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Official Report

MEETING OF THE PARLIAMENT

Wednesday 20 June 2012

Session 4

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Tricia Marwick): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is the Rev Clifford Hughes, former teacher, singer and Church of Scotland minister.

The Rev Clifford Hughes: In 1929, Cole Porter posed a provocative question in the hit song, “What is this thing called love?”

The great Christian apologist C S Lewis provides the answer in four Greek words. Storge is natural affection: picture a mother cuddling the baby in her arms, or me with Lula, my daughter’s Bichon Frise. Then there is eros, which is the attraction of desire, or sexual love—what John Knox’s mentor Calvin referred to as the delicacies with which our God delights us. Then there is agape, or love that gives itself away, which we see supremely on the cross at Calvary:

“Greater love hath no man than this, that a man lay down his life”.

But it is the fourth C S Lewis definition that I want to think about. Philia is what the King James Bible of 1611 in pre-politically correct days called “love of the brethren”. It is the friendship and camaraderie of kindred spirits, the team at work and at play. The party? The Parliament? It is about doing things together. Claire Squires collapsed and died a mile short of the end of the London marathon. Everyone wanted to join Claire’s team and contribute to the cause for which she was running.

I found philia with family, friends and speech therapists who helped me to find a new voice and a new life at Chinwags, a support group of laryngectomees who meet at the Maggie’s centre in Kirkcaldy. I discovered philia again a few years ago when I joined communication forum Scotland and more recently inclusive communication in Scotland—ICIS—where I met some truly inspirational people living day by day with a hidden disability: a progressive neurological condition such as Parkinson’s, multiple sclerosis, dementia, stroke, brain injuries, autism, a learning disability, a mental health condition, a stammer or dyslexia. We face common barriers when society does not recognise or understand the profound impact of communication disability. I sometimes wonder whether folk out there see us in three D: can’t speak, must be deaf; can’t speak, must be daft;

can’t speak, must be drunk. It happens, I promise you.

Philia: the love of the brethren. The French philosopher and war hero Antoine de Saint-Exupéry said:

“Love does not consist in gazing at each other, but in looking outward, together, in the same direction.”

I am grateful for this opportunity to thank the Scottish Parliament for its support over the past few years. Let us continue to raise awareness of this hidden disability and make Scotland truly the inclusive communication nation.

Business Motion

14:05

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-03395, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Criminal Cases (Punishment and Review) (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Criminal Cases (Punishment and Review) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 30 minutes.—[Bruce Crawford.]

Motion agreed to.

Women and Work

The Presiding Officer (Tricia Marwick): The next item of business is an Equal Opportunities Committee debate on the subject of women and work.

14:06

Mary Fee (West Scotland) (Lab): As convener of the Equal Opportunities Committee, I am pleased to open this debate on women and work. The subject of women and work is a key element of the committee's work. We have held a round-table evidence session with the Scottish Trades Union Congress's women's committee, and I will touch on some of the points that were raised during that. The Equal Opportunities Committee will continue its inquiry into women and work later in the year. Today's debate is an opportunity to hear views and concerns from members, which will be invaluable to the committee in making progress with the inquiry.

Last week, in a debate on women's representation, the Parliament heard from my colleague Jenny Marra that women make up only 25 per cent of executive non-departmental public body boards, 36 per cent of advisory boards and 11 per cent of Scottish public limited company boards. Those are shocking statistics. The Parliament needs to take action to end gender inequality and imbalance, as equal female representation will struggle to improve organically.

Recent research has shown that women hold less than a third of the United Kingdom's top jobs and that, in the police service, only 16 per cent of top jobs are held by women. Around the same time last month when BBC research found that women are in less than a third of top jobs, research from Cranfield University showed that candidates for board-level jobs are generally hired based on their fit with the existing, mostly male, directors. There is a need for Government to legislate for greater representation, as much research shows that the imbalance will not correct itself. As Ms Marra pointed out, the Scandinavian countries are an example of what can be achieved when quotas are set.

The glass ceiling continues to exist for women in the workplace, as was highlighted during the Equal Opportunities Committee's evidence session and excellently by Annabel Goldie, who told us of her experiences during her time as a partner in a law firm. Even in workplaces that are predominantly run by women, there is a struggle to advance, as Margaret Boyd from the STUC women's committee found during her time in employment with a major biscuit company. Ms Boyd stated clearly that, no matter how clever a

woman is, men still get the top jobs in shop-floor management, and the most that a woman can get is a position as a supervisor or team leader. That is in a workplace that is dominated by women and has been for many years. There is not only a boardroom glass ceiling, but a glass ceiling in management.

It is no surprise to me that that still exists, but it is shocking when women tend to excel more at education than men. As women become more qualified than men, why are women underemployed or segregated in the workplace?

Kirsty Connell, the vice-chair of the STUC youth committee, said at the round-table:

"We now have a generation of women who are coming through who are highly educated: they've had a lot of investment in their education at every level, and they're outperforming boys both at school and at university."

That is what I have said before, and continues to be of no surprise. However, in relation to the glass ceiling, Ms Connell added:

"it is to do with having access to career support throughout their working life in terms of going for promotion, and to softer skills, such as networking, mentoring and working with more senior men and women in the workplace, which is crucial."

Influences on young people making career choices mean that there is a need for positive female role models from an early age, which is becoming increasingly hard in this age of celebrity.

The committee also heard from Linda Somerville from the Scottish resource centre for women in science, engineering and technology, who said:

"All too often, careers advisers and teachers are blamed for guiding young people up the wrong avenue, but it is parents and parental influences that most commonly reinforce people's attitudes to or stereotypes about gender and employment."

Ms Somerville then described a situation at a national economic forum at which employers were blaming others for the reputation that they had. However, when she asked them whether they had taken steps to rectify their reputations with schools, they said that

"they thought that taking such steps was beyond them."—*[Official Report, Equal Opportunities Committee, 21 February 2012; c 240-1.]*

Proactivity must be at the heart of the policies of those employers that struggle to recruit females, especially graduates who hold the same skills and qualifications as their male counterparts. In fact, we must all be proactive.

In "Tapping all our Talents—Women in science, technology, engineering and mathematics: a strategy for Scotland", which was published by the Royal Society of Edinburgh, one of the key

recommendations was that the Scottish Government should

"take the lead in committing itself to a national strategy for Scotland—an Action Plan—aimed at retaining and promoting women in STEM and led by a Cabinet Secretary".

In fact, Linda Somerville stated that

"The Government could bring in a proactive programme that gives meaningful work experience and tries to move both sides into non-traditional industries."—*[Official Report, Equal Opportunities Committee, 21 February 2012; c 241.]*

She went on to highlight a pilot project in the north of England that has used college experience to move young men and women into non-traditional areas, such as beautician work for men, with positive feedback and evaluation. Similarly, a local engineering employer in my area runs a successful apprenticeship scheme every year, which has made a significant effort to recruit and retain women. However, no matter how much we praise modern apprenticeships, there are some people who take issue with the programme, saying that it appears to reinforce occupational segregation. That is something that I hope that we can consider further.

During the round-table session, we heard great examples of good practice in the areas of apprenticeships, career advisory services and work experience programmes. Kirsty Connell mentioned the Scottish Council for Voluntary Organisations third sector internship programme, and Dennis Robertson praised a modular programme in a school in his constituency aimed at secondary 2 pupils. There are many more great examples like those across Scotland.

One of the main themes that emerged was the lack of flexible childcare, particularly for women working shift patterns. In my opening remarks at the round-table discussion I noted my history as a Union of Shop, Distributive and Allied Workers representative and the experiences that I shared with many women who worked part-time shifts or antisocial hours, especially those who are often asked to work at short notice or are forced to take time off due to lack of affordable childcare. Indeed, many of those who gave evidence in February declared that childcare should be flexible, widely available and free at the point of delivery, or at least much lower in cost. However, we all know that we are some way off that target.

Flexible childcare can bring women out of unemployment, as many struggle to find flexible jobs. It also reduces the stresses of juggling family and work life as women, especially single mothers, are traditionally expected to. For many large employers, flexibility depends on their corporate governance, on the size of their human resources office and on budgets and targets. I worked for a large retailer, and my colleagues and I were lucky

because we had a good union agreement and representation, as well as an employer who would listen to and negotiate about flexible working requests. However, the attitude of many employers to flexible working is to offer either a zero-hours contract or a flexible contract. As I said at the round table, both examples give flexibility to the employer, but absolutely no flexibility to the employee. It appears that employers experience fear when employees request a change in their hours—a fear that must be exacerbated because of the recession, as companies increasingly struggle. It is not only employers who experience fear. Women are too frightened to request changes to their hours, as employers may use threats against the employee—and have done so—when such requests are made.

There must be a change in culture among employers and a change in attitudes. Many public sector bodies such as Her Majesty's Revenue and Customs are years ahead of the private sector in their willingness to accommodate flexible working. However, as I mentioned, budgetary constraints make it easier for managers to turn down such requests. In many sectors, such as customer service, performance targets also have a negative effect on flexible working requests. Emma Ritch, from Close the Gap, underlined that point when she provided the example of a team in the financial sector for whom the financial performance targets were the priority.

I have touched on only some of the barriers and issues that women face in the workplace. I look forward to hearing speeches from members across the chamber in what I am sure will be a constructive and consensual debate.

14:16

The Minister for Youth Employment (Angela Constance): I am delighted to speak in the debate on behalf of the Government. As well as having an obvious portfolio interest, like other members I have a wider political and personal commitment to ensuring that women have an equal opportunity to get into and progress in work. I welcome the upcoming Equal Opportunities Committee inquiry into women and work, and I look forward to the committee's discussions and findings.

The Scottish Government recognises that women face barriers to not just getting into work, but sustaining jobs in certain sectors, as well as experiencing difficulties with the availability of flexible working and progression opportunities. The Parliament has rightly focused its attention on the rise in female unemployment in recent times. Although the female employment rate in Scotland remains higher than in the rest of the United Kingdom, it has, over the past year, dropped by around 1.2 per cent. The situation is particularly

acute for young women. Unemployment is rising faster among young women than among their male counterparts and we are seeing a levelling-out of youth unemployment, with the gender split currently 60 per cent young men and 40 per cent young women whereas, historically, the proportion of unemployed young men has been much higher.

I hope that the committee will have the opportunity to consider some of the longer-term concerns in addition to the current labour market challenges. Women are still underrepresented in a number of business sectors. The most recent figures on the pay gap show that women are generally paid around 11 per cent less than their male counterparts, and, despite encouraging increases in recent years, far fewer women than men enter self-employment. The current wave of welfare reform that is being pushed through by the UK Government is also having a particularly detrimental effect on women, with the Institute for Fiscal Studies confirming that women will be more adversely affected than men.

However, in the face of those challenging statistics, we must recognise that some progress is being made on several fronts, especially regarding young women. In the past academic year, 90.3 per cent of young women leaving school went on to a positive destination. That is an increase from 86.7 per cent in 2005-06 and is higher than the rate among young men, which is currently 87.4 per cent. Although there are still real challenges around the types of professions that women seek, 56 per cent of new entrants to higher education in 2010-11 were women and a staggering 77.9 per cent of medical students are women.

Equality underpins the Government's economic strategy, which recognises that we must create a fairer society, in which everyone can participate. While many of the powers to help women are reserved to Westminster, the equality and budget group is helping to ensure that we consider the impact of every penny that we spend on key groups, including women.

For example, we understand that childcare remains a real problem for many parents. In addition to funding that has been made available to support learning and childcare, we have announced a major medium-term step. The children and young people's bill in 2013 will increase the current provision of 475 hours of pre-school education to 600 hours of early learning and childcare for three and four-year-olds and looked after two-year-olds, to be delivered flexibly from 2014.

Later this month, we will hold a national summit with business representatives to explore how we can promote more flexible working and family-friendly policies in the business sector.

I am delighted to note that in the face of a hugely challenging financial settlement last year, the Scottish Government's equality budget has been maintained at the 2011-12 level—£20.3 million—over the new spending review period, 2012-15.

We have increased spending on work to tackle gender inequality by nearly 30 per cent on the level that was allocated by the previous Administration, which I hope provides a clear signal that the Government gives a high priority to that work.

It is important to recognise, however, that there is no monopoly of wisdom or concern on this issue. We need to take expert opinion and listen to the views of women throughout Scotland on how we can help to move more of them into sustained work. I am therefore pleased to tell the Parliament that the women's employment summit, announced by the First Minister in April, will take place on 12 September. The event will discuss issues such as childcare, workforce challenges, employability and welfare reform. We are working with the STUC to develop what we hope will be an inspiring event that generates a range of new policy recommendations for the Government and others to consider. I am sure that the work of the Equal Opportunities Committee will make a vital contribution to that debate.

14:22

Ken Macintosh (Eastwood) (Lab): I was invited to my local Asda last week, partly to hear about its successful work experience programme but, more important, to join its mums listening group, which is a new initiative in which the supermarket gathers together a group of mothers to talk about how the current economic situation is affecting them. It was a useful exercise to hear at first hand and to confirm the iniquitous choices that many families are having to make in the face of difficult circumstances.

One of the many things that struck me from the discussion was the unanimity of opinion among that group of women when asked what the Government and others could do to help. One example was cheaper, more flexible and more widely available childcare. They were all mothers, but they were also teachers, lawyers, shop assistants and more. Not all were ready to return to their previous occupations or careers, but all felt that their choices were constrained by the lack of affordable childcare.

There is no doubt that childcare is an incredible burden on parental income. Scottish childcare costs are among the highest in Britain. Scottish parents can expect to pay more than £100 for 25 hours of nursery care for children under two. In

some cases, it is up to or more than £230 a week. For children over two years of age, families can expect to pay £95 a week—and that is when childcare is available.

I look back at the huge investment in and expansion of nursery education for all three and four-year-olds under Labour as one of the most significant achievements in the Parliament, but it feels as though progress on improving childcare has stalled. It is more than five years since the SNP promised extra childcare. Despite the political support that any such move would get from Labour, the Government has, as the minister has just confirmed, postponed the introduction of a children's bill until next year at the earliest.

On the broader issues, I congratulate the Scottish Government on its promise to hold a women's employment summit later this year, but, as with the lack of affordable childcare, I fear that not enough is being done to tackle effectively the central problems affecting women in the workplace. As the minister mentioned, we know that young people have been particularly badly affected by the recession, but it is worth highlighting that unemployment among women has increased faster than among men. In fact, since the SNP was elected, it has doubled from 4.1 to 8.2 per cent with more than 100,000 women now out of work.

I will not try to blame the Scottish Government for that entire issue or the wider economic recession that we are in, but I highlight that unemployment among men has dropped recently from 9.7 per cent, at the beginning of 2010, to 8.2 per cent. In other words, the impact of the recession has not been evenly felt. There is no single explanation for that, but gender stereotyping, segregation in the workforce and other negative attitudes and practices are undoubtedly a part of the cause. Even ageism, which demoralises so many people in their 50s and 60s who still have plenty to offer, is thought to affect older women more than older men.

Those unemployment statistics are likely to become worse as austerity cuts take an even greater toll on people's lives. We know that cuts to the public sector are likely to result in further huge job losses with women expected to be worst hit. In fact, it was depressing to hear it confirmed today that more than 25,000 public sector workers have lost their jobs over the past year. I am afraid that it was no surprise to hear that unemployment among women in Scotland is now higher than it is across the rest of the UK. Basically, women are far more likely than men to be employed in the public sector—they account for two thirds of the workforce—therefore it is unfortunately the case that public sector cuts will lead to twice as many women losing their jobs as men.

If we look at the practical steps that we can take to make a difference, it is disappointing that the Government is not doing more. Last week, we called for a gender quota system to be introduced for public sector boards. That measure is supported by many organisations from Oxfam to the STUC, and I was pleased that Mary Fee, the committee convener, referred to it in her opening remarks. That proposal has been rejected by the Government despite the fact that quotas have proved successful in similar small countries, including Norway, Denmark and Iceland.

Of course, in addition to women facing a threat to their employment, there continues to be a glass ceiling. A pressing issue over which the Scottish Government certainly has control is that of the disparity between men and women in apprenticeship schemes. It is essential that we offer a vocational alternative, but we have to challenge gender stereotyping and segregation, not reinforce it. Such disparities create uncomfortable working practices and pigeonhole men and women in certain industries.

There is so much more that we can do. We need to close the pay gap, challenge occupational gender segregation, offer more, not less flexible working, and improve the gender balance at boardroom level. I am pleased to support the committee's work in highlighting the challenges ahead.

14:27

Annabel Goldie (West Scotland) (Con): I am delighted, as a member of the Equal Opportunities Committee, to take part in the debate, and I am very pleased that time has been found for it in the parliamentary schedule.

The inquiry that the committee will undertake into women and work is, in my opinion, extremely important for three reasons. First, there is an issue and everyone can see that. Secondly, there is a valuable opportunity afforded by the debate to identify and highlight the areas and the aspects of the issue that we as a committee need to explore. Thirdly, our committee and the parliament have the opportunity to inform thinking and practices not only in Scotland, but in the rest of the UK and beyond.

