who

read Paul Hutcheon's report in the *Sunday Herald* would, I think, agree that it made for awful reading.

That postcode lottery is unacceptable and the achievement gap that it creates is worse now than it has ever been in the history of the Scottish Parliament. Indeed, that was brought home to me when I read the *Sunday Herald* article, which talked about many areas in Scotland, not least Glasgow, and highlighted the attainment levels in my home city of Dundee. It pointed out that at one secondary school in Dundee that is not far from where I live, the progression rate on to university has actually dropped since devolution in 1999. That is extremely worrying and I hope that the minister will address it when he sums up.

When college budgets are being slashed—some principals reckon that the spending review cut to college budgets is 40 per cent in real terms—it is difficult to imagine the attainment of those from the poorest backgrounds and their aspiration for further education and training improving any time soon. With one in five leaving school to join the dole queue, we must ask what impact cutting college budgets will have on our poorest children's prospects of developing the essential skills and knowledge to be competitive in the jobs market.

Perhaps that is a rhetorical question because, for many of those students, college represents the first rung on the ladder of upward social mobility. When colleges remain local and well-staffed, with a comprehensive curriculum, students can reach levels of attainment and ambition that will make them more competitive in the jobs market or, indeed, qualify them for university if they were not able to progress to that from school.

With that in mind, the Scottish Government needs to give concrete guarantees that colleges will remain accessible to students from the poorest areas in terms of not just proximity and physical accessibility but resources and student hours, numbers and places. We have pressed the Government on all those topics this week; now it needs to give concrete guarantees on them, as the Minister for Children and Young People suggested, and stay true to what was suggested in the Scottish National Party's manifesto in May. In committee and in the chamber this week, guarantees on those have been undermined and, to my mind, now cease to exist.

Much of the work to overcome the inequalities in our education system must focus on widening access. The Scottish Government must work to reduce barriers at each level of higher education in order to facilitate greater levels of attainment for people from non-traditional educational backgrounds. Its measures must go beyond statutory obligations on university admissions towards raising the ambitions and aspirations of

people from non-traditional educational backgrounds. It must tackle drop-out rates and the reasons why they are so high in some communities and universities in Scotland and why more higher education students in Scotland than their United Kingdom peers drop out. Whether that is done through a package of incentives or a dedicated Government unit for Scottish mobility, more must be done.

I welcome the Government's commitment to putting widening access on the statute book and Labour members look forward to the paper on that legislation and to working with the Government to ensure that we have the most robust widening access policy in Europe.

10:02

George Adam (Paisley) (SNP): First, I apologise for my voice; I have man flu. As all the women in the chamber know, men have difficulty with dealing with a slight cold.

When I came to the chamber, I thought that we would all work together in discussing the important subject of raising attainment and ambition for all Scotland's young people, as we can agree on the matter. Children and how they achieve things in life are important. However, having listened to the Labour Party and Mr Macintosh's initial rant, I see that we cannot seem to agree. There is negativity about the future. How can you be negative when you are talking about education and attainment for all the children of Scotland? How can you not want to achieve that? I know that Mr Macintosh is in a leadership contest. Perhaps he thinks that, although, unfortunately, his UK leader does not know his name, he might make a name for himself by having a go at the SNP.

Mr Macintosh mentioned the funding decisions that have had to be taken on education throughout Scotland. I have heard the Labour Party talking about such decisions in the Renfrewshire Council chamber and the Parliament, but Labour offers nothing. It gives us non-stop negativity and no ideas of how it would solve the issues.

We live in very difficult times. Mr Macintosh talks about small, large and composite classes and children moving through the system. What education departments are you talking about? I do not know of any director of education or any educationist who would allow a primary school child to go through school in that way. What was said was complete and utter nonsense, and you do a great disservice to the professionalism of educationists in our local authorities.

Ken Macintosh: Is Mr Adam guaranteeing that, when a child enters a class of 18 in primary 1, he will stay in a class of 18 throughout his school career?

George Adam: I was talking about your idea that there would be constant change throughout a child's primary school education. That simply will not happen in any school.

The Deputy Presiding Officer (Elaine Smith): Mr Adam, would you address your remarks through the chair, please? Thank you very much.

George Adam: I am sorry, Presiding Officer.

The performance of teachers plays a large part in strengthening education, and it is important that some of the McCormac ideals are considered, particularly in talking about leadership.

This is a difficult debate, and the minister was correct to say that we should consider our own children. I am a parent, as many members are. My child—James is no longer a child; he is 20—is on the autistic spectrum, but he was not diagnosed until later on in his academic life. If we had had the diagnosis earlier, James would have had an easier time in education, which became very difficult for him. I always approach debates such as this one from the perspective of a parent who wants what is best for their child. I agree whole-heartedly with the minister on that.

I offer Mr Macintosh a definition of "attainment". It is the action or fact of achieving a goal towards which one works. That is exactly what we are aiming to do. "Ambition" is defined as a strong desire to do or achieve something, which is also important. If such definitions are not part of the debate, why are we here and what are we discussing?

In the previous session of the Parliament, the minority Government offered much. It increased free nursery provision by 20 per cent, increasing the provision of free nursery education to three and four-year-olds. More important, it provided £10 million to the early years early action fund—I could go on; the list is endless, but time is not.

We must look to the future, and it is unfortunate that the Labour Party says that it does not want to do so. There will be integrated inspection, through Social Care and Social Work Improvement Scotland. The new approach to children's services inspections will be ready by 2012. The Children's Hearings (Scotland) Act 2011 will be implemented by September 2012. The establishment of the early years change fund recognises the effects of early intervention. The development of a parenting strategy is important. How often do we hear individuals—particularly grandparents—say, "I blame the parents"? At the end of the day, it might be a good idea to look at how we can make things better for everyone in the country.

Before I was elected as an MSP, I was a councillor in Renfrewshire Council—I still am—and all I heard was constant negativity about the

council's education department, although it is one of the best in Scotland. Labour constantly attacks but offers nothing in return.

We are living in difficult economic times but we must look to the future and be ambitious, not only for the current generation but for the generations that come after it. Our ambition should be never ending. We should ensure that all young Scots have the opportunity to develop and thrive in a dynamic new Scotland.

10:07

Kezia Dugdale (Lothian) (Lab): I am afraid that the tone of the debate appears to be sliding. No member need worry about making cheap political points when they follow George Adam—we witnessed a wee bit of a demise there.

Before he left the chamber, the cabinet secretary accused Ken Macintosh of making flimsy remarks about activity agreements. Here is the truth. The SNP's budget for the pilot on activity agreements was £12 million across 10 local authorities, but the budget this year for rolling out the approach across 32 local authorities is £4 million. In the pilot, the figure was £1.2 million per local authority, but when the approach is rolled out there will be a measly £125,000 per local authority—one tenth of the money that was available in the pilot. How can you possibly apply the lessons from your evaluation of the pilot throughout Scotland and expect the same results? That is why Labour is so seriously concerned about your commitment to all 16 to 19-year-olds.

The Deputy Presiding Officer: Ms Dugdale, please address your remarks through the chair.

Kezia Dugdale: I am sorry, Presiding Officer. I get emotional about the issues; they are so important.

In its report in March, Skills Development Scotland said that the City of Edinburgh Council is the local authority with the worst record in Scotland on positive destinations for school leavers. I will share some of the figures with members. One in six children in Edinburgh leaves school without a positive destination, so is not in education, employment or training. In five schools in Edinburgh the figure is as high as one in four. Last year, 538 kids in Edinburgh had no education or employment to go to.

If members are not bored with the detail, I will go on to tell them that 61 per cent of those 538 kids were boys, 48 per cent had come from the most deprived parts of the city and 13 per cent were care leavers or currently in care.

It is interesting that 48 per cent of those 538 kids had good qualifications. I have been looking at the reasons behind that since I was elected and

I have met dozens of organisations and groups in an attempt to get to the bottom of why the situation in Edinburgh is so bad. I have met every organisation from the Federation of Small Businesses to Rathbone and have learned that there are a multitude of reasons why that is the case. I will try to put those into two broad groups.

First, some kids cannot or will not go to university with the qualifications that they have because of the situation that they find themselves in—the places are not there or they do not have the money to go to university. There is such significant displacement in the jobs market that they are applying for jobs that graduates are having to apply for because positions do not exist elsewhere. What those people need is a strong economy that is full of job creation and a budget that protects college and university places. It is my view and the Labour Party's view that the Government is failing in that respect.

Mark McDonald (North East Scotland) (SNP):

Does the member not welcome the opportunities for all programme that the Government is introducing, which will ensure that people who leave school without a positive destination are given a guaranteed offer of either a training place or some form of employment?

Kezia Dugdale: I absolutely welcome that commitment, which was taken directly from Labour's manifesto. My issue with it is the mixture of measures and how they are delivered. In my experience, activity agreements can be for a commitment of as little as two hours a week. I will go on to talk about a specific example that shows how we might fail our country's youngsters if we apply the same policy to all those people who currently have no positive destination.

The second group that I want to talk about are school leavers who need more support, whose backgrounds are more troubled and whose pathway in life has been an issue of concern from the moment that they entered school. I would like to see more support for those kids, and I am pleased that the City of Edinburgh Council has this year allocated money to every secondary school to allow each school to find the employability training that it deems most appropriate for its kids. I commend Sue Bruce, the chief executive of the council, for taking such a strong lead on the issue. I only wish that the elected politicians around her had cared as much about it, as it is because of their failings that she has been left to pick up the pieces.

Just before the recess, I had the enjoyable experience of presenting awards to people who had participated in the Edinburgh challenge project, a joint initiative between Rathbone and Action for Children in Edinburgh that was about the redevelopment of King George V park, in

Malcolm Chisholm's constituency. Fourteen kids out of the 538 that I have mentioned were given six weeks to redevelop a park that they used to trash—they were graffiti-ing, smoking and drinking there. Through a six-week programme that was given a little bit of money, they rebuilt the park. The experience was amazing and taught them a huge amount about the working environment that they seek to be part of. I met a young guy called Lloyd, who, following his involvement in the six-week programme, moved to a work placement that is half paid for by Rathbone and half paid for by his local employer. Lloyd just wants a job. He hated school and he cannot go to college; all that he wants is an opportunity to work. He could not be a nicer, more ambitious guy. I want the best for him and an opportunity for him to get a job. Had Lloyd been given an activity agreement with two hours of contact time a week for a whole year, he would never have gained the experience that he gained in the park—six weeks of full-time work experience that allowed him to get a work placement.

I ask the Government to acknowledge that there are a multitude of ways of delivering on its policy commitment for 16 to 19-year-olds. If it just gives every kid who comes out of school with no positive destination two hours of contact time a week, it will fail them. In delivering on its bold promise, it must be in command of the detail and must recognise that the numbers simply do not add up to the ambition that it appears to have for young people in this country.

10:13

Derek Mackay (Renfrewshire North and West) (SNP): I welcome the speeches of Kezia Dugdale and Liz Smith, who have brought to the chamber some issues and policy choices that are worthy of consideration—an approach that has been sadly lacking from the speeches of a number of other Opposition members in this and previous debates—so I welcome their thought-provoking comments.

The issue has been close to my heart throughout my time in politics, first as a councillor, then as the leader of a council and now as a parliamentarian. Attainment among our young people is of the utmost importance, and the SNP has a strong record on the subject. The Government's actions in its previous term included increasing free nursery provision and taking early years action, which is, under the present ministerial team, being accelerated at a welcome pace.

However, it does not matter what we did in the previous term; we will be judged on what we do now, and I have enthusiasm for the Government's programme. For example, the family-nurse

partnerships initiative that is being piloted and rolled out is a welcome evidence-based programme. I will work hard to ensure that Renfrewshire is included in the next stage of that programme. In fact, I will not accept no for an answer, because we have such a good record on expanding on programmes such as triple P, which is not the public-private partnership, but promoting positive parenting. Triple P takes a whole-population approach, while the family-nurse partnership targets young mothers. That is essential to give young people the support that they require and to give their children the best possible start in life.

I welcome the inclusion in the Government's legislative programme of a new rights of children and young people bill that will be compatible with the United Nations Convention on the Rights of the Child. I also welcome the new integrated children's services inspection to target the most excluded and the most vulnerable children. I support, too, the development of a parenting strategy. In the past, some people may have argued that that was a namby-pamby social work idea, but we know that it is absolutely necessary for many of our population.

I am a member of the Finance Committee; our utmost priority at the moment is preventative spending, around which there is a great deal of political consensus. I do not like Nike as a company, but I like its slogan: "Just do it." Let us just do it on early intervention and early action on preventative spending. I am disappointed that Ken Macintosh described the sums involved as "paltry". I do not think that £500 million over three years is a paltry sum at all.

Ken Macintosh: The word that I used was "flimsy" and I referred to the £4 million that was announced for activity agreements. Does the minister—I am sorry. I meant Mr Mackay. I was looking ahead, Mr Mackay. Does Mr Mackay agree that the £4 million that was found for activity agreements was taken from the mc²—more choices, more chances—fund that already existed?

Derek Mackay: Mr Macintosh, I am looking at trying to change lives with £500 million of preventative spend. That will have not only cost-saving impacts, but life-changing impacts and it should be welcomed. The Labour MP who is progressing early intervention projects in England and who is doing great work has been told that if he raises £10 million, David Cameron might match it. That would mean £20 million for early intervention in the whole of England. The Scottish Government is allocating £500 million. Does that not put into perspective the priority that the Administration attaches to early intervention? That sum is absolutely incredible in a time of financial

reductions that are a consequence of UK Government decisions.

As I said, preventative spending is about not only cost-saving policies but about life-saving and life-changing policies. I know Ken Macintosh because, before I was elected to the Parliament, I appeared as a witness. He interrogated me in my role as leader of Renfrewshire Council and said that our record on class sizes in primary 1 to primary 3 was not good enough. You were right and I told you that we would take action. I am delighted to tell you that, due to that early action on class sizes, Renfrewshire Council now has the best P1 to P3 class sizes—18 or fewer—in urban Scotland. We have a record of delivery and have risen to the challenge.

Ken Macintosh: Will Derek Mackay give way?

Derek Mackay: I have only one minute left, Mr Macintosh.

Class sizes matter. I hear people describing teacher numbers as a barometer of success, but they are not. They are an issue, but success must be defined by outcomes: the educational attainment of our young people and their preparedness for work and for real life. That involves a whole-population approach that targets those who are most in need of support while recognising that we all have a duty to work together. The health service, councils, the third sector and even the private sector have roles to play in partnership working to ensure that we make the best policy choices for our country.

The school environment in which our children are educated also matters greatly. That is why the announcement at the SNP conference that a further 30 schools will be built or refurbished—adding to the incredible record over the past number of years—is welcome.

As politicians, we have a duty to the next generation. We should not only keep an eye on the next election and the knockabout that goes on in politics, but make the right policy choices so that the next generation has a fair chance and the best possible start in life. That is a commitment to which the Government will live up.

The Deputy Presiding Officer: I respectfully remind all members to address their remarks through the chair. Thank you.

10:19

Jamie McGrigor (Highlands and Islands) (Con): I am pleased to take part in the debate. I thank organisations including Save the Children and Barnardo's Scotland for their useful briefings, which have helped to inform discussions. Barnardo's Scotland is to be commended for highlighting looked-after children's needs. It surely

is not acceptable to any of us here that looked-after children's attainment level in schools is five and a half times lower than that of all schoolchildren and that only 1 per cent of looked-after children go on to higher education, compared with 36 per cent of all school leavers.

I associate myself with the excellent opening speech by my friend Liz Smith. I will focus on the importance of rural schools and their role in helping to raise attainment and ambition. I was pleased to receive recently the call for evidence from the commission on rural education, which I sent to the many dozens of parents in Argyll and Bute who have contacted me in the past year as Argyll and Bute Council has proposed rural-school closure programmes that have outraged many people. I urge all those in my region of the Highlands and Islands and elsewhere across Scotland who value rural primary schools and who have opinions on how we can retain, protect and improve them, to make their views known to the commission before the call for evidence closes on 12 January next year. The commission provides an important opportunity for rural communities to have their say about a key part of their infrastructure and their future.

Part of the commission's remit is

"To examine how the delivery of rural education can maximize attainment and outcomes to give pupils the best life chances, and to examine, where appropriate, how this can be applied more widely".

If we accept the evidence that primary school attainment plays a much greater role in students' potential 16-plus than does their secondary school education, it is clear that many excellent examples of the work that goes on in rural primary schools can be replicated elsewhere in the school system. I commend the pupils of Clachan primary school in Argyll, which is a small rural primary that was recently threatened with closure, for their success in the school's being named joint winner of the prestigious best green school in Scotland award 2011. That shows that best practice can exist in the smallest schools as well as in larger ones.

Rural primaries often have educational programmes that specialise in the biodiversity that surrounds them. For example, the excellent Argyll project called rivers in the classroom brings aquariums into the classroom to teach children about many aspects of freshwater fisheries and aquaculture, which are both important parts of the local economy. I thank the Cabinet Secretary for Education and Lifelong Learning for coming to the renowned Dalmally agricultural show to present the first, second and third prizes for participation in that project to Dalmally, Kilchrenan and Inveraray primary schools. The project is a great way to teach children about the importance of clean

watercourses, which are barometers of the environment's health.

The available evidence indicates that remote rural primary schools have higher attainment levels than do other schools, that attainment in secondary 4 is higher in rural secondary schools and that pupils from the most remote rural areas are more likely to go into employment or higher education as school leaver destinations than are pupils from other areas. I wonder why.

Of course, rural schools often provide a range of additional services to the communities that they serve, including nurseries and crèches. Rural schools have wonderful diversity and much initiative is shown by their teachers. The Scottish Conservatives fully support rural schools' role and wish the commission on rural education success in its deliberations.

I will say a word about the importance of sport and physical activity, including competitive team sports, in helping to improve pupils' physical and mental wellbeing, which in turn aids attainment levels and promotes lifelong team spirit. Local access to facilities is therefore vital. I am grateful to Scottish Gas for its continuing support for the mid-Argyll community swimming pool in Lochgilphead. The funding has helped to secure the pool's future, which is welcome as it provides a much-needed swimming facility for the children of mid-Argyll.

10:25

Sandra White (Glasgow Kelvin) (SNP): I am not a member of the Education and Culture Committee, although I know that a number of members in the chamber are. However, like all members and the public, I believe that it is important that we take forward the issues of attainment and confidence in our young people. Early intervention starting from a very young age is important.

I hear what Ken Macintosh says about the nurture groups that Glasgow City Council has provided. I agree that they are fantastic, and I know that the Cabinet Secretary for Education and Lifelong Learning has also praised them. We do not always disagree on aspects of work that is done by councils. We did disagree with Glasgow City Council when, while other councils were reducing class sizes, it was the only council in Scotland that did not do that. I was disappointed about that, because nurturing and educating the kids of our country is one of the most important duties that we have as elected politicians. I agree with Mr Macintosh on certain aspects, but I cannot agree with him on others.

Both the minister and Derek Mackay mentioned parenting, which is critical in influencing how

children approach not just education but their later years in life. I think the minister has got it right. She mentioned all-encompassing parenting classes. It is not a question of interfering, because it is a fact that many parents want to be looked at not as separate entities but alongside their kids, and to be helped to educate their kids.

I reiterate Derek Mackay's point about early intervention. As far as I am concerned, early intervention is the key, particularly in the earliest years. That point has been made by John Downie of the Scottish Council for Voluntary Organisations and by Sally Ann Kelly of Barnardo's Scotland, who said:

"It is only through effective early prevention work that we can avoid poor outcomes for Scotland's children and young people in later life."

If the acting director of Barnardo's Scotland says that, I think that we are doing something right.

Statistics from the Scottish household survey show that parents' satisfaction with their children's education is high. When people were surveyed about schools and the attainment of their kids, more than 90 per cent of parents said that they were very satisfied with the education that schools provide. We may criticise certain aspects, but in some areas we are getting things right. I am not saying that everything is perfect, but things are improving. We have to work harder to push forward, but we are getting there and we are getting on with it. I am not asking for praise, but the Minister for Children and Young People and her team are working hard to push forward the education system in our country.

I want to veer away from the education aspect and look at other forms of attainment and ambition in a slightly different way. We could do with more positivity and encouragement, particularly from the Labour benches. I do not particularly want to be political, but I have to agree with my colleague George Adam. It is important that we encourage our kids, but if all that we get from politicians is negativity, it does not do much to encourage attainment and positivity. Perhaps members on the Labour benches should look at themselves—not just members who have spoken in this debate, but those who spoke in last night's debate, as well. If we want to encourage our kids to be positive and to do well, we must lead by example. Constantly running them down does not work at all.

Of course, it is not just politicians or Opposition parties who are to blame; the media play a role in this respect. Not all young kids are bad; in fact, many contribute greatly to society. For example, I am proud to say that Glasgow is the only part of Scotland to have picked up the cudgel of the Co-operative Foundation-funded truth about youth programme, which aims to challenge people's

perceptions of young people and to make it clear that not everything about young people is negative and that they actually make a positive contribution to society.

Education is, of course, very important, but we must consider how young people are perceived in the media and by the general public. Indeed, more emphasis should be put on that in, for example, the good citizenship programme. Nevertheless, the fact is that young people sometimes get bad press. We are doing our best through education to ensure that young people can meet the challenges that face them, but perhaps certain people in the media and elsewhere should be educated in the good things that young people do. It is not all bad.

The debate has generally been good. Of course, we will never agree on everything, but it is important that we work together to ensure that our young people are encouraged to attain their full potential. If they cannot look to elected members for that, I do not know where else they can look.

10:31

John Pentland (Motherwell and Wishaw) (Lab): Liz Smith said that the motion was "benign" and "bland". Indeed, it has been suggested to me that it was computer-generated from a data bank of warm but woolly stock phrases. Who could argue with prioritising attainment, improving young people's life chances,

"giving them the best start"

to enable them to make "progress at school"; recognising success; and improving "competitiveness and ... opportunity"? All that is missing is a reference to apple pie and cream. What happened to the promises of concerted and definitive action on, for example, reducing primary class sizes? In her opening speech, the minister stood tall over her statement that class sizes are at a record low. However, I am sure she will agree that that record low is nowhere near the class size of 18 that was first promised to all Scotland's children.

The Minister for Learning and Skills (Dr Alasdair Allan): Will the member give way?

John Pentland: No. I want to make progress.

I was also interested in the use of the phrase "rich attainment" in the motion. If members Google it, they will find that among the few results that come up those that are relevant to education mostly concern the impact of inequality, and point out that, for the rich, attainment is always greater. That might not be what those who drafted the motion wanted to refer to, but it is very true.

One of the main influences on a child's chances of going to university is where they live. Since

1999, there have been some improvements; for example, the number of state-school pupils who are going to university has increased from 31 per cent to 35.7 per cent. However, for schools in deprived areas, that figure is often in single digits, while for schools in nearby better-off areas it can be over 40 per cent. Although Labour's schools of ambition programme was addressing the issue and raising aspirations with clear measurable results, it was unfortunately not given the time that it needed to maximise its impact. Given that this deep-rooted problem cannot be tackled overnight and requires a long-term programme of action that is supported to fruition, it is a great pity that the Scottish National Party cancelled that initiative.

The cabinet secretary, Mike Russell, has recognised that progress has been made in the past 10 years. However, it is still the case that only 15 per cent of Scottish students come from our 20 per cent most-deprived areas. Mr Russell has declared that that inequality of opportunity must be tackled; he thinks that his post-16 reforms will somehow do the job. Statutory duties on universities to address imbalances smack not only of trying to shut the stable door after the horse has bolted, but of passing the buck. As far as post-16 resources are concerned, there is an educational divide, and far from addressing the problem, the Scottish Government is making it worse.

Deprived areas may not supply as many university students, and that makes the college sector even more important to them. The college sector now faces 20 per cent cuts, on top of 10 per cent cuts last year. Will that do wonders for attainment? I think not. There will be fewer courses and students. How will that improve young people's life chances? What a way to recognise the work of the likes of Motherwell College, which has a great record of success.

Even if Mike Russell does not force colleges to merge, how will struggling colleges cope with the impact of cuts on staff, students and courses without doing so? Is that what is meant by "improved competitiveness and ... opportunity"?

Alongside the problems of deprivation, we have groups that are particularly affected by barriers to education and employment. I am pleased to note the work that Motherwell College has been doing in conjunction with STV local and Action for Children, helping and encouraging young carers to take courses and explore careers.

Young disabled people also face obstacles. I note the finding in a report by Leonard Cheshire Disability that 40 per cent of young disabled people have been turned down or discouraged from progressing into further education, while 42 per cent do not undertake work experience.

To tackle poverty and provide employment opportunities for all, educational inequality must be addressed. We need to help all schools to be good schools, and we need to help all children to realise their potential, but we cannot do that without action that is targeted at the areas of greatest need—not in a "Here today, gone tomorrow" fashion, but with a serious long-term commitment to tackling the underlying causes of such problems.

What we have, however, is a chasm between the Scottish Government's rhetoric and reality. The reality does not raise aspirations and ambitions for all, does not provide the best start for all, and does not give the same opportunities to all. Our children and young people deserve better.

I say to the minister that it is time we had an education system that is fit for the 21st century, an education system that equips young people with the employability skills that they need to meet the challenges of the modern world, and an education system that does not condemn the life chances of those who find themselves in the wrong postcode area.

10:37

Joan McAlpine (South Scotland) (SNP): I want to focus on one particular aspect of the motion, which is the reference to attainment for all children. We have rightly concentrated on the life chances of children who are economically disadvantaged, but I want to talk about another group of children. John Pentland mentioned them, which I acknowledge and appreciate; they are children with disabilities.

If we are really going to get things right for every child, we have to realise that that includes children who do not have the same intellectual abilities as other children. They still deserve to reach their full potential, and they deserve a meaningful education that is purposeful, that builds their self-esteem and which equips them with skills for life as well as with qualifications.

Those principles are embedded in curriculum for excellence, and we all sign up to them. Successive Governments have made considerable progress in supporting children with additional support needs, in particular with the Education (Additional Support for Learning) (Scotland) Act 2004, which was strengthened in 2009. That gave children with additional support needs and their parents the ability to demand more assessment, and it introduced more joined-up thinking between education and health authorities. However, it does not seem to translate in every case into schools and how pupils and parents experience education.

Last week, I attended a meeting to launch Enable's report "Bridging the Training Gap", which looked at how young people experience teaching for special needs. Enable's young families support committee last year identified lack of understanding in some classroom teachers—not all—as being a major barrier to successful learning for children and young people. Enable did research that has resulted in the report that was published last week. It looked at how well teachers and learning support assistants are trained initially and through on-going professional development. It wrote to all the local authorities and universities that offer initial teacher education courses, and the findings were quite surprising and shocking.

No local authority in Scotland makes training in learning disabilities such as autism, dyslexia and Down's syndrome mandatory. They offer many courses on additional support needs but, as they are defined in legislation, additional support needs can include all sorts of challenges, such as bullying and disrupted education. Those issues are addressed in training, but the specific needs of people with learning disabilities are not addressed in mandatory training. Further, although the Government's legislation is advanced and encouraging, only nine local authorities provided copies of documents on Government policies and on parents' and children's rights. Another problem is that a lot of parents do not seem to know about commendable initiatives such as the autism toolbox and other laudable aspects of policy development that the Government has undertaken.

The picture is also patchy in university training courses. Eight universities in Scotland offer initial teacher education through bachelor of education courses, and they also offer—as part of those courses—general training for additional support needs. However, only three of the courses include specific learning disability issues as mandatory course content. The Enable report shows that the effect of that on parents' and children's experiences has in some cases been shocking. Children with Down's syndrome have been left on their own because a particular teacher could not cope, with no attempt to get them the materials that they need, such as large-type books. Enable found that one teacher complained to parents that their autistic child needed to learn to socialise better, when most of us with even a cursory knowledge of autism know that the central challenge of autism is that autistic children are not able to socialise.

There are signs of considerable progress. The Donaldson report made 50 recommendations about teacher training, including a recommendation concerning the skills that are required to teach learning-disabled students. It is encouraging that HMIE's submission to that report

noted that student teachers identified that as a priority and said that they want to be better trained in that regard. I therefore welcome the Government's commitment to implementing Donaldson's recommendations.

I also welcome the legislation on the rights of young people and children and the proposed children's services bill, which could help to entrench the rights that we have already established. However, the Enable report makes the point strongly that legislation is not everything and that legislation does not always translate into work on the ground. As the minister and Liam McArthur have said, local authorities' putting policy into practice can be patchy.

The Deputy Presiding Officer: Can you come to a conclusion, please?

Joan McAlpine: Enable Scotland is calling for learning disability training to be mandatory for initial teacher training and on-going professional development. I urge all local authorities and universities to consider that seriously. Beyond legislation, the key problem is one of attitude, and we all need to think carefully about our attitudes to this specific group of children. Getting it right for every child means getting it right for every child, regardless of their intellectual ability.

The Deputy Presiding Officer: I call Liam McArthur, to be followed by Marco Biagi, and I make a plea for six-minute speeches.

10:44

Liam McArthur (Orkney Islands) (LD): I welcome the debate and the opportunity to make a brief contribution to it. Although the amendment that I lodged was not selected for debate, I hope that members will understand if I focus my remarks on the aspects that I sought to highlight through that amendment.

The potential for the debate to roam far and wide has been amply demonstrated. Derek Mackay was absolutely right to commend Kezia Dugdale and Liz Smith for their speeches, and I think Joan McAlpine should be commended, too. I will concentrate on early years intervention, where a step change in priority, collaboration and support is urgently required; on the potential for the pupil premium to make a contribution to targeting resources where they are needed most; and on the concerns that arise from the budget settlement for Scotland's colleges, given the responsibility that rests on their shoulders for helping to raise attainment and ambition among Scotland's young people.

On the first of those areas, as I have said in previous debates, I welcome the Government's commitment to an early years change fund, which

is an approach that the Liberal Democrats proposed in our manifesto. All the evidence shows that we achieve the greatest value from the investment that we make in the earliest years of a child's life and even prior to birth. That does not come cheaply, and it certainly does not provide a guarantee—such things do not exist—but it is the closest that we will get to a guarantee of securing the best possible outcomes for each child later in life.

Barnardo's Scotland's briefing for the debate makes the valid point that no intervention is more critical than that in relation to looked-after and accommodated children, which, as the minister alluded to, the Education and Culture Committee will turn its attention to shortly. The warning from Barnardo's is stark: Scotland, as a corporate parent, is failing looked-after children. The minister was right to acknowledge that, although improvements have been made for some looked-after children in certain circumstances, the overall statistics are frightening. The problems are complex and the costs to society and public sector budgets are considerable. Nowhere is the notion of preventative spend better illustrated.

Although I support the ministers' intentions in the area and agree that the national parenting strategy can play a key role, I am concerned that, notwithstanding Derek Mackay's comments, the scale of the resources that ministers are bringing to bear will prove to be inadequate. Perhaps more accurately, I am concerned that there is a risk that the available funding will be spread too thinly across too many initiatives.

More could be done. Simply pointing the finger at Westminster might play to the gallery in Inverness, but it is rapidly running out of credibility elsewhere. As Jeremy Peat of the Royal Society of Edinburgh made clear to Paul Wheelhouse and his colleagues on the Finance Committee yesterday, it is time for the SNP to stop protecting every sacred cow in the herd. For example, Jeremy Peat added his voice to that of the Government's advisers in advocating a rethink over the status of Scottish Water. Without compromising public accountability or even staff conditions, an estimated £1.5 billion in savings could be achieved by moving Scottish Water to a public trust. Just think what a proportion of that money, over and above the amount that has already been committed—which I acknowledge—could achieve in the interests of making the progress that we all want in improving early intervention. However, that requires political will.

So, too, would implementing, even on a pilot basis, a pupil premium in Scotland. Just because the scheme has been introduced by the coalition south of the border—thanks to the Liberal

Democrats—that cannot be sufficient reason for the education secretary to reject it.

Derek Mackay: Does the targeting of smaller class sizes in areas of deprivation not have the same outcome as pupil premiums would have, in that resources are de facto directed to those who need them most?

Liam McArthur: That targeting can have benefits, but I have an issue with the blanket ruling out of even an exploration of the benefits that the pupil premium can deliver. The scheme will benefit some of the most deprived young people in England by allocating to schools £488 for every pupil who is provided with free school meals. Schools will then have the freedom to spend the money as they see fit, but they will be held to account for how it is used to support deprived pupils.

In answer to a recent parliamentary question, Dr Allan dismissed any suggestion that a pupil premium could play any useful role in Scotland and pointed instead to the EMA. However, the EMA is designed to encourage 16 to 19-year-olds to stay in education, whereas the pupil premium tackles educational disadvantage that is caused by poverty, which starts at a young age and widens later. On average, by the age of seven, children in poverty are two years behind their counterparts from better-off backgrounds. They never catch up.

As Douglas Hamilton of Save the Children Scotland has stated:

"To break this cycle of underachievement, children from the poorest homes must be given high-quality additional support".

To that end, he highlights that the pupil premium can be used for one-to-one tuition, varied curriculum choices and extra support for parents to get involved. Rather than treat us to more of the pointless and somewhat puerile narrative that all Scotland's ills derive from Westminster, it is time for ministers to give proper consideration to the calls from Save the Children and others for a pupil premium at least to be trialled in Scotland.

In relation to raising attainment and ambition for all Scotland's young people, it is difficult to square the minister's remarks with the 20 per cent real-terms cut that the Government proposes to make to college budgets in the next year. The £37.8 million cut next year is particularly swingeing and colleges are already warning about the effect that it will have on the number of places and courses that are available, the quality of provision, staffing levels and so on.

The effect will almost certainly be felt disproportionately by those from more deprived backgrounds. The NUS rightly points out the need to redouble efforts on widening access to further

and higher education, but that and other Government commitments are seriously compromised by the political choices that ministers have made about college budgets.

There is still time to rectify the situation, even by reprofiling the cuts over the next three years. Savings can be made and restructuring is needed, but the cabinet secretary cannot simply ignore the concerns of the college sector, as he did at the Education and Culture Committee on Tuesday, by rubbishising the evidence from Scottish colleges and blaming everything on Westminster. The choices are his. Having been let out to play by the cabinet secretary, I hope that Ms Constance and Dr Allan will help him to make the case to the finance secretary that some of the Barnett consequential arising from the council tax freeze south of the border should be used to soften the blow.

I entirely support the aspirations that are set out in the Government's motion, but if we are to achieve them in the interests of all our young people, particularly those from poorer and more vulnerable backgrounds, the Government needs to match the resources to the rhetoric. I have identified three examples; I hope that Dr Allan will address them in his concluding remarks and that both ministers will reflect on them more fully following this useful debate.

The Deputy Presiding Officer: We are now extremely tight for time. I am afraid that any interventions will have to be contained within six-minute speeches.

10:51

Marco Biagi (Edinburgh Central) (SNP): There have been some thoughtful contributions during the debate. When we have education debates we often see the phenomenon of what we might call synthetic outrage, when members fall over themselves to disagree and criticise. However, we have heard a lot of statements of values and articulations of what matters to parliamentarians. Ken Macintosh at least started that way, but perhaps moved into the criticism-without-solution approach towards the end of his speech.

Kezia Dugdale has already talked about the Edinburgh experience. I do not think that she intended to run down the performance of schools in Edinburgh but my investigations have found that the gap that was mentioned in the Skills Development Scotland report comes from the fact that a disproportionately large number of pupils in Edinburgh go to private schools. As a result, if we simply look at the outcomes from the state schools, we see a picture that is disproportionate in comparison with other local authorities in

Scotland. As the City of Edinburgh Council told me, if all pupils in Edinburgh were taken into account, Edinburgh would be fighting East Renfrewshire for the top spot in any national league table.

Kezia Dugdale: Will the member take an intervention?

Marco Biagi: I want to say one more thing about something that Kezia Dugdale raised so I will take her intervention in a moment.

Kezia Dugdale also made the criticism that the figures do not add up in relation to ambition. That is an interesting point and it perhaps shows a chink—perhaps she realises the nub of the problem, which is that we have received a very constrained financial settlement. If she is going to use her intervention to support her colleague Malcolm Chisholm in calling for further financial powers for the Parliament so that we can address such problems, that would be very welcome.

Kezia Dugdale: My point was not that I am oblivious to the economic circumstances in which we find ourselves; I am saying that Marco Biagi is, because SNP policies pretend to deal with them when they simply cannot. In his attack on my policies and position, is he seriously suggesting that the answer to Edinburgh's school leaver problems is to send more kids to private school?

Marco Biagi: No. What I am saying is that we have to take into account the fact that, for better or for worse, a great many pupils in Edinburgh go to private school. Headteachers in my constituency have told me that they are particularly concerned that many of the high achievers move over into private education, whereas in other parts of Scotland, they would be counted towards state schools' successes. That simply does not happen in Edinburgh. I do not want to diminish Kezia Dugdale's points about the difficulties that learners from low-income backgrounds face, but let us not do Edinburgh down and use a false comparison to say that it is the worst performing authority in Scotland.

In my discussions with headteachers in my constituency and with schools that have catchment areas that go over into my constituency, I have found that the most important factor is the ethos of drawing in the extracurricular, whereby, under curriculum for excellence, essentially nothing is extracurricular.

Drummond community high school has an interesting initiative that involves Wednesday afternoons being thrown over to completely open character-building activities, in which every teacher participates. Craigmount high school—which is outwith my constituency but one of the feeder primary schools for which is in my constituency—has an interesting initiative for

stretching pupils at the top end, which is called advanced advanced higher maths and involves bringing in an outside expert. That is perhaps another controversial issue, but it is certainly a way for that school to show a bit of creativity and aspiration in bringing out the extra from its student body.

That is not a nostalgic call for a return to schools of ambition. I have never seen any statistics that suggested that that scheme helped. A motivated headteacher and motivated staff developing creative solutions in the working of the school is far more effective than the relatively small additional effect of schools of ambition. As Fiona Hyslop said at the time, every school should be a school of ambition.

Liz Smith: Will the member take an intervention?

Marco Biagi: I am just coming to my final minute.

Similarly, schools of rugby is an initiative that was pointed out to me by Scottish Rugby. Jamie McGrigor made a point about the importance of team sports. Such schools can help bring out a team ethos for all pupils. WWF has highlighted one planet schools, another initiative that brings together pupils across a school. If schools are not involved in such all-school initiatives, they are not doing curriculum for excellence right.

I particularly welcome curriculum for excellence because, once it is fully implemented across all cohorts and all schools, it will allow us to break down a lot of the divisions that currently exist. That is why it was conceived and why it received cross-party support. If we look at the four capacities—successful learners, effective contributors, confident individuals and responsible citizens—they do not just describe the education system that I would like to see in this country; I think that a society that was made up of people who have those capacities would be an inspirational place to live.

The Deputy Presiding Officer (John Scott): I call on Mark McDonald, to be followed by Claudia Beamish. You have a very tight six minutes.

10:57

Mark McDonald (North East Scotland) (SNP): I will certainly do all that I can to assist you in that respect, Presiding Officer.

John Pentland said that the only thing missing from the motion was a reference to apple pie and cream. That is missing because it would be entirely incompatible with the Government's healthy eating agenda.

I say gently to the Labour Party that it is fine to complain that more funding is needed in certain areas. We heard from Ken Macintosh that we need extra money for our colleges. Given the proximity of Hallowe'en, he channelled the spirit of his colleague Michael McMahon—a scary prospect, I know—and told us that we needed extra money for local government as well. We hear regularly from Jackie Baillie that we need more money for health. Indeed, we hear regularly from every Labour spokesperson that we need more money in their area. If they can tell us where the magical money tree from which they would seek to take the money is, we will go and find it, get the money from it and put it into those areas.

Kezia Dugdale: Will the member take an intervention?

Mark McDonald: No, thank you.

However, we are operating within a fixed budget that has been cut by Westminster, and we must take tough decisions. At the same time, we must ensure that we deliver the opportunities that exist. As the cabinet secretary has emphasised, reform of the college sector is long overdue. It might be a case of making a virtue of necessity, but if reform in the college sector is accelerated as a result of the tight financial settlement, that might deliver some of the benefits that are required. If we look at some of the savings that have been achieved through reform of the college sector in the city of Glasgow, it is not beyond the realms of possibility to suggest that we could achieve significant savings across Scotland.

Claire Baker (Mid Scotland and Fife) (Lab): Will the member give way?

Mark McDonald: No. I have a very tight six minutes and I want to provide some positive examples. It has been a good debate for positive examples, and I want to look at different stages of some positive examples in my area.

My wife is a committee member of Dyce community centre, which is in the community where we live. It is holding its first ever under-fives week this week. It regularly holds an over-50s week, when the over-50s can sample what the centre has to offer. In the under-fives week, it is promoting a range of activities for children from kindergym to messy play to music and dance.

We often forget the quality that can be brought into children's lives from engaging in such activities; we focus far too much on taking a hard-nosed educational view, but other kinds of activity for the under-fives are often vital in helping them to form early social skills and to move on into education.

We should not forget to focus on parents as well as children. During the under-fives week, there are

also activities for parents. The community centre has set up support groups for things such as breastfeeding and post-natal depression, in an effort to assist parents and give them the support they need so that they can make a positive impact on their children's early years. The Government and its agencies have a role to play in those early years, but we should never overlook the need to support the vital role of parents. Parents will also support each other in having a positive impact in the lives of their children.

I will now consider secondary education and collaborative approaches. My secondary school, Dyce academy, has long taken a collaborative approach, sharing with the former Bankhead academy and now Bucksburn academy higher and advanced higher courses. Children from each school can go to the other for those courses. Alternatively, courses can be run jointly by the schools. That can help many pupils who might otherwise struggle to attain the qualifications that they wish to, or which they require in order to get to university. That is especially true in some of the more niche subjects. I would not have been able to do sixth year studies in English had the course not been run jointly; there was not sufficient interest in my school alone. That collaboration has been running for a number of years, and perhaps other schools across Scotland need to consider working in such a way with neighbouring schools. Many members will know of similar examples from their areas.

I turn now to links between schools, colleges and universities—the final stage of the educational journey. A number of good examples exist in my area. The aspire north programme is a collaboration between universities, colleges and schools that tries to engage with pupils in S3 to S6 and to raise their awareness of the value of further and higher education, to encourage aspiration and build self-confidence.

There are also good partnership links between colleges and universities. The University of Aberdeen has built strong links with Banff and Buchan College and Aberdeen College, and there is the unilink programme between Robert Gordon University and Aberdeen College, offered on a two-plus-two basis—students can do two years of a college course and then go straight into third year at university. That helps to break down some of the barriers that exist to access to higher education for those who perhaps cannot make the direct leap from secondary school to university. They are given the opportunity to bridge the gap. Consideration should be given to the question whether such collaborative approaches can be replicated elsewhere in Scotland.

I regret the notion that Ken Macintosh introduced—that universities are somehow elitist

institutions. That rhetoric belongs in the past. It does not reflect my experience of Scottish universities, or the experience of anybody I know. If the Labour Party is now defining universities as elitist, that may explain why Ed Miliband wants to close half of them.

11:03

Claudia Beamish (South Scotland) (Lab): As a former primary teacher and as someone who worked in the 1980s—that long ago—in a unit for disaffected teenagers who were excluded from mainstream schools, as someone who worked with the community education sector and the Workers Educational Association, as someone who was an Open University student, and, like many of us, as someone who has been a parent, I am pleased to speak in this debate.

I will focus on the threat to provision for students who are on the edge of education—and who could be lost to it—and on the threat to provision for post-16 rural students. I will also focus on some particularly vulnerable and poorly supported groups.

As other speakers have stressed, and as our amendment highlights, the connection between deprivation and low educational attainment has long been known and is still intractable. Recent research by the Rowntree Foundation

“demonstrates that barriers to achievement vary significantly among deprived areas as different factors combine to shape ambitions, and shows that the difficulty for many young people is in knowing how to fulfil their aspirations.”

The continuation of the education maintenance allowance will undoubtedly help support many students in their later years in school. However, the same research also tells us that

“better information is required to support young people in understanding how schooling, post compulsory education and work fit together.”

Let us for a moment turn our attention back to the four capacities, which Marco Biagi highlighted. As a former teacher, I have already seen the clear benefits of that approach in effecting change, particularly in relation to inclusion. Those developments should not stop at post-16; they should go on right through life—no other member has said that today.

Today the Black and Ethnic Minority Infrastructure in Scotland working group is holding a conference in Glasgow on human rights education and active citizenship. Brian McGinley of the University of Strathclyde tells us:

“learning needs to be socially and culturally situated, over arched with values that are in keeping with the students' understanding and aspirations. Educators need to find out what interests the students and then work co-

operatively with them to agree the next steps which are both within reach and challenging for them."

The Scottish Government's aim to link education more closely with employers is positive, especially in relation to the development of opportunities in new industries such as marine renewables. Jim Sweeney, associate director of Motherwell College, highlighted a problem that has come to light. He said that he

"welcomes the focus on employability and better links with industry".

However, he felt the problem for some of our more vulnerable young people is that those opportunities might come only after initial courses and that

"Cuts might prevent colleges offering this stepping stone and some young people will undoubtedly find themselves even further ... From the education or jobs market."

On the question of protecting and enhancing opportunities for rural young people, there is concern that students from outlying areas will increasingly be unable to access a place at college. Motherwell College subsidises transport from rural areas in my region, which enables students from communities such as Leadhills in rural Clydesdale to be given every opportunity to access education and training. The speed and depth of cuts could put that in jeopardy.

Derek Mackay: On that point, does the member think that there is scope for more innovation? Not all places in post-16 education are in colleges, so perhaps the third sector could help by providing places in rural areas such as those that she mentions to ensure that the 100 per cent commitment on 16 to 19-year-olds is achieved.

Claudia Beamish: I take the member's point, but when courses are running already and students are unable to reach the colleges that they should be attending because there is no rural public transport, that is a serious problem.

Many rural students benefit from the Open University and in South Scotland the OU has a relationship with Dumfries and Galloway College, but there are now concerns about that, too. Funding pressures have led the college to prioritise full-time provision, which reduces opportunities for students who need to study at lower levels of intensity. Most of the students tend to come from areas that are very close to the Crichton campus and the OU provision must be protected there and at other institutions.

I also want to focus our attention on vulnerable and underrepresented groups. Joan McAlpine mentioned disabled pupils and I want to highlight the situation for disabled students. The chances of those with learning difficulties are threatened by cuts to colleges. Project search at Motherwell College is one such example. Part-time courses

for people with learning disabilities have been cut by a third according to the Scottish Consortium for Learning Disability, which stated

"there is little evidence of alternatives".

Will the minister consider that and guarantee protection for such groups?

Many are relieved by the Scottish Government's commitment in the spending review to looked-after children and children in care. As I have not much time left to speak, I shall limit my remarks on the subject to saying that those young people deserve our commitment beyond childhood into adulthood. Although the minister's points were reassuring, the problem is intractable and has gone on for many years, so we all look forward to action. Those young people deserve no less.

Evidence heard by the Equal Opportunities Committee highlights challenges faced by black and ethnic minority pupils, too.

The Deputy Presiding Officer: I am sorry, you must close now, please.

Claudia Beamish: Thank you, Presiding Officer. I hope that the minister will consider supporting those groups, too.

I hope that the minister will consider the various points that I have made and that, in considering preventive spend, which is a stream that is available, she will be able to consider supporting some of the groups I have mentioned.

11:10

Clare Adamson (Central Scotland) (SNP): I am pleased to speak in the debate. I recognise that we are talking about not only education but a joined-up approach to how we deal with inequalities in our society. The Scottish Government is tackling the causes of inequality as never before. Our early years intervention work and the equally well strategy are geared towards improving opportunities for all Scotland's children.

We must tackle the causes of inequality if we are to make any progress in those areas, and the previous SNP Administration had a good track record in relation to recognising some of them. It supported projects that encouraged play because it recognised the scientific research that shows that cognitive development in the first three years of life will define children's outcomes. Preventative spend on early years will transform opportunities and outcomes for children across Scotland.

This is not just about our early years strategy. Curriculum for excellence focuses on the needs of children and their learning journey and is a stepping stone that will support and develop each pupil to enable them to achieve their full potential, carrying on into the opportunities for all

programme for 16 to 19-year-olds. Curriculum for excellence also works hand in hand with GIRFEC to transform our young people's opportunities and outcomes.

I will talk a bit about ambition, which has not been touched on much in the debate. Before I do so, I will address some comments made by earlier speakers. Jenny Marra and Ken Macintosh talked about college places in some detail. At a time when we face unprecedented cuts in the budget, they seem to believe that, while every other sector must rise to the challenge, the colleges that were preserved in aspic by Margaret Thatcher should remain as they are. Are they seriously suggesting that we should maintain places and teaching numbers that are not required for the 16-to-19 strategy? If so, that explains a lot about the economic chaos that the previous Labour Government left.

Jenny Marra: Will the member take an intervention?

Clare Adamson: No, thank you.

On class sizes, which John Pentland and Ken Macintosh referred to, Derek Mackay talked about how his local council was able to tackle that issue and make good progress on it. John Pentland was the finance convener of North Lanarkshire Council when it and Labour-controlled Glasgow City Council were the worst-performing councils in delivering class-size reductions.

Liz Smith described the motion as "benign". I find that a bit curious. I remind members that the Government has a track record of delivering on commitments and achieving change in Scotland through the delivery of some of its policies. Far from it being benign, I regard the motion as transformational, innovative and inspiring.

Kezia Dugdale made a thoughtful speech. I recognise and share her concerns about people from deprived backgrounds entering further and higher education. However, she said that there was a monetary aspect to that, which I found quite ironic, given that it was her party and the Liberal Democrats who introduced—to their shame—the graduate endowment. Thank goodness the Scottish Government is committed to delivering free education.

I was at the SNP conference at the weekend, where I saw a presentation by a senior medical student who is involved in the University of Edinburgh's pathways to education development programme. That outreach project is for schools that do not normally feed into the university and it tackles specifically people who are the first person in their family to go on to further education, developing a nurturing process to allow them to do that. It has been so successful that Universities Scotland has committed to roll it out. We ought to

recognise the good work that is being done in that area.

On ambition, I am delighted that the Scottish Government has protected the youth music initiative, which gives children the support that they need to achieve their musical ambitions. I am delighted, too, with the new Scot fund, which will support sporting, entrepreneurial and creative skills in our young people. I am also delighted that £5 million of that money will create a hub in Glasgow to support the National Youth Orchestra of Scotland, providing administration, rehearsal and studio space. That money is, of course, in addition to the money that has already been given to the Theatre Royal and the Glasgow Royal Concert Hall to develop their projects. However, Glasgow councillors will no doubt still say that Glasgow gets nothing.

I am glad that the Government has protected the festivals expo fund, which offers opportunities for talented young people in Scotland to showcase their wares to the wider world.

I have very little time left.

The Deputy Presiding Officer: Indeed.

Clare Adamson: I would like to see more ambition for women who are involved in stem projects and who work in technical areas. Again, we have a way to go on work on that.

11:16

Liz Smith: The debate has been very interesting.

We should be in no doubt that the motion is benign. I listened carefully to what the minister said at the start of the debate, and picked out from her speech seven key points about what is important. I do not think that any member has any problem with the importance of the early years, preventative spend, the health policy link, children's services, including expanding the GIRFEC agenda, working with parents, the curriculum for excellence, and 16 to 19-year-olds, but the motion is benign in that it does not get down to the root-and-branch changes that have been recommended in some of the most recent reports that have been commissioned by the Government through painstaking efforts. Foresight has gone into those recommendations, which are on the Government's table right now. We must take on board a lot of what is said in those reports, as they are manifestly about raising attainment, ensuring that we have good-quality teachers and headteachers in all our schools, and raising the aspirations of every single child in this country.

I do not agree with everything that Ken Macintosh said, but I agree that funding is not the main issue. It is about building on the first-class

work of the General Teaching Council for Scotland, raising the professionalism of teachers across the board, and speaking about the uncomfortable truth that a very small minority of teachers should not be in our classrooms. It is about dealing with literacy and numeracy, moving on to a post-McCrone settlement that will find support among our teachers, and ensuring that the school system is much more responsive to the needs of pupils, parents and teachers rather than to the Government and quangos. It is about building greater flexibility into the system and being prepared to admit that the comprehensive structure has failed too many of our pupils when it comes to mastering the basic skills. Those are all serious issues that have been taken up by Graham Donaldson, Professor McCormac and David Cameron, and they demand serious answers.

Several members have rightly mentioned the importance of the early years. It is true that the early years are important, and it is right that the Scottish Government has acknowledged their importance and that that acknowledgement must be complemented by a range of policies to do with health visitors, nursery and child care, and disability care—Joan McAlpine mentioned that—and policies that will help to promote better parenting. Sandra White focused on that. As we know, there is a much stronger correlation between better attainment and children who grew up in a loving, caring and healthy environment.

I want to pick out Derek Mackay's contribution, as he focused on policies that work. It is a lesson for all members that, whichever party we belong to, we should take up policies that work and that can demonstrate that they improve attainment. Derek Mackay referred to things that are happening in his part of the world in Renfrewshire and Glasgow. Those things have worked. The nurture groups have basically worked, and many of the schemes that have encouraged greater parenting involvement have worked. My colleague Jamie McGrigor referred to many initiatives in rural schools, where the use of the campus by the community and the increased involvement of parents in the school have worked. That is extremely important.

No member will be surprised to hear me come back to a policy of giving greater responsibility to headteachers and teachers in the classroom, which has been a substantial feature of the evidence that has been presented to the Government recently. We should consider the results of schools that have first-class headteachers and schools that were failing but have been turned around by their headteachers. As Marco Biagi said, the headteachers of those schools have thrown off the mantle of Government

objectives and have done things for themselves. They have got results, and good for them.

I know that I will be criticised for ensuring that free schools are part of our policy, but I say to members who criticise the Conservative policy and argue that free schools are the privilege of the middle classes that that is not the case. In a third of cases in which the offer of free-school status has been taken up in England, the applications came from disadvantaged communities. The advantage of the pupil premium, which Liam McArthur mentioned, is that it provides an incentive. Free schools in England are working and parents are being attracted into the system.

The Teach First programme brings some of the finest graduates into schools to help some of the most disadvantaged pupils. I have looked at the programme in Germany, England, America and Australia, where it has turned around the results of many poorly-performing schools and given ambition and aspiration to children who perhaps previously had little of either. Surely that is what it is all about. I ask the Government to consider the programme carefully. Teach First is an important project and Scotland would be well advised to consider it. I accept that there must be guarantees that the GTC would have some oversight of registration.

Education policy in this country should be driven by what works, not by political ideology. I support the amendment in my name.

11:22

Claire Baker (Mid Scotland and Fife) (Lab):

The debate has been wide ranging and it will not be possible for me to comment on all the speeches. I welcome the speeches from Joan McAlpine and Claudia Beamish and I apologise for missing some speeches that have been commended.

We are all united on the importance of raising the attainment and achievement of Scotland's children and young people and I think that we are all united in a recognition that poverty and inequality are key factors in determining outcomes. I argue that there is failure, not of comprehensive education but in relation to the inequality in our society that comprehensive education seeks to address.