My starting point is that the economy and society benefit when women are at work. That means work in all the widely recognised fora that are workplaces; it also means women playing their full part at all levels within workplaces.

The number of unemployed women in Scotland is not just worrying and disturbing in its own right, but it suggests that during recession and times of financial challenge women are more vulnerable, which is an issue that Ken Macintosh alluded to.

Much of that is down to inherent structural weaknesses in the employment pattern. Evidence suggests that women are predominant in low paid, insecure and short-hours jobs. That certainly is the view of Save the Children, which provided a helpful briefing for the debate. The reasons for that situation are multiple and some are more obvious than others. I certainly like to think that if our committee inquiry can lay bare those reasons and investigate sensible solutions to address them, we shall achieve two very important objectives: we shall accelerate the pace of women playing their full and proper role in the workplace and we shall strike at that structural employment vulnerability that is so damaging.

As has been indicated in the debate, some of the reasons are specific and obvious: lack of affordable childcare has already been identified as a major issue. However, that deficiency does not explain why some women fail to acquire skills to enter the workplace or, having acquired skills, seem to hit obstacles in career progression, or fail to be recognised as meriting consideration for public appointments, to which issue Mary Fee alluded; nor does it explain occupational segregation.

On the matter of skills, we like to think that with a combination of education, training opportunities and modern apprenticeships we do a lot to prepare young men and women for the workplace—and we do—but let me share an experience. Last week, I visited a successful manufacturing company in an area of significant unemployment. Much of the work requires full-time, skilled sewing machine operators. The company has vacancies, but it cannot fill them. Young people with those skills are not coming forward. I am taking the matter up with the local council to see what has happened to the teaching of such basic skills at school level, but I find that kind of mismatch in this day and age alarming.

The issue of the obstacles confronting women with skills was partially touched on in last week's debate, as Mary Fee indicated, when the bizarre sparseness of women on many of our public sector boards of governance was highlighted. We all agree that the paucity of female presence has absolutely nothing to do with the unavailability of female talent, so there must be a question over attitudes and appointment procedures. In fairness, I have detected a willingness by the Scottish Government to take that on board.

The private sector, however, does not have too much to shout about either in that regard. The most recent labour force survey figures show that in skilled trades occupations 93 per cent of employees are men and 7 per cent are women; and in the realm of process, plant and machine operatives, 87.7 per cent are men and 12.3 per

cent are women. The survey also shows that of 212,000 managers, directors and senior officials, only 36 per cent are women.

I believe that the whole scenario has to be probed. The minister was wise to say that no one has a monopoly of knowledge, wisdom or solutions on the issue. However, something is getting in the way of women getting on. Is it prejudice? Is it inadvertence? Is it attitude? Is it historic legacy? Is it lack of skills or lack of confidence? Is it lack of help with family responsibilities? In some cases, is it down to the individual choice of the woman? We need to find out. I hope that this debate will throw more light on what we need to explore, examine and challenge.

The Presiding Officer: We now move to the open debate. Members have only four minutes for speeches, I am afraid, and our time will be extremely tight.

14:33

Jean Urquhart (Highlands and Islands) (SNP): As a member of the Equal Opportunities Committee, I welcome the opportunity to comment on the vital work that is ahead of us to ensure that we remove as many barriers as possible for women seeking to enter their chosen career. I welcome, too, the minister's announcement of the summit in September, which is perfect timing.

It is not just unemployment among women that should worry us, although that has doubled since early 2008. We should be equally concerned about the type of work that women undertake. Recent figures suggest that just over 40 per cent of employed women are employed part time, compared with roughly 13 per cent of men. In many cases, that is because flexible working policies have not been fully implemented by organisations, forcing those with young families to seek reduced hours in order to balance their work and home lives. That can have a knock-on effect on career progression and family income, which is not healthy for the economy or for society.

Linked to the issue of career progression is career choice. The Royal Society of Edinburgh released a report entitled "Tapping All Our Talents" in April this year, which details a possible future strategy to boost the number of women in science, technology, engineering and mathematics, and halt the current situation whereby, unbelievably, 73 per cent of female STEM graduates drop out of the sector, which is an issue that we must investigate. The report also presses women to be more proactive in seeking out opportunities, to take risks and to step outside their comfort zone. I urge all of the members present to read that report and to consider how

best to take on board its constructive recommendations for stopping that brain drain.

Equally striking is the disparity between economically inactive men and economically inactive women who have chosen to look after their families. Currently, 31 per cent of economically inactive women fall into that category as opposed to 5 per cent of men—those figures may be due to the continuing discrepancy between maternity and paternity leave, or they may be due to trouble accessing childcare.

As the Minister for Youth Employment mentioned earlier, the Scottish Government is beginning to tackle the issue of childcare by increasing the number of free nursery education hours from 475 to 600. That will make a huge difference to a number of women—certainly in my ken. Putting in place family-friendly structures through the national parenting strategy must continue to be one of our priorities, as must mitigating the disproportionate impact on women of Westminster welfare reform as best we can within the current constitutional parameters.

Women at all levels face challenges. Currently, there is a 10.7 per cent pay gap between men and women in full-time employment across Scotland. That gap is exacerbated by a glass ceiling whereby only 36 per cent of higher-level jobs are held by women. Indeed, only 35 per cent of the members of this Parliament are female. Like my colleague Shona Robison last week, I find it hard to believe that

"there are not equal numbers of ... suitable male and female candidates"

across the parties, and even harder to believe

"that the best candidate just happened to be male on so many occasions."—[*Official Report*, 14 June 2012; c 10062.]

I encourage all members to give this issue some serious thought. Although society has taken some large strides in the past few decades to level the playing field, as always there is more that can be done.

14:37

Claudia Beamish (South Scotland) (Lab): I thank the Equal Opportunities Committee and its excellent convener, Mary Fee, for bringing forward this important debate, particularly on a day when figures have been released that show that female unemployment is not going down in line with more general trends.

As a previous convener of the Equal Opportunities Committee, I want to touch on two issues. They are seemingly separate, but they share some similar solutions. Both relate to women on the edge.

This is refugee week and today is world refugee day. I want to highlight the particular plight of refugee women in their quest for work, so that both we as parliamentarians and others can consider how best to help.

"The Struggle to Contribute" is a report by the independent refugee women's strategy group. Some of the group members are in the public gallery. The report identifies some of the barriers that are encountered by refugee women on their journey to employment in Scotland. The names of the women and some personal details have been changed to protect their identities.

More affordable childcare that is accessible for refugee women is sought. Amina fled her abusive husband and family in Pakistan with her young daughter three years ago. She was taken out of school to work before being forced to marry at 15. She had only basic literacy in Urdu when she was granted refugee status in Scotland. Amina had several hours a week of tuition in English for speakers of other languages while she was in the asylum process. Her jobcentre adviser has tried to persuade her to get a job in social care despite her poor English language skills. More funding is needed for specialist employability services, information provision, work placements and employability preparation for those who are in the asylum process and for those who are recognised as refugees.

Leila has a law degree from Algeria and had just started practising law when she was forced to flee with her husband and young son in 2001. Leila spent many years in the asylum process with her family living on less than 65 per cent of income support. Throughout the challenges that she faced, including two years in administrative homelessness, she has been an active member of her community and a volunteer. She speaks fluent English, Arabic and French, but her law qualifications are not recognised in this country. I ask the Equal Opportunities Committee and the Scottish Government to consider what the report recommends—that there should be mechanisms in place to recognise the qualifications and prior work experience of refugees.

We need to consider how we can monitor the specific impact that welfare reform and cuts to services are having on refugee women.

I also want to touch on the subject of women offenders, which is close to my heart. I have spoken on the subject in the chamber several times and, in the recent debate on women offenders, I spoke about the importance of breaking the pattern of reoffending by helping to create openings for women who have few or none. For many women who are caught up in the cycle of reoffending, the cause is financial exclusion, whether that is directly linked to criminal activity or

whether it simply leads to circumstances in which crime is seen as the only option.

The Royal College of Psychiatrists in Scotland noted in its evidence to the commission on women offenders:

"The social characteristics of prisoners suggest a lifetime of social exclusion. Compared to the general population, prisoners are ... 13 times more likely to have been unemployed".

Evidence continually shows that women in employment are far more likely to desist from criminal activity than those who are unemployed.

The Presiding Officer: The member has 30 seconds left.

Claudia Beamish: I ask the members of the Equal Opportunities Committee and all other members in the chamber to consider those concerns and the issue of women on the edge. I am delighted to hear about the event to be held on 12 September, but I ask the minister to ensure that women on the edge are included in it.

14:41

John Finnie (Highlands and Islands) (SNP): As we have heard, women are being disproportionately affected by the recession, and that will be compounded by the policies of the Westminster Government, particularly with regard to welfare reform. The STUC is clearly concerned about the issue, especially as women's unemployment has increased by 19 per cent in the past year, while male unemployment has declined. The general secretary of the STUC, Grahame Smith, said:

"The STUC looks forward to working constructively with the Scottish Government on this key issue over the coming months."

I am delighted that it will be involved in the first women's employment summit, which will be held later this year. The agenda certainly sounds interesting.

We cannot rewrite history, undo the wrongs or change the assumptions that have been made—assumptions that are often forgotten in a time of war. The post-war treatment of women is a clear example of hypocrisy in our society.

We know that women are more likely to have primary caring responsibilities, to work part time, to be in lower-paid jobs, to be in insecure and lower-status jobs, and to be lone parents. Those factors all impact greatly on what we are discussing. Many academic studies have covered the issues, and I am grateful to all the organisations that have provided briefings.

I will quote from an informal briefing that was provided to me following a conversation at the

weekend with a young mother of twins in Inverness. Following a meeting with two other young mothers—she will like me calling her young—she provided me with some information about their concerns. I will tell members about them by quoting their words. As background, I note that they both work for the national health service and both have a child under one. One of the mothers has returned to work and the other has not.

Their concerns related to the following:

“Flexible working including the option to work weekends.

Lack of affordable and flexible childcare - only available 8 to 6, Monday to Friday.

Requirement to pay a month up front before a child starts with childminder/nursery - can be hundreds of pounds.

Employer attitudes to request to reduce hours on return from maternity leave - not always positive.

Complicated benefits/tax credits system that offers no assistance to middle income families.

Sheer number of firms offering childcare vouchers - one or two companies would simplify system both for parents and childcare providers.

Need for employers where possible to offer flexible working to fathers not just mothers.”

I am grateful to the convener of the Equal Opportunities Committee for mentioning the committee's round-table discussion, at which we heard a flavour of the problems that exist. The convener mentioned as an example short-notice changes of shift for women who have primary childcare responsibilities, who often care for other family members as well. The significance of that is shown by the fact that it was discussed at the STUC women's conference, and we had some very good input on it at the round-table discussion.

We also heard that there is a huge gulf between employers' agreed policies and what happens in practice. I am grateful to the Equality and Human Rights Commission for highlighting the following, which is another issue:

“Work-life balance and diversity initiatives, as well as the right to request flexible working, are likely to be given lower priority by employers during the current recession.”

It is for that reason, and because of the well-documented concern that some people have about people's ability to challenge malpractice, that we need strong trade unions and staff associations more than ever, not just to ensure that people are properly represented but to ensure that hard-fought-for workplace gains are not lost.

There is much that can be done. It is significant that neither of the two young women whom I mentioned knew about some of the Scottish Government initiatives. It is important that we get

information out there. There is a lot to be done, and I look forward to the rest of the debate.

14:45

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): This is a very difficult time for both women and men, but there is no doubt that many problems have a particular impact on women. Unemployment among women is increasing; the pay gap persists; childcare is too expensive; flexible working is not widely available; and occupational segregation is rife, both horizontally through job stereotyping and vertically through women missing out on positions of power. Over and above all that, there is the sometimes subtle and unconscious discrimination that is quite difficult to identify and remove but which has been clearly exposed by many pieces of research.

The problem is knowing where to begin but, as in last week's debate on gender quotas, it might be particularly helpful if we look at Nordic countries. This week, for example, a constituent recommended the Norwegian system of parental leave, which reserves some leave for men and allows both maternal and paternal leave to be taken simultaneously. Such a move would be helpful for women as well as everyone else and would fit into the wider agenda of family-friendly and flexible working that is so vital to families.

When that is not available, it is invariably women in our society who suffer—and let us not forget that the economy, too, suffers. Other members have referred to the Royal Society of Edinburgh report, which points out that, in contrast with men, the majority of women with qualifications in STEM subjects are not working in those areas and estimates the resulting cost to the economy at £170 million a year.

The public sector needs to show a lead in flexible, family-friendly working and I note that, in the Equal Opportunities Committee's evidence-taking session, the NHS was particularly praised in that respect. I would go along with that view, although I know of another constituent who recently had to leave her job as an NHS nurse because she could not get the flexible arrangements that, as a single parent, she required.

Affordable, flexible and high-quality childcare is clearly central to all of this. Indeed, that was recognised over 20 years ago by women in the greater Pilton area of my constituency, when they identified campaigning for a childcare centre as central to their ambitions to get out of poverty and get into reasonably paid employment. In a Facebook exchange with me this morning, a woman who used the centre wrote:

"The Pilton Childcare Centre helped me to progress. I would not have been able to work full-time and do my degree without that project. I will never be able to thank the women who campaigned for the Centre enough."

As I have said, such provision is central—and, as the minister knows, I cannot get through any of these debates without mentioning that wonderful childcare centre.

Occupational segregation is not only another massive issue but a major contributor to the pay gap. As gender stereotyping starts in the earliest years, it must be addressed at that point. However, it also needs to be addressed later on in, for example, modern apprenticeships, which various speakers have mentioned. The fact that only 2.6 per cent of engineering apprenticeships are female, while the reverse is the case for childcare apprenticeships, shows that this is a big issue.

The occupational segregation within companies and public organisations has been encapsulated in the phrase "glass ceiling", but it also operates in subtle and unrecognised ways. A constituent who is doing research on the matter referred me to several fascinating pieces of research but, with only half a minute to go, I have no time to mention them.

There is also little time to mention the current public sector cuts package that is coming, in particular from the Westminster Government, but the fact is that, as the Fawcett Society makes clear in its report, austerity is having a particularly bad effect on women. It says—and this will be my final quote:

"Taken individually, the elements that make up the current austerity package will make life more difficult for many women across the UK; added together they spell a tipping point for women's equality."

I hope that that is not the case, but the Fawcett Society will be right if we do not redouble our efforts to address the many factors that make up gender inequality.

14:49

Sandra White (Glasgow Kelvin) (SNP): I am very pleased to speak in this Equal Opportunities Committee debate. As a previous member of that committee, I am proud to say that it lives up to its name and I commend its work.

Research has concluded that, in developed nations, there are clear links between higher rates of women's employment and lower rates of child poverty. As Mary Fee said, Sweden and other small countries lead the way on that, while in Scotland there are much lower rates of maternal employment and much higher rates of child poverty. As Malcolm Chisholm said, there are

certainly many lessons to be learned from other countries, particularly the Nordic countries.

I welcome the minister's announcement that the women's jobs summit will take place on 12 September. Among other issues, it will discuss childcare, which has been raised by almost every member so far; indeed, Ken Macintosh says that is his number 1 priority for getting women back into work. Although I welcome the increase in free nursery education for three to four-year-olds and looked-after two-year-olds, responsibility for children does not end when they reach a certain age. We have sometimes overlooked that when we have considered the various issues of nursery care.

We need to provide affordable childcare for the age group that is not in nursery school. Many women prefer not to go back to work when their kids are at nursery, if they are fortunate enough, but they want to go to work when their kids start school and the problems sometimes start there. They cannot re-enter their career and cannot re-enter the workforce.

A number of members mentioned the proportion of women in particular jobs. I will give members some of the stats that I looked up. In health and social care, 85 per cent of workers are female, yet in construction, 99 per cent of workers are male. In early years care and education—a very important career—98 per cent of workers are female, yet in vehicle maintenance, 98 per cent of workers are male. We must ask ourselves something here—it is a basic issue that every member has raised. Is that to do with gender stereotyping or cultural attitudes, and what can we do about it?

One of the things that we can do about it—and the Government can perhaps raise this issue at the jobs summit—is a positive attitude, which goes a long way. Obviously, having more female representation in the Scottish Parliament promotes a positive attitude to young women. Politicians can go out to schools and speak to young women's groups to tell them where they can go, what we have achieved and how they, too, can achieve it. The media, teachers and parents can all put forward a positive attitude towards women.

Are the jobs and careers that have predominantly women employees undervalued? Is enough emphasis put on jobs such as teachers, nursery teachers, hospital workers and nurses, which are very important jobs? They seem to be undervalued. As Malcolm Chisholm said, it is about the economy. If women have the money, they will spend it, and their kids will be taken out of poverty. Perhaps the Government—possibly at the summit—will look at the undervaluing of those jobs. Perhaps it will take the lead by looking at the modern apprenticeship scheme to see where the

money is going—whether it is to construction or to social care, as well.

I am grateful for being able to take part in the debate. I hope that we can move forward to give women a positive attitude and bring more women back into work.

14:53

Alison McInnes (North East Scotland) (LD): I welcome the fact that the Equal Opportunities Committee is embarking on an inquiry into women and work. Within our devolved competence, much could be done to improve the situation. The committee's chosen subject is, of course, very wide ranging and will throw up many interrelated issues that need to be tackled.

There is already a great body of research that committee members can draw on. Ahead of the debate, MSPs received excellent summary briefings from a range of groups, which I am sure will assist the committee in framing its terms of reference. In passing, I remark that I am surprised that there were no briefings from any of the unions or the STUC.

In 2012, why is it that to have children or to become a carer means inequality for women? Flexible working is not available in all types of work, including senior roles. Why is it that pregnancy discrimination, sexual harassment and other forms of workplace discrimination are not eliminated? Until we transform Scotland's workplaces, women's choices will remain limited. Men and women will not be able to lead family life in a way that works for them, older women will continue to be less independent than men, and our country will become less productive in a tougher global economy. Women are still undervalued and underpaid. I am particularly concerned about the apparent erosion of terms and conditions of those who are employed as carers, as councils continue to outsource provision of personal care for the elderly.

I urge the committee to look at the matter of women and work in the round. Topics for consideration should include occupational segregation, the modern apprentice programme and gender stereotyping generally in employment, vocational training and skills training, and how that reinforces occupational segregation throughout someone's lifetime in employment.

As others have said, the issues of work-life balance and unpaid labour in care provision, which falls on women's shoulders, should be considered. Access to childcare services, their affordability and their long-term stability are also issues. Another issue is the loss of employment opportunities for women as a result of the increase in part-time working by men. The Royal Society of Edinburgh's

recent report examines in great depth the lack of retention and progression of women in science, engineering and technology jobs. There is also a need to target women's entrepreneurship and self-employment.

As members will know, I have always taken a keen interest in women in science, so I will focus on that subject in my last few comments. It is such a waste that 73 per cent of women with qualifications in SET subjects no longer work in those areas. There is no magic solution, but a consistent and pragmatic approach is needed to nurture young women scientists. The Scottish resource centre for women in science, engineering and technology, which is based at Edinburgh Napier University, is tackling many of those issues, but much more can be done.

The Athena SWAN project aims to increase the number of women recruited to top academic posts in science. By working with universities on staff development, mentoring and networking schemes for women, Athena is helping to embed best practice in science departments. I urge the Government to encourage all universities to take part in the project. It is extremely disheartening that only a few universities have so far shown an interest in Athena, which is a proven way forward.

A complex web of interactions is having a negative impact on the retention and advancement of women in the SET sector. Barriers relate to organisational culture, mobility, long working hours, returning to work after a career break and the widespread use of fixed-term contracts. Those all contribute to the leaky pipeline in science that we have heard about.

A change in workplace policies and practices is required to reduce attrition levels at all levels of scientific, engineering and technology-related employment. Whole workplace cultures need to change to make them fair places to work for everyone. We should create workplaces in which it is acknowledged that family life is at least as important as working life and in which every individual can progress to attain their full potential.

Mary Fee mentioned last week's debate on women on boards. I am disappointed but not surprised that that debate received hardly any coverage in the media. I hope that the Equal Opportunities Committee's work will be covered in depth by the Scottish media and that it will generate not only debate but an increased resolve to tackle the problems.

14:57

Maureen Watt (Aberdeen South and North Kincardine) (SNP): It is to be commended that the debate has been designed to cultivate the

broadest possible discussion, given that the issue is so multifarious in its scope.

It is an affront that in Scotland, a northern European social democratic country, the gender gap still persists across our society in so many respects. I hope that the difference between ourselves and our Scandinavian neighbours does not elude most members. We know that girls tend to outperform boys at school, yet women are generally less well represented when it comes to senior management positions and to climbing the career ladder, especially in certain fields.

As others have mentioned, we know that the recession and the UK Government's welfare cuts will have a disproportionate impact on women and will have a knock-on effect on their children and families. Although the Scottish Government is trying to do all that it can to mitigate those impacts, it is equally important that we know why the imbalance exists.

Annabel Goldie gave a list of reasons that she thought contribute to the imbalance. I would say to her that it is about all of the above. We know that low pay among women contributes to the high level of child poverty in Scotland. That is why, for example, the SNP included in its local government election manifesto a progressive pledge to introduce a living wage of £7.20 an hour in all councils to help to tackle the issue. That measure is necessary because almost two thirds of the thousands of people who will benefit from the introduction of the living wage are women. Although that modern, progressive policy is to be commended, as a society we should ask ourselves why the majority of our lowest-paid jobs are done by women and why men continue to dominate the boardrooms.

We remember that, in a number of our council areas, the process of implementing single status has been a long and tortuous process. Those who we would think would most benefit from it and welcome it have often been the most obstructive.

Just as concerning is women's traditional exclusion from other fields. Although progress is being made in attracting women into STEM subjects and areas of work, gender stereotypes continue to prevail. Last night, at the British Veterinary Association dinner, we heard that 80 per cent of veterinary medicine students are women. However, when it comes to being in line for a partnership, how many of those women will be overlooked? There is probably the same issue in the legal profession.

White, able-bodied males still make up the largest group in Scotland's workforce, but they no longer represent the majority, so continuing dependence on that demographic in science and technology is unsustainable and represents a lost

opportunity for female scientists and engineers as well as for the sector as a whole. A modern, scientific, energy-rich nation such as Scotland must address the issue.

In the north-east, there are loads of employment opportunities in STEM subjects, but colleges do not have enough flexibility to decide where MAs go. We could replace hairdressing apprenticeships with engineering apprenticeships, for example. We must challenge attitudes.

15:01

Margaret McDougall (West Scotland) (Lab):

The recession is biting and there has been a rise in female unemployment. We need to take the opportunity to change the status of women in work for the better. We must work towards creating a more aspirational society for the young women in our country, in which women are presented not with glass ceilings and low wages but with the flexibility to have a family and a career that is not just a job.

Scotland might have experienced the biggest fall in unemployment in the UK, but female unemployment increased by 23 per cent last year. We must take the Government's positive spin with a pinch of salt.

Earlier this year I was glad when the minister announced a women's employment summit, and I welcome her comments about that today. Unemployment among Scottish women has risen from around 85,000 to 105,000 during the past year alone, so it is only right that the Government should start to set out a process whereby the rapid increase in women's unemployment can be halted.

Nursery care costs have risen by 6 per cent, and 44 per cent fewer families receive help with childcare costs. We need to consider how we can change the culture, so that instead of childcare being expensive and inflexible it is accessible to working parents from all walks of life. That will be a difficult task, but we need to address the matter.

I welcome the changes in relation to greater qualifications in the childcare sector, to bring about better care. We must ensure that childcare is not just an easily affordable service but a profession—a female-dominated one, at that—that works for providers and users.

As well as making it easier for women to access work, we need to tackle the quality of work that is available. Women should have access to work that is fairly paid and has reasonable hours.

In a recent survey, the recruitment service Timewise Jobs found that 72 per cent of Britons think that it is not possible to have a senior job and work part time. Timewise also found that one in seven part-time workers tries to hide their status

from their colleagues. An unacceptable stigma is attached to part-time work. That needs to change. We need a culture in which part-time work is no longer viewed negatively and the flexibility and additional options that part-time work affords are encouraged. We need to dispel the connotations of low quality, low status and low pay that are associated with part-time work. Many jobs and sectors could be better suited to part-time working or working from home. We should promote a positive approach to part-time jobs and the flexibility that they bring for women, particularly women who have childcare or other caring responsibilities.

We all too often hear about the pay gap between men and women. The most recent figures indicate that, on average, there is still a 10.7 per cent gap between male and female pay. We must work to see that that stops. Groups that are working to decrease the gap, such as Close the Gap, are making substantial inroads to paving the way for companies in both the public and private sectors to secure equal pay, but not enough is being done. The Equal Pay Act 1970, which came into force in 1975—37 years ago—has failed to be enforced for far too long. We need to ensure that the same is not the case with the Equality Act 2010.

Companies should seek to change stereotypes, not perpetuate them. Women should not be turned down or overlooked for the possibility of promotion for fear that they cannot commit to the hours or that they may require maternity leave in the future.

15:05

Richard Lyle (Central Scotland) (SNP): I congratulate the convener of the Equal Opportunities Committee, Mary Fee, on securing the debate.

In the past, the Scottish National Party has strongly supported the single agreement for local councils. That has played an important role in achieving equal pay in local government, which is a major employer in Scotland. That affirmative attitude has set the foundation for equal opportunities in all sectors and underpinned the importance of the work of women.

We now need to reassert our determination towards achieving equal opportunities in the labour market. Across all levels, we need to close the segregation gap by providing more flexible work opportunities. Although women comprise 48 per cent of the Scottish labour force, those workers still have primary responsibility for childcare. A disproportionate number of carers are women, and provisions need to be put in place to allow women to balance work life and home life. Many women seek employment that offers some

flexibility, whether through flexible arrangements, shift working or part-time hours. The *Official Report* of the Equal Opportunities Committee meeting details many situations that are faced by women, whether they are single, single parents or married. I would love to go into that further, but unfortunately I do not have the time.

We must tackle discrimination and the stereotyping of female jobs. Some 64 per cent of the lowest-paid workers are women. Female workers are more commonly found in low-paid jobs such as cleaning, catering, clerical, cashiering and caring jobs, and less than a third of top-level jobs are held by women. Conversely, their male counterparts can enjoy higher-paid jobs in various fields.

The Parliament should be committed to making transformational changes to childcare. I understand and support the upcoming children's services bill, which will make local authorities legally obliged to deliver the 600-hour minimum requirement for the benefit of Scotland's children and families.

We must pledge to reinforce the importance and value of women in the workforce by introducing a living wage by 2013. Almost two thirds of the beneficiaries of that will be women. We should always endeavour to make work accessible and diverse for both women and men.

In conclusion, I compliment the Scottish women's budget group. A paper by that group that I have received says:

"The advancement of gender equality and women's economic independence requires employment and skills development policy and programmes; effective childcare and other care provision; effective responses to UK government welfare reform measures; embedded gender analysis in policy and resource decisions. The forthcoming Scottish Government 'Summit'"

in September

"must be a turning point for women's employment."

15:09

Annabel Goldie: The debate has been short, but extremely useful. Mary Fee set the tone with an eloquent critique of the broad issues and rightly referred to the evidence that the committee took on 21 February, in trade union week. After that, it seemed to me that issues came in thick and fast from a variety of contributors.

Perhaps it is not surprising that issues such as childcare, the pay gap and occupational segregation have been covered by members, including the minister, Jean Urquhart and Alison McInnes, as has the challenge of family responsibilities, of course. As many other members have done, I welcome the minister's

confirmation that there will be a summit in September. Claudia Beamish raised the specific issues that confront refugee women.

It is easy to feel quite gloomy about the issue sometimes, but I think that all of us, having listened to the debate and sensed the degree of purpose to do something about it, now feel a sense of optimism. Margaret McDougall articulated that feeling very well when she spoke about having positive aspirations, although she tempered those remarks with her comment about the stigma that is attached to some part-time jobs.

Some interesting things are already happening. I was struck by the reference to the relevance of quality part-time jobs and flexible working. The evidence that the committee received on 21 February was supported by written submissions, including one from a member of the public who outlined her own experience of part-time working. She was clear about the lack of quality part-time work and—interestingly—about the difficulty of making the transition from full-time to part-time work. She also noted the challenge of having limited opportunities for training and promotion. A number of members have spoken about the pay gap, but there is also a gap—which is different, but nonetheless important—between flexible working policy and its implementation.

We are clear about the challenges in front of us, but we are also clear that we can approach the task as a committee with—as I just said—a tremendous sense of purpose. Our approach will be greatly assisted by the speeches from members in today's debate.

The committee will want to look at examples of good practice, because there are such examples out there. Mary Fee mentioned her experience in the retail industry. I was made aware of a charity in Edinburgh called Women Onto Work, which supports women who are trying to get back into the workplace. I was very struck by what it does: it gets self-referrals from individual women who are seeking help, and it does so without using any marketing or getting any referrals from service partners. It has supported clients into employment, further education and even self-employment.

One of the most successful dynamics for change involves using the experience and example of successful women. I hope that the committee can explore that area and identify women who could make a positive contribution to our deliberations. With no disrespect to the Presiding Officer, I regard every woman in the chamber as a successful woman. We have counterparts throughout Scotland in every area of life: we need to take the success of those successful women and thread that into the warp and woof of the web of the Scottish workplace.

15:13

Rhoda Grant (Highlands and Islands) (Lab): I welcome the debate. Although it may appear that we have had a quick-fire debate and sped through some of the issues, I hope that it will be helpful to the Equal Opportunities Committee when it considers the issue in more depth.

Every member who has spoken has mentioned the availability, flexibility and cost of childcare, and it would be wrong to start with any other issue. I am proud that the Labour Party introduced free nursery education for three and four-year-olds, and I welcome the Government commitment to increase that provision to 600 hours and to extend it to looked-after children and two-year-olds. However, I ask the Government to consider the issue further and to reflect on the debate, because one point that has emerged consistently has been the availability of good-quality childcare.

Margaret McDougall mentioned the quality of childcare, and—as other members have discussed—flexibility and cost. She said that qualifications should be looked at to ensure that those who provide the childcare are seen as doing an important job as well as enabling others to do their jobs.

Sandra White mentioned child poverty. Good-quality childcare has the ability to lift children out of poverty, and it is one of the most important factors in that regard.

Claudia Beamish talked about refugees, for whom childcare is one of the main issues. If any issue has emerged that must be considered by the Equal Opportunities Committee and the Government it is childcare and ensuring that there is adequate provision of what is needed.

An issue that was discussed last week and which has been mentioned again today is women's representation on public boards. I urge the minister and the Government to look at that again. It is not a reserved matter; it is an area in which the Scottish Government can take action. Such action would make a huge difference, because people who are in a position to recruit others tend to recruit people who appear to be like them. If boards are dominated by men, they will appoint men to the top jobs. In that way, the problem is repeated for future generations. Until we stop and use some positive discrimination, we will not change things. We had the same arguments in the legal profession in relation to judges and the like. Until we ensure that there are women in positions in which they are recruiting, we will not get women coming through to the top jobs.

Another issue that has been touched on is skills. In schools, a process starts whereby gender stereotyping results in guidance teachers and

parents pushing girls on to different career paths from those of boys. At the weekend, I heard someone from the Scottish Women's Convention talk about an inquiry that involved it engaging with rural women and looking at the specific issues that they faced. A big issue that those women flagged up was that their daughters were being forced down a path that was not giving them the skills in maths and sciences that would equip them for a career outside school. We need to ensure that women get into the non-traditional industries if we are to tackle inequality and the pay gap. Another interesting thing that I learned is that in countries such as Russia, most welders are women, because they are recognised for their skills, their concentration and their attention to detail, not their gender.

This is a short debate. Suffice it to say that the Labour Party is committed to equal opportunities and to ensuring that the gender pay gap ends and that women have their rightful place in society.

15:17

Angela Constance: Like other members, I feel that we have only begun to touch the tip of the iceberg, but I am sure that all our appetites have been whetted for more.

The big message that we want to get out from the debate to businesses big and small, the length and breadth of Scotland, is that diversity delivers. Getting more women into work and progressing in work is not just the right thing to do but the smart thing to do. We cannot continue to underutilise the talents and abilities of the majority of the population.

Malcolm Chisholm was absolutely correct to mention the wonderful childcare centre in Pilton. I have had the opportunity to visit it, and it is an inspiring project. Claudia Beamish rightly mentioned that it is refugee week, and Richard Lyle touched on the fact that it is also carers week. There are fundamental employability issues to do with carers, refugees and women who are seeking to get into the labour market.

Mention has been made of the modern apprenticeship programme. I hope that it is accepted and welcomed that the number of women who participate in the programme has increased. In 2008-09, 2,857 participants in the programme were women; in 2011-12, that figure had increased to 11,383. That is not to say that I am complacent. I accept that if we were to scratch below the surface of those figures, we would see some significant gender differences, depending on the framework. Someone mentioned the very low participation rate of women in engineering.

I do not accept that the modern apprenticeship programme reinforces occupational segregation,

but I accept that it reflects current occupational segregation in the workforce. I also accept that how we move forward in the modern apprenticeship programme will give us an opportunity to do things differently and to encourage more young women into growth sectors and more technical sectors. I accept that we have much to do on that, in conjunction with the careers information and advice that we give. Of course, we also have a job of work to do in convincing some parents of the merits of various occupations.

Maureen Watt, Jean Urquhart and Alison McInnes spoke about women who are in STEM-related professions and about the importance of the work of the Scottish resource centre for women in science, engineering and technology. The Scottish Government supports that centre's work; we stepped in to fund it when it lost some funding from UK sources. We also heard about the seminal and important work by the Royal Society of Edinburgh, to which the Deputy First Minister will respond formally.

We need to be ahead of the game as a nation and as an economy and to take the opportunities that we are afforded by new and emerging sectors. That provides a great opportunity to tackle occupational segregation. It is important to note that an equality statement will sit alongside the renewables route map.