In 2007, the OECD highlighted the disparity in school performance between the poorest pupils and the rest as the biggest challenge that faces the Scottish education system. Although the Government's lack of progress in the area can be criticised on a variety of grounds, such as the Government's inability to balance the promotion of populist policies with the promotion of what works to address inequality, we acknowledge that the

attainment gap stretches back beyond 2007 and that the devolution spotlight on early years is overdue.

The evidence is stark. At the age of 3, children from disadvantaged backgrounds start to fall behind their more advantaged peers, and by the time they are 5 they are a year and half behind on vocabulary. Socioeconomic circumstances are the defining factor in a child's early development.

The identification of the problem is easy, but politicians still need to accept it to the extent that they are prepared to put their money where their mouth is, particularly in times of financial constraint, and argue that priority should be given to groups and individuals who do not or cannot speak up for themselves.

Labour's amendment mentions the Government's forgotten pledge on class sizes. In the previous session of the Parliament, the Government thought that class sizes were the central tool that could deliver the progress that we all want. The Government must be clear about its logic for replacing the approach with one that is based on a pupil-teacher ratio. Does it think that the new approach is a better way to deal with the challenges that we face? Even if the Government thinks that a reduction in class sizes is still the best way forward but cannot or will not resource such an approach, it must be bold and use the pupil-teacher ratio in a way that is meaningful and contributes to the sea change in achievement that we all seek.

Glasgow City Council was regularly pilloried in the chamber for not meeting the pledge on class sizes. However, its policy of providing smaller class sizes and nurture groups for children who need intense support might be the direction that the Government wants to take if it is serious about getting results. We need to balance the resources that we have and, if we are serious about addressing the impact of educational inequalities on some children and families, we must prioritise them.

The Government will argue that the draft budget does that in moving towards a preventative spend model. We all appreciate that this is a difficult budget, but there are political choices to be made and I am not convinced that the budget will achieve the sea change that is needed. The Scottish futures fund is £250 million over the lifetime of the Parliament and includes the sure start fund of £50 million. The three-year spending review, however, has allocated just £160 million of the futures fund, with £90 million being held back for the pre-election year. So we can expect around £30 million over three years from the sure start fund. We will also have the early years change fund, but it turns out that the Government's contribution to those two funds is the same pot of

money, with the rest of the money coming from national health service boards and local authorities. I do not question the commitment of those partners to deliver in that area along with the Government, but there are limitations on what local partners can contribute and it would be helpful to know what commitment the minister has received from those partners, who face the toughest financial settlements that they have ever had under devolution.

The strain will come in trying to achieve the shift on scant resources. Money will still have to be targeted at crisis support or more intensive support, and it will be difficult to commit money to projects that embed the kind of change that will ultimately prevent constant crisis management. I will give a brief example from my experience. A small organisation, Community Mums (Scotland), which was based in Methil, across from my old office, provided support to local families. Supported by the Coalfields Regeneration Trust, it was a grass-roots, volunteer-led organisation. However, the Coalfields Regeneration Trust could not support it forever and it could not get other funding, so it closed. Some of the families that it supported moved on to other organisations, but those tended to be the families with more complex needs; the mums—it was mainly mums—who just needed a wee bit more support and guidance, such as they would get from a mum, lost the service. The organisation provided early support that prevented more complex problems, but it could not survive. Given the huge pressure on local authority budgets over the coming years, even with the contribution from the sure start fund, it does not seem likely that Community Mums could have survived.

Identifying the problems is easy, but the solutions are complex and wide reaching. Liam McArthur and other members are right to raise the issue of the college cuts that are proposed over the spending review period. I find it astonishing that, although Paul Wheelhouse strongly disagrees with the UK Government's college cuts, he uses them to justify the Scottish Government's cuts when it is making exactly the same choices.

A few years ago, I visited Westfield Nursery in Cupar, with the then minister, Adam Ingram. The visit focused on the nursery's commitment to the UN Convention on the Rights of the Child, but I got talking to the staff about its relationship with Elmwood College. The nursery setting provided an opportunity, where appropriate, to talk to parents about their learning opportunities and to encourage them to think about college. There is evidence that the children of parents who continue education after school or who undertake education while parenting have raised ambition and expectation. A home in which learning and education are valued supports a child's learning

and growth. The planned college cuts will impact most on the mature learner and those studying for non-national qualifications; however, if they get the benefit of second chances, that not only improves their opportunities but contributes to their children's first chances.

Sandra White talked about young people's perception of others' negativity. In recognising the importance of parenting, the minister will acknowledge that, for a small number of children, negativity in their own homes limits them. We need increased support for parents, as Susan Deacon recognises in her report, "Joining the dots: A better start for Scotland's children". She states:

"there are ways that we can work to break the cycle of poor parenting that is blighting the lives of many of our children."

Raising the attainment and ambition of all Scotland's children and young people should be a defining aim of the Parliament. There are challenges across the age ranges, moving through school, college and university as well as the employment opportunities and training that Kezia Dugdale focused on. However, if we do not get delivery in the early years right—if we do not ensure that all infants and young people get the proper support, encouragement and investment that they need to thrive and grow—we will approach all other life stages with our hands tied behind our backs.

It could be said that in the previous session the Parliament was dominated by the concerns of higher education. That sector was at the sharp end of debate and sometimes, even in the new session, it looks as though that might continue. Vulnerable children and their families do not have the influence or political organisation of those who are involved in the university sector. Maybe they should, but they do not present pledges for politicians to sign or documents that demonstrate their contribution to our economy, so it falls to us to make a serious commitment to address the deep-rooted inequalities that too often determine a child's life chances by the time that they reach primary school.

The Government needs to be bold. The motion contains warm words; the "Joining the dots" report makes it clear that the time for warm words is over. We need concerted political and societal effort if we are to ensure that no child is left behind.

11:30

The Minister for Learning and Skills (Dr Alasdair Allan): This Government is about raising the expectations and ambitions of all Scotland's young people. I emphasise that it is all of them: Scotland cannot afford to write off the ambitions of

any individuals, communities or groups within its society. Approaches such as building new schools—as I saw this week with the beginning of the building of a new Auchmuty high school in Fife—and measures such as activity agreements that encourage and give confidence to young people who have not had opportunities during their secondary education or have become alienated from it all, play an important role in raising attainment and ambition, which are important to all Scotland.

That much was reflected in the tone of many thoughtful speeches in the debate. As we heard, improving attainment will encourage ambition in our young people. It will also enable them to develop the skills and capacities that are needed to fulfil their potential.

The Government's priority is to ensure the best life chances for Scotland's young people—to improve attainment and to do so by raising ambition. Members from all parties demonstrated that they understood that priority, although I think that Jenny Marra misunderstood it slightly. The Government is not saying that there are no problems or that there is no room for improvement, but we are trying to be positive in the motion.

Positivity, apart from being a moral good in itself, is, as any teacher will tell members, much more likely to get results. Some of the Opposition members complained about benign motions; all that I can say is that benign motions may achieve more than malign amendments.

Ken Macintosh rightly made much of the importance of class sizes. They are part of a wider agenda for improvement. The Government will also focus on early years and embedding the GIRFEC principles. As members also rightly indicated, those principles have not been uniformly or universally applied. Ms Constance clearly indicated that the Government intends to put that right.

The successful implementation of curriculum for excellence is a subject in itself, as are post-16 opportunities, which are the subject of investigation by the Government at the moment, following the cabinet secretary's pre-legislative statement on the matter.

Ken Macintosh made a point about class sizes. The fact is that the number of P1 to P3 children in classes of less than 18 is up 70 per cent. I realise that he may not want to give credit to the Scottish Government for that or to Derek Mackay for it in Renfrewshire, but it is a fact that cannot go unacknowledged.

As a minister with an interest in the tertiary education sector, I say to some of the Labour members in particular that the use of the word elitist helps no one. I say that because the

Government clearly has a commitment to young people of all backgrounds. If that was not the case, we would not offer 25,000 new apprenticeships or guarantee 16 to 19-year-olds without work the opportunity of education or training. I am sure that, every time that somebody says that universities are elitist, a Scot from a less-than-privileged background will think, "University is not for the likes of me." Can we please get beyond calling universities elitist?

Ken Macintosh: I say for clarity that the accusation is that the SNP is elitist—not universities.

Before the minister moves off class sizes, will he clarify the Government's policy on that? Is the policy parked or abandoned? Is teacher quality now the main driver to raise attainment?

Dr Allan: As I believe was explained to Ken Macintosh only recently in committee, class sizes are substantially smaller than those under the previous regime. Continuing to bring them down remains the ambition and the work of the Scottish Government.

Every time we debate attainment, we talk—rightly—about the inequalities in Scotland's society, which are reflected in educational opportunities. I am happy to and think that it is important to acknowledge the realities of those inequalities. Participation rates in tertiary education have improved for the second year running, but I would like them to improve more rapidly.

John Pentland was right to make a point about improving equality of access to our tertiary education sector for young people who are from less wealthy backgrounds. He said that schemes had been abolished. I remind him that the Scottish Government has created two new schemes with the aim that he described—the schools for higher education programme and a scheme for access to the professions.

Articulation is an important part of what the Government is trying to achieve. We are trying to ensure that we do not stick to rigid and outdated concepts about how people will end up in higher education, for instance. We must be much more flexible about allowing movement between different forms of education and genuine lifelong learning. One aspect that will support that approach and encourage equality of access to tertiary education is that the Government has made it clear that higher education will be free in Scotland.

Derek Mackay, who was endorsed by several parties across the chamber, made the point that—at the other end of the educational experience—early intervention is important, as are activity agreements. Claudia Beamish was right to

highlight the needs of specific groups, including students from ethnic minorities. Claire Baker talked about the importance of early years. I can only seek to reassure her that, as the Government will fund the early years task force with in excess of £250 million, we should have confidence in what the Government seeks to do on early years. *[Interruption.]* I am being reminded to refer to what the Government and its partners seek to do.

As Ms Constance outlined, we will deliver improvement by focusing on early years. More than that, we will seek to ensure that young people have a rewarding and enjoyable education experience and that they enter their adult life ready to take full advantage of an increasing range of opportunities.

We know that those who face the most difficult challenges need co-ordinated support that delivers for them as individuals. That means collaborative working by the dedicated professionals who work day in, day out to inspire, support and nurture our children and young people.

We are embarking on a programme of change in early years, which will include vital work to develop a national parenting strategy, the roll-out of another phase of our play, talk, read campaign, the further expansion of early learning and childcare provision and the roll-out of work under the early years change fund. Through positive engagement with community planning partnerships and other partners, we are making progress across the country on embedding the GIRFEC principles. Through curriculum for excellence, we are supporting the development of key capacities and ensuring that our young people leave school with the skills, aptitude and ambition to fulfil their potential.

In coming months, much work will be undertaken not only on engagement on and support for the development of new national qualifications but on targeted support for the implementation of new work in primary schools, engagement with parents and a focus on attainment.

The Presiding Officer (Tricia Marwick): The minister must start winding up.

Dr Allan: I will gladly do so.

We must be ambitious for all our children and young people, but we must go further. We must work to support them so that they develop their own ambitions that are nurtured through guidance, professional know-how and a commitment to continuous education for all.

In conclusion, I merely say that we cannot accept Labour's amendment due to its relentless negativity. Had the Conservative amendment not ended in two ideological words that write off many

schools in Scotland, it would have been quite sensible. However, not for the first time, the Conservatives are captives of their ideology.

Scottish Executive Question Time

General Questions

11:40

Kinship Carers

1. Paul Martin (Glasgow Provan) (Lab): To ask the Scottish Executive what steps are being taken to support kinship carers. (S4O-00268)

The Minister for Children and Young People (Angela Constance): The Scottish Government has done more than any previous Administration to support kinship carers. We introduced legislation that specifically recognises and defines kinship care, supported it with comprehensive guidance and delivered training with our partners through the concordat. We remain fully committed to our 2007 strategy “Getting it right for every child in kinship and foster care” and we are actively seeking changes to the benefits system to improve and simplify financial support for kinship carers.

This year, we launched a service with Children 1st to provide support on non-financial issues and we have extended funding to Citizens Advice Scotland to provide advice on financial and legal issues. Both services can be contacted through a free and confidential helpline.

Paul Martin: The services are all very well, but funding has to be available in the first place to deal with the serious challenges that kinship carers throughout Scotland face. There are more than 15,000 of them. Does the Government agree that the time is right for consistency between councils to ensure that a more consistent approach is in place to support kinship carers?

Angela Constance: As the member is well aware, local authorities are best placed to make decisions about the level of allowances and what is needed to support a particular child with a particular carer, but we are sympathetic and committed to continuing to support kinship carers. The key thing is for kinship carers to be treated as parents and to receive child tax credits and child benefit when a child enters their home.

Sandra White (Glasgow Kelvin) (SNP): The Scottish Government announced recently that carers will be included in the energy assistance package. Can the minister tell us what effect that will have on carers?

Angela Constance: I will address the issue with the minister who is responsible for the energy assistance package.

Autistic Spectrum Disorder (Young Adults)

2. Maureen Watt (Aberdeen South and North Kincardine) (SNP): To ask the Scottish Government what it is doing to support young adults with an autistic spectrum disorder and associated comorbid conditions. (S4O-00269)

The Minister for Public Health (Michael Matheson): The soon-to-be-published Scottish strategy for autism contains a number of recommendations that will help to improve services and provide personalised support. In addition, the 10-year self-directed support strategy sets out a vision for the development of self-directed support nationwide based on a set of values and principles that aim to ensure that everyone who is eligible for social care has a choice in their support arrangements. The forthcoming self-directed support bill will underpin that aim.

Maureen Watt: As the minister is aware, the combination of an autistic spectrum disorder complicated by other conditions can create significant challenges when it comes to the provision of high-quality care and stimulating day facilities. There is a particular need to ensure that young adults in such situations can access suitable residential placements that provide learning opportunities as well as care once they have passed school age. Will the minister undertake to look at what can be done to improve the availability of appropriate, fully funded residential placements for young adults with an autistic spectrum disorder and comorbid conditions?

Michael Matheson: I am aware of the concern that the member raises. Part of the reason for introducing the autism strategy is to address those issues and ensure that there is a greater consistency in the types of services that people with autistic spectrum disorders receive. Alongside that, subject to the Parliament's agreement, some £10 million will be made available over the next three years to help to embed some of the recommendations around the strategy. Through doing that, we can help to ensure that the level and nature of services are appropriate and that they are provided in a way that better suits individual needs.

Supported Workplaces

3. Kezia Dugdale (Lothian) (Lab): To ask the Scottish Executive how it will protect and increase the number of supported workplaces across Scotland in the current economic climate. (S4O-00270)

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): The Scottish Government is committed to increasing the

opportunities for disabled people to work in a supportive environment. We want a consistent, person-centred approach to supporting those who want help to enter, sustain and progress in work. There is a variety of employment models for achieving that, of which employment in a supported workplace is only one, and Scottish businesses have a role to play in enabling disabled people to access jobs based on their skills and abilities.

Kezia Dugdale: I thank the minister for his answer, although it offers little comfort to Blindcraft in Edinburgh. I know that the Government assured workers and unions that every effort would be made to disseminate Blindcraft's customer base to other supported workplaces across Scotland that are currently on a three or four-day week. Is the minister able to confirm that the mission has failed and that Blindcraft's business is now in private hands?

Fergus Ewing: The member will know that Blindcraft was supported for a great many years by various administrations in the City of Edinburgh Council and that all parties in the council, including her own, recognised that the public funding element was not sustainable in the long term. It is fair to recognise, as I thought that the member had done when we met and discussed a matter that is, of course, not party political, that the City of Edinburgh Council and its staff did a huge amount of work and made every possible effort to support each of the workers at Blindcraft in Edinburgh on a one-to-one basis. It was entirely correct to carry out that work. It goes without saying that all of us in the chamber will ensure that whatever can be done to support those individuals will be done but I believe that a terrific power of work has already been done and has helped a great number of the staff into fruitful employment and training and other productive work.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I note the minister's dedication to the idea of disabled people finding gainful employment. Is he able to advise whether the Scottish Government has responded to the consultation on the Sayce report on the future of workplaces such as Remploy in my constituency? If so, what conclusions did it reach in its submission?

Fergus Ewing: First of all, I met the member's colleague Helen Eadie to discuss this important matter, which, as all members will expect, has been taken extremely seriously by the Government. Moreover, when she met Maria Miller, the United Kingdom Minister for Disabled People, the Deputy First Minister Nicola Sturgeon highlighted her concerns about the impact of any changes to Remploy on Scottish employees. A letter setting out our concerns will shortly be sent

to the Department for Work and Pensions, with which we will continue to discuss any implications for Scotland.

Licensing (Scotland) Act 2005

4. Alex Fergusson (Galloway and West Dumfries) (Con): To ask the Scottish Executive what plans it has to revisit the basis under which businesses are assessed for a licence to sell alcohol under the Licensing (Scotland) Act 2005. (S4O-00271)

The Cabinet Secretary for Justice (Kenny MacAskill): Selling alcohol is not a right and those who wish to profit from its sale should expect to go through a rigorous licensing process. The Scottish Government believes that the current system, whereby applications for a licence to sell alcohol under the Licensing (Scotland) Act 2005 are assessed by licensing boards, is the best way to do that. However, the Government is aware of concerns about the current system of licensing fees and I am happy to announce that we intend to commission an independent review of the system of alcohol licensing fees to inform our thinking on how we can best address such concerns. Further details will follow.

Alex Fergusson: I genuinely thank the cabinet secretary for that response, which is very different from the one that he gave a couple of months ago when I spoke to him on this issue. I am delighted at the outcome and the announcement of the review.

Acknowledging the cabinet secretary's comment that the review will be independent, I wonder whether, as part of it, the Government will look at changing the basis of assessment and consider assessing fees on the actual turnover of alcohol instead of on rateable value. The current system has led to huge increases for small businesses, with the result that more than 30 per cent of such businesses in my constituency have surrendered their right to sell alcohol.

Kenny MacAskill: I am aware of how Mr Fergusson has pursued this matter, which has a great deal of legitimacy. We are addressing licensing fees because we are aware that there is a distortion. There are areas in which industrial sales of alcohol take place and areas in which there are limited sales, but the system causes great financial difficulties.

The basis of the fees has been rateable value. We inherited that system from the Licensing (Scotland) Act 2005, but some matters cause great difficulties. We have seen difficulties relating to golf clubs, social clubs and even airports, such as in Benbecula or elsewhere, where the rateable value has distorted matters. I can give the member the assurance that we recognise that there is a

problem and that it would be much fairer if the feeing was based on sales and turnover rather than simply on rateable value.

We are undertaking the review to try to address an anomaly that we accept exists, and I hope that the member accepts the answer in the spirit in which it is given. The review will be independent, and we are seeking to get greater justice into the basis of feeing.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I welcome that interplay between Alex Fergusson and the cabinet secretary.

I ask the Cabinet Secretary for Justice to look at another licensing issue. The guidance that the Scottish Grocers Federation has received from its legal advisers indicates that the discounting ban can, in effect, be disregarded in respect of multipacks. Will he join the Cabinet Secretary for Health, Wellbeing and Cities Strategy in relooking at the recent legislation on discounting, the spirit of which is clearly being broken by the retailers?

Kenny MacAskill: We have always been aware that licensing matters cannot simply be dealt with individually. The purpose of minimum feeing is to ensure that discounting is dealt with, and we brought action on multiple sales, which I think was supported by Dr Simpson and his colleagues, because of the problems that are caused by them.

We are trying to address the issues that we face in Scotland from alcohol overconsumption and abuse. The Scottish Grocers Federation has correctly raised a problem, but it would be fair to say that retailers that are selling alcohol at a deeply discounted rate should look to their own behaviour rather than criticise the law. It is for that reason that we require minimum pricing to work in conjunction with the action that has correctly been taken to deal with two-for-ones and other offers that were, frankly, unacceptable.

The Presiding Officer (Tricia Marwick): Question 5 has not been lodged by George Adam, and question 6 has not been lodged by Clare Adamson.

National Health Service (Local Services)

7. Mark Griffin (Central Scotland) (Lab): To ask the Scottish Executive how it proposes to improve the availability of local NHS services. (S4O-00274)

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I set out clearly the Scottish Government's strategic vision for achieving sustainable quality in the delivery of our healthcare services. That includes a commitment to retaining and improving local NHS services and

prioritising support for people to stay at home or in a homely setting for as long as appropriate.

Mark Griffin: On the sustainability of services in particular, NHS Lanarkshire has just decided to close a treatment room in Kildrum health centre in Cumbernauld, which means that residents will no longer have simple clinical procedures such as blood tests or dressing changes available locally, despite the Government's stated determination to keep services local and to improve their availability. Patients who are fit enough to access the services locally will have to travel into the new centre in Cumbernauld, and many will not be able to travel—

The Presiding Officer: Can we get to the question, please?

Mark Griffin: Those patients will have to have a home visit by a nurse, which is a false economy. Will the cabinet secretary commit to investigating the change and the additional costs that will result from increased home visits?

Nicola Sturgeon: I will, of course, look into any concerns that are raised in the chamber or directly with me by members.

We have a clear presumption against centralisation of services. It is for local health boards to keep their service provision under review to ensure that they are meeting the needs of the local population and, when they are making changes—whatever they might be—to demonstrate that the right factors have been taken into account and that in making those changes they are improving the quality of care for patients. I would have expected NHS Lanarkshire to do that in this situation. When any change constitutes major service change, it requires to go through the formal processes and come to ministers for final approval.

I am more than happy to look at the points that the member has made and to respond to him in more detail in writing.

Elaine Smith (Coatbridge and Chryston) (Lab): The cabinet secretary will no doubt be aware that I have written to her concerning the decision of NHS Lanarkshire to remove X-ray services from Coatbridge health centre. Given the Scottish Government's policy to protect local access to healthcare, will she consider intervening to require the health board to reconsider its plans for this local health service?

Nicola Sturgeon: I am well aware of the close interest that Elaine Smith and other members, such as Christina McKelvie, have taken in this issue. Much of what I said in response to the previous question stands in response to this question. Where changes are made, it is incumbent on health boards to demonstrate quality

improvement as a result of those changes. The changes that Elaine Smith talks about do not constitute major service change, but that does not change the fact that NHS Lanarkshire has to take forward its plans in consultation with local communities and demonstrate to them the improvements that it is seeking to introduce. Of course, I am happy to continue to give reassurance to local members about the benefits that will come with those changes, as, I am sure, is NHS Lanarkshire.

Council Tax (Banding)

8. Richard Lyle (Central Scotland) (SNP): To ask the Scottish Executive what steps a person can take to reclaim an overpayment of council tax due to a wrong banding. (S4O-00275)

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): If an individual believes that their home has been banded incorrectly, legislation provides that they may make a proposal to the assessor to alter the valuation list. If the assessor disagrees and the proposal is not withdrawn, it is then referred for appeal to the valuation appeals panel. Further appeal, on a point of law only, can be made to the Court of Session.

Any subsequent recalculation of council tax liability or repayments is a matter for local authorities, which are responsible for the implementation and administration of council tax.

Richard Lyle: Valuation appeal committees are refusing appeals due to time limits that have been set on appealing wrong council tax banding. Will the Government give due consideration to a member's bill proposing the removal of time limits to appeal?

John Swinney: The Government would certainly give consideration to any members' bills that are introduced. I give the member that undertaking.

On the question of appeals against valuations, arrangements are set out in legislation for the appeals to be considered. If those arrangements are deemed to be unsatisfactory, the Government will consider the questions that are raised.

Prison Visits (Children)

9. Mary Fee (West Scotland) (Lab): To ask the Scottish Executive whether it will request that the Scottish Prison Service record all visits made by children to family members in prison and whether it considers that setting targets for such visits would help the rehabilitation of prisoners. (S4O-00276)

The Cabinet Secretary for Justice (Kenny MacAskill): The SPS currently records all

instances of children visiting a family member in custody if they have been registered as a visitor by the prisoner. However, the SPS depends on prisoners volunteering information about the number of children they have and registering them as visitors. In such circumstances, it is difficult to see how the setting of targets for child visits would be possible.

Mary Fee: I have a letter from John Ewing, the chief executive of SPS, which was sent to one of my colleagues. It states clearly that it should be up to the social work department to carry out the collection of data. Does the cabinet secretary agree with that statement, and does he agree that the social work department has sufficient resource in that regard?

Kenny MacAskill: I believe that the social work department has sufficient resource. We must consider first principles. There is a great deal of hypocrisy from Labour on this issue. In the previous session—I acknowledge that Mary Fee was not a member at that time—my colleague Aileen Campbell moved an amendment that would have required the judiciary to take children into account when imposing a sentence. That was opposed vehemently by the Labour Party. It seems rather rich that Labour should be concerned about the rights of children once their parents are incarcerated and not at the time of sentencing.

Secondly, one of the major respects in which children factor into this area involves women offenders and, in particular, the difficulties that are caused by short sentences—another matter on which the Labour Party displayed opposition in the previous session and continues to do so to this day.

When Elish Angiolini announces her report on the rights of women offenders, I hope that the Labour Party will support what the report says about the interests of children, who are particularly affected by the issue of women prisoners.

The Presiding Officer: Before we turn to the next item of business, I remind members, as I did this morning, that all mobile phones and other electronic devices should be switched off.

First Minister's Question Time

Engagements

11:59

1. Iain Gray (East Lothian) (Lab): To ask the First Minister what engagements he has planned for the rest of the day. (S4F-00203)

The First Minister (Alex Salmond): I will meet the Cabinet Secretary for Finance, Employment and Sustainable Growth. The subject matter will be the small business bonus scheme. I am sure that all members will welcome the latest official statistics, which have been published today and which show that, since 2009, there has been a 15 per cent increase in uptake and that more than 85,000 premises in Scotland now benefit from that substantial scheme.

Iain Gray: Talking of signing up, I have here a picture of the First Minister signing up to an election pledge for the National Union of Students Scotland to protect college places. Will he keep that promise?

The First Minister: The Scottish Government intends to keep all the promises in its manifesto. The manifesto says:

"We have reached agreement with our universities and colleges to maintain student numbers in the year ahead and will maintain this throughout the next Parliament."

That is what our manifesto states and what we will go forward with.

Iain Gray: I welcome the First Minister's promise to stick to the pledge, although he will forgive me if I am a little sceptical. Is it the same kind of promise as the promise that he would keep to his manifesto pledges to reduce class sizes to 18 and to maintain teacher numbers? Those were other education pledges to which he signed up. Yesterday, the Cabinet Secretary for Education and Lifelong Learning told the Education and Culture Committee that "something has to give". I have a letter from the principal of Angus College that states that Alex Salmond has cut the principal's teaching budget by 40 per cent and that 2,000 places will be cut. That is in one college. Will the First Minister be honest and agree that college places are going to be cut?

The First Minister: I thought that Iain Gray would have realised that the Scottish Further and Higher Education Funding Council has not issued the plans for each college, so I am afraid that his suggestions are threadbare. The Labour Party can come back and debate the issue when the plans are issued.

I want to point out a remarkable feature of the spending plans. We are in the most extraordinarily

difficult financial times, which I think Iain Gray would acknowledge, given that a large part of the difficulty is the Labour Government's responsibility. There is not much point in debating what was said in the previous session of Parliament because, to remind Mr Gray, the people judged on that in May and it was a pretty overwhelming conclusion. The substantial and interesting point is that, over the spending review period, which is from 2012-13 to 2014-15, the total investment in post-16 education, which includes universities and colleges, training and skills, is £5.95 billion, with the figure rising from £1.92 billion in 2011-12 to £1.99 billion in 2014-15, which is an increase of 3.2 per cent.