Employers and industry-led solutions are key to finding long-term and effective solutions to getting more women into work and making progress in work, particularly in the STEM-related industries, as well as in the energy and renewables sectors.

Welfare reform and childcare have been mentioned extensively. I do not want to get into a spat with Mr Macintosh, but I will say that the need for flexibility in how we plan to move forward and in how we deliver pre-school nursery provision is part of why we need primary legislation, although I understand the instinctive urge always to want to do more and do it more quickly. For older children, social enterprises and out-of-school care are an important part of the jigsaw.

As for last week's debate, I understand that Shona Robison's position was that she—along with others—wanted to meet the Commissioner for Public Appointments in Scotland to discuss the pros and cons of quotas, so the door has most certainly not been shut.

At the start of the recession, men experienced 70 per cent of the job losses. However, we now know that joblessness disproportionately impacts on women. That will require us all to act and think differently. I am all for the advancement of women's economic independence, whether that is through getting more women into work, dealing with occupational segregation and equal pay,

getting more women into self-employment or getting more flexible working opportunities. I hope, and my aspiration is, that the women's employment summit will be a turning point for long-term effective change. I am sure that the Equal Opportunities Committee's findings will make an important contribution.

15:23

Stuart McMillan (West Scotland) (SNP): This is my first summing-up speech in my five years in the Parliament. I am delighted to close the debate on behalf of the Equal Opportunities Committee. The debate has been open, interesting and wide ranging, and it follows on from a debate last Thursday morning.

I will try to capture much of what has been said but, before doing that, I will make a couple of points. The committee's discussion of women and work in February was an excellent way of opening up the issue. I am sure that every member finds it abhorrent that major issues affect women in the workplace. My opinion is that the worst issue has been the lack of equal pay. The legacy of women receiving less money than men for doing the same or similar jobs is shocking. Nothing that I can say today will fully reflect my disgust with that situation. The point might have been addressed now, but how much money has been wasted by organisations defending the indefensible?

My second point follows on from the debate that took place last Thursday morning. I am happy that today's debate has not been a mirror image of that debate, but last week's debate has helped to open up today's debate. Some of the issues that were discussed last week are just part of the wider range of issues that the Parliament and the Equal Opportunities Committee need to look at. I am sure that we will do so in our future work.

I will touch upon some of the points that were raised today and at the beginning of the process. When Elaine Dougall of the STUC women's committee gave evidence to the Equal Opportunities Committee, she made the powerful statement:

"Women bring diversity to an organisation."—[*Official Report, Equal Opportunities Committee*, 21 February 2012; c 247.]

I think of the strong women in my family and how powerful they have been in shaping how the family went through life. I would not be half the person that I am if it were not for my mother and the strong direction that I got from her. It is extremely important for organisations to realise that women bring a totally different perspective on how an organisation could run and its decision-making process. Elaine Dougall's comment was extremely powerful and when the committee is going through

its inquiry, it should remember that comment at all times.

Annabel Goldie's contribution on the three reasons why she supports the inquiry tied in with that and I absolutely agree with her. When we do that piece of work, I am sure that the committee will be as one on many aspects of it.

Clare Adamson, who was a member of the Equal Opportunities Committee in February, made an extremely powerful comment about the wider issues when she spoke in last week's debate. She said:

"It is far more fundamental and must involve us all embracing a cultural change in our society."—[*Official Report*, 14 June 2012; c 10067.]

That hits the nail right on the head and begs the question of how we forge a cultural change. Our society needs to take a genuine look at all the issues that have been raised today and more—working hours, stereotypes, childcare, the gender quota, women on the edge, as mentioned in Claudia Beamish's powerful speech, welfare reform, working hours contracts—so that we can forge some type of cultural change. Various members touched upon working hours and contracts for flexible working. Clare Adamson mentioned that last week and at the committee meeting in February, and Margaret McDougall spoke about certain terms of equal pay. That is a very powerful argument and another issue that we need to look at.

Again, various members touched on occupational segregation. I am also a member of the Economy, Energy and Tourism Committee. At the committee's meeting this morning, Fergus Ewing touched on occupational segregation and modern apprenticeships in the renewables sector. That was quite interesting, because he said that the focus is not just on boys doing engineering and girls doing something else. There is a genuine understanding of the issues in that regard.

On Monday, I visited a school in Port Glasgow and had a lengthy chat on that issue with one of the teachers. Port Glasgow was traditionally a working-class area in the shipbuilding and engineering industries. We talked about how young people's attitudes today are different from what they were 30, 40 or 50 years ago, as are the opportunities.

Sandra White talked about modern apprenticeships. I am sure that everyone will welcome the women's summit that will take place in September.

Many members spoke about childcare. In evidence to the Equal Opportunities Committee, Anne-Marie Mackin of Play First (Scotland) Ltd made the powerful comment:

"If the childcare issues were dealt with so that care was available for longer hours, was more responsive to family needs, was provided in the right locations and was either free or relatively affordable, that would deal with many of the other issues."

Obviously, there are positives. All members should warmly welcome the increase to 600 hours of free childcare a year under the forthcoming bill next year. I dare say that that measure will be welcomed, once it has been thoroughly scrutinised.

Another issue that was raised was about welfare reform. Once again, Anne-Marie Mackin made a comment that I thought was bang on the money when she said:

"I think that welfare reform might be the straw that breaks the camel's back."—[*Official Report, Equal Opportunities Committee*, 21 February 2012; c 249, 261.]

All members understand that welfare reform will have a detrimental effect on hundreds of thousands of people in Scotland, both male and female. However, given the issues of working conditions and childcare, welfare reform will have more of an adverse effect on women than on men. I am sure that we will consider that in our inquiry.

There are positives. I warmly welcome the women's summit in September and the proposed increase in nursery provision. The work on the living wage in Scotland is also welcome. However, I absolutely agree with Richard Lyle that we need to reassert our desire for improvement. As the father of two young daughters, I want them to grow up in a Scotland that is fair and equitable and in which they have exactly the same opportunities and chances as males. I want them to work hard, but I want them to have exactly the same chances and opportunities. I look forward to the inquiry with my colleagues on the Equal Opportunities Committee. I dare say that we will discuss the issue further in the Parliament.

Criminal Cases (Punishment and Review) (Scotland) Bill: Stage 3

15:32

The Deputy Presiding Officer (John Scott):

The next item of business is stage 3 proceedings on the Criminal Cases (Punishment and Review) (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 3—Exception to non-disclosure rule

The Deputy Presiding Officer: Amendment 1, in the name of the Cabinet Secretary for Justice, is grouped with amendments 2, 14 and 15.

The Cabinet Secretary for Justice (Kenny MacAskill): Amendment 1 is a technical amendment that deletes from the bill new section 194M(3) of the Criminal Procedure (Scotland) Act 1995. That provision was originally included to make clear that the Scottish Criminal Cases Review Commission's power to decide to disclose information under new section 194M(1) of the 1995 act was subject to other provisions within the overall framework. However, new section 194M(3) is not essential to the operation of the framework, so amendment 1 deletes it to simplify the provisions in new section 194M. The result is that the natural context of the set of provisions in part 2 of the bill will mean that new section 194M(1) is qualified to the extent that is provided for in the other provisions, but without that having to be stated expressly.

Amendments 14 and 15 are consequential amendments that delete references to new section 194M(3) at new section 194Q(1) and (3)(b).

Amendment 2 is intended to address concerns that we have received from the United Kingdom Government that new section 194M could be read in such a way that it sought to override reserved legislation that would otherwise limit the disclosure of information. Notwithstanding that that has never been our intention, we have considered carefully the UK Government's comments. We have always

been clear that the Scottish Government is committed to being as open and transparent as possible on the al-Megrahi case within the devolved competence of the Scottish Parliament.

Furthermore, we are satisfied that, as I said to the Justice Committee when the issue was debated at stage 2, the provision at new section 194M(4), which was inserted at stage 2, does not affect any restriction or limitation on disclosure that is imposed by reserved legislation.

As members will be well aware, the Scottish Parliament cannot legislate on matters that are outside its competence. All acts of the Scottish Parliament require to be read within the context of section 101 of the Scotland Act 1998, which provides that acts of the Scottish Parliament are to be read in a way that is consistent with the devolved competence of the Parliament.

However, following stage 2, we were asked by the UK Government to recast the provision, for two reasons; first, to make explicit that any limitation on disclosure imposed by an enactment is not overridden by new section 194M(1) of the 1995 act; and, secondly, to remove the reference to “any obligation of secrecy” that was contained in new section 194M(4) of the 1995 act.

In lodging amendment 2, we have kept our minds entirely focused on ensuring that our policy aims are met. We are satisfied that our recast provision continues to meet our policy aims, as it is sufficient to address the concern that was expressed by the Scottish Criminal Cases Review Commission in its evidence to the committee that the bill as introduced did not provide the necessary authority for it to disclose information that is covered by legal professional privilege or by any common-law duty of confidentiality.

If amendment 2 is agreed to, I can assure members that the commission will still have the necessary authority to decide whether it is appropriate to disclose information, even if that information is covered by legal professional privilege or by any common-law duty of confidentiality.

On that basis, I move amendment 1.

The Deputy Presiding Officer: As no other member has requested to speak—[*Interruption.*] Sorry. I call Lewis Macdonald—a late request.

Lewis Macdonald (North East Scotland) (Lab): I admit that it was a late bid to speak, Presiding Officer.

I simply want to reflect on the cabinet secretary's comments that his inquiry in relation to this matter was raised following representations from the UK Government. Can he tell us whether, having recast the provision, he has had further discussion with the UK Government?

Kenny MacAskill: I had discussions with the secretary of state and the Lord Advocate had discussions with the Advocate General, from whom we received a communication this morning. I believe that there has been full and frank discussion and that the fears and alarms of the commission have been addressed. We think that we have struck the correct balance between doing what we have always said that we will do with regard to being as open and transparent as possible on the al-Megrahi case and obliging foreign Governments and the UK Government by acknowledging their requests in a way that has assured them that they feel that their rights are protected.

Amendment 1 agreed to.

Amendment 2 moved—[Kenny MacAskill]—and agreed to.

The Deputy Presiding Officer: Amendment 3, in the name of the cabinet secretary, is grouped with amendment 7.

Kenny MacAskill: Amendment 3 has been lodged to address concerns that have been expressed by the UK Government about the way in which the bill treats information that it has provided to the commission.

The UK Government has expressed concern that it does not have final control over the release of information that is held by the commission but which it provided.

We have explained that the bill enables any person who has provided information that is held by the commission to take legal action in their favour in respect of potential disclosure of information. That includes the UK Government. We had considered that that was sufficient to meet the balancing policy aims of relaxing the restrictions on the commission to facilitate the publication of information while protecting the interests of affected persons and interested persons in respect of the potential disclosure of their information. However, the UK Government has indicated that it is not satisfied with those protections.

As we have consistently made clear, the Scottish Government's policy is to be as open and transparent as possible about all aspects of the Lockerbie atrocity. Taking into account the fact that the commission's statement of reasons for referring al-Megrahi's case to the appeal court has been published, and reflecting that that was the main reason why part 2 of the bill was brought forward, we accept the need to ensure that the provisions contained in the bill do not jeopardise future co-operation between the UK Government and Scottish police, the Crown Office and the commission.

Concern has been expressed that future co-operation between the UK Government and Scottish authorities may be put at risk if no change was made to the bill in this area. In view of that, we lodged amendment 3, which provides that consent of the UK Government is required for the disclosure of any information that

“is held by the Commission”

and which

“has been supplied by the UK Government”.

That puts the UK Government on the same footing as foreign authorities, whose consent the commission must seek before disclosing information that they have supplied.

We accept that amendment 3 represents a very fine balance between being as open and transparent as possible and ensuring that there is no adverse impact on future co-operation in investigating serious cross-border crime.

Avoiding the risk of a lack of future co-operation between other countries and Scotland in criminal investigations led us to ensure that the bill provides that foreign authorities retain control over information that they have supplied. Such considerations also apply within the UK, which ultimately led us, after much reflection, to include a consent mechanism for the UK Government.

Amendment 7 is a minor consequential amendment following on from amendment 3. It makes it clear that there is no unnecessary double consent mechanism whereby consent from abroad is also needed in cases in which the UK Government’s consent is required.

I move amendment 3.

Amendment 3 agreed to.

The Deputy Presiding Officer: Amendment 4, in the name of the cabinet secretary, is grouped with amendments 5, 6 and 8 to 13.

Kenny MacAskill: Amendments 4 to 6 and 8 to 13 are minor technical amendments that are intended to clarify and simplify the provisions in the bill that require the commission to obtain the consent of foreign authorities before disclosing information that has at any time been supplied by them. The amendments do not seek to change the policy intent of the provisions, with consent still being required before the commission can consider disclosing information that it holds that has been provided by a foreign authority.

Overall, the amendments seek to remove the distinction between information that has been obtained from foreign authorities through international assistance arrangements through the Lord Advocate and information that has been obtained on the commission’s own application.

They instead make it clear that, quite simply, if the commission holds information that was supplied by a foreign authority, the commission must obtain that authority’s consent before disclosing that information.

I move amendment 4.

Amendment 4 agreed to.

Amendments 5 to 15 moved—[Kenny MacAskill]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Criminal Cases (Punishment and Review) (Scotland) Bill

The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-03369, in the name of Kenny MacAskill, on the Criminal Cases (Punishment and Review) (Scotland) Bill.

15:44

The Cabinet Secretary for Justice (Kenny MacAskill): I begin the formal stage 3 debate by thanking the members of and clerks to the Justice Committee for their careful consideration of the Criminal Cases (Punishment and Review) (Scotland) Bill. As I am sure members will highlight, this is a small, important but complex bit of legislation that takes some time to understand fully.

I also thank the external stakeholders who have taken the time to engage in the bill process and share their knowledge and views during scrutiny of the bill. In particular, the Scottish Criminal Cases Review Commission has been of great assistance throughout in offering views on how best to enable it to consider the release of information relating to cases that it has referred to the appeal court but which subsequently have been abandoned.

I thank, too, the Information Commissioner's Office for its assistance in helping us to understand more fully the data protection issues relating to part 2 of the bill.

The bill deals with two distinct topics. Part 1 addresses an anomaly that has arisen with regard to the setting of the punishment part of non-mandatory life sentences. The bill sets out a clear framework that the courts must follow in future when sentencing prisoners to a non-mandatory life sentence.

Part 2 provides a framework within which the SCCRC can consider whether it is appropriate to disclose information that it holds relating to cases that it has referred to the appeal court where that appeal subsequently has been abandoned.

Part 1 is a direct response to an appeal court judgment in the case of Petch and Foye v Her Majesty's Advocate in March 2011, concerning the setting of the punishment part of non-mandatory life sentences. The punishment part of a sentence is the length of time that a prisoner must serve before becoming eligible for parole. Following the judgment in Petch and Foye, a number of offenders have successfully appealed and had the punishment part of their non-mandatory life sentences reduced.

It is important to emphasise that the judgment did not and does not mean that serious offenders have directly been released early from prison. Since the judgment took effect, any offender who has had their punishment part reduced will continue to need to satisfy the Parole Board for Scotland that they do not present a risk to public safety. If the Parole Board is not satisfied, the offender remains in prison.

However, there is common agreement throughout the chamber that it is wrong that a person who is given a non-mandatory life sentence could become eligible to apply for parole earlier than if they had been given a fixed sentence for the same crime. The bill gives back to the courts the discretion to set the punishment part of a non-mandatory life sentence to satisfy the need for punishment of the offender.

We are aware that throughout the parliamentary process there has been some criticism of the provisions on the grounds that they are too complicated. We accept that the provisions are complex but we do not think they are unnecessarily complex. The provisions exist in a particular context and seek to address a very particular issue. The sentencing of non-mandatory life offenders is a complex area of law, with a fair amount of detail involved. However, the courts are used to following the statutory framework provided. In the bill, our task is solely to resolve the Petch and Foye anomaly. We believe that the somewhat prescriptive approach that we have taken is preferable to passing legislation that may be simpler to read but harder to apply.

We accept that the problem of how a judge should calculate the punishment part of a non-mandatory life sentence remains a difficult one, and we consider that it is important to set out the steps involved in legislation as clearly as possible, rather than placing the full onus on judges.

I am aware that some—the Law Society of Scotland, for example—have suggested that the problem could be addressed simply by removing the requirement to strip out the public protection element of the notional determinate sentence when calculating the punishment part of a non-mandatory life sentence. We accept that, on the face of it, that would remove the step in the present calculation that created the Petch and Foye anomaly. However, our solution to Petch and Foye has to be seen within the context of Scots law and case law, including European convention on human rights case law. In particular, previous case law has accepted that determinate sentences contain, or at least can contain, an element that relates to public protection, even though they are not expressly divided in that way.

Lewis Macdonald (North East Scotland) (Lab): Does the cabinet secretary recognise that

although that is the case, the matter is not one that is typically specified or separated out, and therefore there is at least some merit in the argument that a simpler approach might achieve the same objective in a way that is more comprehensible to the public?