Against the context of cuts that Alistair Darling promised would be tougher and deeper than those of Margaret Thatcher and which were then increased by the Tory-Liberal coalition, that is a remarkable investment in the future of universities, colleges and young people in Scotland.

Iain Gray: Frankly, those who run Angus College will feel that the First Minister is living in a parallel universe. The letter that I referred to outlines cuts of 40 per cent and says that 2,000 student opportunities will go. Yesterday, the education secretary said that the figures were hypothetical, but there are real cuts in college places already. I spent Saturday at the hardest hit rally in Edinburgh. Disabled people fear for the future, and their figures show that almost 1,000 college places for disabled learners have already gone, which is getting on for half of such places across Scotland. Do those Scots have no place in Alex Salmond's brave new world? Why is he not protecting their college places and their future?

The First Minister: I remind Iain Gray of the manifesto commitment to maintain student numbers, which is exactly what we will do. I also remind him that, given that we do not yet have the figures for individual colleges, I have set out the overall picture for post-16 education. On his specific question, the phrase "opportunities for all" that we are using means exactly what it says: every single 16 to 19-year-old in Scotland who is not in a job, apprenticeship or full-time education will be offered an education or training opportunity. Instead of attacking it, Iain Gray should welcome that remarkable commitment in the face of cutbacks that are the joint responsibility of successive Westminster Labour and Tory and Liberal Governments.

Iain Gray: That promise was from the Labour manifesto not the Scottish National Party manifesto. I welcome it, but the Scottish Consortium for Learning Disability tells him that opportunities are being removed right now for Scots who have learning disabilities. Are they not included in the promise?

Alex Salmond spent last weekend rallying his faithful troops in Inverness and rewarding them with wrist bands—[*Interruption.*] I knew it; they are like sheep. I knew that some of them would hold them up. Perhaps the First Minister missed the news that applications for our universities have plummeted and that our education system consistently fails our poorest children and young people who have disabilities. He must know that one in four of our young men cannot find work. He has let youth unemployment double in this country. When is he going to stop banging on about a mythical independence generation and start doing something for Scotland's lost generation?

The First Minister: There are substantially more SNP troops and SNP votes than there are Labour Party troops or votes in Scotland at present.

We have made a number of strong commitments. Youth employment in Scotland is almost 5 per cent higher than it is across the United Kingdom, but youth unemployment is far too high. It is a serious issue, which is why we have introduced 25,000 modern apprenticeships, which is 60 per cent more than Iain Gray's party offered when it was last in government. That is why we have kept faith with the post-16 education sector and, when remarkable cuts are being made to the Scottish budget, it is extraordinary that that commitment to post-16 education and the commitment to student numbers applies. That is also why we have introduced opportunities for all.

In his questions, Iain Gray referred to what happened during the previous parliamentary session. He then talked about the Labour and SNP manifestos. I know that Iain Gray is finding it difficult to come to terms with what happened in May. People compared the SNP record in government with the record of the Labour Party in Westminster and Scotland. They compared the SNP's manifesto with Iain Gray's manifesto and they came to an overwhelming conclusion. I suggest that Iain Gray learns to live with it.

Prime Minister (Meetings)

2. Annabel Goldie (West Scotland) (Con): To ask the First Minister when he will next meet the Prime Minister. (S4F-00190)

The First Minister (Alex Salmond): I have no plans to meet the Prime Minister in the near future.

Annabel Goldie: I realise that this is my final opportunity to hold an exchange with the First Minister at question time.

Members: Aw.

Annabel Goldie: I reassure him that I will not sing:

"Good-bye-ee, good-bye-ee, wipe the tears, baby dear, from your eye-ee".

I have a feeling that that would not encapsulate his sentiments about my going. I have enjoyed our exchanges.

I was proud to deliver a new drugs strategy that is focused on recovery, but it means nothing if it is not being rolled out on the ground. I was proud to be at the forefront of giving Scotland 1,000 extra police officers, but that achievement is diminished if understaffed courts cannot prosecute criminal cases. I was proud that Scottish Conservative votes delivered help with business rates for thousands of small businesses across Scotland, but now businesses are to be hit with higher rates. How has the First Minister undermined three such good policies in such a short space of time?

The First Minister: Annabel Goldie understates the importance and long-lasting nature of those policies. We have made substantial progress and I welcome her support for drugs rehabilitation in Scotland. The 1,000 extra police officers are in operation on our streets and in our communities around Scotland. It was said by others in the chamber that the commitment would never be delivered, but they were proved wrong and we were proved right. I believe that those extra police are a substantial reason for the fact that recorded crime in Scotland is now at a 35-year low. Annabel Goldie should note that we now know that the small business bonus scheme is delivering for 85,000 properties in Scotland. That seems to me to be another substantial achievement. I am very happy to credit Annabel Goldie with having supported those valuable initiatives. I hope that she will realise that now, whatever may happen, I will have to pursue those matters alone. However, I assure her that I will protect her legacy.

Annabel Goldie: One of the more enjoyable features of this job has been reining in the First Minister's more obvious exuberances. I must tell him that his priorities of independence and jaunting off to the middle east are not the priorities of people, patients, students and victims. It falls to me to rein him in again.

Will the First Minister instruct the Lord Advocate to hold a crisis meeting with prosecutors to ensure that criminal cases are not time barred? Will he instruct his health minister to report to the Parliament as soon as possible on the burgeoning and inescapable problem of caring for the elderly in hospital? Will he explain how a 25 per cent increase over five years in the cost of methadone is compatible with a drugs strategy that focuses on recovery?

The First Minister: I will take careful note of and will take forward all those important issues, as instructed by Annabel Goldie.

Everything that I said before the recess, when I thought that it was Annabel Goldie's last question to me, still stands. I offer this compliment, which was paid on television the other night by one of the contenders in the Tory leadership election:

"The reality is that whoever wins this leadership election will at least in the short term be less well known and less popular with the public than Annabel Goldie. And if Annabel Goldie presided over a fall in our vote I don't think any of the four of us are going to be able to turn it around in any short space of time."

That is a quote from Murdo Fraser. I think that he was trying to say what I and, I am sure, the whole chamber believe, which is that, whatever the electoral results say, Annabel Goldie was an excellent leader of the Scottish Conservative party. I believe that she maximised the Conservatives' possible vote because she was well thought of and well liked and, above all, because she was respected by the Scottish population for the manner in which she put forward her ideas. I, too, have enjoyed our exchanges at question time. Thank you, Annabel. *[Applause.]*

The Presiding Officer (Tricia Marwick): Ms Goldie, because I am all heart, you can ask the First Minister a final supplementary question. *[Laughter.]*

Annabel Goldie: I am indebted to the Presiding Officer for her generosity, and I thank the Prime Minister—I mean, the First Minister—*[Laughter.]* It is good to give him a taste of what will never be. *[Laughter.]*

I remember the First Minister dolefully observing of a previous Prime Minister that he never writes and he never calls. Let me reassure the First Minister that, although I may be leaving this job and may not be invited round to the new Salmond towers for drinks, he has not heard the last of me. I shall write and I shall call.

The First Minister: I shall answer the phone and reply to the letters, and invitations will be in the post.

The Presiding Officer: Adam Ingram has a constituency question.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): The First Minister will be aware of the brutal murder of Stuart Walker in my constituency last weekend and of the universal shock and horror that it has aroused in the Cumnock community. Will he give the Parliament an update on the investigation?

The First Minister: The constituency member describes the murder as brutal, as indeed it was. It was a shocking incident. The police are responsible for the conduct of the inquiry, but they have said publicly that they anticipate that their inquiries will have a positive conclusion. It remains

for the Parliament to offer condolences to the friends and the family of Mr Walker.

Helen Eadie (Cowdenbeath) (Lab): The First Minister will be aware of recent press reports concerning radiation levels at the beach in Dalgety Bay that are 100 times greater than at Sandside beach at Dounreay. Those reports are of real concern to residents in the area. Does he agree that it is imperative that all agencies, including the Scottish Environment Protection Agency and the Ministry of Defence, work together extremely urgently and effectively to tackle the issue once and for all? There is no room for any further delay in assessing the scale of problem and solving it.

The First Minister: As the constituency member knows, SEPA is actively involved in that question at present and is pursuing it with great alacrity. I hope that it will get full co-operation from the responsible Westminster department. It is in all our interests that the MOD approaches the matter with an open book. Helen Eadie can be certain that SEPA will pursue its responsibilities with great diligence.

Longannet (Carbon Capture and Storage)

3. Bill Walker (Dunfermline) (SNP): To ask the First Minister what the Scottish Government's position is on the decision by the United Kingdom Government not to proceed with the proposed carbon capture and storage project at Longannet. (S4F-00208)

The First Minister (Alex Salmond): The carbon capture and storage project at Longannet was a huge opportunity, not only for Scotland but for the rest of these islands and for Europe. Unfortunately, it is now a lost opportunity. I recognise the strong case that Bill Walker has made on behalf of his constituents in this Parliament and elsewhere, and I know that all members in the chamber will unite in condemning a Treasury decision that ends the prospects of that world-leading project and threatens the future of clean coal in Scotland.

This is about more than a single project. It tells us loud and clear that this Parliament should be responsible for Scotland's energy future and energy resources.

Bill Walker: It is truly a missed opportunity for Fife and for the whole of Scotland. The Treasury and the Westminster Department for Energy and Climate Change dithered and disagreed over the necessary funding, despite the fact that the cost of the whole project could have been covered by one tenth of the yearly estimated North Sea oil and gas revenues—

The Presiding Officer: I ask the member to get to his question, please.

Bill Walker: Indeed. Will the First Minister continue to make the case to the Westminster Government that it is simply not acceptable to mouth words of support and offer warm words about carbon capture when what is needed is real action, so that Scotland can capitalise on that massive economic opportunity?

The First Minister: I will quote the words of Professor Stuart Haszeldine, who is probably the world expert on carbon capture. On "Newsnight Scotland" on 19 October, he said:

"it has gone through three Prime Ministers, Tony Blair, Gordon Brown and now David Cameron, all of whom claim to be enthusiastic about carbon capture and storage. None of whom have been able to deliver it. It's a project that has been extremely complicated and subject to a lot of quite unfair Treasury rules, and the Government has consistently refused to take on board much of the risk."

As Bill Walker pointed out, at a time when North Sea oil and gas revenues are more than £13 billion for this year alone, it would not have been unreasonable to expect expenditure of one tenth of that amount to secure the long-term future of clean coal in Scotland.

Liam McArthur (Orkney Islands) (LD): It is unhelpful to suggest that the work done by the partners on the project has been lost. Does the First Minister agree that there is every confidence that the project in Peterhead is the one that others will have to beat? Is it his view that, when a project bid comes in at 50 per cent over budget, ministers should proceed regardless?

The First Minister: The member should have a look at Professor Haszeldine's full interview on "Newsnight Scotland", in which he exposed the reality behind the Treasury calculations and the application of risk and project factors in a quite unreasonable fashion.

I sat behind the Liberal members in the House of Commons when they condemned in the strongest fashion the previous Labour Government's decision to turn its back on the Peterhead project in 2007. Is it too much to expect that Liberal members will see the Longannet betrayal as a lost opportunity for coal? Liam McArthur can be sure that we will be pressing to the utmost to try to secure and salvage a carbon capture project for Scotland. However, he must surely recognise the huge disappointment, the huge lost opportunity and the unfairness of carbon capture in Scotland not being funded while Scotland's resources fund his Government at Westminster.

John Park (Mid Scotland and Fife) (Lab): I know that the First Minister has a close relationship with Scottish Power's parent company, Iberdrola. Since the announcement was made, has the First Minister or anyone in his Government taken the opportunity to speak to the

trade unions who represent workers in Scottish Power to ask whether they have any long-term concerns about Longannet and energy policy more widely?

The First Minister: The Scottish Trades Union Congress is on the Scottish energy advisory board—my energy advisory board, which I co-chair—which has discussed this project many times. I will be glad to meet the trade unions at Longannet to talk about the future of coal in Scotland, but the future of clean coal in Scotland was centred on this carbon capture project.

The comments made by Labour members at Westminster did not strike me as being as thoroughgoing as I would have expected, given the significance of this announcement. I think that I am right in saying that it was not mentioned by the Labour front bench when Chris Huhne made his statement. It is an extraordinarily important decision that casts a pall over the future of clean coal in Scotland.

I will be delighted to meet the trade unions, but I suspect that the trade unions at Longannet will recognise the importance of and the element of betrayal in this United Kingdom Government decision.

Computer Games Industry

4. Joe FitzPatrick (Dundee City West) (SNP):

To ask the First Minister what steps the Scottish Government is taking to support Scotland's computer games industry. (S4F-00202)

The First Minister (Alex Salmond): We are taking a range of steps to support the computer games companies. In 2009, the Scottish Government invested £3 million in making the University of Abertay Dundee the United Kingdom's first ever centre of excellence in computer games. Scottish Enterprise manages 15 computer games companies and has made major investments in Glasgow's digital media quarter and in Seabraes Yards in Dundee. That commitment has borne strong results. For example, in February I was delighted to announce that Outplay Entertainment planned to establish its headquarter office in Dundee, creating 150 jobs and relocating from California.

Joe FitzPatrick: I thank the First Minister for his response. Earlier this week, the video games industry body, TIGA, and trade group the Association for UK Interactive Entertainment—UKIE—recognised the positive difference that independence could make to the industry and criticised the UK Government for failing to invest in the Scottish games sector. Will the First Minister join me in urging the UK Government to offer specifically targeted tax relief to help this vital industry thrive in Dundee and across Scotland?

Will he also continue the support that the Scottish Government is giving to the industry by considering the case for a creative content fund and have the relevant minister meet me and games industry representatives to explore that proposal?

The First Minister: Those are very important proposals. I recognise what TIGA has been saying about the computer games industry. Its case for tax relief is based on the argument that revenues would increase if the tax relief were granted—it cites international examples—because of the attraction of key investments into Dundee and Scotland. That is an example of why we need control over a tax base if we are going to offer such incentives in a successful way. On the last point, Joe FitzPatrick is aware that the Scottish Government has been asked to examine the establishment of a creative content fund to encourage new and further investment. I have asked officials to meet TIGA in early course to discuss how the proposal might be developed.

Mark McDonald (North East Scotland) (SNP):

Given that the UK Government has not only failed to introduce games tax relief, despite assurances by the previous Government that it would—the present incumbents show no desire to do so—and given that Ireland appears to be considering tax breaks in this area, does the First Minister agree that it is vital that the UK Government acts now to ensure that the games industry continues to invest in Scotland and does not start looking elsewhere? If the UK Government will not do so, is it not time that it gave us the powers to do it ourselves?

The First Minister: Yes, it is vital; yes, we should have the powers. The illustration of that is clear: the proposals put forward by TIGA, based on international examples, indicated how to be competitive. This sector could operate in an environment where tax relief and tax breaks result in an increase in revenue because of increased investment. It is obvious to members in this chamber that successive Labour Governments and the Conservative and Liberal Democrat Government have refused to do that. Would it not be better if we controlled the tax base and tax incentives so that we could respond in the way that this vital industry wants for Dundee and for Scotland as a whole?

Gavin Brown (Lothian) (Con): Has the First Minister considered a targeted tax relief with a power that he actually has, namely business rates?

The First Minister: I point out that we have considered a very well-targeted business rates policy that has resulted in 85,000 businesses across Scotland enjoying the small business bonus. Given some of the things that I have been hearing in the Tory leadership contest, I am not

certain that a future Conservative leader will be as dedicated in their support for that Scottish National Party initiative as Annabel Goldie has been.

Waiting Times Targets (Surgery Appointments)

5. Dr Richard Simpson (Mid Scotland and Fife) (Lab): To ask the First Minister whether the Scottish Government will investigate claims that patients are being offered unrealistic surgery appointments in England in order to circumvent waiting times targets. (S4F-00205)

The First Minister (Alex Salmond): As Richard Simpson will know, the Government is committed to lower waiting times and to complete transparency in the reporting of waiting times. Indeed, it was this Government that abolished hidden waiting lists. Initial findings from the investigation that is being carried through by NHS Lothian are that it did not make its patients a reasonable offer and offered only one appointment date to patients. That does not comply with the new ways waiting times guidance. The chief executive of NHS Lothian has initiated a full investigation, which will report to him by early November. A copy of the report will be submitted to the Cabinet Secretary for Health, Wellbeing and Cities Strategy, Nicola Sturgeon. Members will be interested to know that all the patients concerned are now being treated locally and are no longer having to be offered treatment in England.

Dr Simpson: I thank the First Minister for that most helpful reply in resolving the situation. The new ways waiting times initiative, which was actually an initiative from Labour that was then implemented fully by the Scottish National Party and is therefore a scheme to which both parties have joined up, has resulted in more than 100,000 patients being removed from the waiting lists every year. Many of those have been removed for valid reasons, but—

The Presiding Officer: Can we get to a question, please?

Dr Simpson: My question to the First Minister is this: given the large numbers that are being removed from the waiting lists and the evidence that the NHS Lothian case shows of new gaming, which led to the problem of hidden waiting lists, will he ask the cabinet secretary to undertake a review of the new ways waiting times initiative to ensure that no gaming is taking place in other areas of Scotland?

The First Minister: First, there is now transparency, so the cabinet secretary does that as a matter of course. Secondly, I remind Richard Simpson that, as I know he was going to tell members, when we took office in March 2007, 29,000 patients had an availability status code—in other words, they were part of hidden waiting lists.

Lastly, I know that Richard Simpson will have seen the figures from the United Kingdom comparative waiting times group that were recently published, which demonstrate that Scotland had the lowest median waiting times in the UK for seven of the 11 procedures under examination. That is before the UK Government tries to dismantle the health service south of the border.

Independence Referendum

6. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the First Minister when the Scottish Government will set a date for the referendum on independence. (S4F-00198)

The First Minister (Alex Salmond): In good time to meet our election commitment.

Murdo Fraser: The First Minister will not give us a date for his referendum and now he wants to muddle things further with talk of a third option. Surely it cannot be the case that the First Minister lacks the courage to put his big idea of independence to a straight yes or no vote of the Scottish people, or is he feart?

The First Minister: I now find out that Murdo Fraser has been feeding lines to the Prime Minister. I congratulate Murdo Fraser, who has, alone among the Tory candidates, questioned me for the fourth time. That is marvellous practice. It would be such a shame if all that practice came to naught.

I have been handed a statement by Matt Qvortrup, a professor and the world's foremost expert on constitutional referenda, from a letter that he is sending to *The Times* newspaper. He closes the letter by saying:

"While it is a matter for the Scottish people and Parliament to determine the form of their own referendum and while asking about a single question would be much more common, such a two-question proposition would be fair, reasonable and clear."

Our position is that, whatever else Murdo Fraser can count on—and I suspect that this is more certain than the result of the Conservative leadership campaign—there shall be a yes-or-no question on Scottish independence on the ballot paper, and the independence referendum will be held in the second half of this parliamentary session. That is the proposition that we put to the people of Scotland, on which we received an overwhelming and resounding majority.

Murdo Fraser: I am not interested in the opinions of constitutional lawyers, however eminent they are; I am interested in the opinions of the First Minister. If the First Minister is so confident that he can win support for independence, why not put the matter to a vote now and let the people decide?

The First Minister: There are a couple of reasons. The people of Scotland showed faith in the Scottish National Party in the election campaign, and I thought that the SNP would show faith in the people of Scotland. That is an original concept for the Conservative Party.

I am fascinated. We heard from Annabel Goldie that she did not really care about some of the world's most renowned economists; now, of course, we are not to care about the views of the leading constitutional professors and experts. The problem for the Conservative Party and the reason why it has been reduced to its present pitiful condition is not that it has not paid attention to the views of economists or constitutional experts, although doing so would have been good; the reason for the state of the Conservative Party is that it has never paid attention to the views of the people of Scotland.

Margo MacDonald (Lothian) (Ind): I am interested in what the learned professor thinks, but I am even more interested in what we think we could do with the answer to our question on a subject over which we have no jurisdiction. It is not in our gift to say what happens to anything other than an independence vote from the Scottish people. We cannot say how much devolution or what sort of devolution there should be. Why are we piddling about with the second question?

The First Minister: I fully accept that one of the great advantages of independence over devolution is that it requires the inalienable right and sovereignty of the Scottish people, but I look forward enormously to campaigning shoulder to shoulder with Margo MacDonald in the independence referendum campaign.

12:32

Meeting suspended.

14:15

On resuming—

Scottish Executive Question Time

Culture and External Affairs

Cabinet Secretary for Culture and External Affairs (Meetings)

1. John Pentland (Motherwell and Wishaw)

(Lab): To ask the Scottish Executive what meetings the Cabinet Secretary for Culture and External Affairs has had with the directors of the national museums and galleries in the last month. (S4O-00278)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I have not met those directors in the last month, but I will be meeting the chair of National Museums of Scotland shortly. On Monday, I met the chair and national librarian of the National Library of Scotland and I am looking forward to an event to celebrate the reopening of the Scottish national portrait gallery in late November.

John Pentland: I note the cabinet secretary's support for free access to museums and acknowledge the view of museums and galleries that such a policy would be changed only as a last resort. However, I also note that this year the budget for the national museums and galleries is going to be cut by more than £9 million in real terms, and that the museums and galleries have made it clear that they will find it extremely difficult to stay within their budgets without introducing charges. In the light of her comment this week that there is very little flexibility in the culture budget, is the cabinet secretary able to guarantee that such charges will not be introduced? If charges are not introduced, what cuts will have to be made to museums and galleries?

Fiona Hyslop: As I said to the Education and Culture Committee this week, free access to our museums and galleries will continue. I also point out that, although the cuts from Westminster have made the budget settlement extremely difficult, I have managed to ensure that next year's budget for museums and galleries will not be reduced.

Marco Biagi (Edinburgh Central) (SNP): The national museum of Scotland in my constituency is one of the jewels in the crown of the national collections. Is the cabinet secretary able to provide any information on visitor numbers and the museum's possible economic impact following its refurbishment and given its general high profile?

Fiona Hyslop: A few weeks ago, when I answered the same question, the national museum had received half a million visitors. I can now tell Parliament that, since reopening, it has received more than 860,000 visitors. I cannot give the member any information about the economic impact of that particular reopening, but I can tell him that the 360 museums and galleries around Scotland attract 25 million visitors a year; generate an estimated £79 million for the economy; and help to sustain more than 3,600 tourism-related jobs.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I am sure that the cabinet secretary is aware of the nationally important find of Viking treasure, which has lain near Ardnamurchan for a millennium. Although such finds are extremely important to local communities and economies, in the past they have tended to be taken away to Edinburgh, London or elsewhere. Does the cabinet secretary agree that we should be doing all that we can to ensure that exhibits such as the Lewis chessmen, the St Ninian's Isle treasure in Shetland and the Viking treasure in Ardnamurchan are displayed in the areas where they are found?

Fiona Hyslop: I, too, am very excited about the fantastic find of the Viking boat and the burial site. It is of significant value and it is only right and proper that the objects remain in Scotland. However, although I am extremely sympathetic to the view that we should generate local tourism by presenting such finds in those areas, I must point out that, under the treasure trove system, Scottish ministers have no role in determining the allocation of individual finds; such decisions are taken by the Crown Office. There is a treasure trove code of practice and, if the member agrees, I will send him the provisions in writing. It is important that we celebrate our history and culture not just in our museums and cities but locally, and I hope that in the future such finds will be displayed locally. Unfortunately, as I have made clear, such a decision might not be in my gift at this time.

Broadcasting

2. Gordon MacDonald (Edinburgh Pentlands) (SNP): To ask the Scottish Government what progress has been made toward implementing the recommendations of the Scottish Broadcasting Commission's report, "Platform for Success". (S4O-00279)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): The third and final progress report from the Scottish Government on implementation of the recommendations of the Scottish Broadcasting Commission was published on 6 October 2011. I have welcomed the increase

in the level of network programmes from Scotland to be commissioned by United Kingdom broadcasters, but have expressed disappointment that the UK Government has not engaged properly to establish a Scottish digital network.

Gordon MacDonald: Scotland contributes more than £300 million to the licence fee each year, but with no Scottish digital network established and a 20 per cent cut proposed to the BBC budget, does the minister believe that Scotland gets value for money from the current arrangements?

Fiona Hyslop: Scotland does not get value for money from the current arrangements. That point was made clearly by the Scottish Broadcasting Commission and, earlier this year, by the Scottish digital network panel, which I commissioned and which recognised and revealed the deficit of support in Scotland.

We do not receive a fair go. The Scottish digital network panel identified that the licence fee is regarded across the political spectrum as the best source of funding for public service broadcasting, but we have missed out on a number of occasions. First, the Scottish Government was not included in the hurried weekend negotiations that took place behind closed doors between the UK Government and senior BBC management on the licence fee. Secondly, funding of £76 million from 2013-14 has been allocated to the Welsh S4C network but not for a Scottish digital network. Thirdly, there is a scale of cuts to BBC Scotland that could seriously affect on-going delivery of quality broadcasting. Finally, I have serious concerns that the allocation of the licence fee for broadband does not reflect the significant challenges of delivering a 21st century broadband service in rural areas. On a number of counts, I think that we are not receiving value for money.

Cuba (Social, Economic and Cultural Links)

3. Neil Findlay (Lothian) (Lab): To ask the Scottish Executive what plans it has to develop social, economic and cultural links with Cuba. (S4O-00280)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): We do not have any plans at present to develop further social, economic and cultural links with Cuba, but we are always willing to consider opportunities as they arise, prioritised to meet the need of our purpose of increasing sustainable economic growth.

Neil Findlay: The minister will be aware of the excellent work of the cross-party group on Cuba and the accord that the United Kingdom and Cuban Governments signed in July. The accord represents an important step towards respecting Cuban sovereignty and—dare I say it?—Cuban independence, and it will allow exploration of

opportunities for bilateral engagement in areas of mutual interest including trade, climate change, science, health and education. Will the minister agree to meet the cross-party group to discuss how we can develop Scottish relations with that great socialist state?

Fiona Hyslop: I will try to be gentle. I have met the previous Cuban ambassador on education issues.

It is interesting that although some members seem to be happy to encourage ministers to seek solidarity with other countries that are seeking sovereignty and independence, they are not prepared to stand up for their own country's sovereignty and independence.

On a more positive note, I look forward to the work of cross-party groups in identifying links with a number of countries. Only yesterday I met a Kurdistan minister; we are always open to such opportunities. However, as the member will understand, those meetings have to be prioritised for Scotland's economic needs.

The UK signed the accord with Cuba earlier this summer and some of the areas in it are devolved, so we will have to look at the accord to see what links can be identified.

Elaine Smith (Coatbridge and Chryston) (Lab): Perhaps I can help out the cabinet secretary with an example of an opportunity to develop cultural links between Scotland and Cuba. Will she consider giving her support to the "Beyond the Frame" Cuban art exhibition in Glasgow next May? It will be the first time that such a large exhibition of contemporary Cuban art will be shown in Scotland.

Fiona Hyslop: Next year is the year of creative Scotland, so we will be welcoming artists and art from all over the world. If the member sends me details of the exhibition, I will see whether it is possible for me to attend.

Joint Ministerial Committee on Europe (Meetings)

4. Aileen McLeod (South Scotland) (SNP): To ask the Scottish Government what European Union issues were discussed at the most recent meeting of the joint ministerial committee on Europe. (S4O-00281)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Discussions at the October joint ministerial committee on Europe covered a range of issues relating to the business of the October European Council and co-ordination between the UK Government and devolved Administrations on the eve of the negotiations on the multi-annual financial framework for 2014 to 2020.

Aileen McLeod: Since part of the EU's proposed multi-annual financial framework for 2014 to 2020 includes €80 billion for the horizon 2020 future framework programme for research and innovation—which will be vital for Scotland's university and research sectors and small and medium-sized enterprises—will the cabinet secretary press the UK Government to take account of Scotland's interests when it is formulating its position for the EU budget and horizon 2020 negotiations?