Kenny MacAskill: I accept that argument, but—as I was about to say—life sentences are split into a punishment part, which is fixed, and an indeterminate public protection part. When calculating a punishment part, ECHR case law says that the punishment part cannot contain an element relating to public protection because it would be unfair to do so.

We therefore consider that removing the requirement to strip out the public protection element of the notional determinate sentence cannot be done, as the need to strip out any public protection elements from a punishment part is a clear obligation under ECHR in the context of the sentencing of life prisoners. Furthermore, the effect of the Law Society proposal alluded to would be to sweep away the existing framework for calculating the punishment part of sentences, with the aspects that it requires for certainty of effect and ECHR compliance, and leave nothing in its place.

Although the Petch and Foye judgment affected only a small number of sentencing cases—only around 80 offenders have been given non-mandatory life sentences in the past seven years—as a Government, we wanted to act quickly and appropriately to address the problem raised by the judgment and ensure that people have confidence in the sentencing of the most serious offenders. We have done that in part 1.

Part 2 provides a framework within which the Scottish Criminal Cases Review Commission can consider whether it is appropriate to disclose information that it holds relating to cases that it has referred to the appeal court where that appeal is subsequently abandoned.

We introduced the provisions as part of our commitment to be as open and transparent as possible about all aspects of the Lockerbie atrocity and, specifically, to address the situation that had arisen with regards to the commission's statement of reasons for referring the al-Megrahi case to the appeal court.

Subsequent to the introduction of the bill, the commission's statement of reasons has been published by a newspaper. However, our legislation is general, and we consider that it is in the interests of ensuring transparency and openness in the justice system that there is a framework in place to ensure that, in future cases, the commission is able to consider releasing information relating to abandoned appeals arising

from a reference that it has made, where there is a substantial public interest.

We have been keen to ensure that the framework that we put in place is as robust as possible. The al-Megrahi case, given its international nature, is one of the most complex cases—if not the most complex case—that the commission has had to investigate. We are confident, therefore, that our framework can be applied in a range of possible future cases.

We have made a number of changes to the bill to ensure that the framework is as effective and appropriate as possible, and that has been commented on in terms of the amendments—indeed, I made such a comment in my response to Lewis Macdonald's intervention in relation to the first group of amendments.

Specifically, we have made provision to address the commission's concerns in relation to information to which legal professional privilege or a common-law duty of confidentiality applies.

We have improved the provisions requiring consent from foreign authorities to make it absolutely clear that, where information held by the commission originates from a foreign authority, the commission must obtain the consent of that foreign authority, irrespective of how the information came to the commission.

In response to United Kingdom Government concerns, we have extended the consent requirement to cover information provided to the commission by the UK Government. That is necessary to ensure that future co-operation between the UK Government and Scottish police, the Crown Office and the commission is not put at risk.

The bill addresses matters that have arisen in two important but distinct areas of our justice system. It meets our absolute commitment to do everything that we can to ensure that the public has confidence that our justice system is fair, transparent and effective.

I move,

That the Parliament agrees that the Criminal Cases (Punishment and Review) (Scotland) Bill be passed.

15:54

Jenny Marra (North East Scotland) (Lab): I welcome the opportunity to speak in the stage 3 proceedings on the Criminal Cases (Punishment and Review) (Scotland) Bill.

At stage 1, Scottish Labour pledged its support for the bill's general principles, but we took the opportunity to highlight some of our concerns around the complexity and relevancy of the bill's provisions. While we are still happy to support the

bill's passage through Parliament today, we do so with a continued note of caution and a request that the Government commit to monitor the bill's application on those grounds after it is passed today.

Both parts of the bill are commendable in principle. Part 1 addresses an anomaly in the law, which is that offenders serving non-mandatory life sentences are eligible to be considered for release by the Parole Board for Scotland earlier than those serving a comparable determinate sentence. Part 2 enhances transparency by allowing the Scottish Criminal Cases Review Commission to publish reports on cases that are abandoned subsequent to being brought to the appeal court. Both are positive steps. However, it is still difficult to tell whether either part 1 or part 2 will serve their stated purpose in practice as effectively as they ought to.

Throughout the Justice Committee's evidence taking on the bill there was a feeling—even among members—that the bill was difficult to comprehend, as the cabinet secretary said, and that its outcomes were difficult to predict. It is questionable whether the Government has fully addressed those concerns.

The common concern of stakeholders about part 1 was that it sought to solve a complex problem by making it even more complex. We heard evidence from senior professionals in the justice system to that effect. David McLetchie, from the Conservative benches, pointed out the most striking example of that complexity when he said during the stage 1 debate that part 1 had been described as

“a tortuous system which is barely intelligible to lawyers, let alone to the general public”.—[*Official Report*, 19 April 2012; c 8272.]

Although we accept that, in the absence of a simpler solution, part 1 is entirely necessary as a result of European law, I re-emphasise the important point that I made during stage 1, which is that our justice system must be, and must be seen to be, fair and comprehensible to not only those working within it but the victims of crime and the general public watching.

John Finnie (Highlands and Islands) (SNP): Does the member accept that we also heard evidence of the support that is provided to victims by the Crown Office and Procurator Fiscal Service, Victim Support Scotland and the like, and that it is not necessarily a requirement for victims to understand the minutiae of the legislation, as opposed to its intention?

Jenny Marra: In the evidence that the committee took, there was an acceptance that there is support in the courts for victims of and witnesses to crime, as John Finnie points out, but I

think that there was also an acceptance that the understanding of sentencing generally was not perhaps as good as it could be and that further work might take place to aid that understanding among not only victims and witnesses but the general public.

In dealing with sentencing for serious crimes, part 1 applies to a sensitive area of our justice system that is often subject to extensive media coverage and public interest, so it is critical that the laws that we create around sentencing are clear and effective and that they achieve the desired outcomes. As I argued at stage 1, any other outcome could risk doing a great deal of damage to the integrity of our justice system. It is for that reason that I urge the Government to monitor closely part 1 as it comes into effect and to ensure that it not only addresses the anomaly that it seeks to address, but does so in a way that is seen to be fair and right.

As the Government is currently undertaking consultation to improve our justice system for victims of and witnesses to crime, I know that it is as keen as Labour is to ensure that sentencing laws are considered fair and right by those who have suffered at the hands of violent and dangerous offenders.

The exact function that part 2 will have in practice remains to be seen. Just before the stage 1 debate on the bill, a Sunday newspaper printed a redacted version of the Scottish Criminal Cases Review Commission's statement of reasons in the Megrahi case. The publication of the statement of reasons seemed essentially to remove the need for part 2. It also appeared to answer many of the questions surrounding the impediment caused by existing data protection law.

Part 2 was devised in response to the Megrahi case. Although the power of publication will be on the statute book after the bill is passed, it is difficult to imagine a similar scenario to which it will be applicable. In the Megrahi case, widespread public and political interest pushed a desire for the publication of the statement of reasons in an appeal that was subsequently abandoned. The legislative process to provide transparency was overtaken by the actions of the media. Now the power will rest in law if circumstances arise in which it is needed again.

Although Labour is happy to support the passing of the bill, it is a difficult and complex piece of law that is still to prove its utility in practice. Part 1 still appears to offer a complex solution to a complex problem, and the relevancy and applicability of part 2 remain to be seen. Therefore I urge the Government to reflect on how the legislation was drafted and to commit to monitoring its application in our justice system.

Our justice system must be clear, comprehensible and relevant to those that it serves. Any law that falls short of those benchmarks must be questioned. I hope that the bill meets the high standards that are expected by victims and by all those with a stake in the success of our justice system.

Labour is happy to support the bill.

16:02

Margaret Mitchell (Central Scotland) (Con): Parts 1 and 2 of the Criminal Cases (Punishment and Review) (Scotland) Bill deal with two distinct and unconnected areas of the law. I come late to scrutiny of the bill, but my colleague David McLetchie had the dubious pleasure of scrutinising it during its passage through the Justice Committee. I say “dubious” because part 1 of the bill deals with some extremely technical and complex issues involving punishment and sentencing. I will deal first with the less technical part 2.

Despite its general wording, part 2 of the bill was drafted with a particular instance in mind—namely, the case of al-Megrahi. Part 2 seeks to provide a framework by which the Scottish Criminal Cases Review Commission may disclose information about cases that it has referred to the High Court of Justiciary when the relevant appeal has been subsequently abandoned. Given the publication of the statement of reasons in the al-Megrahi case by the *Sunday Herald* earlier this year, part 2 has become largely redundant. However, due to technical reasons and the structure of the bill, part 2 cannot be deleted without prejudicing the whole bill. That being the case, the Scottish Government has merely made the best of a bad job. It maintains that because part 2 is drafted in general terms, it could in theory apply to future cases and that—hey presto!—it should be retained.

Part 1 seeks to address an anomaly in our sentencing law as identified in Petch and Foye. As a result of that ruling, an individual who was given an indeterminate non-mandatory life sentence became eligible for consideration for parole at an earlier stage in their sentence than they would had they been given an equivalent determinate—or fixed—sentence. In order to correct that anomaly, it has been necessary to look at the statutory rules that courts use when they calculate the punishment part of a life sentence. The punishment part refers to the part of a life sentence that a prisoner must serve in custody before they are eligible to apply for release on parole, and it includes both the retribution and deterrence aspects of the sentence.

To give an idea of the complexity of the statutory rules, I highlight comments that were made by Joanna Cherry QC, who appeared as advocate depute in the Petch and Foye case. She stated that the analysis of the current rules

“gave rise to the most difficult piece of statutory interpretation that I have had to engage in in my career”.—[*Official Report, Justice Committee*, 31 January 2012; c 865.]

The sad—but true—fact is that the new rules will add to the complexity of the arrangements for sentencing, which, as Jenny Marra correctly stated, has been described as

“a tortuous system which is barely intelligible to lawyers”.

Part 1 also raises another more fundamental point about our sentencing system. The bill’s approach involves identifying a determinate sentence that might notionally have been imposed. That is done by stripping out of the determinate sentence any element that is imposed for public protection, and significantly—this represents the nub of the problem—by applying the current rules on automatic early release. The pertinent point is that there would be no need for the bill if the SNP had acted on its 2007 and 2011 manifesto pledges to end automatic early release of prisoners.

The end of automatic early release was legislated for under the Custodial Sentences and Weapons (Scotland) Act 2007 but, despite the SNP’s promises, it has yet to be implemented. Furthermore, as far back as 1997, first the incoming UK Labour Government and then the Labour and Liberal coalition failed to enact the legislation to end automatic early release that the previous Conservative Government had ready to implement after the 1997 general election.

Usually, at this point, a member—

Mark McDonald (North East Scotland) (SNP): Will the member take an intervention?

Margaret Mitchell: Mark McDonald is on cue. Here we go.

Mark McDonald: I freely admit to not being a legal expert, but my understanding is that the bill is about eligibility for parole, and not about automatic early release. I am unsure where Margaret Mitchell’s train of thought is taking her, but I suspect that it is in the wrong direction.

Margaret Mitchell: Perhaps Mr McDonald has failed to grasp the complexity of the bill. It is the mandatory sentence part of it that is subject to automatic early release.

The previous Conservative Government introduced early release, but having quickly realised the error of the system, it left the legislation that I alluded to—for the repeal of early

release—on the statute book in 1997. Fifteen years have elapsed since then, and during that time nothing has been enacted in Scotland to tackle automatic early release.

Although the Scottish Government is seemingly committed to ending automatic early release, it has delayed and procrastinated. Rather than take decisive action, it has dithered and has stated that it wants, before it acts, to be certain about the implications for the Scottish criminal justice system. Perhaps the cabinet secretary could, during the debate, shed some light on when the assessment of those implications will be completed.

At stage 1, the cabinet secretary said:

“The bill should not be viewed as an opportunity to make significant change; that will ... come in other legislation.”—
[*Official Report*, 19 April 2012; c 8263.]

I merely ask when that further legislation will be introduced. Until then, on how many occasions will Parliament have to pass legislation that is akin to the Criminal Cases (Punishment and Review) (Scotland) Bill in order to correct other anomalies?

The Deputy Presiding Officer (Elaine Smith):

We now move to the open debate. I can allow speeches of around five minutes, with some time in hand for interventions.

16:09

John Finnie (Highlands and Islands) (SNP):

First, I say that the provisions in part 1 are vital to addressing an anomaly and that they remain—despite all the criticism we have heard—unamended.

Messrs Petch and Foye have a lot to answer for—not least their vile crimes. As we know, the background of their appeal was the time that those who have been given discretionary life sentences or orders of lifelong restriction must serve before becoming eligible for parole. Clearly, the anomaly was unforeseen. However, by way of reassuring the general public, the Cabinet Secretary for Justice made it clear that such individuals still had to satisfy the Parole Board for Scotland that they pose no risk to the public. The bill will reinstate the judicial discretion that was removed by the appeal court ruling and will reduce the risk of decisions being overturned on appeal.

ECHR law has decreed that non-mandatory life sentences are different from other types of sentences and are imposed by courts after an assessment of risk to the public. The bill sets a framework for the punishment part of non-mandatory life sentences. First, the court must assess the appropriate period of imprisonment had the prisoner not been sentenced to life imprisonment or been made the subject of an

order of lifelong restriction. That period ignores any period of confinement that is necessary for protection of the public. The court must then assess the appropriate period for satisfying the requirements of retribution and deterrence.

Under the bill, that part of the period of imprisonment—known as the punishment part—must be either half or some greater proportion of the period specified, up to the entire period of imprisonment. At that point, judicial discretion kicks in. A greater proportion than half can be specified only if the court considers it appropriate after considering the seriousness of the offence, or of the offence combined with other offences of which the prisoner has been convicted on the same indictment as that offence; after its considering whether the offence was committed when the prisoner was serving a period of imprisonment for another offence; and after its considering the prisoner's previous convictions.

Any legislation that closes a gap must be welcomed. There has been much discussion about the complexity of the bill; indeed, the Justice Committee debated whether or not it is ECHR compliant. However, it was very much assured by the Scottish Human Rights Commission's response that the bill meets the specific terms of the convention.

No one said that this was going to be easy. In its response to the committee, the Scottish Government made it very clear that it would consider any alternatives that were offered, but none was forthcoming. There is no simple ready reckoner. As I have pointed out, judges will have to consider a range of factors, but we suggest at our peril that our High Court judges have neither the wisdom nor the guile to make their way through the legislation.

Proportionality is as important in our judicial system as it is in life and is certainly vital to our sentencing policy. The public rightly expect assurances that they will be protected. However, as I said to Ms Marra, I do not believe that victims need to understand the minutiae of sentencing law; after all, they receive support from the Crown Office and Procurator Fiscal Service and from the victim information and advice service. Moreover, a victims and witnesses bill is heading our way.

Jenny Marra: I agree that victims and witnesses do not need to understand the minutiae of sentencing law, but does John Finnie agree that the public—both victims and witnesses—need to be able to appreciate what sentence fits what crime and at what point someone who has been convicted will be released?

John Finnie: Jenny Marra highlights two different issues: the sentence itself and the release period. The public want to know the

bottom line: the judge will give it to them. Indeed, we heard in evidence that the advocate who is prosecuting a case will liaise closely with the family and victims throughout the process. Assurances already exist.

As for part 2, I could not disagree more with Margaret Mitchell; the provisions are not “redundant”. They were never about a specific case and, although they have been dressed around one case, they have further application.

That said, it is perhaps understandable that the bulk of the attention on the bill has been focused on part 2. There is an obligation for justice to be seen to be done and, as we have heard, the Scottish Government views the provisions as a commitment to openness and transparency in relation to the al-Megrahi case. The Justice Committee certainly viewed that the publication of the *Sunday Herald* on 20 March largely superseded the legislation, but the legislation still applies.

We heard comments about the Scotland Act 1998 and the reassurances that were given to the UK Government. I am certainly very happy for the bill to include terminology through which the UK Government is viewed as a foreign government and, if it is put on the same footing as foreign governments, I will be relaxed about that. Crime has to be fought across international borders and that requires co-operation, which is catered for by the bill. I will leave it at that.

16:15

Graeme Pearson (South Scotland) (Lab): I thank colleagues on the Justice Committee for the time and effort that they took to help me to understand some of the complexities of the bill. I also thank the witnesses who took the time to come to the committee and who patiently took us through the steps and explained the complexities and almost unfathomable detail of part 1 of the bill, and the critical part that it will play in the administration of justice.

It is important that sentencing be safely conducted in the knowledge that appeals against sentencing will be maintained at a minimum. I am sorry that Mr Finnie found Jenny Marra’s criticism to be slightly irksome, but it is important that we understand some of the shortcomings that still exist in the process, so that the next legislation can address them more competently.

John Finnie: My point was that no alternative was offered. If any alternatives had been forthcoming, they would have been considered.

Graeme Pearson: I accept that. As Mr Finnie knows, the sheer complexity of what the committee faced left us exhausted and without

alternative solutions to consider in the timescales that were available to us. Additional victims legislation is due to come before Parliament, and one hopes that we could consider some unfinished business in the longer term.