Fiona Hyslop: I am pleased to confirm that I did exactly that only last week at the joint ministerial committee. There are great opportunities not only with the horizon fund, but with the £40 billion in the connecting Europe facility.

On the horizon 2020 fund, if we can identify areas that will help Scottish businesses and areas where we have expertise—particularly energy, renewable energy and life sciences—there are great opportunities. There are clearly challenges in the framework negotiations that are taking place, not least in respect of the common agricultural policy and other areas, but we should work closely with our universities on the horizon fund in order to ensure that we can get the best possible result from it. I am impressing that on the UK Government and it seems to be responding to that.

Jamie McGrigor (Highlands and Islands) (Con): Will the minister flag up at the next joint ministerial meeting the importance of getting CAP reform right for our Scottish farmers, crofters and the countryside?

Fiona Hyslop: Not only will I do that, but I did it at the last ministerial meeting. I was in Brussels last week when the Latvian President was visiting; Latvian farmers were protesting on the streets of Brussels—I think that farmers have protested a number of times in Brussels—and were complaining that their per-hectare percentage on pillar 2 was only 54 per cent. Scotland's amount is 48 per cent. That point was made quite forcibly to the UK ministers, who I hope will respond and ensure that CAP reform takes Scotland's needs, in particular, into account.

Significant Buildings (Glasgow)

5. Bob Doris (Glasgow) (SNP): To ask the Scottish Government what funding is available to support the repair, retention and community use of architecturally and historically significant buildings in Glasgow. (S4O-00282)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Historic Scotland has a budget of £12 million per annum available for historic environment grants. Approximately £5 million of that is made available

for grants to buildings of architectural and historic significance throughout Scotland. Historic Scotland also provides £750,000 to Glasgow City Heritage Trust towards grant funding of building repairs in the Glasgow city area.

Bob Doris: I draw the cabinet secretary's attention to Springburn's historic burgh halls and winter gardens, which have been left to go to wrack and ruin for decades under Glasgow Labour. I contrast that with Maryhill burgh halls, which have been supported by the Scottish Government, brought back into use and recently reopened.

Given the moneys that are available, can the cabinet secretary outline the ways in which Historic Scotland advises and works with local authorities, such as Glasgow City Council, and other interested organisations to maintain Scotland's historic building environment, and pushes local authorities such as Glasgow City Council to meet their responsibilities?

Fiona Hyslop: Clearly, in terms of statutory responsibilities, all local authorities have to take account of needs in their areas. As I explained, Historic Scotland works with all local authorities, including Glasgow City Council. Bob Doris can send me details of the winter gardens.

I am very pleased about what is happening with Maryhill burgh halls. That is a fantastic example of what can be done. Heritage is an investment in protecting our past, but it is also important in ensuring that we have community spaces for the future, and I encourage all local authorities on that. Even within a tight budget, Historic Scotland has been able to maintain its grants provision for 2012-13.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): The cabinet secretary and Mr Doris might be reassured to hear that discussions have begun concerning the future of Springburn public halls and the winter gardens. Might the cabinet secretary like to consider the funding that is available for historic places of worship? That is a popular scheme and its funding rounds are often oversubscribed, with the result that a church in my constituency is unable to take advantage of a heritage lottery grant, because it has been unable to secure matched funding from Historic Scotland. Can the cabinet secretary consider whether it would be possible to better align the criteria that organisations use when making awards?

Fiona Hyslop: I take it from the Patricia Ferguson's comments that she is supportive of the places of worship scheme. Recent announcements that we made about a number of places across Scotland were very much appreciated. She will recognise that changes have affected the UK in relation to places of worship. I

have had dialogue with the heritage lottery fund and I also know that Historic Scotland is looking at that scheme in particular. It is important to recognise the fantastic work that Historic Scotland is doing. In fact, it is now the biggest employer of stonemasons in the UK. Historic Scotland will have to work with local authorities and churches. It is a unique situation, but I reassure the member that I value the importance of the places of worship scheme. If there is further information about how the scheme will develop in the future, I am happy to send it to her.

Culture, Heritage and the Arts (Coatbridge and Chryston)

6. Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive what action it is taking to promote culture, heritage and the arts in Coatbridge and Chryston. (S4O-00283)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): In 2010-11, Creative Scotland invested £446,000 in the youth music initiative in North Lanarkshire. It also made additional grants to individuals of £6,500 in the Coatbridge and Chryston area for cultural and creative projects. In April 2011, Museums Galleries Scotland allocated more than £80,000 for the conservation of key objects in the Summerlee museum of Scottish industrial life. The money will be used to create an external exhibition space to enable more visitors to enjoy the collection.

Elaine Smith: I thank the cabinet secretary for outlining those welcome contributions. Is she aware of the excellent Bazooka Arts project in North Lanarkshire that provides opportunities through the arts for adults with disabilities and mental ill-health? The project has recently opened a shop in Coatbridge—the Art Stop—to display and sell artwork that is created by its participants. Will the Scottish Government consider matching the commitment of North Lanarkshire Council, which has provided additional funding to allow the organisation to continue running the Art Stop shop at least until Christmas?

Fiona Hyslop: I am not familiar with that project. As Elaine Smith will be aware, the Government does not directly fund individual small-scale organisations such as that. The member might want to approach Creative Scotland, which has set equality as one of its main themes.

Clare Adamson (Central Scotland) (SNP): Will the cabinet secretary join me in congratulating Creative Scotland on its continuing support through the Big Lottery Fund for North Lanarkshire Council's October book festival—words 2011—which this year included a presentation at

Coatbridge library by comic book writer and local superhero Mark Millar?

Fiona Hyslop: I am more than happy to congratulate North Lanarkshire Council on its words 2011 festival. I understand that it included James Robertson and poetry in Gaelic and Urdu. The 40 book festivals throughout Scotland are an important part of the fabric of our cultural experience.

Cultural and Creative Industries (Mid Scotland and Fife)

7. John Park (Mid Scotland and Fife) (Lab): To ask the Scottish Executive what steps it is taking to promote cultural and creative industries in Mid Scotland and Fife. (S4O-00284)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): The Scottish Government published its creative industries strategy on 21 March, which made it clear that the creative industries partnership will ensure that public sector agencies support the creative industries effectively. Creative Scotland's investment in projects in Mid Scotland and Fife, even excluding the youth music initiative, is worth about £1.2 million a year.

Scottish Enterprise is a board member of the institute for capitalising on creativity, which is a collaboration of four educational institutions that is based at the University of St Andrews. I was delighted to attend the launch of the institute on 26 October.

John Park: I draw the cabinet secretary's attention to the Project Arts Dunfermline proposal, which aims to buy a former fire station in Dunfermline and convert it into a creative industries hub. The group is negotiating the settlement with Fife Council, but I ask the cabinet secretary whether she is prepared to meet the group as the initiative develops to find out more about that exciting project.

Fiona Hyslop: I am interested in finding out more about that project. Creative industries hubs are a real prospect for the future. The Briggait in Glasgow and Out of the Blue in Leith have been successful and provide fantastic opportunities for start-up businesses in the creative sector. That is the way forward, so I am interested in hearing more about that project.

BBC Trust (Meetings)

8. John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): To ask the Scottish Executive when it last met the BBC trust and what issues were discussed. (S4O-00285)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I met with Bill

Matthews of the BBC trust yesterday. A range of issues were discussed, including our concern about the impact of the BBC's proposed cuts on BBC Scotland.

John Lamont: Earlier this year, the BBC started to broadcast BBC Alba on Freeview. To allow that to happen, 13 BBC radio stations are no longer broadcast on Freeview during BBC Alba's transmission times. However, a large number of my constituents use the Freeview platform for radio listening, particularly in areas such as Jedburgh, where there is no digital radio signal and the analogue signal is poor. Is the cabinet secretary content with the level of consultation that the BBC undertook prior to that change and is she concerned that the consequence of the change is that it is depriving non-Gaelic speaking communities access to essential radio services?

Fiona Hyslop: We always made it clear to the BBC that it should find alternative provision for those radio stations. I reassure the member that the figures that have just been released in relation to BBC Alba on Freeview are fantastic and show how successful it has been. The BBC trust has said that, although it expected a number of complaints along the lines that the member raises, the scale has not been what was anticipated, given the complaints that were received beforehand. The member might want to direct those figures and the concerns of his constituents directly to the BBC trust.

Historic Scotland (Funding)

9. John Wilson (Central Scotland) (SNP): Before asking the question, I draw members' attention to my entry in the register of members' interests.

To ask the Scottish Executive what recent discussions it has had with Historic Scotland regarding future funding. (S4O-00286)

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Historic Scotland is an executive agency of the Scottish Government, and there have been regular discussions in recent months on the agency's funding requirements as part of the preparations for the spending review 2011. Although Historic Scotland will experience significant cuts in its budget in coming years, it is reducing its cost base, significantly growing its income from non-Government sources and, importantly, maintaining its grants budgets for 2012-13.

John Wilson: I welcome the cabinet secretary's decisions on funding. What further steps are being taken to ensure that we have the necessary skills to maintain and protect Scotland's historic built environment?

Fiona Hyslop: Last week, I was delighted to announce funding support for a national conservation centre for traditional building skills in Stirling. That will be a great opportunity to make sure that we have those skills in the future. It includes Historic Scotland taking on 30 more modern apprenticeships for support for traditional building skills. That is great news and a great step forward, and I am sure that members will congratulate Historic Scotland on that initiative.

Bill Kidd (Glasgow Anniesland) (SNP): What plans are in place for cultural activities to be brought to Scotland by participant nations during the Commonwealth games in 2014?

Fiona Hyslop: The 2014 Commonwealth games will be an exciting opportunity to engage culturally with sportspeople and visitors from across the world as they gather in Glasgow. The cultural programmes for 2014 are at an early stage of development and the delivery structures are not yet in place. However, there is a commitment to working with arts and cultural organisations from throughout the Commonwealth and to present their work as part of the cultural festival at the games. Further information will be provided at an appropriate time, once the plans are more developed.

Bill Kidd: I am asking the question because many people in my constituency have family backgrounds in the Commonwealth and they would be keen to observe and/or to contribute to any cultural activities that originate from the participant countries. Does the cabinet secretary think that that will be possible?

Fiona Hyslop: I thank Bill Kidd for that point. I would like to see all MSPs and the whole country mobilise to help to celebrate the world's coming to Glasgow and to Scotland for the Commonwealth games. It is a fantastic opportunity and I am sure that we will take it forward with a great deal of enthusiasm.

Infrastructure and Capital Investment

Affordable and Social Housing (Investment)

1. Angus MacDonald (Falkirk East) (SNP): To ask the Scottish Government what progress has been made in encouraging investment in affordable and social housing from pension funds and other financing options. (S4O-00288)

The Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil): Some Scottish local authority pension funds have confirmed to the Scottish Government that they are interested in investing in social and affordable housing. They are considering the options available to them to do that, taking account of their fund managers' advice and their investment criteria.

The Government is also undertaking due diligence on a number of major bids for the innovation fund that seek to use new forms of institutional and other investment to support affordable housing supply.

Angus MacDonald: The cabinet secretary will be aware of the efforts that I made when I was a governor of the Falkirk pension fund to encourage the fund to look at investment in social and affordable housing. Does he agree that such an investment from pension funds would provide them with low-risk, index-linked, ethical investments that tick all the boxes and help to provide badly needed social and affordable housing?

Alex Neil: I entirely agree with the member and I commend his efforts in seeking to ensure that the Forth Valley pension fund looks at the possibility of investing in social housing while adhering to its investment criteria. We are having serious discussions with a number of pension funds and I hope to conclude those discussions within the next few months.

Lewis Macdonald (North East Scotland) (Lab): Initiatives of the type that Angus MacDonald has raised are welcome. However, the cabinet secretary will recognise that the level 4 figures that the Government has just revealed show that the Government's own investment in social and affordable housing will fall from £268 million this year to £125 million next year. Will he confirm that that represents a cut of more than 50 per cent in cash terms alone in the affordable housing supply line in the Scottish Government's budget? What does he intend to do to make up for that?

Alex Neil: Those figures exclude the local government settlement element of transfer of management of development funding. In reality, over the period of the comprehensive spending review, we will invest a total of £600 million in social housing, which is only about £10 million short of what was recommended by Shelter. Indeed, only a month ago, between us, the Minister for Housing and Transport and I announced total investment from the innovation and investment fund of £460 million for more than 4,300 new houses. I am still waiting for a statement from the Labour Party welcoming that.

Neil Findlay (Lothian) (Lab): Some credit unions have told me of their desire to look at investing in social housing the finances that they hold on behalf of their members. I understand that Financial Services Authority rules prevent that. I appreciate that governance of the FSA is reserved to Westminster, but will Mr Neil raise the issue with the Cabinet Secretary for Finance, Employment and Sustainable Growth so that the

next time Mr Swinney has a cup of tea with Mr Osborne they can have a chat about it?

Alex Neil: I am quite happy to raise that with Mr Swinney in the hope that he raises it with Mr Osborne. If Mr Osborne fails to do anything, we will act once we get the yes vote in the referendum.

Procurement Portal

2. Colin Beattie (Midlothian North and Musselburgh) (SNP): To ask the Scottish Executive what steps it has taken to ensure that small to medium-sized businesses have fair access to the procurement portal and what share of the available business they obtain. (S4O-00289)

The Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil): Public contracts Scotland provides a free-of-charge, single access point to public sector contract opportunities, which is open to suppliers of all sizes. Eighty-six per cent of the 58,000 suppliers registered on the site are SMEs. In the past year, 74 per cent of the contracts advertised on the PCS website have been awarded to SMEs.

Colin Beattie: In Scotland, we spend £9 billion a year on third-party goods, works and services, but only 30 per cent of the spend is with companies that employ fewer than 100 people. Will the minister consider what further measures can be taken to ensure that smaller companies, which form the backbone of our economy, receive a more equitable share of the procurement allocations, in order to better protect jobs?

Alex Neil: I am very empathetic to the member's point. We are looking at ways in which we can increase the opportunities for smaller companies and, indeed, micro-companies. We are considering a range of measures, including, not least, reform of the pre-qualification questionnaire system, with a view to accommodating smaller companies.

In addition, I will in future work much more closely on that issue with our local authority colleagues, who are responsible for 50 per cent of all public procurement in Scotland. The way in which some of their framework contracts have been designed makes it extremely difficult for SMEs in their area or, indeed, in the rest of Scotland to compete effectively for that business. One local authority, Fife Council, has tackled the problem highly successfully, and I hope to see the Fife model rolled out among all the local authorities in Scotland.

Gavin Brown (Lothian) (Con): If I heard him right, Mr Neil said that 70 per cent of public contracts go to SMEs. Does that figure relate to the volume of contracts? If so, what is the value of the contracts that go to SMEs?

Alex Neil: Over the past four years, the volume of contracts that have gone to SMEs is 75 per cent, which represents 45 per cent of the value.

Train Services (Overcrowding)

3. Alison McInnes (North East Scotland) (LD): To ask the Scottish Executive what action is being taken to tackle overcrowding on peak train services between Inverurie, Dyce and Aberdeen. (S4O-00290)

The Minister for Housing and Transport (Keith Brown): In December 2008, the Edinburgh-Fife-Aberdeen timetable package introduced an hourly service between Inverurie and Aberdeen, which improved capacity along the route. In addition, as part of its franchise obligations, ScotRail monitors passenger numbers to ensure that it utilises its train fleet and resources to minimise overcrowding.

We have commissioned Network Rail to examine the feasibility, cost and deliverability of the options that are contained in the Aberdeen to Inverness rail improvement study to accommodate the anticipated growth in passenger numbers on that route.

Alison McInnes: A recent survey by Nestrans—the north-east of Scotland transport partnership—highlighted significant overcrowding on peak services. It revealed, for example, that a peak evening service from Dyce to Aberdeen was operating at 141 per cent occupancy, while other services were operating at 118 per cent. If we are to encourage the use of public transport, that situation must be urgently addressed. Will the minister make it a priority to meet ScotRail and Nestrans to find a solution?

In addition, there has been a remarkable growth in passenger numbers in that area. In the past six years, passenger numbers at Inverurie have risen by 129 per cent, in comparison with the Scottish average of 34 per cent.

Will the minister agree to treat Aberdeen in the same way as Edinburgh and Glasgow and ensure that, in assessing future growth potential, he considers Aberdeen as a separate commuter market rather than relying on Network Rail's current forecasts, which include only the intercity routes?

Keith Brown: As I explained previously, it is down to ScotRail to ensure—within the franchise agreement for which it is responsible—that it provides sufficient capacity to accommodate the service demand that exists. That would, as Alison McInnes rightly says, include increases in growth.

The issue is worth thinking about as we enter the consultation process for the next franchise, in order to ensure that the points that Alison McInnes

raises are considered. It is for ScotRail to address the issue, but I am happy to take it up with the company and get back to Alison McInnes.

Dennis Robertson (Aberdeenshire West) (SNP): What effect has Nestrans had on easing the congestion in rail services? What plans does the Government have to ease the road congestion in north-east Scotland, particularly on the A96 in my constituency of Aberdeenshire West?

Keith Brown: The regional transport partnerships have the ability to lobby with regard to the rail industry, and they can lobby Scottish ministers to improve rail services to and within their own areas. They have a role to play in responding to rail consultations and in providing a regional strategic view, and they can, at their own initiative, undertake research and appraisals.

On Dennis Robertson's second point, we are very conscious of congestion in the north-east. He mentioned the A96, and he will be aware of the consultation that is soon to begin on the A96 Inveramsay bridge scheme, which involves upgrading the A96 trunk road to accommodate the free flow of traffic. The scheme will remove the need for existing traffic signal controls, remove congestion and reduce delays for road users. It will also—to return to rail—reduce the likelihood of bridge strikes by increasing the headroom. The Government is taking those initiatives seriously as part of a long-awaited project that we are progressing.

Scottish Enterprise (Meetings)

4. Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): To ask the Scottish Executive when it last met Scottish Enterprise and what issues were discussed concerning Glasgow's infrastructure. (S4O-00291)

The Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil): Ministers and officials meet representatives of Scottish Enterprise frequently. For example, the Cabinet Secretary for Finance, Employment and Sustainable Growth met representatives of Scottish Enterprise to discuss the comprehensive spending review on 26 August, and I understand that he is meeting the Scottish Enterprise board later today.

Patricia Ferguson: I thank the cabinet secretary for his answer, but I am sure that during those meetings Scottish Enterprise would not have volunteered the fact that it has been paying £0.25 million per annum for more than 10 years to secure a site in my constituency for which it has no plans and no use.

Will the cabinet secretary agree to meet me to discuss the options that have been identified locally that could provide a purpose for the site

and prevent the waste of £0.25 million of public money each year?

Alex Neil: I am not sure to which site Patricia Ferguson is referring: it may be the Ruchill hospital site or it may be another. I am always prepared to meet members who bring forward detailed proposals on how to use vacant public land, particularly if it is available for housing.

Social Rented Homes (Edinburgh)

5. Sarah Boyack (Lothian) (Lab): To ask the Scottish Executive what proportion of the 20,000 social rented homes that were announced by the Minister for Housing and Transport on 6 October 2011 will be built in Edinburgh. (S4O-00292)

The Minister for Housing and Transport (Keith Brown): Following the Scottish Government's announcement of spending plans for the next three years, funding allocations to local authorities are being considered, and discussions are taking place with stakeholders on the best way to operate a comprehensive affordable housing supply programme.

When local authority allocations are known, City of Edinburgh Council's strategic housing investment plan, which is due in February, will specify a planned number of homes by tenure over a five-year period and will be used to plan the number of social rented homes in the city.

Sarah Boyack: Almost 26,000 people are on the Edinburgh housing register and the City of Edinburgh Council estimates that it needs 1,600 new affordable houses every year over the next decade. Registered social landlords have indicated that they can deliver only 3,000 new houses over the next five years, which is 600 homes a year. In an earlier response, Alex Neil indicated that there would be funding for housing for local authorities. Will the minister clarify how much resource will be available? Will he assure me that the shortfall of around 1,000 social houses a year will be expected to come from new council housing stock?

Keith Brown: To be perfectly honest, on both those questions it is not possible at this time to specify that level of detail. I have said that funding allocations to local authorities are being considered and that process should be concluded relatively soon.

Our commitment on council housing is for 5,000 council houses across Scotland over the next five years. Edinburgh is obviously free to make a bid in that process.

Sarah Boyack is right to say that there is a challenge for the city of Edinburgh, as there is elsewhere. However, I think she will know that the level of investment that she mentioned—if it was

to be for 16,000 houses—is not nearly possible with the allocations of money that we receive from Westminster, nor is it possible for the Government to address long-term issues overnight; that has to be done over a period of time.

However, as the cabinet secretary made clear, we are investing around £600 million over the next three years. In the course of this year, with the money that will be added to by other sources, we are talking about more than £400 million being invested in housing across Scotland, which shows that we are serious about trying to address some of these long-term issues.

The Deputy Presiding Officer: I call Malcolm Chisholm but ask him to be brief.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Is the minister aware that local housing associations are telling me that future developments will have to be 70 per cent mid-market-rent housing and only 30 per cent social rented housing because of reduced subsidy levels? Given that, already, many people who are entitled to permanent accommodation are having to stay in temporary accommodation for long periods, how on earth can we meet the 2012 commitment if we do not have far more social rented homes in Edinburgh?

Keith Brown: Of course, it was for housing associations and others to make bids for the innovation and investment fund. It is true that we have given the commitment that two thirds of the 30,000 houses that we intend to build over the next five years will be social housing. We have made that commitment and it is a very strong commitment, given the budget situation we are in. Obviously, there will be further detailed discussions with the City of Edinburgh Council. As I have just said, it has to produce its strategic housing and investment plan, which is due in February and will specify tenure as well as the number of socially rented homes in the city over a five-year period. Perhaps I will be able to give the member more clarity once that has happened.

The Deputy Presiding Officer (John Scott): Questions 6, 7 and 8 were not lodged, much to the concern of the Presiding Officers. I call James Kelly to ask question 9.

Budget 2011-12 (Capital Investment)

9. James Kelly (Rutherglen) (Lab): To ask the Scottish Executive what priorities it has set for capital investment in the 2011-12 draft budget. (S4O-00293)

The Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil): We have a range of strategic priorities for capital investment, including the Forth replacement crossing, the new south Glasgow hospitals and the Scottish schools

for the future programme. We are using every policy lever to expand the capital programme.

James Kelly: I thank the cabinet secretary for his answer. Will he confirm that the adoption of the non-profit-distributing funding model by the Government is a climbdown, because, as Mark Hellowell and other academics have pointed out, that model will pay returns to investors? It is therefore a variant on public-private partnerships, which were much criticised by Mr Neil.

Alex Neil: There is a difference between a return to an investor and the massive excessive profits made by the private finance initiatives both north and south of the border. As a House of Commons select committee has recently reported, under the Tory-Liberal Democrat majority the country is now paying a very heavy price for Gordon Brown's PFI bill. If we were not paying such a heavy price in Scotland alone—towards £800 million a year—in excessive profits to the PFI merchants, we would have much more money to invest in new schools and hospitals rather than having to pay it out to the fat cats in the City of London.

Walking and Cycling Facilities (Investment)

10. Marco Biagi (Edinburgh Central) (SNP): To ask the Scottish Government what encouragement it gives local authorities to invest in walking and cycling facilities. (S4O-00297)

The Minister for Housing and Transport (Keith Brown): In 2011-12, the Scottish Government will allocate £7.458 million to local authorities for investment in cycling, walking and safer streets projects. However, it is up to authorities to prioritise investment to meet local needs.

Marco Biagi: I get a lot of representations from constituents asking for spending on cycle routes in particular. My response is that the cycle routes, for a large part, are the responsibility of the local authority. Has any estimate been done of the amount of spending by local authorities on cycle routes? What role does the minister envisage for local authorities in fulfilling the very ambitious targets in the cycle action plan for Scotland?

Keith Brown: We do not hold that information centrally, as it is up to local authorities to determine how to meet local needs and to invest accordingly. However, councils currently receive a ring-fenced cycling, walking and safer streets capital grant from the Scottish Government. We ask that they spend at least 36 per cent and preferably 50 per cent of that on cycling projects and cycling promotion. In 2011-12, around £2.68 million should contribute to achieving the 10 per cent vision in the cycling action plan for Scotland. Local authorities may also access

funding that is allocated to Sustrans and Cycling Scotland for safe cycle routes, national cycle network links, bikeability Scotland cycle training, and awareness-raising campaigns for drivers to look out for young cyclists, especially during school-run times.

Points of Order

14:56

Murdo Fraser (Mid Scotland and Fife) (Con):

On a point of order, Presiding Officer. At First Minister's questions today, the First Minister, in response to a question from me on the referendum on independence, stated the following, and I quote from the *Official Report*:

"I have been handed a statement by Matt Qvortrup, a professor and the world's foremost expert on constitutional referenda, from a letter that he is sending to *The Times* newspaper. He closes the letter by saying:

'While it is a matter for the Scottish people and Parliament to determine the form of their own referendum and while asking about a single question would be much more common, such a two-question proposition would be fair, reasonable and clear.'"

End of quote.

I have now been informed that the words quoted by the First Minister purporting to be from Professor Qvortrup are not those of the professor but were written by the First Minister's official spokesman, who advised the press of that at lunch time's media briefing. I am sure that you will agree, Presiding Officer, that if that is correct it appears that the First Minister has misled Parliament, which should be a matter of great concern to all members. Will you ask the First Minister to come to the chamber and make a statement so that the record can be put straight?

The Deputy Presiding Officer (John Scott):

I thank Mr Fraser for that point of order, but he will be aware that in matters of veracity, members, including the First Minister, are responsible for what they say during proceedings. I note, nonetheless, what Mr Fraser has to say and I hope that all members will reflect on what they say and have said in the chamber. If they think that they may have misled Parliament, they may wish to address that.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):

On a point of order, Presiding Officer. With reference to Mr Fraser's point of order, would the Presiding Officers make time available should the First Minister wish to return at the earliest opportunity to the Parliament to clarify the comments that he made?

The Deputy Presiding Officer: We would consider any such request through the normal channels.

Margo MacDonald (Lothian) (Ind): On a point of order, Presiding Officer. While I fully accept your ruling as regards the responsibility of each member to be truthful when he or she speaks on any particular topic, do we not have a responsibility as a Parliament to the people who

elect us and who may not be in a position to hear corrections being made? Should we not make a correction plain to the people outside here, particularly on such an important constitutional question?

The Deputy Presiding Officer: I refer the member to my previous answer to Murdo Fraser that members of Parliament are responsible to Parliament for what they say.

Johann Lamont (Glasgow Pollok) (Lab): Will the Presiding Officers reflect on the fact that, in this case, it is not only that it appears that the Parliament was misinformed, but that somebody's views were misrepresented, and that person is not in a position to make sure that the record is changed. I think that that is another issue that we would want you to consider.

The Deputy Presiding Officer: I think that we have already essentially dealt with that point of order, but I thank you, nonetheless, for raising it.

If there are no further points of order, we will move on to the next item of business.

Scots Criminal Law (Integrity)

The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-01133, in the name of Kenny MacAskill, on ensuring the integrity of Scots criminal law.

14:59

The Cabinet Secretary for Justice (Kenny MacAskill):

Scotland has a unique legal tradition that is many centuries old and proudly independent. The existence of distinctive Scots law predates the treaty of union by centuries. The old Scots Parliament made laws for Scotland and those laws were applied in Scotland's courts long before 1707.

The distinctiveness of Scots law has been at the heart of our national identity and civic society, and we have a duty to preserve and uphold it. I know that that view is widely held. 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 are part of our civic democracy. That identity and that independence were constitutionally guaranteed by the treaty of union in 1707, and they have been cherished and preserved for centuries since then.

With that in mind, I am delighted to welcome the report that has been prepared by the independent review group led by Lord McCluskey. Once again, I welcome him and his colleague Sheriff Charles Stoddart to the chamber, and I want to pay tribute to the individual members of the group.

Lord John McCluskey is a central figure in the history of Scottish constitutional change. He was Solicitor General for Scotland when the first devolution proposals came before the Westminster Parliament in the 1970s, and he presided as a High Court judge for 16 years over some of the most significant cases in Scottish legal history.

Sir Gerald Gordon was a sheriff for nearly 25 years and a temporary judge at the High Court until June 2004. He was professor of Scots law and head of the department of criminal law and criminology at the University of Edinburgh. He has been an advocate and procurator fiscal depute, and he was a member of the Scottish Criminal Cases Review Commission from its inception in 1999.

Sheriff Charles Stoddart was the first director of judicial studies for the Judicial Studies Committee for Scotland and a well-respected sheriff.

Professor Neil Walker is regius professor of public law and the law of nature and nations at the University of Edinburgh, and an internationally renowned expert on constitutional theory.

The group's report is objective, measured and informed by an unparalleled level of expertise. The advice provides a sound and sensible basis for progressing matters. The analysis that the group has produced is considered. It recognises the need for change and puts forward measured and achievable suggestions on how we can bring about that change.

In taking on the task, the group was clear that the review would operate within the current constitutional situation. That is not the constitutional situation that the First Minister and I seek, but it is the one that we find ourselves with and require to address. The Scottish Government's position on constitutional change is well known. It goes without saying that we are preparing Scotland to be a modern, independent nation. However, this debate is not about constitutional change; rather, it is about ensuring that the integrity of the Scottish legal system is preserved. People must take any threat to Scotland's historic legal tradition seriously, whether they support independence, devolution or the status quo.

Until 1999, the High Court of Justiciary sat in its rightful place at the apex of the Scottish criminal justice system. I accept that devolution was not intended to change that, but the jurisdiction of the United Kingdom Supreme Court has developed in the intervening years, and that has had effects in ways that were not foreseen when I was being lectured by Sheriff Stoddart and Sir Gerald Gordon.

I simply seek to suggest ways in which the situation can be remedied, whereby the High Court has the final say on Scots criminal matters and the UK Supreme Court assumes a role as a proper constitutional court and is certainly not a further court of general appeal. That is a perfectly normal state of affairs in any modern European democracy where there is a clear distinction between the proper role of the criminal courts and the function of a specialist court that is tasked specifically with the role of interpreting and defining convention rights. The courts should not compete with but complement each other.

The review group made a number of arguments. First, the UK Supreme Court should be limited in jurisdiction, ruling only on the application of convention rights and not on any remedy offered in recompense for breach of those rights. Secondly, an appeal to the UK Supreme Court should be competent to proceed only when a point of general public importance is judged to be raised. Thirdly, provisions for appealing to the UK Supreme Court should not be limited to acts of the Lord Advocate but should be extended to all acts of public bodies, including the Scottish ministers.

On the first point, we agree that the UK Supreme Court should not rule on remedy. Under the current arrangements, we would be prepared to accept that it has a role in interpreting the European convention on human rights and handing down its interpretation. However, actively to suggest remedies for breaches is to take a step too far. The role of the court should rest with giving authoritative rulings on compliance.

We also agree on the second point. It is simply not acceptable that the High Court of Justiciary in Scotland does not have the same powers as its counterparts in England and Wales when it comes to certifying a case for consideration by the UK Supreme Court. That is a strange anomaly, which must be remedied.

We agree on the third point, too. The Human Rights Act 1998 already captures the acts of public bodies, and the recognition of that is simply the putting into effect of what currently happens, through the office of the Lord Advocate. It would make sense and be more transparent to recognise the situation in relation to criminal proceedings, rather than trying to fit such acts into the term

"an act of the Lord Advocate".

It is far better that the system should be clear, particularly to the public, who do not have the luxury of immersing themselves in the finer detail of criminal procedure.

Johann Lamont (Glasgow Pollok) (Lab):

Does the cabinet secretary think that the public might prefer him not to go on in great detail about the issue but instead address the key issue for the justice system, which is the clogging up of cases in the prosecution service and the undermining of people's confidence in the system?

Kenny MacAskill: I would have hoped that, on a matter of huge constitutional importance that is fundamental to the integrity of Scots criminal law, the member's intervention would have added to matters rather than detracting from the dignity and majesty of these proceedings.

There are pressures in the courts system. We will debate them, and doubtless they will be discussed and argued about in the Parliament. However, Ms Lamont offered no perspective on the matter that we are debating. Does she think that this debate is irrelevant? Is it not worthy of her consideration? Cannot she ask a question that relates to the fundamental matter in hand, which is the integrity of Scottish criminal law and how we deal with the UK Supreme Court? I do not seek to diminish the challenges that the Crown Office and Procurator Fiscal Service faces, but I would have thought that the member would have made a contribution that was worthy of a debate in which we are honoured by the attendance of Lord McCluskey and Sheriff Charles Stoddart.

The review group's recommendation remedies the situation that was introduced by the Scotland Act 1998, which Lord McCluskey described recently in the House of Lords as "constitutionally inept".

There are other points with which we agree. It seems sensible to allow the UK Supreme Court to reformulate the questions, albeit within properly defined parameters. We would be relaxed about the retention of the powers of the Lord Advocate and the Advocate General to refer cases if they felt that there was a point of general public importance. I note that there are others who agree with the McCluskey group recommendations, including the Lord President, who has written to the Scotland Bill Committee indicating that Scotland's most senior judges are in agreement with the report, particularly on the point of certification. In an important debate about matters involving the Lord Advocate and the Advocate General, which includes comments from the Lord President, it would be worthy of members to contribute constructively to achieve the necessary outcome of preserving the integrity of the judicial system in Scotland.

I say to those who argue against certification simply that Scotland has an independent legal system. As I said at the outset, it was preserved by the treaty of union and predates the treaty of union. It has been a fundamental part of the democratic and civic structures in our society that have grown up in parallel with, but distinct from, those south of the border and we imperil it at our own danger. We must trust the High Court of Justiciary to consider the merits of cases and rule accordingly, just as the courts of appeal in the other constituent parts of the UK are trusted. In that way, both the High Court and the UK Supreme Court will be able to fulfil their respective functions.

In seeking to take concrete actions to address those issues, I will write today to the Scotland Bill Committee of this Parliament in advance of its evidence session on Tuesday. I will also write to the Advocate General and the Secretary of State for Scotland with a copy of draft illustrative provisions that are designed to implement the McCluskey group's recommendations. I look forward to holding further discussions with the Advocate General and others as we seek to agree on a solution that is in the best interests of Scotland.

In the meantime, I urge the Parliament to endorse the conclusions of the review group's report and call on others to recognise that they offer the best path to safeguarding the integrity of our historic independent legal system. This is not necessarily the position that the Government would take in an independent Scotland. However,

while we remain in a devolved Scotland, it is fundamental that we preserve the integrity of that which was meant to be protected, and was specified as being protected, in the treaty of union. For that reason, this is an important debate and should be treated as such by all members. It was because of the importance of the subject that Lord McCluskey and his colleagues—given their eminence and seniority in law in Scotland—were asked to consider it. Now that they have produced a report that is supported not only by me—as might be expected, putting my faith in the great and the good—but by the Lord President, the most senior judge in Scotland, speaking not only personally but on behalf of the senior judges of Scotland, it is important that the Scottish Parliament listens and acts.

I move,

That the Parliament welcomes the conclusions of the review group chaired by Lord McCluskey on the examination of the relationship between the High Court of Justiciary and the Supreme Court in criminal cases; welcomes the review group's comments about the historical independence of the Scottish legal system and its conclusion that this position should be maintained by restoring the High Court to its rightful place at the apex of that system; further welcomes the review group's suggestion of a certification procedure granted by the High Court of Justiciary for criminal cases; notes the review group's view that the UK Supreme Court should have a limited jurisdiction, ruling solely on the point of law relating to convention rights arising in criminal cases, and calls on the UK Government to work with the Scottish Government to deliver a solution through the Scotland Bill that reflects the recommendations of the review and preserves the integrity of Scots criminal law.

15:13

James Kelly (Rutherglen) (Lab): I welcome the opportunity to take part in this afternoon's debate. I thank Lord McCluskey and his colleagues for the work that they have done in producing not only the final report but the interim report that we debated in June.

Mr MacAskill started with a history lesson. I will start with a more recent history lesson to put the debate in context. It is important to reflect on the intemperate contributions that the First Minister and the cabinet secretary made to the debate back in May. Following the Supreme Court's judgment in the Fraser case, Mr Salmond attacked the England-based judges for the decision. Mr MacAskill told us that such judgments implied that the judges acquired their knowledge of Scots law on a visit to the Edinburgh festival. He also, shockingly, threatened to withdraw funding from the Supreme Court. The Law Society of Scotland and the Faculty of Advocates united to condemn that move. Those comments were unacceptable at the time and did nothing to set the tone that Mr MacAskill has strenuously encouraged Parliament to adopt this afternoon. It seemed to me almost as

if Mr MacAskill and the First Minister were telling us that all we needed to get the correct decisions were some Scottish judges in tartan scarves as opposed to English judges wrapped in the St George's cross. Some members are shaking their heads, but that was the tone of the debate.

I note the report and will move on to discuss the issues in more measured terms. I welcome the fact that the report reinforces the UK Supreme Court's role. I point out that that is at odds with the view that the Scottish National Party Government expressed back in May, but it is the correct view to take and is entirely logical given the situation that we are in.

Mr MacAskill stressed that we have an independent legal system. However, we are not an independent country. We reside within the UK, and the UK is the signatory to the European convention on human rights. Therefore, it is important that we have consistency throughout the UK and the Supreme Court should be the court of appeal in human rights cases. That recommendation in the report is to be welcomed, particularly when we contrast it with some of the suggestions in the debate back in May, such as having a Scottish supreme court or referring decisions to Strasbourg.

In its submission to the Scotland Bill Committee, the Faculty of Advocates pointed out that the Supreme Court has been used on only very few occasions. Between October 2009 and March 2011, there were 18 requests for the Supreme Court to consider cases and only two of them were taken up. Members should contrast that with Strasbourg, where 150,000 cases are taking up to three and a half years to be heard. We should think of the cost and uncertainty that would arise if we went down that route, as some members suggested earlier in the year.

Three areas in the report require concentration and further consideration. The proposal in the Scotland Bill on acts of the Lord Advocate, which has been discussed in the expert group convened by Lord Wallace and in Lord McCluskey's group, is a substantive legislative proposal that requires consideration. The expert group, supported by Lord McCluskey's group, criticised the original constitutional arrangements in relation to the Lord Advocate's retained functions. It pointed out that that has resulted in practical problems and delays. The proposal has been made to take out the Lord Advocate's retained functions.

It should be noted that the Law Society has opposed that. It has some concerns on the issue, particularly on how convictions would be treated if convention rights had been breached. However, I note that, in its evidence to the Scotland Bill Committee, the Faculty of Advocates—which was originally opposed to taking the acts of the Lord

Advocate out of the arrangements—says that it is hopeful that a solution can be found. It is important that the relevant parties discuss the issues to try to find a solution that is agreeable to all.

Mr MacAskill focused on the proposal that the High Court should have to grant a certificate of public interest in a case before the Supreme Court could hear it. He argued that that would bring Scotland into line with other parts of the UK. That is one side of the argument, but other issues must be considered. If that approach was to be consistent with that in other parts of the UK, it could open up the ability for people to argue—as with criminal cases in England—that an application should be implemented in Scotland, which would provide a route for criminal cases to go to the Supreme Court.

Kenny MacAskill: Does the member recognise that the Lord President's letter says:

“the High Court should be brought into line with the Court of Appeal (Criminal Division) and the Court of Appeal of Northern Ireland by the requirement of certification by these intermediate appeal courts as a precondition of any criminal case being taken to the UK Supreme Court”?

Does what our most senior judge has written on behalf of himself and his colleagues not carry significant weight in legal terms?

James Kelly: If Mr MacAskill looks back at the submissions to the expert group that Lord Wallace established, he will see that only two submissions supported the route that Mr MacAskill proposes. A considerable amount of work must be done to provide evidence that supports Mr MacAskill's view and to deal with legal and technical issues that have arisen in the discussion—there is some way to go on that. Going down the proposed route could also restrict access to justice by disallowing direct appeals to the Supreme Court.

It is important to get the law right and to produce a robust system that works in the 21st century. Several important matters, some of which are technical and complex, need to be considered fully before any amendments are made to the Scotland Bill.

I move amendment S4M-01133.3, to leave out from first “welcomes” to end and insert:

“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; notes the conclusions of the review group chaired by Lord McCluskey on the examination of the relationship between the High Court of the Justiciary and the Supreme Court in criminal cases; 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 McCluskey report and the work of the expert group set up by Lord Wallace raise some important questions in relation to devolution issues, the requirement for a general public interest certificate to be issued by the High Court of the

Justiciary prior to appeal to the Supreme Court and widening the scope for appeals to the Supreme Court on European Convention on Human Rights grounds to include potential violations by any public authority, and believes that detailed consideration of all the relevant issues and implications of the range of reforms identified is essential and that this must involve discussion with all interested groups to ensure that any reforms deliver a fair and effective judicial system."

15:22

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I, too, welcome the opportunity for members to look in detail at the final report by Lord McCluskey's review group. We had an informative debate on the interim report in June and we are now in a position to look at Lord McCluskey's final report.

I add my appreciation to that of others for the work that Lord McCluskey and his team did in producing the report. Disagreements on the detail of the report's conclusions are inevitable, but the report undoubtedly provides a clear and helpful analysis of the issues that are at stake. Unfortunately, many of the Scottish Government's pronouncements have been less than helpful. To avoid doubt, we should be clear that the McCluskey review endorsed the proposition that the Supreme Court should retain a jurisdiction in respect of appeals in criminal cases from Scotland when those cases raise questions of compatibility with convention rights.

The UK Supreme Court acts as a buffer between the High Court and the European Court of Human Rights. It allows human rights issues in controversial criminal cases to be resolved in the UK before the time and resources of an already overburdened international institution are demanded. The cabinet secretary has claimed that referring cases from Scottish courts directly to the European Court of Human Rights would be simpler. Perhaps he should remember that the court in Strasbourg has a backlog of about 150,000 cases and a three to four-year waiting time. If we slowed access to justice through such an approach, we could find that more cases were eligible for appeal.

When the UK court rules on Scottish cases, it does not judge on the facts of the case or release a proven or not proven verdict. Instead, its remit is restricted to particular points in connection with the European convention on human rights, so the constitutional system provides a more immediate process for interpreting the human rights rules that the ECHR establishes more conveniently than going directly to the European court in Strasbourg.

The motion rightly mentions the Scottish legal system's historic independence and the need to maintain that. I doubt whether any member from any party disagrees with that. However, I gently

remind the cabinet secretary that, just as the proudly independent Scottish legal system historically did not exist in a vacuum, so our justice system today must be seen in the context of our national and international legal obligations. That the High Court of Justiciary has a relationship with the UK Supreme Court and the European Court of Human Rights in Strasbourg does not in itself imply that Scotland's legal system is in some way bereft of integrity. Rather, it shows that Scotland and her legal system is an independent part of the United Kingdom and the European Union.

As the Law Society recognises, Scots law has always been outward looking, both in providing a model for other legal systems to follow and in looking to other legal systems for good practice and inspiration. We believe that our legal system is strong because of that willingness to learn from other systems, and the SNP ought to be careful that its political attempts to reduce the UK Supreme Court's influence on Scotland do not come at the cost of an effective legal system that provides fair access to justice for all.

That said, we fully recognise the need to tidy up how the UK Supreme Court engages with Scots law in determining points that relate to human rights. It is to be welcomed that the report underlines the need for coherence in the way in which human rights laws are applied north and south of the border. The UK Government has made it clear that it will review Lord McCluskey's recommendations carefully. The Advocate General, Lord Wallace, has met Lord McCluskey to discuss his report and I understand that he will do so again. In clear contrast to the negativity and bickering from the Scottish Government, Her Majesty's Government at Westminster has shown that it is prepared to take a responsible and constructive path to ensuring that the integrity and effectiveness of Scots law are respected and maintained.

As we have seen, the review group recommends in its report that the UK Supreme Court should have the power to rule on human rights issues that arise from Scottish criminal law cases. However, it argues that that should occur only if the High Court of Justiciary permits the appeal. Permission would be granted through a certificate that notes that the case raises a point of general public importance. The Government, which has done all that it can to undermine the integrity of the UK Supreme Court in recent months, has welcomed the proposal with open arms. We in this part of the chamber believe it to be an unnecessary proposal that might have far-reaching negative consequences for access to justice in Scotland.

The Law Society has also made it clear that it disagrees with the recommendation. Its point is

that individuals, whether they are in Scotland or in other parts of the UK, have rights that are particular to the individual and they should not be assessed against such a test. The SNP's dogmatic political desire to narrow the UK Supreme Court's scope on Scottish matters should not be pursued at the price of restricting full access to justice for Scots.

As I said, we welcome the work that Lord McCluskey and his team have done on the role of the Supreme Court in relation to Scots law, but we do not accept the spin that the Scottish Government has put on it. We will continue to fight to maintain the integrity of Scottish criminal law, but firmly within the context of Scotland's place in the United Kingdom.

I move amendment S4M-01133.1, to leave out from "this position" to second "criminal cases" and insert:

"the position of the High Court of Justiciary should be maintained in its rightful place at the apex of that system".

15:28

Alison McInnes (North East Scotland) (LD): I, too, welcome the opportunity to debate the review group's report and set it in the context of the wider debate. I find it interesting that, after the Government's refusal for so long to engage with the Scotland Bill process, it is now taking to scheduling debates in the Parliament in the hope of encouraging ever more amendments to it.

It is difficult to know where to begin with the Government's motion. I am drawn immediately to the reference to

"restoring the High Court to its rightful place at the apex of"

the Scottish legal system. I agree that the High Court should remain as the final court of appeal in Scottish criminal cases, but the key word is "remain". I do not believe that its position has ever been in doubt. There are certainly some issues about the precise way in which our legal system interacts with the Supreme Court and it is right that that relationship should be clarified. I will touch on those issues in a moment, but first I must again thank Lord McCluskey and his group for their work on the report. Hearing additional viewpoints to inform the debate is always helpful. However, I must repeat two points that I made in our debate on the initial report in June.

First, let us remember that the report was commissioned by the Government as an attempt to justify its intemperate comments towards the Supreme Court on the back of the Nat Fraser ruling. That the report has singularly failed to endorse the Government's call that the Supreme Court should play no role in Scotland should serve as a reminder to both Kenny MacAskill and Alex

Salmond that they ought to think a little before they shout. Secondly, I am still unsure why we seem to be giving the report the same weight and significance as the report of the Advocate General's expert group, which was put together over many months on the back of evidence taking and discussions with a wide range of experts and interested parties.

That said, Lord McCluskey's report raises a number of relevant issues. I am particularly interested in his recommendation that we widen the scope for referrals to the Supreme Court beyond the acts or omissions of the Lord Advocate and that appeal to the Supreme Court be open, regardless of which public authority is alleged to have violated a person's convention rights. If a practical way can be found to incorporate such a change, the move seems eminently sensible. The Lord Advocate is not the sole point of contact for ensuring that accused people's convention rights are protected and I hope that we can consider and discuss this issue further as the Scotland Bill progresses. I was interested to hear Kenny MacAskill support such a change earlier this afternoon. I am also content with the report's recommendation that the Supreme Court remit cases in which it has found a convention breach right back to the High Court for it to determine the appropriate disposal.

However, I cannot agree with Lord McCluskey's recommendation on certification. I recognise that this tricky issue merits debate but, so far, there have been inconsistencies in comparisons. It has been mentioned more than once that a system of certification already exists in England and Wales and Northern Ireland but, as members of the Advocate General's expert group made clear in response to Lord McCluskey's group, any such comparison is flawed because, in those jurisdictions, the Supreme Court is the final court of appeal for all aspects of criminal law. Of course, that is not the case in Scotland.

The Advocate General's group also noted the many exceptions to the certification system that are in place in the rest of the UK.

Kenny MacAskill: The member seems to be suggesting that, south of the border, the UK Supreme Court is the final court of appeal on criminal matters. Given that it is accepted even by the Advocate General that it is not meant to be, the justification for certification in Scotland is even greater than it is south of the border and it is therefore no wonder that, in response to comments by his fellow judges, the Lord President has written seeking certification.

Alison McInnes: I do not agree. The reason for having certification south of the border is the vast number of cases that might appear in the Supreme Court. The number of such cases is

constrained in Scotland because only devolution issues are involved.

The Advocate General's group noted that many exceptions to the certification system are already in place in the rest of the UK and believed that it would be wholly inappropriate for Scotland to adopt certification unless similar exceptions were put in place—and such a formulation would, it said, “not be straightforward”.

In any case, I fear that, once again, this debate is approaching the whole issue of ECHR compliance from the wrong angle. It is all very well for the cabinet secretary and the First Minister to be outraged that a “foreign court” is “undermining” Scots criminal law with its decisions. However, what I am outraged by—and what this Government should be outraged by—is the fact that our laws still have flaws that allow people's human rights to be impinged on in the first place.

As I said back in June, the perception remains that engagement with the ECHR tends to focus on criminal cases and that, therefore, it is a means of protecting the criminal classes. However, such a perception is not the reality, and nor should it be used as an excuse not to take action to ensure that Scotland's laws are compatible with the convention. I firmly believe that the Scottish Government must heed the Law Society's calls for a full review of Scottish criminal law and procedure to determine its compatibility with the ECHR.

I am very concerned that there remains a distinct air of “wha's like us?” in the Government's approach to this whole issue. Enshrining and protecting human rights in our laws should be a basic principle of government. However, when discussing concerns about potential human rights implications of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, the Lord Advocate appeared to be of the view that the law would be compliant, simply because he

“cannot act in a way that is incompatible with ... the ECHR.”—[*Official Report, Justice Committee*, 20 September 2011; c 302.]

Ensuring the protection of human rights is far more complicated than that. The Government must take the issue seriously and I hope that, as we move forward, the debate on this issue will be more about the deficiencies of our law and less about taking cheap pot shots at the Supreme Court.

I move amendment S4M-01133.2, to leave out from “conclusions” to end and insert:

“constructive work of the review group chaired by Lord McCluskey on the examination of the relationship between the High Court of the Justiciary and the Supreme Court in criminal cases and notes that this follows the work of the Advocate General's expert group that examined this issue last year; in particular welcomes the review group's view that the Supreme Court should continue to have jurisdiction in relation to issues of convention rights arising in Scottish

criminal cases; recognises that the High Court of the Justiciary is currently the final criminal court of appeal in Scotland; agrees that, in disposing of an appeal, the power of the Supreme Court should be limited to declaring whether or not there has been a breach of a convention right and, if there has been, to saying why this is so, and calls on the Scottish Government to work constructively with the UK Government to take forward a thorough and detailed consideration of the recommendations of both expert groups.”

15:34

Roderick Campbell (North East Fife) (SNP): I declare an interest as a member of the Faculty of Advocates.

I welcome the findings of Lord McCluskey's further report as part of the on-going debate about the UK Supreme Court and its relationship with the High Court of Justiciary. However, we should remind ourselves that the High Court of Justiciary's position as the final court for determining criminal justice in Scotland was reaffirmed in section 124 of the principal piece of legislation on criminal procedure in Scotland, which was passed by the UK Parliament as recently as 1995.

As a member of the SNP, I would prefer Scotland to be a signatory to the ECHR with its own supreme court. Alas, that is not the situation we find ourselves in.

Much of the debate concerns the provisions of section 57 of the Scotland Act 1998, in particular subsection (2) and the assessment of whether the Lord Advocate in his acts has acted in a way that is incompatible with convention rights. From the passage of the Scotland Act 1998, the Judicial Committee of the Privy Council has been required to exercise a devolution jurisdiction, and the Lord Advocate has been required to act in a convention-compliant way, subject to the limited exceptions in section 57(3).

In practice, matters have become interrelated and confused. It is accepted by the UK Government, as well as the Scottish Government, that section 57 needs to be changed, and provisions to amend it are in the current Scotland Bill. However, although clause 17 of that bill removes the devolution issue label from acts and failures to act by the Lord Advocate, it talks about them instead as convention issues. In Lord McCluskey's view, that simply changes the paperwork and not the substance. I find it hard to argue with his view.

Lord McCluskey believes that there ought to be parity between the High Court of Justiciary and the English courts with regard to appeals, and he recommends that only cases that raise a point of general public importance certified by the High Court should end up at the Supreme Court. The

Supreme Court in England can act as a final court of criminal appeal, but that has never been the position in Scotland.

I will quote from paragraph 37 of Lord McCluskey's final report:

"When the Human Rights Act was passed in 1998, the decision was implicitly taken that certification, required in most criminal proceedings, was still to be required in English cases even when the issue in the proposed appeal was one of compatibility with convention rights."

If that is the practice in England, it should be so in Scotland too.

As the cabinet secretary said, the Lord President has this week commended the proposal that the High Court should be brought into line with the criminal division of the Court of Appeal in England and the Court of Appeal of Northern Ireland by the requirement of certification. That surely must carry some weight.

I turn to the recommendation that

"the Supreme Court should be limited to declaring whether or not there has been a breach of a Convention right and, if there has been, to saying why this is so."

I agree with that proposal. The human rights of the accused should be the same in convention terms, be they in Edinburgh or Exeter, even if the practices and procedures of criminal law in those jurisdictions differ. As the Scottish Law Commission said in October 2010:

"There is no more reason why a particular feature of Scots criminal law need be the same as any feature of English criminal law in order to comply with the requirements of the Convention as there is that any feature of either system should be the same as a feature of Russian law to achieve that purpose."

There are reservations in the legal profession about the proposals, not least from the Law Society of Scotland. It opposes the idea of mandatory certification by the High Court of issues of general public importance before a case may proceed to the Supreme Court:

"Requiring a certificate of public importance could raise the situation where some people are restricted from appealing because the contravention of their human rights does not meet that test and this, we feel, could restrict access to justice."

That argument has an attraction—we should avoid a hierarchy of rights—but I am not sure how many cases would be affected in practice and, moreover, it risks putting us out of step with the rest of the UK. If there is a need to review the nature of the test, it should be addressed across all jurisdictions in the UK.

I turn to the question whether the Supreme Court should be able to hear appeals where an appeal was refused by the High Court. It is important to bear it in mind that Lord McCluskey is actually saying that the Supreme Court should

have the power to grant or refuse leave but that it should have no power to consider granting leave unless a certificate that the matter is of general public importance has been granted by the High Court. If the Supreme Court has an unfettered jurisdiction to hear appeals, inevitably its position is as the final arbiter in the system, which has the potential—I use the word advisedly—to damage the integrity of the Scottish criminal justice system.

In the desire to allow the Supreme Court to have such an unfettered right, there is among some people an inherent criticism of some recent High Court decisions. The answer to that is not to imply that the Supreme Court knows better but to ensure that convention issues remain at the forefront of judicial culture, tradition and training in Scotland's courts. However, even as a fully independent nation, we should never be afraid to learn from other jurisdictions while respecting our own traditions.

Finally, I turn to the recommendation to refer devolution issues to the Supreme Court when they raise issues of compatibility. I agree that that is a good proposal. I am glad that the cabinet secretary accepts that. As I recall, that was one of the criticisms of Justice Scotland in a briefing at the time of Lord McCluskey's first report. I welcome the report.