Part 1 of the Criminal Cases (Punishment and Review) (Scotland) Bill seeks to address an inconsistency in the law,

“whereby a life prisoner is likely to have a parole hearing earlier than a non-life prisoner sentenced for a similar crime”,

if the punishment part of the sentencing process of the non-mandatory life sentence is not properly considered and recorded. Although some evidence at stage 1 expressed concerns that the bill would add complexity to an already highly convoluted area of law, the area does require considerable attention.

Evidence from witnesses, in particular from Joanna Cherry QC, indicated that

“it is not just lay people who find the legislation extremely difficult to understand. I am sure that it is an issue for the Parliament that legislation should be readily understandable to the public, particularly legislation to do with ... sentencing”.—[*Official Report, Justice Committee*, 31 January 2012; c 865.]

That was a “strong factor” in her concern about the bill. It is important that witnesses and victims who come before our courts should leave them in the full knowledge that they have received the information that they deem to be necessary to understand the system. It is true that some witnesses want to know very little of the outcome, but others want to understand the rationale that lies behind it. There is a duty on Parliament to ensure that legislation provides for judges to offer sufficient information in the public courts.

Sir Gerald Gordon QC, who is the author of “The Criminal Law of Scotland”—a seminal document in terms of the application of criminal justice in Scotland—echoed Joanna Cherry’s sentiments in acknowledging that even legal experts and members of the judiciary would struggle to understand all the provisions. Michael Meehan added that

“The bill complicates matters by requiring judges not only to consider the sentence that they will impose but to conduct a parallel notional sentence exercise.”—[*Official Report, Justice Committee*, 31 January 2012; c 866.]

All that said, the challenges that were faced by the cabinet secretary in the circumstances of Petch and Foye were overwhelming and needed an immediate sensible response. To that extent, the bill puts us on a better footing and makes us able to defend, in any appeal, the processes that are administered by our judges.

As has been alluded to, part 2 of the bill has to some extent been superseded by the publication

in March in the *Sunday Herald* of the SCCRC report, and the subsequent death of al-Megrahi further weakens the need for the legislation. Although we were told that it could be applied in cases other than the al-Megrahi case, it has never been fully articulated in what other circumstances the legislation could be used.

In any case, it is useful that facts that are gathered by the SCCRC as part of its process, and which are subsequently abandoned for whatever reason, could be made public in a fair and worthwhile manner in the future. As a result, I support the proposals that are outlined in the bill and I support the motion. [*Interruption.*]

The Deputy Presiding Officer (Elaine Smith):

I ask front-bench members to pay attention to members who are speaking in the debate.

16:22

Roderick Campbell (North East Fife) (SNP):

I refer to my declaration of interests, as I am a member of the Faculty of Advocates.

It seems to have been a long time since we commenced consideration of the bill. In relation to part 1, we should remember that we are dealing with a bill that is designed to deal with the particular difficulties of the decision in Petch and Foye, and not a bill that is designed to deal with sentencing in general. As the policy memorandum states, the intention is to put back in place the policy that existed prior to the Petch and Foye judgment.

In essence, the aim is to give flexibility to judges in sentencing and to ensure compliance with the requirement, which arises from ECHR case law, to ensure that once the punishment part of a sentence has passed, a prisoner has the opportunity of regular reviews of his continued detention as well as the opportunity to identify properly the period that is required for punishment—or, as it also known, retribution and deterrence—as opposed to public protection.

The concerns that surfaced as a result of Petch and Foye were predominantly in relation to comparative justice, and to seeking to ensure that someone who has been sentenced to an indeterminate sentence is not released earlier than a prisoner on a determinate sentence whose situation might otherwise be the same. The bill seeks to correct that anomaly by giving a judge power, in specified circumstances, to apply a percentage that is higher than the normal 50 per cent—which equates to the normal early-release provisions for determinate sentences—to the stripped-down notional determinate sentence.

The proposed methodology has certainly caused concern, not only to the Law Society but to

the Faculty of Advocates. There certainly seems to be an argument that, for the purposes of achieving comparative justice, the comparison should be with the actual determinate sentence that the prisoner would have received rather than with a notional stripped-out determinate sentence. That may, of course, raise issues about the extent to which, in a determinate sentence, there is an element for protection of the public, but that could give rise to a debate in itself and is a matter for another day.

The methodology in the bill is undoubtedly complex. Although I note the cabinet secretary's comments that it is not unnecessarily complex, I believe that it will cause difficulties for the general public in understanding sentencing, even if it will provide a solution. However, it should not be forgotten that during the stage 1 debate the cabinet secretary invited alternative suggestions and, as John Finnie pointed out, no alternative was forthcoming. In the absence of working alternatives, we have what we have.

Nevertheless, I remain concerned about the overall complexity of the provisions and the degree to which they will be welcomed and accepted in the court system. I therefore ask the cabinet secretary to keep the operation of part 1 of the bill under review and to take on board comments about its operation in practice from interested parties and, perhaps, from the new Lord President.

Part 2 relates to disclosure of information that is obtained by the SCCRC. Since the Justice Committee embarked on consideration of the bill, the only person who was convicted in the Lockerbie investigation—Mr Megrahi—has died. Even before he passed away it might have been tempting to say that events had overtaken the bill, given the publication in the *Sunday Herald* of the statement of reasons for appealing his conviction. When that happened, it looked like part 2 of the bill was obsolete and redundant, as members have said. However, we must not forget that this is not all about Megrahi; part 2 has a wider general application and merited on-going consideration by the committee and the Parliament. I rather doubt that it will be much use in practice, but I hope that our deliberations will prove to have been helpful, particularly in relation to data-protection issues.

In relation to a posthumous appeal, if a member of Megrahi's family wants to take matters further they should appreciate that in the first instance it is for the SCCRC to decide whether it is in the interests of justice that a reference to the High Court be made. In the circumstances of an abandoned appeal, that is likely to be far from straightforward.

I am pleased that the Government sought to clarify matters in relation to legal professional

privilege and to acknowledge concerns by lodging amendments on which we voted this afternoon.

16:26

Mary Fee (West Scotland) (Lab): As I said in the stage 2 debate, the bill is needed to remedy the judgment in *Petch and Foye v Her Majesty's Advocate*.

I do not have a legal background, so I welcomed members' input in assisting my somewhat limited understanding of a complicated bill. It is disappointing that there is a loophole in our justice system that means that a prisoner who has committed a crime that is so serious that it merits a life sentence could be eligible for parole earlier than people who are serving sentences of a fixed length. Many members talked at length about that.

I am satisfied that the bill will close the loophole, but I have reservations about how it will do that. It will remedy a loophole in the sentencing structure, but does not give a clear legislative solution, because what is being proposed is too similar to what has gone before. The new legislation will be every bit as difficult to understand and interpret as the existing legislation.

Sentencing needs to be less prescriptive and sentencing requirements need to be clearer and more appropriate in order to make it easier for the public and victims of crime to understand how and why a sentence has been given. Most of my Labour colleagues who are present were also in the chamber last week when we debated support for victims and witnesses. I agreed with the suggestion that victims and witnesses need to be given more information to help them to understand why decisions are made and why sentences are handed down. The provisions in the bill are unnecessary complex and will make it harder for victims, witnesses and offenders' families to understand why a sentence has been given.

The addition of such a complex piece of legislation to our justice system will also make it harder for lawyers and judges to interpret the law. I agree with the Justice Committee and the Law Society of Scotland that the bill is acceptable as an interim measure to address the concerns that immediately arise from *Petch and Foye*, but an opportunity has been missed to simplify a complex part of law. Our sentencing legislative framework should be reviewed in its entirety and made much clearer and easier to understand.

Part 2 of the bill was intended to allow publication of the reasons behind the decision to refer the *Abdelbaset Ali Mohamed al-Megrahi* case to the High Court as a possible miscarriage of justice. Arguably, part 2 of the bill has now been made redundant, because the reasons for the appeal's being dropped were leaked and

published in the press. I agree with the Justice Committee that the publication of the statement of reasons in the *Megrahi* case might serve a relatively limited purpose, but the main reason why part 2 was introduced was to facilitate the *Megrahi* case. The bill's scope is very general and can apply to cases in the future other than the *Megrahi* case. That gives the Scottish Government an opportunity to consider whether the bill's provisions are strong enough to apply in other cases. There needs to be as much transparency as possible so that the public can have a greater understanding of the appeals process.

The general principles of the bill are decent. They set out to solve a couple of issues in our justice system, and they will do that successfully, but I still think that the bill may add complexity to an already overly complicated area of law. However, I will support the bill, as will my colleagues in the Labour Party.

16:31

Mark McDonald (North East Scotland) (SNP): I spoke in the stage 1 debate on the bill and I am pleased to have been given the opportunity to speak in the stage 3 debate.

It appears that the bill will be passed this evening, given the comments that Opposition members have made.

At stage 1, I said in response to comments that David McLetchie made, which Jenny Marra raised, that the litmus test of any legislation is not that it makes easy bedtime reading, but that it delivers outcomes that can be seen to deliver benefits. That litmus test has been applied, and it has been passed in parts 1 and 2 of the bill.

Jenny Marra spoke about the need to make legislation more accessible to the public and the possibility that the legislation's complexity might make it unintelligible to victims and witnesses who are involved in the legislative process. It will not have escaped members' attention that, only last week, we discussed issues relating to victims and witnesses with a view to the Government's proposed legislation on enhancing and improving support for victims and witnesses. I spoke in that debate and mentioned the pilot that Victim Support Scotland is running in the Tayside area. I think that there are pilots in a couple of other regions as well, but Tayside is, obviously, in North East Scotland, which I represent. In that pilot,

"Victims and witnesses will be supported through, and gain speedier access to, case progress information".

The aim is also to ensure that information is given to them "in an understandable way."

We should not necessarily believe that victims and witnesses must be able to read and

understand legislation themselves; there is often a need for organisations such as Victim Support Scotland to offer such support to them. I think that the issue of how the Government can ensure that victims and witnesses have the support to be able to understand the complexities of the legislative process will be on the Government's radar as matters progress. We recognise that the process is often complex for members of the public.

Jenny Marra: I thank the minister—or, rather, the member—for giving way. I have promoted him.

To clarify, it was certainly not my intention to say that the legislation should be bedtime reading for me, or that it is for victims or witnesses of crime to understand the legislation. Indeed, the legislation needs to be complex in this case, but the guidelines and information that are given to victims and witnesses of crime in court and the justice process should be legible and understandable, and they should aid their understanding of the process.

Mark McDonald: I welcome the member's clarification. I think that we would all agree with that; indeed, that was the notion around which I framed my remarks during last week's debate.

I turn to a point that was made by Margaret Mitchell and the introduction into the debate of automatic early release. That issue was surprisingly absent at stage 1, given how important it apparently is to understanding the reasons behind Petch and Foye. It was absent in the discussions at stage 1 because it is not relevant: the issue is comparative justice. Whether an offender is serving a full determinate sentence or is released early from a determinate sentence is irrelevant. The relevant issue is the need to strip out the element of public protection that gave rise to the anomaly that the Government has dealt with in the legislation.

Margaret Mitchell: Will the member give way?

Mark McDonald: I understand entirely that Margaret Mitchell may think that I have misunderstood the complexities of the legislation, but I contend that perhaps she has misunderstood those complexities and has mistakenly brought automatic early release into the debate. She will have an opportunity to clarify and reflect on that in summing up, but I suggest to her that automatic early release is a red herring in the debate and ought not to have been brought into consideration at this stage.

Margaret Mitchell: Will the member give way?

Mark McDonald: I give Margaret Mitchell the opportunity to clarify and perhaps withdraw her comments.

Margaret Mitchell: Does the member accept that automatic early release was a factor in the calculation in the case that led to the anomaly?

Mark McDonald: We are talking about eligibility for parole, which in my understanding is not the same as automatic early release.

Although only a small number of cases are affected by the issue that was raised in Petch and Foye, we should not lose sight of the fact that those cases relate to significant and serious crimes, hence the application of a non-mandatory life sentence.

That is why it is extremely important to introduce legislation at this stage, rather than to examine some of the wider sentencing issues that Mary Fee raised in her speech. It is important that we close that loophole now, on the basis that it relates to extremely serious crimes and to the need to ensure that the public are appropriately protected from those individuals.

With regard to addressing anomalies, part 2 has been described as largely redundant. That would be a fair assumption if we were to assume that it related only to the al-Megrahi case, but—as has been mentioned—the general framing of the bill means that it can be applied in future cases.

Whether such cases arise is neither here nor there: the fact that they are now provided for is the important thing. It is better that we have those provisions and perhaps do not need them in future than that we might need them and do not have them on the statute book. That is why it is important that we pass the bill, regardless of whether part 2 is seen by some as irrelevant, which is not necessarily the case.

I look forward to the bill being passed.

16:37

Margaret Mitchell: The Scottish Conservatives will support the bill at stage 3, and I welcome this afternoon's debate. My closing remarks will focus on the provisions in part 1, which seeks to address an anomaly in sentencing—as identified in Petch and Foye v HMA—that must be rectified.

A number of members have noted the complexity of part 1, and I make no apology for again highlighting the comment that was made at stage 1 by James Chalmers of the University of Edinburgh. He stated:

"the Bill seeks to create a tortuous system which is barely intelligible to lawyers, let alone to the general public".

That point is important, not because lawyers might find the bill challenging to understand—although clarity of law for the benefit of those who advise their clients is to be welcomed—but, crucially,

because the public would struggle to understand it.

Despite Mark McDonald's rather skewed view and bizarre comments, Parliament should aspire to produce legislation that is readily understandable to the public. The Scottish Government made that crystal clear in its recently published consultation on the proposed victims and witnesses bill. The consultation places great importance on the need for victims to understand how sentencing decisions are made. It states:

"The Government is considering ... what ... practical measures could be taken to try and improve public understanding of sentencing."

That being the case, the obvious question is whether the Scottish Government gave the same consideration to the drafting of the complicated sentencing rules in the bill that is before us today.

Furthermore, the bill deals with two distinct and unconnected areas of the law, as the Justice Committee noted in its stage 1 report. Although that approach is not without precedent and can be justified on pragmatic grounds, it has the potential to create handling difficulties when legislation is considered. Perhaps more important, the combining of unconnected provisions in one bill makes finding the law on a specific matter more difficult for those who use the law. For both those reasons, the practice should not be encouraged. Just as the Parliament should aspire to the objective of producing clearly drafted legislation, it should aspire to that of ensuring that the law is not just easily understood, but easily identifiable.

In giving a custodial sentence as a disposal, the judiciary seeks to achieve public protection, retribution and deterrence. It is widely recognised and conceded that the bill will make an already complex sentencing process more complicated, which means that the desired retribution and deterrence are that much less likely to be achieved. In such circumstances, none of us, least of all the Scottish Government, whose responsibility it is to get things right, can take much comfort from or pride in the passing of the bill.

16:41

Lewis Macdonald (North East Scotland) (Lab): As we have heard, all parties recognise that part 1 of the bill is necessary, but Labour members also wish to acknowledge the views of those legal experts who gave evidence during the bill's consideration who were concerned about the complexity of the new processes that are to be introduced and who believe, as Mr MacAskill has previously conceded, that further legislation may be needed in future to resolve the same issue.

As Graeme Pearson said, the anomaly that exists in the justice system is so serious that the issue must be addressed in a timely fashion. For that reason, although it is possible that more prolonged consideration might produce a different outcome, we will support the bill as it stands, but we are mindful of the warning that it may prove not to be fit for purpose.

The Law Society of Scotland said in its submission that part 1 would not give rise to a clear legislative solution, because the

"calculation and comparison exercises proposed by the Bill are similar to what has gone before."

Although the bill will resolve the anomaly that was highlighted by the Petch and Foye case, it is unlikely to prove to be a long-term solution. It will provide the short-term fix that is required, but the processes that it puts in place may prove to be more complex, and perhaps even more problematic, than the status quo.

However, we agree that the status quo is not an option. An anomaly exists at the heart of the Scottish justice system, which has to be fixed to restore confidence in the fact that offenders are indeed serving the sentences that the courts have imposed on them.

John Finnie and Roderick Campbell rightly noted that no amendments were lodged to part 1. We considered and were sympathetic to the Law Society's approach and its efforts to identify a simpler way of resolving the anomaly. Although, as the cabinet secretary highlighted, ECHR compliance is important, the jury is out on whether the Government's approach will succeed in improving public confidence in the system. Having considered the alternative approaches, we will support the approach that the Government has favoured, but we think that it is important to keep in mind some of the criticisms.

The issue is one of public confidence. As Jenny Marra rightly highlighted, it is not just about lawyers being able to understand the minutiae of the legislation; it is about those who are affected by the justice system being able to understand its impact and its consequences for them and for those who are found guilty of offences against them.

Coverage of the Petch and Foye case gave many people the distinct impression that dangerous criminals were to be released earlier than the courts had intended. As has been said, the final decision on release rests with the Parole Board for Scotland. As the cabinet secretary said, a decision to release is made only when the board is satisfied that the offender poses no further threat to the public.

The bill will give the courts greater discretion when it comes to calculating indeterminate life sentences, but there are some risks attached to that. The complexity of the directions that are issued to judges on calculating indeterminate life sentences is an issue in itself. John Finnie said that we should not assume that High Court judges will not understand the bill; I do not think that anyone would assume that. The difficulty arises if the legislation is so complex that the public do not understand it. The fact that judges are obliged to go through the process to reach a conclusion runs the risk of reducing public confidence in the process and in the system.

Double counting in calculating the length of an indeterminate sentence might be a problem—that point has been highlighted. The seriousness of an offence should be counted once, not twice. If double counting occurred, the risk is that we might end up with a different result. That leads to another risk—that human rights concerns could leave the system open to further challenges and force us to address the issue again, whether or not we wish to do so.

As Jenny Marra and Roderick Campbell said, careful monitoring will be needed after the bill is passed. I would welcome the cabinet secretary's response on monitoring the bill's operation.

The bill will amend one small part of the process to solve one problem. The problem and the solution alike illustrate the need for Scotland's sentencing system as a whole to be re-examined. James Chalmers of the University of Edinburgh's school of law has been quoted. In his evidence, he made the point that the bill

"serves as powerful evidence of a sentencing system in need of much more far reaching review and reform."

Sentencing has been on the Parliament's agenda for some time. The Criminal Justice and Licensing (Scotland) Act 2010 allowed for the creation of the Scottish sentencing council, which would have been ideally suited to the circumstances of the case that we have discussed. It is disappointing that ministers have yet to set in train a wider review of sentencing and have yet to act on the option of creating the Scottish sentencing council.

The language in part 2 of the bill is more straightforward, although it has caused its fair share of debate and controversy. We have heard views about whether part 2 has been rendered irrelevant by the fact that a newspaper made public the SCCRC's report on Megrahi and by the subsequent death of Megrahi. However, the bill is in front of us. The circumstances in which part 2 would be called on are difficult—but not impossible—to imagine, although it is certainly difficult to imagine another appeal being

abandoned by such a high-profile appellant in a way that attracted such attention and public concern. However, such circumstances might arise so, having come thus far, it is appropriate to proceed to put the measure on the statute book.

There is no great problem in making available the information that relates to an investigation, provided that doing so is appropriate and safe. The clarification of the data protection rules has been highlighted. Perhaps that was an unintended positive consequence of the bill. It is important that any such release of information should safeguard individuals and not breach legally enforceable human rights.

I was intrigued by John Finnie's interpretation that the amendments to part 2, which were agreed to by all parties this afternoon, in some way place the UK Government on the same footing as a foreign Government. I invite the cabinet secretary to clarify that the amendments will protect the UK Government's position in relation to the release of information rather than impinge on its prerogatives, as Mr Finnie might have wished to suggest.

If part 2 goes down in legal history, it will do so as a measure that was passed after it was no longer required. Only time will tell whether it will have any future use.

By contrast, part 1 might survive on the statute book for only a relatively short time. If the processes that it creates turn out to have made the wheels of justice grind in a way that is more complex, more cumbersome and less transparent, a future Government might decide on a simpler and more direct approach. Better still, the processes that part 1 covers could be addressed as part of a wider review and reform of our whole sentencing system. Such a process should start sooner rather than later.

With those caveats, we are content to support the bill.

16:50

Kenny MacAskill: There has been a great deal of unanimity in the chamber today. Starting with Jenny Marra and continuing thereafter, we have had a plea for the legislation to be as simple as possible and to be understandable to the general public. I fully appreciate that point. The great and the good and many others have been rolled out in support of that view and have pled in its favour.

I fully accept that, irrespective of whether we are dealing with criminal, commercial or consumer legislation, it should be as understandable as possible. Wherever possible, it should be understandable to the ordinary man and woman in the street, not just to those who are privileged

enough to possess a degree in law. Sadly, that cannot always be the case. Some aspects of the law are by nature very complex, and that will always be true.

Equally, if we did not have complex law, we would not need lawyers; we would need only pleaders. In the past, Parliament has passed legislation that we thought was relatively straightforward. We thought that it was relatively straightforward to say that it was iniquitous that those who suffered from pleural plaques should not be given the opportunity to obtain recompense. Some lawyers, including some eminent lawyers, thought that that was contrary to the powers of the Parliament and took the case as far as the Supreme Court. It is not only that law should be, wherever possible, understandable; it can all be challenged equally. I fully accept all the points that were made about law being as understandable as possible. That is the Government's desire and, to be fair, it is the desire of every Government, whether present or past, or north or south of the border. Sadly, however, some laws are, by their nature, very complex.

Jenny Marra: We should clarify the point. We have called not for the legislation to be simpler but for sentencing to be simpler and more easily understood by witnesses and victims of crime. That has been our call throughout the scrutiny process.

Kenny MacAskill: To be fair, that was the aspect that Ms Marra raised, but many other people, including some in her party, raised the question of the law being unnecessarily complex. Mr Pearson mentioned Sir Gerald Gordon, who lectured me and whose textbook I had back when I studied law. I appeared in trials in the sheriff court in Edinburgh and elsewhere along with Michael Meehan. I instructed Joanna Cherry QC when I was a practitioner. They were all cited, along with James Chalmers, as people who said that the law was unnecessarily complex.

I wish that it could be simpler, but it cannot, because it is a complex area of law. We should also remember that we are dealing with an appeal case in which the judge's first decision was challenged, so one judge was accused of getting it wrong. The matter went to our highest court of criminal appeal, which was divided. The decision was a majority decision; there was no unanimity across the bench. We are talking about a case that challenged even our most esteemed senior judiciary. Some think that the decision was not right, which is why there was a majority judgment.

As John Finnie and others have said—and I do not wish to be churlish here—no one has come forward with an alternative. We believe that the legislation will address the position that was taken by the majority of the appeal court judges. I regret

that the legislation is not simpler, but we are talking about a complex area of law. However, it is complex because judges apparently got it wrong the first time, other judges could not unite on the matter, and we have had to act to address the situation. That is where we are.

I assure Jenny Marra and Roderick Campbell that we will keep the matter under review. I am due to meet the Lord President tomorrow, which will be the first time since he was put into that esteemed office, and I assure members that I hope to be able to tell him that we have passed the bill. I will raise with him the issue of the complexity of the law and say that I hope that we can work with the appeal court that he, as Lord Justice General, will chair. When we appoint a new Lord Justice Clerk, we will also discuss the issue with him or her.

Part 2 of the bill is on the SCCRC. There was an issue that we had to address. The bill was drafted in a general way, although it was always clear that the driver was to ensure that the commission's report on al-Megrahi was published. We believe that there is a gap in the law. I think that Lewis Macdonald said that it is difficult to speculate on circumstances that might arise, but they might arise. Some people have gone to the SCCRC and subsequently not proceeded with an appeal. Those were not matters of public interest, so I do not think that anybody is lamenting the fact that the information is not out there in public, but there might be such an instance in due course. It is therefore appropriate to have a legislative framework that allows for that.

It has been mentioned that the *Sunday Herald* published what are admitted to be the matters that have been referred to by the SCCRC. Something is fundamentally wrong if the SCCRC has to publish matters that it is precluded by law from publishing, resting on an assurance from the Lord Advocate that he will not prosecute. That cannot be right. It cannot be appropriate that something that is so important to our legislative framework as the SCCRC should have to rest on a nod and a wink from the Lord Advocate and an assurance that he will not prosecute if it publishes information. There is something fundamentally wrong with that.

The bill ensures that we deal with cases that might arise—although we cannot say what they may be—and not simply the al-Megrahi case, but it also deals with the fundamentally wrong situation that, in a case as important as the al-Megrahi one, the SCCRC would breach the law in publishing information, albeit that the Lord Advocate in his kindness and wisdom might say that he would not prosecute. That cannot be appropriate in our system. It is therefore appropriate to put the matter on a solid legal basis

so that the commission can publish what it feels to be appropriate.

We have included measures dealing with foreign Governments and the United Kingdom Government. Mr Macdonald need have no doubts that the only reason why we included the United Kingdom Government was to satisfy the points that have been raised with me by Michael Moore, the Advocate General for Scotland and Foreign and Commonwealth Office ministers. However, let us be clear that what the *Sunday Herald* published could be superseded. Therefore, as well as ensuring that we give a legal basis and framework to the SCCRC, we must consider what would happen if we did not proceed and the United States Government said that it did not mind if more information was published, or if the UK Government said that the *Sunday Herald* or the commission could publish what it liked and it would not interfere.

The bill ensures that there is a legal or statutory basis for the commission to do what has simply been homologated by the Lord Advocate. We give the commission surety that, if anything should change, it would be doing nothing untoward.

Lewis Macdonald: Will the cabinet secretary confirm that the situation remains that, if another Government chooses not to give consent, important matters might be withheld?

Kenny MacAskill: Absolutely. The assurance that we have given in relation to foreign Governments and the United Kingdom Government, which was raised with us by the Lord Advocate, is fundamental. It would undermine the whole basis of co-operation on law enforcement if information would not be given—we would not provide information if such an approach were reciprocated. It is therefore important that we give that assurance.

The Tories continued their mantra chant on early automatic and unconditional release. The Tories have an opportunity to debate that in the Parliament tomorrow, although they have chosen not to do so. It is important that they make their point in debates, despite the fact that we continually point out that it was the Tories who invoked the automatic early release provisions. The learned Kenneth Clarke, who has held many offices of state and whom I meet and find personable, does not seem to think that it is necessary to proceed in that way. In many ways, he does things vastly differently from me, but he is sometimes much more liberal.

The bill is nothing to do with automatic early release; it is to do with comparative justice and ECHR cases. The Tories have a right to bring their points to the Parliament, but they bring the issue of automatic early release into every justice

debate. It would have been more appropriate to have had a debate on the issue in their debating time in the Parliament, rather than raise it in a debate that has nothing to do with the issue.

The bill addresses a complex and difficult area of law. For those who know—as I think members know—what Petch and Foye were convicted of, there was something manifestly wrong in the situation and we had to sort it out. On that basis, I am grateful to members for their support for the bill. It is complex and it will be kept under review, but it provides the opportunity for the High Court and the SCCRC to deal with matters appropriately.

Business Motion

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-03390, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

17:00

The Cabinet Secretary for Parliamentary Business and Government Strategy (Bruce Crawford): As I said to the chamber last week, depending on what amendments are lodged in advance of the stage 3 debates next week, we will do all that we can to include in the business either a statement or a debate on Rio.

I move,

That the Parliament agrees the following programme of business—

Wednesday 27 June 2012

9.30 am	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Ministerial Statement: Budget Outturn 2011-12
10.05 am	Scottish Parliamentary Corporate Body Questions
10.20 am	Stage 3 Proceedings: Police and Fire Reform (Scotland) Bill
2.30 pm	Continuation of Stage 3 Proceedings: Police and Fire Reform (Scotland) Bill
<i>followed by</i>	Standards Procedures and Public Appointments Committee Debate: 4th Report 2012, (Session 4): Scotland Act: Standing Order Rule Changes
<i>followed by</i>	Business Motions
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 28 June 2012

9.15 am	Parliamentary Bureau Motions
<i>followed by</i>	Ministerial Statement: Progress on Reform of Post-16 Learning
<i>followed by</i>	Stage 3 Proceedings: Long Leases (Scotland) Bill
11.40 am	General Questions
12.00 pm	First Minister's Questions
12.30 pm	Members' Business
2.15 pm	Themed Questions Culture and External Affairs; Infrastructure and Capital Investment
2.55 pm	Stage 3 Proceedings: Welfare Reform (Further Provision) (Scotland) Bill
<i>followed by</i>	Parliamentary Bureau Motions

5.00 pm Decision Time

Tuesday 4 September 2012

2.00 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
2.05 pm	Topical Questions
<i>followed by</i>	Scottish Government Business
<i>followed by</i>	Business Motions
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Wednesday 5 September 2012

2.00 pm	Parliamentary Bureau Motions
2.00 pm	Portfolio Questions
<i>followed by</i>	Scottish Government Business
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 6 September 2012

11.40 am	Parliamentary Bureau Motions
11.40 am	General Questions
12.00 pm	First Minister's Questions
12.30 pm	Members' Business
2.30 pm	Scottish Government Business
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time

Motion agreed to.

Parliamentary Bureau Motions

17:01

The Presiding Officer (Tricia Marwick): The next item of business is consideration of two Parliamentary Bureau motions: S4M-03391, on approval of an Scottish statutory instrument; and S4M-03392, on the suspension and variation of standing orders.

Motions moved,

That the Parliament agrees that the Mental Health (Safety and Security) (Scotland) Amendment Regulations 2012 [draft] be approved.

That the Parliament agrees that Rule 6.11.1(a)(i) be suspended for the purpose of consideration between 30 June 2012 and 21 December 2012 of any orders requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011 and that the following alternative provision be substituted for that purpose—

“(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;”—[*Bruce Crawford.*]

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

Decision Time

17:01

The Presiding Officer (Tricia Marwick): The first question is, that motion S4M-03369, in the name of Kenny MacAskill, on the Criminal Cases (Punishment and Review) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Criminal Cases (Punishment and Review) (Scotland) Bill be passed.

The Presiding Officer: The next question is, that motion S4M-03391, in the name of Bruce Crawford, on approval of a Scottish statutory instrument, be agreed to.

Motion agreed to,

That the Parliament agrees that the Mental Health (Safety and Security) (Scotland) Amendment Regulations 2012 [draft] be approved.

The Presiding Officer: The next question is, that motion S4M-03392, in the name of Bruce Crawford, on the suspension and variation of standing orders, be agreed to.

Motion agreed to,

That the Parliament agrees that Rule 6.11.1(a)(i) be suspended for the purpose of consideration between 30 June 2012 and 21 December 2012 of any orders requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011 and that the following alternative provision be substituted for that purpose—

“(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;”

The Presiding Officer: That concludes decision time.

R B Cunninghame Graham

The Deputy Presiding Officer (John Scott):

The final item of business today is a members' business debate on motion S4M-03173, in the name of Rob Gibson, on remembering Cunninghame Graham. The debate will be concluded without any question being put.

Motion debated,

That the Parliament congratulates Alan MacGillivray and John C McIntyre on the publication by Kennedy & Boyd, Glasgow, of the collected stories and sketches of R B Cunninghame Graham in five volumes of one modern edition; celebrates their four years of work to present the works of what is considered one of Scotland's finest writers for modern audiences to enjoy and so that they may assess his place in Scotland's national literature; recalls the cross-party support for motion S3M-04228 by Rob Gibson, Remember Cunninghame Graham, "That the Parliament recalls the birth of Robert Bontine Cunninghame Graham on 24 May 1852; celebrates his adventurous life, which led him to champion the miners, the gauchos, the native Americans, the crofters and many others whom he considered were exploited by the wealthy and privileged; remembers that he took pivotal roles in founding the Scottish Labour Party, with Keir Hardie, in 1888 and the National Party of Scotland in 1928; considers that, after his tenure as an MP from 1886 to 1892, his trenchant and humane writings inspired many others and, in particular, inspired Joseph Conrad to write *The Heart of Darkness* and *Nostromo*; commends his writing to all those who value humanity and social justice today, and calls on the Parliament and Scottish Government to prepare appropriate celebrations in 2012 for the 160th anniversary of his birth.", and considers that there is a need for a major celebration of Cunninghame Graham in 2012.

17:03

Rob Gibson (Caithness, Sutherland and Ross) (SNP): It is no easy task to summarise the adventurous life of Robert Bontine Cunninghame Graham and explain why I believe that he deserves widespread recognition. I will explore the reasons why he has been neglected for decades and how his life is an inspiration for us today—indeed, he ranks as a great Scot in our long history.

On a monument that was erected at Dumbarton—now relocated to Gartmore—a year after his death in 1936 we can read the words:

"FAMOUS AUTHOR,
TRAVELLER AND HORSEMAN
PATRIOTIC SCOT
AND CITIZEN OF THE WORLD ...
HE WAS A MASTER OF LIFE —
A KING AMONG MEN."

Born in London on 24 May 1852, Robert was the eldest child. His father was an army officer, his mother part Spanish and part Scots. He was aristocratic on all four sides, with long family connections to Finlaystone, Ardoch and Gartmore in the west of Scotland. His direct descent from

King Robert II of Scotland via the defunct earldom of Mentieth gave him a better claim to the throne than Queen Victoria. His ancestors were radically minded lairds on the Lowland-Highland border, where their 10,000 rushy acres around Gartmore and the Lake of Mentieth produced little income and mounting debts.

As children, he and his brothers would ride ponies around the Gartmore policies in the summer. He disliked English public schooling, from experiences at Leamington Spa and Harrow. His family links to South America produced a bright boy who soon became fluent in Spanish. He received no classical university education, but he learned fencing and French at finishing school in Brussels. As an adolescent, he saw his father become practically insolvent and thoroughly insane from wounds received on army duty in Ireland.