The Deputy Presiding Officer (Elaine Smith):
I have a wee bit of time in hand for interventions.

15:40

John Finnie (Highlands and Islands) (SNP):
The debate is about Scots law, not about any other system. It is about respect for the unique features of Scots law.

When the UK Supreme Court commenced operations on 1 October 2009, it took on the judicial functions of the House of Lords: appeals from England, Scotland and Wales, including human rights issues.

With regard to Scotland, it was envisaged that the UK Supreme Court would hear civil appeals from the Court of Session. The intention was that the High Court of Justiciary remained the highest court of criminal appeal. One unintended consequence of the inauguration of the UK Supreme Court has been that Scottish criminal case defendants can appeal to the Supreme Court on human rights grounds. That was never imagined when the court was established.

As we have heard many times, unlike English and Welsh defendants, Scottish defendants can appeal to the Supreme Court without leave to appeal from the High Court. That clearly puts Scots law on a different footing from legal systems elsewhere in the UK.

I quote Paul McBride QC, who is a much-quoted man in this chamber. He states:

“the truth of the matter is—you can get to the Supreme Court in Scotland by-passing our Scottish courts, you can’t do that in England. That’s unacceptable.”

I agree that it is unacceptable and it is also unacceptable that the UK Supreme Court has overturned decisions of the High Court of Justiciary.

The UK Supreme Court should not be ruling on remedy as an ordinary court of appeal. It should be fulfilling its function as a constitutional court: interpreting and defining convention rights and relaying those judgments back to the High Court to determine remedy. This is clearly a matter of devolution not functioning correctly. The original provision in the Scotland Act 1998 never intended matters of criminality to be considered under the locus of devolution issues.

A matter of Scots identity is at stake. The UK Supreme Court interferes in Scots criminal law and that impacts on the distinctive nature of Scots law. The Scottish Government seeks a position in the Scotland Bill whereby the UK Supreme Court should not have any general jurisdiction in matters relating to criminal law.

My colleague Rod Campbell quoted from the Scottish Law Commission’s submission to the Advocate General’s review of devolution issues. The submission goes on to state:

“The European Court of Human Rights has recognised the ... inadvisability of attempting to introduce a ‘one size fits all’ approach to disparate systems of criminal justice.”

That is something that the chamber should recognise. I hope that the chamber will stand up for Scotland’s distinctive legal system and prevent further interference.

I, too, welcome the report published by Lord McCluskey and his colleagues. It was announced on 5 June that there would be a review of the law and practice that currently governs the respective jurisdictions of the High Court of Justiciary and the UK Supreme Court.

It is important to note that Lord McCluskey and his colleagues considered the issues within the current constitutional settlement. We have heard from the Cabinet Secretary for Justice that that is not necessarily how we will see things in the future.

We have also heard that we wish the recommendations to be implemented. It is agreed that the Supreme Court should continue to have

“an appellate jurisdiction in relation to issues of convention rights arising in Scottish criminal cases”.

However, it is important that the extent of its role should be clearly defined and limited. The High

Court of Justiciary should remain the final court of appeal in Scottish criminal cases.

I strongly support the view that an appeal to the Supreme Court from the High Court should require the granting of a certificate that the case raises a point of law of general importance or concerns the victim of a violation of convention rights under the ECHR.

The existing system whereby the UK Supreme Court is a court of appeal within the criminal justice system is constitutionally problematic and affects the historical independence of Scots law. The Supreme Court’s role clearly needs to be defined.

As we have heard, the current Scotland Bill proposals are profoundly flawed and require significant recasting to maintain the High Court of Justiciary as the apex of the Scots legal system. There is no reason to make the position of the High Court different from the position of courts elsewhere in the UK.

It is disappointing that issues have been raised about the Scottish Government’s commitment to human rights. The Government remains fully committed to human rights. My colleague Alison McInnes, along with other members and the Law Society of Scotland, has raised issues about the need for an audit of Scots criminal law to ensure compatibility with the ECHR and avoid costly compensation claims. We all support that. Indeed, the Cabinet Secretary for Justice has indicated that that will occur. As we have heard, in any case, that forms part of the scrutiny of any proposed legislation that passes through the Parliament.

It is important to note that the Scottish Government is not inward looking—it is outward looking. As my colleagues have said, we have learned from abroad and will continue to do so. It is important that we play our part in international law. We, like all members, are supportive of human rights and social justice, but that does not mean that we will not defend our unique legal system and prevent further interference.

15:46

Hugh Henry (Renfrewshire South) (Lab): It is hard to conclude that the Scottish Government is, as John Finnie suggested, outward looking on the issue that we are discussing, because everything that Government ministers have said has been not only inward looking, but intemperate and narrow-minded. In fact, many of their comments have been misplaced. James Kelly referred to comments that the First Minister and the Cabinet Secretary for Justice have made. They have said a range of things that I hoped they would have reflected on and come to the Parliament to apologise for.

Earlier, Murdo Fraser raised a point of order about the First Minister misinterpreting or misstating someone else's comments and misleading the Parliament. On this issue, the ministers also have form. On 27 May, Lord Hope said that the First Minister

"misunderstood the law and the facts".

That has been evident in what ministers have said throughout the process.

I was interested in Kenny MacAskill's somewhat pompous reply to Johann Lamont. His protestations were both hilarious and pathetic. He spent some time saying how delighted he was to welcome the report from Lord McCluskey, although I thought that perhaps he would take time to apologise to Lord McCluskey for some of the things that he has said. Lord McCluskey has been quoted in *The Telegraph* as saying that Mr MacAskill ought to be "ashamed of his comments" and that his comments were "unsuitable" for a man holding his office. We have heard nothing since to suggest that Mr MacAskill is in any way ashamed of or apologetic for anything that he has said, even though he has now accepted a report that fundamentally goes against everything that he and the First Minister had argued.

Mr MacAskill's attempt to get Lord McCluskey to come up with something that suited him was the latest in a series of such attempts. There was also the Walker report, which was shelved because it did not come up with the recommendations that suited the Government.

Sometimes in the Parliament, we use words loosely and out of context. I wanted to use the word "hubris" because the cabinet secretary, the First Minister and others in the Administration have shown a degree of it, but I thought that I had better check exactly what the word means. I found that it means extreme haughtiness—well, we have heard that today from the cabinet secretary. It means pride or arrogance, which we have certainly seen throughout the debate. The definition goes on to suggest that hubris often indicates a loss of contact with reality. We can clearly see a loss of contact with reality in the cabinet secretary's behaviour on the issue, all the way up to now, including accepting a report that contradicts what he wanted. The definition also describes hubris as an overestimation of one's competence or capabilities—that is certainly true—especially when the person exhibiting the behaviour is in a position of power. That definition was written specifically with Kenny MacAskill in mind.

When are we likely to hear from the Government an admission that it was wrong and that—

Annabelle Ewing (Mid Scotland and Fife) (SNP): Will the member give way?

Hugh Henry: Certainly.

Annabelle Ewing: I thank the member for giving way. It is interesting to hear about his research into the definitions of various words but it would be quite helpful if he could come to the point and indicate his position on the specific recommendations of the McCluskey review group.

Hugh Henry: Other members in my group have outlined their specific points on that, but we must take notice of the general context. Earlier this year intemperate and disgraceful remarks were made about ambulance chasing and Mr MacAskill said that he no longer intended to fund the Supreme Court to look at cases that we did not think should be going there. In fact, he is now proposing to do that, because the McCluskey review did not come up with what he intended.

When I reflect on the matter I thank God that, although we have a majority Government that is predicated on a minority vote and no revising chamber, we have another body that is capable of putting in checks and balances. Had it been left to the Government, changes would have been railroaded through if they had had the power to do it. Now we have a conclusion that is completely at odds with what the Government wants.

I welcome the fact that the recommendation is for the Supreme Court to have a role. I do not agree with certification, and other members have ably outlined why that is not the right thing to do. I hope that, on reflection and at the end of the debate, we might hear some words of apology for the way in which the issue was handled and the debate was conducted.

15:52

George Adam (Paisley) (SNP): Obviously, I did not think things out too well when I sat down for this debate next to an advocate. However, I hope that I can show some good old-fashioned common sense.

We need to discuss the matter soberly. The public does not understand the legal definitions and the problems that are being discussed. All that they see is a decision being made in another court and another place. We must all be careful to take the public with us when we make these decisions.

I have two examples from Paisley, and I use Paisley examples because I know them very well. The first example is the Glen cinema disaster in 1929 that led to health and safety rules being changed because 69 children were killed when black smoke engulfed the cinema. That was not a criminal case, but it is an example of the public

being part of and remembering a legal decision that was made at a later date.

My second example is *Donoghue v Stevenson* in 1932: the decomposed snail in the ginger bottle. That case was unfortunate for the cafe owner at the time but it brought up the idea of negligence in retail and cafes.

David McLetchie (Lothian) (Con): Will the member give way?

George Adam: Against my better judgment, I will.

David McLetchie: Is the member aware that the High Court got the *Donoghue v Stevenson* decision wrong in a sense? It was actually the House of Lords that established the principles of negligence and essentially laid the foundation for the law of negligence worldwide.

George Adam: As I said, the cases that I have been discussing are civil, not criminal.

The public believes and the cabinet secretary is correct to say that the distinctiveness of Scots law has been at the heart of our national identity in civic society. I would go so far as to say that our Parliament exists because Scots law retained its independence from the early years of the union until now.

As part of my example about why we should be careful to take the public along with us, I will use someone as simple as my wife's aunt—[*Laughter.*] I do not mean simple in that way. I mean that the discussion or argument is simple.

She keeps phoning up my wife to ask why that court down south is making decisions for Scots law. That is the kind of discussion that people who are not in the legal profession are having. The common sense of ordinary hard-working people means that they cannot understand why criminal cases from the Scots legal system, of which we are justifiably proud, have to be heard outwith Scotland. They are asking themselves why there has to be another tier after the High Court in criminal cases, and I admit that I feel the same way.

The establishment of the UK Supreme Court under the Constitutional Reform Act 2005 has led to an increase in the potential for judgments in high-profile criminal cases in Scotland to be overturned on appeal. I believe whole-heartedly in justice and everyone's right to appeal, but some of the decisions that have been made have upset the public in Scotland.

That state of affairs has been caused by a quirk of various acts since devolution. Within the UK, Scots law is no longer on an equal footing with the law in the rest of the nation states of the union. People who know more than I do have said as

much. Brian McConnachie QC, who is vice-chairman of the Faculty of Advocates criminal bar association, said:

"It's difficult to argue that we should have something different here than in England."

I agree with some of the recommendations of Lord McCluskey's review group. It believes that the High Court of Justiciary should remain the final court of appeal in Scottish criminal cases, and that an appeal to the Supreme Court should require the granting by the High Court of a certificate that the case raises a point of law of general public importance. It also believes that it is not appropriate that the Supreme Court be required by statute to apply the test of miscarriage of justice in Scottish criminal appeals. My simple ideal of the law tells me that those are good ideas for Lord McCluskey to proceed with.

The Scots legal system is one of the mainstays of Scottish life. It was a part of Scotland before the union, it has been a part of Scotland during the union and it will be an important part of Scotland after the union. However, the debate is about the current situation and the quirk that means that Scotland is the only part of the UK in which a case can bypass the High Court and be heard in the Supreme Court. This is not a discussion just for the chamber or the legal profession; it is one that Scots are having the length and breadth of the country. They believe that the current situation is not proper and that something has to be done about it.

The Deputy Presiding Officer: I remind members that we have a wee bit of spare time. Members taking interventions would be preferable to any shouting out from the seats.

15:57

Annabelle Ewing (Mid Scotland and Fife) (SNP): I preface my remarks by stating for the record that I am a member of the Law Society of Scotland and that I hold a current practising certificate. I remember well the case of *Donoghue v Stevenson*, which my colleague George Adam brought up. I did not expect to hear about that case today, but I guess that that is just one of those things.

As a lawyer, the starting point for me in the debate is the fact that the Scottish legal system is independent, even if other areas of life in Scotland are still to catch up—although I firmly believe that that will happen before long. As a Parliament, we have a duty to do what we can to preserve the integrity of our legal system and to ensure that it works in a coherent way.

I want to deal directly with the point that Johann Lamont—who is moving her chair—raised. The debate is not some exercise in constitutional navel

gazing, nor is it a discussion of an issue that has no impact on the real lives of hard-working people, as my colleague mentioned. It is a debate that deals directly with the operation and the efficiency of our legal system, which is important to all of us.

I very much welcome the comprehensive report that the independent review group led by Lord McCluskey has provided. As the cabinet secretary said, the Scottish Government has accepted the report's recommendations, and I understand that the Lord Advocate has written to the Scotland Bill Committee to set forth the kind of provisions that should be included in the Scotland Bill if the recommendations are to be implemented. Kenny MacAskill said that he is now progressing matters in his capacity as Cabinet Secretary for Justice.

As we have heard, one of the key recommendations concerns certification; specifically, it states that an appeal from the High Court of Justiciary to the UK Supreme Court should be competent only when the High Court has granted a certificate that the case raises a point of law of general public importance. That will deal with the anomalous situation in which certification is required as a matter of principle in the other UK jurisdictions, even if there are exceptions in certain cases. As a general rule, allegations of convention rights incompatibilities that occur elsewhere in the UK do not reach the Supreme Court unless there is certification.

That goes back, as Alison McInnes mentioned in a slightly different context, to the fact that the House of Lords was the final court of appeal for criminal matters for those other jurisdictions, which is not the case in Scotland as enshrined in the acts of union. When the Human Rights Act 1998 was passed, the certification rule was implicitly extended to cover compatibility cases in the other UK jurisdictions.

However, even if that was not the case, and there was suddenly no certification system in the other UK jurisdictions—as I understand it, there has been no significant attempt to abolish that requirement in the rest of the UK—it would still be necessary, in my view and the view of the McCluskey review group, to ensure that the High Court's historical position as the final court of criminal appeal in Scotland was preserved given that we have an asymmetrical set-up in the UK.

Paragraph 41 on page 15 of the review group's report states:

"In particular, we seek to ensure that the Scottish criminal justice system, unique amongst the constituent systems of the UK in its historical independence from the apex criminal appeal court for the rest of the UK, should not now, in the area of Convention rights, become more subject to interference from that apex court than the courts of these other systems."

That states the review group's position on certification very clearly. There has been interference from the UK Supreme Court, and we need to do something about it now that the opportunity has presented itself in the form of the Scotland Bill.

Concerns have been expressed about a possible diminution of the individual's rights if such a certification system were to be introduced in Scotland, but I simply do not agree. Those concerns are based on a misunderstanding of the UK Supreme Court's role. The High Court in Scotland has always been the final court of appeal in criminal matters. It is the competent court, and it is perfectly capable of continuing its centuries-old role. It was never intended that the UK Supreme Court should have jurisdiction over Scots criminal law decisions as if it were a new and final court of appeal in Scottish criminal cases, as the review group has pointed out.

James Kelly: Annabelle Ewing's premise seems to be that the Supreme Court's ability to take cases from Scotland should be limited. It was not clear from the cabinet secretary's speech whether, with regard to the McCluskey report's point about ECHR breaches, public authorities could raise cases with the Supreme Court through the certification route. Does the SNP support that?

Annabelle Ewing: If I understand James Kelly correctly, he is addressing the issue of deleting the reference to the Lord Advocate and extending it to cover public bodies, which is being done simply to deal with the current reality. If James Kelly takes the time to read the report in full, he will note that it deals with that issue. It has been suggested that the language of "Lord Advocate" is being stretched to incredulous scenarios simply to ensure that acts of public bodies are properly included in the process. The change therefore does not enhance the scope of anything—it simply corrects a language problem that currently exists.

Some people argue that the rights of people in Scotland will somehow be diminished, but nobody seems to be arguing that there is any concomitant diminution of the rights of people in the rest of the UK where the certification system is currently in place. There must therefore be some other reason why members have put forward those arguments in the chamber today.

In conclusion—you have been more than generous with my time, Presiding Officer—I welcome the report and support all its recommendations. I refer once again to the letter from Lord President Hamilton that was sent to the Scottish Parliament information centre, which is dated 25 October 2011, which has been read into the record. We can place significant weight on the views of the Lord President and the judges of the Court of Session in this matter.

16:05

Graeme Pearson (South Scotland) (Lab): I thank Lord McCluskey's group for the effort that it has made and the quality of the report that it has produced in such quick time and in unfortunate circumstances. I trust that the Government will encourage consultations on many of the recommendations that have been discussed in the chamber today and which still cause some concerns.

The cabinet secretary's motion refers twice to the "integrity" of Scots law and comments on the "historical independence" of Scots law. It is therefore a pity that neither the First Minister nor the Cabinet Secretary for Justice considered those issues before uttering their inflammatory comments in respect of the procedures around the Supreme Court.

We should have been spending our time in this chamber discussing other issues affecting Scottish communities: jobs, unemployment, health, education or the economy.

The notion of an entirely independent Scottish legal system in this complex world might be a comfort to some practitioners of law, but the public merely want an effective system that delivers justice.

Why are we discussing the Supreme Court today? It is largely due to the First Minister's senseless outburst about the Supreme Court.

Derek Mackay (Renfrewshire North and West) (SNP): Does the member not think that he, like many Labour Party members, is becoming victim to thinking that the debate is about the rhetoric rather than the substance of the issue, which is the independence of Scots law?

Graeme Pearson: The point I am making, which the member makes well for me, is that the rhetoric got in the way of the substance and deflected our attention from the key underlying issues.

The First Minister's outburst about Supreme Court judges was followed by the Cabinet Secretary for Justice's observations about those justices' knowledge. Let us remember that Lord Hope and his unfortunately now deceased colleague Lord Rodger were both acknowledged experts in jurisprudence. So, why the discord? Both judges were, unfortunately, members of a court that was not based in Lamlash but located in London. What we have here is a manufactured stushie born of the devolution settlement of 1998. The Scotland Act 1998 enabled the Judicial Committee of the Privy Council in London to act as an arbiter on human rights issues, although at the time Alex Salmond MP described the organisation as consisting of many members who had held

political office and owed their appointment to the council to politics. It has been six years since the Constitutional Reform Act 2005, which ensured that those responsibilities were passed on to the Supreme Court. Only now, 13 years after the original legislation, have we had the outburst.

The Cadder case quite properly resolved issues around a person's right to have access to a solicitor when interviewed by the police. The Supreme Court decision confirmed Scotland's respect for fairness and justice, but the Fraser ruling on whether it was fair that crucial evidence was withheld from the defence by the Crown seemed to cause the Government immediate concerns. If I was more cynical, I might have suspected that the Scottish Government was merely manufacturing its ire over such issues, but of course nothing so puerile could be at work here.

Today's motion shows that ministers were primarily concerned about the integrity of Scots law and its historical independence, which was perhaps better described by the justice secretary as the principle of who pays the piper calls the tune. That is not very edifying, but such an approach flags up warning signs about the dangers of political interference in enforcement and justice matters.

Kenny MacAskill: Is the member not aware that there is a Scotland Bill going through down in London that has clauses that deal fundamentally with Scots law? Does he not think that that is a matter on which we should comment? Is it not for that reason that Lord McCluskey has brought forward his report? Is it not the case that unless Parliament takes a position on the matter and Lord McCluskey comments on it, decisions may be taken south of the border regarding the Scotland Bill that will have huge ramifications for the integrity of Scots law? Or does that matter not apply?

Graeme Pearson: The cabinet secretary will remember that Lord McCluskey reported in those terms because the cabinet secretary asked him to report. The reason why he asked him to report is that such a furore was created in the lead-up to our discussions, in which we are engaged today.

We must remember that there are real political dangers in interfering in enforcement and justice matters, particularly given the future formation of a single police force. I hope that Mr MacAskill will not seek to call the tune there, too.

Throughout this heated argument, one office has maintained a consistent silence: that of the Lord Advocate. Not a syllable, word, sentence or paragraph has left his lips on this constitutional crisis, and some would say rightly so. It is a pity, however, that he did not maintain a similar dignified silence when it came to the political

shenanigans surrounding the matter of sectarianism and football supporters. One would have hoped that he would be better suited to contribute to this debate than to one on football issues, but needs must.

John Finnie: Does the member accept that the Lord Advocate has, indeed, written to the Scotland Bill Committee about this very subject in a letter dated 26 October?

Graeme Pearson: Certainly, I am aware that the letter was written on 26 October. The member might remember that we have had some months of debate about this important issue and many comments from people who are less able—*[Interruption.]* We received the letter this morning and it has not been part of the public debate or the debate in the chamber.

This stushie should have been resolved quietly and with some decorum, using a small, specialist team in committee to examine and report, not unlike—

The Deputy Presiding Officer: Mr Pearson, can you start to conclude now, please?

Graeme Pearson: Indeed.

It should have been not unlike the McCluskey report, which we have already welcomed here. Not one South Scotland constituent has expressed to me any interest in the First Minister's concern about the Supreme Court, because they are too busy struggling with other matters of import. Significantly, the Supreme Court will be maintained as a welcome opportunity for Scottish justice to see itself as others see it through appropriate decision making in areas of the European convention on human rights.

The Deputy Presiding Officer: Mr Pearson, you must conclude.

Graeme Pearson: I am grateful to you, Presiding Officer—thanks very much.

16:13

Maureen Watt (Aberdeen South and North Kincardine) (SNP): All of us in the chamber are only too aware of the impact that Supreme Court decisions have had on Scots criminal law, not least with such high-profile judgments as that on the Cadder case. We now have a UK court with the power to overturn and overrule the judgments of the High Court and radically reshape the Scottish legal system as a result. Make no mistake about it: this threat to the independent legal system that Scotland has held on to since the act of union has caused significant disquiet in the Scottish legal profession. What makes the situation more intolerable is that it has developed through a quirk of legislation, or a loophole in the

system that has, at a stroke, jeopardised centuries of Scottish legal tradition and, indeed, given the UK Supreme Court more power over Scottish criminal law than it holds over equivalent courts in the rest of the UK.

I do not believe that the situation that has been allowed to develop is an underhanded power grab or a premeditated effort to undermine the independence of the Scottish legal system. No: it is quite simply a result of a lack of consideration for Scotland and the failure of the then UK Government to think through the consequences that the legislation would have north of the border. As has often been the case at Westminster, Scotland was an afterthought—if it was considered at all—and, just a few years later, we are left to pick up the pieces.

It was never intended that the Supreme Court would act as an appellate court in Scottish criminal cases and supplant the role that the High Court has held for centuries as the highest court of appeal in such matters. Restoring the High Court to the apex of the Scottish legal system is a matter of correcting something that was not at any time intended to be a part of the devolution arrangements.

The report of the review group chaired by Lord McCluskey recommends that the Supreme Court be limited to interpreting and defining when and where breaches of the ECHR have taken place before remitting such cases back to the High Court to determine the appropriate disposal of the case. The Supreme Court should not have the powers of disposal over Scottish cases that it currently has. It is essential that that recommendation is acted on.

It is difficult to see any justification for the Supreme Court continuing to hold the power to grant a leave to appeal where certification has been refused by the High Court in Scotland when it does not hold the power to do so in cases that come from courts in the rest of the UK. I hope that the need to alter that situation is universally accepted in the chamber and beyond.

As others have said, it is somewhat perverse that devolution has resulted in the Scottish courts having less autonomy while Scotland has gained more autonomy over other aspects of Scottish life. Introducing a certification requirement would at least bring equality for the Scottish criminal justice system with its counterparts in the rest of the UK.

It is worth noting that the review group's report condemns the Scotland Bill, which is progressing through Westminster, as being "seriously flawed". That description of the bill seems to be coming from more and more quarters these days. Will the report finally be the one that leads to a substantial reworking of the flawed legislation that is being proposed? I am not holding my breath. Far from

limiting the inappropriate role that the Supreme Court has taken on in the Scots legal system, the current provisions of the Scotland Bill would entrench that role. Such a move is far from desirable and would be completely out of step with the review group's recommendations. I understand that Lord Wallace is reflecting on that matter. The time has come for him to accept the need to change course and limit rather than enhance the role of the Supreme Court in hearing Scottish criminal cases.

I welcome the review group's conclusions and the case that it has made for restoring the High Court to its rightful place as the final court of appeal in Scotland for criminal cases. I hope that the UK Government can see the clear need to adopt its recommendations and alter the necessary legislation to address the issue.

16:18

Kevin Stewart (Aberdeen Central) (SNP): We have heard from many lawyers today. Like my colleague George Adam, I come at the issue from the aspect of an ordinary punter, but during my study before the debate, I considered the views that many people have expressed over the past few months and years.

When the then Lord Advocate, Elish Angiolini, gave evidence to the Scotland Bill Committee, she said:

"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, unless the Supreme Court process is genuinely rarely exercised and takes place in the context of a matter that is of substantial constitutional significance across the United Kingdom or where there is a very new piece of jurisprudence that is clearly ambiguous."—[*Official Report, Scotland Bill Committee*, 8 February 2011; c 479-80.]

I have huge respect for Elish Angiolini, who worked in north-east Scotland before she became Lord Advocate, and I take on board her views in that regard.

I am extremely proud that Scotland has kept an independent legal system. That is quite unusual, in light of the many pressures since the act of union on other institutions that existed in this nation. When I speak to people from elsewhere, it is interesting that they say, "You have an independent legal system. Surely that means that you are independent." I wish that that were the case. I think that we are seeing a minor attack on our legal system.

In October 2010, the Scottish Law Commission made a submission to the Advocate General for Scotland's review of devolution issues and acts of the Lord Advocate, in which it said:

"Scots criminal law is a jurisdiction which is not only constitutionally separate from English criminal law. Many of its practices and procedures differ substantially from those of English law. There is no more reason why a particular feature of Scots criminal law need be the same as any feature of English criminal law in order to comply with the requirements of the Convention as there is that any feature of either system should be the same as a feature of Russian law to achieve that purpose ... The European Court of Human Rights has recognised the ... inadvisability of attempting to introduce a 'one size fits all' approach to disparate systems of criminal justice."

Members talked about equality of partnership in the union. Why must certification take place in Northern Ireland, Wales and England but not in Scotland? That is very wrong and shows that some of the parties in the Scottish Parliament do not believe in equality of partnership in the union. Maybe folk need to think about that as we near the referendum.

I watched—in the dead of night—a fascinating BBC 4 documentary on the Supreme Court. I do not think that the court's membership necessarily reflects society in the UK.

Neil Findlay (Lothian) (Lab): Did the member record the programme? Maybe he could give the recording to George Adam's auntie, so that she can have a look.

Kevin Stewart: Even if I had recorded the programme and given it to George's auntie, she would probably be half asleep before the first 10 minutes had passed. Flippancy aside, we are talking about a serious matter. The Supreme Court does not reflect the society that we live in, and the matter needs to be looked at in greater detail.

The opening of the Supreme Court gave us the partnership of Cameron and Clegg, because that event was the first time that they had ever really spoken to each other. In many regards, the Supreme Court has a lot to answer for.

16:23

Alison McInnes: It is no surprise that the debate has taken the route that it has done. SNP members have displayed their usual sensitivity about London interference and have been overly protective of the Scots identity. Other members have rightly reflected on the genesis of the row. The analyses of Graeme Pearson and Hugh Henry, in particular, were spot on.

The title of the motion, "Ensuring the Integrity of Scots Criminal Law", is an example of how distorted things get when they are viewed through the prism of nationalism. The measured tones of Kenny MacAskill's opening speech were in stark contrast to his tawdry language earlier this year, which showed much disrespect to the Supreme Court, its judges and our legal system itself.

It should be a matter of great concern to everyone when ministers who play a role in our judicial system launch attacks on judges and their judgments. Respect for the independence of the judiciary is a fundamental responsibility of Government, so I hope that ministers will take that duty a bit more seriously in the future. I remind Mr MacAskill, who has just returned to the chamber, that it is never too late to say sorry. It was a bit rich to hear members being lectured by Mr MacAskill today on the appropriate demeanour for the debate.

The idea that the independence of Scots law is under threat is simply wrong. The fact remains that only a tiny number of cases every year go to the Supreme Court. The High Court remains Scotland's highest criminal court. Surely, the main issue that we should be concerned with is not where the Cadder ruling or the Nat Fraser ruling were made; we should be far more worried about the deficiencies—if there are any—in our criminal law and the procedures that are creating doubts over the legitimacy of the convictions in the first place. Those and other recent cases have not been examples of a foreign court imposing itself on Scottish criminal proceedings; rather, they have been a warning that we need to look closely at our body of law and to review exactly how it sits in relation to ECHR responsibilities.

The only time criminal proceedings from Scotland reach the Supreme Court is when there is a devolution issue—typically, when it is alleged that there has been a breach of the ECHR by a Scottish minister. We need to keep the matter in context. In May 2011, Justice pointed out:

"Since the Human Rights Act and the Scotland Act came into force, the Judicial Committee of the Privy Council, and subsequently the Supreme Court, have only heard twenty two cases, of which five were brought by the Crown. This number produced an average of two or three cases a year. ... Of these cases, fourteen were dismissed, limiting the ability of bringing similar points back before the Court. Only eight appeals were allowed, four of which were in favour of the Crown. There is no evidence from these appeals and the judgments handed down that the Supreme Court has extended its jurisdiction or heard cases it ought not to. Indeed it appears to us that the Supreme Court operates entirely within its special jurisdiction, and appropriately respects the position of the High Court of Justiciary."

That is a quote from a submission by Justice following the Advocate General's further call for evidence in May 2011.

On the real point of substance, both the Advocate General's expert group and the McCluskey review group recommend that there remain a right of appeal to the Supreme Court on human rights grounds in Scottish criminal cases.

On certification, there is not only little support for it, but some bemusement about why the matter has been raised at all.

Stewart Maxwell (West Scotland) (SNP): I am, to be frank, astonished by the member's statement that there is "little support" for certification from Scotland's highest court to the Supreme Court. Does she believe that the Lord President carries so little weight that she can dismiss his opinion with such comments?

Alison McInnes: I am not dismissing his opinion with my comments. I am drawing on the fact that the responses to Lord Wallace from the Faculty of Advocates, the Law Commission, the Law Society of Scotland and Justice all said that there is no need for certification and that there is confusion around the matter.

Kevin Stewart: Will the member take an intervention on that point?

Alison McInnes: No. I would like to make some progress.

It is wrong to draw a comparison with England on the matter because, in the other legal systems in the UK, appeals to the Supreme Court are competent on all aspects of criminal law, evidence and procedure, not just—as in Scotland—on matters that fall within the definition of devolution issues. In the circumstances, the requirement for certification makes sense, given the potential for a large volume of appeals to the Supreme Court.

I am concerned about the idea of raising an issue of general importance. Individuals have rights that are particular to the individual, which should not be assessed against a test of general public importance. If they were, that would result in some people in Scotland being prevented from appealing, which would surely be wrong.

We should all agree that Scots law and its application must be fair and just and must comply with the right to a fair trial. We must never become so insular that we cannot learn from others. The Law Society believes that Scots law should continue to be outward looking and should be able to adopt and adapt ideas from any other jurisdiction if they lead to an improvement in the law in Scotland. I completely concur with that view.

16:29

David McLetchie (Lothian) (Con): We last debated the issue on 30 June, following publication of the first report of the review group that was chaired by Lord McCluskey. We now have the benefit of the final report and the opportunity to consider it in the light of the further evidence that was submitted to his group and to Her Majesty's Government on the details of clause 17 of the Scotland Bill. We also have the evidence that has been, and is in the course of being, presented to the Scotland Bill Committee, which will hear next week from, among others, the

Advocate General, the Lord Advocate and Lord McCluskey.

In all that careful examination and detailed consideration, it is interesting to note how the points of difference have narrowed considerably over the past five months. That is to be welcomed. It is also interesting to note that, as is underlined in its final report, Lord McCluskey's review has wholly endorsed the approach that Her Majesty's Government has taken and the principles that underpin clause 17. For the avoidance of doubt, and as John Lamont and others said, the McCluskey group has endorsed the proposition that the Supreme Court should retain jurisdiction in respect of appeals in criminal cases from Scotland when they raise questions of compatibility with convention rights.

That is entirely at odds with the position that the First Minister, Mr MacAskill and the Scottish Government initially adopted. Indeed, the McCluskey review's main critique of clause 17 was not that the proposed grounds of appeal to the Supreme Court were too wide and too intrusive but was, in fact, the exact opposite: it was that they were not wide enough.

Lord McCluskey has said that appeals on convention rights grounds should be permitted not only where the Lord Advocate as prosecutor is alleged to have perpetrated a violation, but where any other public authority involved in the criminal process—such as the courts, the prison service, the police or social services—is alleged to have done so. In fact, he went as far as to suggest that the BBC could be brought within that wider ambit in respect of its reporting of criminal proceedings.

The proposition that the grounds of appeal should be widened in that way has considerable merit, and I understand that the Advocate General is actively considering it. However, that is all a far cry from the position that the SNP Government initially adopted, as evinced by the pig-ignorant pronouncements of the First Minister and Mr MacAskill, which were the subject of such widespread and well-deserved condemnation.

Bill Walker (Dunfermline) (SNP): On a point of order, Presiding Officer.

David McLetchie: I knew he would say that.

Bill Walker: Is it appropriate to refer to "pig-ignorant comments"? Is that proper parliamentary language, Presiding Officer?

The Presiding Officer (Tricia Marwick): No words are proscribed in the Scottish Parliament. I notice that Mr McLetchie referred to the comments, not the member himself, as "pig-ignorant".

David McLetchie: Thank you, Presiding Officer. I have no intention of causing offence to any of

Scotland's pigs or, for that matter, to any other people.

I turn to certification. As I said in my speech on 30 June, the SNP was doing its level best to big up the issue and it is still at it in the motion. Why is that? Certification is the fig leaf to cover up the SNP's embarrassing retreat on the key points of principle.

I accept that the argument on certification is evenly balanced. I read McCluskey's report on that point and can see the force of his arguments. I also read the letter from the Lord President, which has been referred to. That certainly deserves our attention and respect, although our High Court of Justiciary has not covered itself in glory over the past year in its assessment of convention rights and our criminal law.

I also read the submissions to the Scotland Bill Committee from the Faculty of Advocates and the Law Society of Scotland, neither of which sees a need to change the present situation or, therefore, to introduce a certification requirement. I can see the strength of their case, which accords with the view of Her Majesty's Government.

That all demonstrates to me that no side of the argument has a monopoly on legal or constitutional wisdom. It also says to me that the distinguished Scots lawyers who all cherish our legal system certainly do not come to different conclusions because one group wants to do Scotland and Scots law down while another is its sole defender. Both want to serve the interests of justice in general and in the particular case. They simply happen to disagree about how it might best be achieved in the aspect of the judicial process that is in question.

I will make a couple of general points in conclusion. Everyone recognises that the issue of using the devolution minutes procedure has arisen in criminal cases because of the Scotland Act 1998's provisions and the inclusion of the Lord Advocate and the Solicitor General for Scotland in the category of the Scottish ministers. If the Lord Advocate was not defined as a Scottish minister and that role was confined to the person's being the head of our prosecution service, the situation in relation to the 1998 act would not have arisen.

We should ask ourselves the fundamental question: is it appropriate for the head of our prosecution service to be a minister in the Government and its principal legal adviser? The Scotland Bill will not change that position. The present and previous Scotland Bill Committees have touched on that matter, which raises a lot of wider constitutional issues. I question whether that duality of roles is sustainable in the long run, irrespective of whether Scotland remains part of

the United Kingdom or becomes an independent country.

The cabinet secretary might like to tell us whether the Scottish Government intends to publish its views on whether an independent Scotland would have a Lord Advocate with such a dual role. In an independent Scotland, what would be the relationship between ECHR and Scots law? Would ECHR be incorporated directly into our body of law? Could acts of a Scottish Parliament in an independent Scotland be subject to being reviewed and struck down as being incompatible by a Scottish supreme court? Alternatively, would such a Scottish Parliament remain sovereign in lawmaking in the same way as the UK Parliament remains sovereign under its relationship with ECHR, notwithstanding the Human Rights Act 1998?

Those are big questions, to which we need answers. I trust that the Scottish Government will consider them in a more measured way than the way in which it considered the Supreme Court issue.

Point of Order

16:36

Iain Gray (East Lothian) (Lab): On a point of order, Presiding Officer. I appreciate the opportunity to raise the point of order. We are 25 minutes away from the end of the item of business and we are rapidly running out of time for the First Minister to come to the chamber to provide clarity about a matter that has been raised in several points of order this afternoon.

At First Minister's question time, the First Minister misled the Parliament when he referred to comments by Professor Qvortrup in the media about the Scottish National Party's proposals for a two-question referendum. To mislead the chamber is, in itself, a fundamental breach of the code of practice; that it should be on such an important constitutional issue is of the utmost significance. It is bad enough that the First Minister should deliberately choose to mislead the chamber on his Government's behalf, but that he should give a misleading representation of the views of an academic who has no recourse to answer that in the chamber is surely an abuse of the trust that the public place in us as parliamentarians.

The First Minister must explain why his official spokesman tried to nobble—that is the only suitable word—Professor Qvortrup this morning after the professor's comments appeared in the media and why the First Minister deliberately misrepresented the professor's views in the chamber.

It is evident that either the First Minister knowingly misled Parliament or that his official spokesperson knowingly misled him. Whichever explanation is true, one of those people must face the consequences and the Parliament must hear an explanation from the First Minister for his conduct earlier today. I therefore ask the Presiding Officer to reconsider the issue and to provide additional time this afternoon for the First Minister to clarify the position.

The Presiding Officer (Tricia Marwick): I thank Iain Gray for his point of order. Members are responsible for what they say in proceedings. As the previous session's Standards, Procedures and Public Appointments Committee noted, it would be inappropriate for me to have any role in ruling on questions of accuracy. I am not responsible for establishing the veracity of what is said, which is not covered by standing orders or the "Code of Conduct for Members of the Scottish Parliament". However, I hope that all members will reflect on what they say in the chamber and that they will, if they think they have misspoken, take steps to correct that.

Scots Criminal Law (Integrity)

Resumed debate.

The Presiding Officer (Tricia Marwick): I call Johann Lamont. Ms Lamont, you have a very generous seven minutes.

16:40

Johann Lamont (Glasgow Pollok) (Lab): I can see how cheery everybody is at that prospect, yet again. I am beginning to take it personally.

I thank Lord McCluskey and his team for their report. I recognise that it is an important contribution to a broader debate about the justice system. I was struck by the history lesson on Scots law that the Cabinet Secretary for Justice gave us in his opening speech, and by his comments on the critical duty that we have to defend the integrity of Scots law. It is a concern that we can shift from having pride in the development of the legal system over time to reflecting an instinctive chauvinism for anything that happens to be Scottish—the idea that, because something is Scottish, it must be good. The reality is that the legal system, like many other things, is a living thing that is shaped by people's experiences over a long time. It is not our job simply to preserve everything as it is and ever was, but that is a way of sustaining that system of justice.

The reality is that, historically, we cannot be complacent about ordinary Scottish people's experience of the judicial system, which will have changed over time directly because of that experience. Historically, people have experienced a system that was not fair. It did not offer access and it was not perfect. If the cabinet secretary starts from a position that it is as it is and will ever be thus—that is, perfect—we will not be able to respond to the concerns of individuals in our communities.

Kevin Stewart: Will the member give way?

Johann Lamont: I will just make this point. I reflect on Maureen Watt's concerns about individual judgments. I share her concerns, and I have shared the anguish of individual constituents who are simply bewildered by the decisions that the courts make. However, that applies at every level of the court system; it is not unique to the Supreme Court. It is a challenge for all of us to sustain the independence of the judicial system while we understand that people feel frustrated by individual findings in individual courts. We have to work through that and give people confidence, but the issue is not particular to the Supreme Court, so it should not be considered in those terms.

To use Stewart Maxwell's favourite word, I was "astonished" by the way in which the cabinet secretary responded to my intervention about the extent to which the issue, no matter how important it is, reflects the priorities of the people whom we represent. It is not in any way to diminish the work of the legal experts who produced the report to say that we should urgently address the concerns about the chaos in the prosecution service. It would be good to find the Cabinet Secretary for Justice as exercised by those concerns as he has been by his particular interpretation of what is happening in the Supreme Court. In order to resolve his concern about my intervention, perhaps he will agree to make an urgent statement to the Parliament next week on the serious implications of what is happening in what is a very stretched service, and the implications for access to justice and people's confidence in the justice system. I will welcome his contribution if he commits himself to making that statement.

I respect the senior judges and others who have contributed to the debate, but I would take the cabinet secretary's scolding—he returned to it three times—a little easier if it was not delivered by a Cabinet Secretary for Justice who has abused Scots justice, berated "ambulance-chasing" lawyers and threatened to withhold money from the courts.

In welcoming Lord McCluskey to listen to this afternoon's debate, I wonder whether he might be rather surprised by the way in which his report is being spun by the cabinet secretary and, indeed, by the First Minister. The reality is that the report rebuts the Scottish Government's central contention when the issue was first raised—that the Supreme Court should not have a role in human rights cases and that it should not be higher than the apex of the current court system.

Jim Eadie (Edinburgh Southern) (SNP): Does the member agree that the limited jurisdiction of the Supreme Court as recommended in Lord McCluskey's report should be made explicit in the Scotland Bill, and will she use her influence with her Westminster colleagues to ensure that that proposition is taken forward?

Johann Lamont: We have said that all of Lord McCluskey's recommendations should be interrogated closely and debated. I do not see why we need to jump to proposing that the issue be dealt with immediately in the Scotland Bill, particularly given that learned people in the legal profession do not speak with a unified voice on this issue.

Obviously, everyone agrees with the independence of the Scottish justice system. However, Lord McCluskey does not say that that independence has been undermined. Indeed, Lord Hope ignored the court's apex structure in the

Fraser case and recognised that he did not have general jurisdiction. It is important that any assertion that the justice system's independence has been undermined does not become fact. If there is any evidence that that is the case, the cabinet secretary should tell us which of the accepted canons of Scots law have been overturned to justify the statement that the system's independence has been undermined. Even his own report did not find that.

It is also clear that Lord McCluskey's report does not endorse the argument—which I acknowledge has not been marshalled today, although it has been in the past—that it would be better to have a Scottish supreme court or to have people lingering in the courts of Strasbourg waiting for decisions that it would be for them to go to London. It was all about geography rather than the rights of the person who is seeking vindication. Surely the important test is to have efficient access to justice and an effective justice system for Scottish citizens and communities.

We acknowledge that there is an interesting and important debate to be had about certification, but we should also point out that the view that is set out in the McCluskey report does not reflect the views of the whole legal establishment. It is nonsense to say that there is a unified view on the matter, so we will want to be persuaded, on the balance of the arguments, of what the best approach might be. I have to say that the cabinet secretary's approach to this particular aspect reflects his approach to the whole matter. When he says to me, in his most reverential tone, that we must respect the views of a serious and senior legal figure when he argues for certification, what he actually means is that we should listen to senior legal voices if they agree with him. That is simply unacceptable.

Derek Mackay: Given that the member has returned to the issue of the cabinet secretary's style, can she suggest which Labour leadership candidate Kenny MacAskill should style himself on? Should he style himself on, for example, Ian Davidson, who threatens to give people who disagree with him a doing—allegedly?

Johann Lamont: I believe that the cabinet secretary berated me for not taking the issue seriously. He might want to have a word with his own back bencher in that regard.

As far as certification is concerned, we need to understand whether it might have any unintended consequences that have not been thought through and we need to realise that there are complexities to deal with.

I certainly feel that the cabinet secretary has gleefully picked on this particular issue because it gives him threadbare vindication for his and the

First Minister's entirely inappropriate and disproportionate behaviour in the past. Having caused a huge fuss, they have had to search manfully through the report to find some issue that they can hold up and say must be considered. I agree that the issue should be debated, but it does not merit the diatribe to which the legal profession and others were subjected. The cabinet secretary says that we need to reflect on and listen to what those in the legal profession who understand these things have to say, but he must understand how appalled those people were by the tone that he and the First Minister adopted. Their comments were not worthy of back benchers, never mind people in the offices that they hold.

We welcome the report and any debate that gives us an opportunity to think about how we can have a justice system that people have confidence in and which gives them access to justice.

As I have said, we all know that the courts make decisions that people find bewildering, but there is no suggestion that Supreme Court decisions are not rooted in interpretation of the ECHR. There is a bigger challenge for all of us: it is to ensure that we have a justice system that is properly resourced and in which people know they can get a fair hearing and know that those who disrupt their communities and create victims are held to account. That is the bigger debate that we should be having, rather than one that is predicated on the false premise of an attack on the independence of the judicial system that is merited neither by what is happening nor by the findings of Lord McCluskey.

Points of Order

16:50

Willie Rennie (Mid Scotland and Fife) (LD): On a point of order, Presiding Officer. I seek clarification, further to the points of order that were raised earlier. Professor Qvortrup was clear that the Scottish National Party's two-question referendum is untenable, but today the First Minister delivered a fabricated endorsement to the chamber. He quoted a letter that turns out to have been written not by the professor, but by the First Minister's special adviser in his own office this morning. This is a blatant attempt to nobble an academic, to doctor the evidence and to pull the wool over the eyes of the people of Scotland. An apology is not enough. Presiding Officer, will you make time for an early meeting of the Parliamentary Bureau so that a full debate can be held on the Government's conduct on this matter?

The Presiding Officer: It is, of course, open to any of the parties to make that request to the bureau.

A number of similar points of order have been raised throughout the day. The First Minister is now in the chamber. If he wishes, I will be happy to accept a point of order from him.

The First Minister (Alex Salmond): Presiding Officer, do you want me to speak now or at the close of this business?

Hugh Henry (Renfrewshire South) (Lab): On a point of order, Presiding Officer—

The Presiding Officer: I am sorry, Mr Henry, but you cannot interrupt a point of order.

The First Minister: Presiding Officer, I gave a response to Parliament at First Minister's question time today that I would now like to correct. I believed that the words that I used in response to Murdo Fraser were going to be included in a letter from Professor Matt Qvortrup to *The Times* newspaper. I now know that that was not the case and, therefore, apologise to the chamber for my mistake. It was never my intention to mislead Parliament, so I wished to correct the record at the earliest opportunity. I was given a message shortly before I entered the chamber that was wrong, and therefore my response was incorrect. The responsibility for that is mine, and mine alone, which is why I apologise to the chamber for the misinformation.

The good news is that I have now spoken to Professor Qvortrup this afternoon—something that I should perhaps have done before First Minister's question time. I now fully understand his position, which is that, if we wish it, it is entirely feasible to hold a two-question referendum on Scotland's

constitutional future in a fair, reasonable and clear manner, provided that certain conditions are met. Furthermore, as one of the world's foremost experts on referendums, Professor Qvortrup has agreed to put his services at the disposal of the Government and the Parliament—if it wishes—to bring about a two-question referendum, should that be the will of the Parliament, when the time comes.

One thing is absolutely clear above all else: in the second half of this parliamentary term, there will be a clear question in the referendum that consults the people on whether they support Scotland becoming an independent nation.

The Presiding Officer: Mr Henry, do you wish to continue with your point of order?

Hugh Henry: Yes, Presiding Officer. Thank you for allowing me in.

I welcome the comments from the First Minister, but that is not what I wish to consider. I recognise the right of members to raise points of order during debates, and I understand that you, Presiding Officer, are constrained in that you have to accept them and listen to them. This is not a criticism of the First Minister, because circumstances just developed, but I would argue—I hope that you will reflect on this—that it would have been better to take the First Minister's reply after the conclusion of what is a significant and important debate. What we have done is interrupt the flow of the debate. That is maybe something that we could look at for future reference.

The Presiding Officer: I thank Hugh Henry for that very helpful point of order. I agree with all that he has said. It is rather unfortunate that the debate has been interrupted by points of order, but as you rightly said, when the points of order are made I have no alternative at the moment but to accept them. It is something that I will reflect on, and it is something that the Parliament and the Standards, Procedures and Public Appointments Committee should reflect on, too.

Murdo Fraser (Mid Scotland and Fife) (Con): On a point of order, Presiding Officer. My point of order is further to the one that I raised earlier this afternoon on the same issue.

I welcome the First Minister's apology to the chamber for misleading the Parliament in response to a question from me at First Minister's question time. It speaks volumes about this Government that, when it comes to its flagship policy of an independence referendum, it misleads, manipulates and manufactures evidence in support of its stance and browbeats and bullies those who dare to take a contrary view.

Presiding Officer, can you ascertain from the First Minister whether, in addition to apologising to

Parliament, he has apologised to the esteemed academic, Professor Qvortrup, for misrepresenting his view?

The Presiding Officer: That is not a matter for me.

Scots Criminal Law (Integrity)

Resumed debate.

The Presiding Officer (Tricia Marwick): We resume the debate. Ms Cunningham has about 6 minutes.

16:56

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): It has been an interesting afternoon, for reasons that turned out to be not all to do with the subject of the debate.

I reiterate the Government's thanks to the individuals who considered the Supreme Court for us: Lord McCluskey, Sir Gerald Gordon, Charles Stoddart and Professor Neil Walker. They are all figures of considerable experience, expertise and substance and a number of their names are very well known to me—I ought to put it on the record that I am a non-practising member of the Faculty of Advocates, which may be germane to some of what we have been discussing.

There is a bigger issue in this debate, although I realise that I have much less time to discuss it than originally I might have had. The question, which Johann Lamont touched on in her closing remarks, is this: does any legal system anywhere in the world ever get everything 100 per cent right? Of course, the answer to that question is no. Some do better than others, but nobody will ever have a legal system that is 100 per cent right 100 per cent of the time.

In every single system, there will be appeals mechanisms, reversals and things done or not done that turn out not to be ideal. All of us live with that throughout the workings of the process. The question of how that is handled is important in every jurisdiction and the debate falls within that more general discussion, because that is really all that we are talking about.

We in the Government believe that the Scottish legal system should have equal status with others but we fear, rightly, that that equality of status is beginning to be eroded. I pray in aid of that comments that were made in Lord McCluskey's interim report. He stated:

"This widening of jurisdiction ... had surprised everyone and had created real problems".

It is therefore not the case that the issue is just made up. Graeme Pearson asked why we are having the debate and why we are discussing the matter in the first place. The issue is, of course, a live one in the Scotland Bill, which is currently going through Westminster, and concerning which we have a committee in this Parliament. Indeed, I remind everyone that the Lord President's letter,

which has been much quoted during the debate, was actually in connection with the Scotland Bill Committee, which he and his colleagues had been invited to attend. This is a very current and pertinent debate, which is on-going in a number of different venues; it is therefore quite right that we debate the issue in the chamber.

It is also important, in regard to other comments that Graeme Pearson made, to point out that, as Kevin Stewart indicated, the Lord Advocate Elish Angiolini herself gave evidence to the Scotland Bill Committee in the previous session of Parliament. It is therefore not true to say that the Lord Advocate has not done that. The new Lord Advocate might not yet have done so, but that is not the same as saying that the Lord Advocate has not done so at all.

In its report, the group made it clear that it has considered the issue within the context of the current devolution settlement, so—hold the front page—from our perspective, that is not something that we want to continue very far into the future. Within those limitations—we regard them as limitations—the report is positive. It recognises that the current system is constitutionally problematic, that the role of the UK Supreme Court needs to be more narrowly defined in relation to Scottish criminal cases, that the role of the High Court of Justiciary at the apex of the Scottish criminal justice system must be protected, and that the current Scotland Bill proposals require significant recasting if they are to be acceptable.

In Lord McCluskey's rather trenchant words—those who have interacted with Lord McCluskey will recognise that trenchancy—he basically describes them as being constitutionally inept. That is a pretty serious criticism that we must take seriously and not with the measure of disregard that I heard in the chamber this afternoon. The Advocate General's proposals would remodel the UK Supreme Court as a court of appeal in the Scottish criminal justice system. That is the case, because the proposals would give the Supreme Court full powers to overrule subordinate courts, which in our view is unacceptable.

I would have raised a great many specific points if I had the original amount of time that I was to have.

The Presiding Officer: I can give the minister another couple of minutes.

Roseanna Cunningham: I must say something about certification, which has been the biggest part of the serious part of the debate. Some members have claimed that certification is not appropriate. I struggle to see how they can take that stand, because it would put Scotland in a completely different set of circumstances to the rest of the UK. How on earth can that be justified?

Our High Court would not have authority similar to that of courts elsewhere. We must trust the High Court with that authority, and we must trust it to recognise cases that have points of general public importance—we know that it can do it—and to issue a certificate where appropriate. Annabelle Ewing's comments on that were absolutely bang on.

I want to point out the corollary to the argument that has been made. If no certification is taking place elsewhere in the UK, the implication of a number of the comments from Opposition members is that the poor people in the rest of the UK are lacking in rights, but I do not hear any great regard for that. I therefore suggest that the position of those members is completely political.

The situation is clear. The experts whom we have asked to consider the issue have pointed the way forward. I hope that in the future the debate will be as constructive as possible, and that people will stop looking at it purely politically and start looking at it in reality, with the criticisms that have been made.

Decision Time

17:02

The Presiding Officer (Tricia Marwick): There are seven questions to be put as a result of today's business. I remind members that, in relation to the debate on ensuring the integrity of Scots criminal law, if the amendment in the name of Johann Lamont is agreed to, the amendments in the name of John Lamont and Alison McInnes fall.

The first question is, that amendment S4M-01134.3, in the name of Ken Macintosh, which seeks to amend motion S4M-01134, in the name of Angela Constance, on raising attainment and ambition for all Scotland's young people, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

Members voted.

The Presiding Officer: The result of the division is: For 34, Against 17, Abstentions 63. The amendment is therefore agreed to.

Members: No.

The Presiding Officer: I am assured that that is the correct result.

Members: No.

The Cabinet Secretary for Parliamentary Business and Government Strategy (Bruce Crawford): On a point of order, Presiding Officer. You will hear from the reaction of my colleagues that it is quite clear how we all recorded our vote—including me; I clearly voted no. I am sure that all my colleagues will confirm how they voted. In the circumstances, I suggest that there is a technical glitch in the system. I can give you that absolute assurance.

The Presiding Officer: I have the results on my screen and they are as I read them out. I will suspend the meeting for a few minutes so that the system can be checked.

17:05

Meeting suspended.

17:08

On resuming—

The Presiding Officer: I have had the clerks check the system and I am assured that there is a glitch. Can all members remove their cards from the system—

Hugh Henry (Renfrewshire South) (Lab): On a point of order, Presiding Officer.

The Presiding Officer: No. Let me finish. All members should remove their card from the system. We will reboot the system, and I hope that we can then rerun the vote.

17:09

Meeting suspended.

17:15

On resuming—

The Presiding Officer: It appears that the electronic voting system is acting unreliably. Under rule 11.7 of standing orders, I can ask for the vote to be rerun. As there is no certainty that the system will operate at any point soon, I intend to call the votes on Wednesday when we resume business. I will now suspend all business, including members' business, because we have no microphones as the system is down.

I close the meeting and look forward to seeing members next Wednesday.

Meeting closed at 17:15.

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Printed in Scotland by APS Group Scotland