Unsure of a career in the army or imperial service, Robert expressed the wish to ranch in Argentina, which turned into a lifelong love affair with the life on the pampas and the wild mixed-race gauchos—the South American cowboys. For seven years, on and off, he spent time cattle and horse trading while absorbing the atmosphere and the nature of the frontier and the young republics, from Argentina to Brazil—hence the sobriquet Don Roberto. He sympathised with the marginalised, the downtrodden and victims of progress, and he became the political champion of the gauchos, the Sioux Indians and tribes across the globe in his extensive writings that began after six years in the imperial Parliament, which he dubbed "the Theatre Royal, Westminster".

Robert eloped with a struggling actor whom he met in Paris—Gabriela de la Balmondière—who was apparently a Chilean orphan. They loved to travel and she loved to write on mystical subjects. Their visits to Texas, Mexico and Spain ended only with her early death in 1906. He buried her on the isle of Inchmahome, where he, too, is interred.

The death of Robert's father in 1883 brought managerial responsibilities at Gartmore and, in the next few years, an entry into active politics. Robert was finally elected as a Liberal MP for north-west Lanarkshire in 1886, when Lord Salisbury and the Tories won a six-year term. With wit and an outspoken style in the chamber, his campaigns championed the miners, crofters, the dock workers and the chain makers of Cradley Heath. He stood for home rule all round; he befriended Charles Stuart Parnell, without agreeing on economic policies; and he promoted Keir Hardie. The collaboration of Graham and Hardie helped to birth the Scottish Home Rule Association and the Scottish Labour Party in the late 1880s.

Robert's forebears were radical Liberals, and he himself opposed aggressive foreign policies and

the game laws. He was for Scots and Irish home rule, a graduated income tax, reform of the land laws, the abolition of primogeniture and entail, free education and local options on the sale of liquor. That placed him as a substantial landowner campaigning against landlordism. Indeed, he had to sell Gartmore in 1900.

He quickly drew members' attention at Westminster, where his speeches and suspensions became big news. He became the first socialist MP in a growing circle of varying degrees of fervour. For his part, he maintained a lifelong commitment to parliamentary democracy and the need for working people to be their own representatives. George Bernard Shaw captured his immortal phrase, "I never withdraw", for his play "Arms and the Man". That was Graham's response to his second suspension from the house for protecting miners from predatory Tory legislation that would have damaged the miners in his constituency.

After failing to be re-elected in 1892, he began writing from early notes for his own amusement. He travelled and wrote many short stories and sketches, which included acerbic political comments in many periodicals. By 1900, he was seen by others as a writer's writer. That trenchant and humane writing inspired many in his wide circle of literary friends, in particular Joseph Conrad, who wrote "Heart of Darkness" and "Nostromo", both of which exposed the evils of imperialism and so-called progress in the Belgian Congo and in South America. Robert's history of the Jesuits in Paraguay became the modern film "The Mission", and his histories of South American dictators warned the world in the 1920s and 1930s against the rise of Hitler and Mussolini.

The Parliament should congratulate Alan MacGillivray and John C McIntyre on the publication in the past year, by Kennedy & Boyd of Glasgow, of the collected stories and sketches of R B Cunninghame Graham in five volumes of one modern edition. Their four years of labour to present the works of one of Scotland's finest writers will allow modern audiences to enjoy and assess Cunninghame Graham's place in Scotland's national literature.

The golden thread of his life deserves new understanding and analysis. Many of the causes of his lifelong campaigns ring a bell for us today, not least his determination in later life to help found the National Party of Scotland in 1928. He became the first president of the Scottish National Party in 1934. I hope that we share his concerns for the downtrodden and enjoy his descriptions of nature and the people of his native Mentieth, or of Morocco or the Argentine pampas—lands threatened by the hand of progress about which

he was so sceptical. His writings should be known to all who value humanity and social justice.

The motion

"calls on the Parliament and Scottish Government to prepare appropriate celebrations in 2012 for the 160th anniversary of his birth."

To help, I have secured, on top of the debate, a place in the festival of politics to further explore the adventurous life and the ideas of this famous Scot.

I hope that the Parliament can honour Don Roberto by etching one of his trenchant quotes on the wall outside. I modestly suggest, in these continued days of constitutional change, a phrase that he used in a rally at Stirling in 1930. He said:

"The enemies of Scottish Nationalism are not the English, for they were ever a great and generous folk, quick to respond when justice calls. Our real enemies are among us, born without imagination."

Viva Cunninghame Graham.

17:11

Joan McAlpine (South Scotland) (SNP): I am delighted to speak on the life of R B Cunninghame Graham and I congratulate my colleague Rob Gibson on securing the debate.

Every article that I have read on Cunninghame Graham, from my time at university onwards, and every event such as this debate, seems to seek to reclaim him from undeserved obscurity. We regularly rediscover him and then forget him just as quickly. There is so much that we should remember: in particular, his campaigning on behalf of Lanarkshire miners, whom he was elected to represent as a Liberal in the 1880s when there were still 300 boys under the age of 12 who laboured in the pits beside adult men and women. In the space of a few weeks in 1887, he spoke at 60 meetings of Scottish miners to publicise the coal mines regulation bill, and all 60 supported his eight-hour day amendment. Unfortunately, he could not secure the support of Parliament. When MPs rejected the eight-hour amendment for the whole of Britain and Ireland, Cunninghame Graham attempted to get an opt-out for Scotland—the purpose of his public meetings in Lanarkshire—but that was voted down too, and, for him, that was a very strong vindication of his lifelong support for home rule, which was tied to his passion for social justice.

In 1889, shortly after he entered the House of Commons, he said that the demand for a Scottish Parliament came

"from the extreme misery of a certain section of the Scottish population, and they wish to have their own Members under their own hands, in order to extort legislation from them suitable to relieve that misery." —[*Official Report, House of Commons*, 9 April 1889; Vol 335, c 97.]

Forty years later, he told the *Reynolds Illustrated News* that he wanted a Scottish Parliament to reduce unemployment, raise wages and nationalise the coal mines—all matters that remain reserved to London.

However, he was not always so consistent. He was a colourful, mercurial and uncompromising character. For example, he hated Gladstone, his party leader, and boasted regularly of out-staring him in meetings when the old leader had called him in to give him a dressing down. He also described the Liberal leadership as

“timorous, miserable inveterate animals who ... are really Tories at heart.”

He campaigned as a pacifist ahead of the outbreak of world war one, and then volunteered to serve at the age of 62 when hostilities began in order to show solidarity with the troops at the front line. However, it was his thrawn individualism that resulted in his being sent to prison for protesting against unemployment in Trafalgar Square, and it was the same rebel spirit that got him ejected from the Commons for the dreadful crime of using the word damn, which was no doubt in response to some injustice.

I believe that there are practical and economic reasons for our national amnesia about Cunninghame Graham. The fires of our collective memory need to be fuelled with stories. When we had a vibrant newspaper publishing industry in Scotland, Cunninghame Graham was a household name. I, too, congratulate the Glasgow publisher who has given us Cunninghame Graham's written works this year. However, the written word has been replaced by film, radio and television as the main means of recording and sharing information and telling stories. There has been one good documentary on Cunninghame Graham—“The Adventures of Don Roberto”, in 2008—but it was shown on BBC 2 Scotland only. Compare that with the time devoted to his contemporaries, men whom he inspired, such as William Morris and George Bernard Shaw, as well as other greats of late Victorian and Edwardian London such as the pre-Raphaelites and the early Bloomsbury set—and think about the amount of celebration and scrutiny that they receive through television, drama, debate and discussion.

Modern Scotland must address the absence of such attention to our culture and history if we are to keep it alive, relevant and vibrant. Scottish studies in schools will help, but we need to use the modern media as well through a Scottish digital network that funds production for and about this country and through better means of securing funding for films, which is a point that was made just this week on “Good Morning Scotland” by the “Rob Roy” producer Peter Braun. He has been trying for years to raise money to make a film of

James Hogg's “The Private Memoirs and Confessions of a Justified Sinner”, one of our greatest works of literature. However, its author, like Cunninghame Graham and so many other figures in our history and culture, has been unjustifiably marginalised. The film-maker Ken Loach, whose most recent movie is “The Angels' Share”, said that we need to tell more stories of Scotland on both radio and TV.

R B Cunninghame Graham's life could inspire dozens of different films and programmes, critical as well as celebratory, but the man who inspired Joseph Conrad's “Nostromo” and who has museums in his honour in Argentina is condemned to random rediscovery in his own land. That is not acceptable.

17:16

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I, too, congratulate Rob Gibson on securing the debate and on his tenacity in championing Robert Cunninghame Graham.

Rob Gibson suggested that a quote from Cunninghame Graham should be included with those that adorn the wall outside this place, and I have no problem with that, although I would perhaps have a problem with the particular quote that he chose. I have a suggestion for another Cunninghame Graham quote to use, which consists of words that he used to begin a speech in Parliament and which might stand as a lesson to us all. On this particular occasion, the witty, urbane and passionate Cunninghame Graham announced to Parliament,

“Gentlemen—”

for they were gentlemen—

“I shall be brief but tedious.”

Exhausting he may have been, but I would argue that he was never tedious.

For too long, Cunninghame Graham has been ignored by historians and biographers alike, so I am pleased that his contribution to literature is now being recognised. His travel writing in particular is witty and stylish, and it resonates today. Although it speaks of countries that have changed so much since the time when he was writing, it tells stories that still have meaning for us.

Of course, Robert Bontine Cunninghame Graham—Don Roberto—was not only a writer. He was, as the late Caroline Benn described him, a

“fluent linguist, explorer, naturalist and undoubtedly the most accomplished equestrian to enter Parliament.”

He was also an early supporter of animal welfare, an opponent of capital and corporal punishment and in favour of prison reform and the free

opening of museums on Sundays. He was hailed as the first socialist MP and as the uncrowned king of Scotland—as Rob Gibson said, he was a direct descendant of Robert II through the earls of Menteith.

Cunninghame Graham was dashing and rode a black horse everywhere he went. The horse was called Pampa and was an Argentinian mustang that apparently he discovered when it was pulling a Glasgow tram. That may sound unlikely, but so does much else about the man's life. Apparently, on discovering the horse, he immediately arranged to obtain it. It travelled by railway horse-box to London, where it was reunited with its master, who then rode it into the stables at Westminster.

Cunninghame Graham was an extremely colourful character, but he also had an excellent political brain. He became a mentor to Keir Hardie and, together, they worked hard for the miners, against injustice wherever it was to be found and for home rule. They were inseparable for six years; Glasier said that they "went about in harness".

That Cunninghame Graham influenced Hardie goes without question, but I want to focus on a chapter of his life that shows his commitment and courage. During 1887 there were almost daily demonstrations in London on the issue of unemployment. The authorities eventually banned the use of Trafalgar Square, including its use for an event on 13 November at which Cunninghame Graham was to speak. That action of the authorities quickly turned the demonstration into one that was as much about free speech as it was about unemployment. Marchers converged on the city, and those coming from Battersea, Notting Hill and Rotherhithe were ambushed by police. The Army blocked all the entrances to the square. Many marchers decided to turn and run, but not Cunninghame Graham or John Burns, his fellow speaker. They made their way, pushing and shoving, to the front and climbed on to a plinth to speak. Both men were stopped by the army, but not before they received heavy blows to the head. They were arrested and charged with infringing the riot act, and Cunninghame Graham received a six-week sentence, which he spent recovering from his head wound. He was later to claim that the prison was far more comfortable than the many others he had experienced in his travels. That event was extremely embarrassing and depressing for the early progressive movement, but it led to the creation of Britain's first civil liberties association.

Like Robert Burns, there is something about Cunninghame Graham that can attract everyone, wherever they come from in Scottish society. Although we may not all agree with all of his beliefs, he is someone whose place in Scotland's

history should be better understood and better recognised. I was delighted to find at the weekend that his novels and story books, which I have from years ago, are now available on Kindle.

I again congratulate Rob Gibson on securing the debate, and I congratulate the publishers on their efforts to try to bring Cunninghame Graham to a wider audience.

17:22

Kevin Stewart (Aberdeen Central) (SNP): I too congratulate Rob Gibson on bringing this debate to the Parliament. I have an admission—sadly, I had not read very much of Cunninghame Graham's work until the motion was lodged. However, I was aware of many of his sayings. One of the most satirical was about Henry Campbell-Bannerman, about whom Cunninghame Graham said:

"He has all the qualifications for a great Liberal Prime Minister. He wears spats and he has a beautiful set of false teeth."

That is absolutely amazingly funny.

G K Chesterton proclaimed Cunninghame Graham to be

"the Prince of Preface Writers"

and famously declared in his autobiography that although Cunninghame Graham would never be allowed to be Prime Minister, he instead

"achieved the adventure of being Cunninghame Graham",

which George Bernard Shaw described as

"an achievement so fantastic that it would never be believed in a romance".

That sums up the man.

I also have to admit that I missed a recent STV documentary about Cunninghame Graham, but it seems to have sparked quite a lot of debate on the internet and elsewhere. Some of that debate was on the Greenock Morton fans website. One does not normally expect to find such debates on football supporters' websites—I have certainly never seen one on the Dons website, it has to be said.

Something that has always amazed me about Cunninghame Graham is the number of artists, including Epstein, who either painted or sculpted him. There is a famous bust by Epstein in Aberdeen art gallery, which is a quite fantastic piece of work.

Other members have already said quite enough about all the things that Cunninghame Graham stood for and what he did in Parliament. However, I found one piece of writing—which uses a word that we no longer use to describe black people, so I will not mention that word when I quote from it—

that is a complete and utter attack on poverty, religious fundamentalism, racism, imperialism and the grab for land and resources. He wrote:

"The Malays, the Malagasy, Japanese, Chinese, Red Indians as Sioux, Comanches, Navajos, Apaches with Zapatecas, Esquimaux, and in the south are"—

the n-word that I am not going to say"—

"though their hair is straight, Turks, Persians, Levantines, Egyptians, Moors, and generally all those of almost any race whose skins are darker than our own, and whose ideas of faith, of matrimony, banking, and therapeutics differ from those held by the dwellers of Primrose Hill, cannot escape. Men of the Latin races, though not born free, can purchase freedom with a price, that is, if they conform to our ideas, are rich and wash, ride bicycles, and gamble on the Stock Exchange. If they are poor then woe betide them, let them paint their faces white with all the ceruse which ever Venice furnished, to the black favour shall they come ... At times a thinking man knows scarcely what to think, and sometimes doubts whether God is the God we took him for and if he is a fitting Deity for us to worship, and if we had not better once for all, get us a God of our own race and fitted for our own ways."

As I said, that piece of writing is an attack on poverty, religious fundamentalism, imperialism, racism and the grab for land and resources. To me, it shows that he believed that we are a Jock Tamson's bairns. He was a believer in an independent Scotland and an immense internationalist. We should all celebrate Robert Bontine Cunninghame Graham.

17:26

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I thank Rob Gibson for giving us the opportunity to celebrate the life and works of Robert Bontine Cunninghame Graham, and to recognise the recent publication of his writings in a new collection for modern readers. Rob Gibson provided a fitting and eloquent tribute. I also thank other members who have contributed to the debate.

Robert Bontine Cunninghame Graham has been described by experts in Scottish literature as Scotland's forgotten personality, politician and writer. However, that is no longer the case, and Joan McAlpine gave an interesting analysis of the need to tell his stories in a modern context.

Cunninghame Graham was in every sense a remarkable individual. As we have heard, he was born in London of Spanish heritage and was educated at Harrow. He was an adventurer in Morocco, and a cowboy and long rider in the Americas, and he passed away in Argentina. However, throughout all of that, he was a Scot. The sheer scope of his life experience and the energy that he devoted to everything he did are inspirational. Joseph Conrad once said:

"When I think of Cunninghame Graham, I feel as though I have lived all my life in a dark hole without seeing or knowing anything."

Cunninghame Graham was noted as an inspiration and influence for Conrad's famous books "Heart of Darkness" and "Nostromo". As we have heard, his notable friends extended well beyond Conrad to include the likes of Charles Stewart Parnell, George Bernard Shaw and Buffalo Bill.

Don Roberto, as he became known in the Americas, inspired by both deeds and word. In Argentina, he was a champion of the miners, the gauchos, the native Americans and many others whom he considered were being exploited by the wealthy and privileged.

His influence on modern Scottish political life cannot be underestimated. He entered the House of Commons in 1886 as a Liberal MP for Lanarkshire and left in 1892 as that Parliament's first sitting socialist member. We have heard much today about his electoral platform, which was considered radical at the time. It included universal suffrage, free school meals, free education, an eight-hour working day, home rule for Scotland and the abolition of the House of Lords. Well, five out of six ain't bad, Presiding Officer.

On leaving Parliament, Cunninghame Graham's spirit of adventure continued. He moved to Spain to prospect for gold, which is perhaps a unique undertaking for a former MP.

Not content with being a founder of the Scottish Labour Party along with Keir Hardie, about which we heard from Patricia Ferguson, Cunninghame Graham went on to found the Scottish National Party. His view was that nationalism and the establishment of a Scottish Parliament with full control over all Scottish affairs was needed in order to further internationalism. Members will not be surprised to hear that I and many of my colleagues most certainly agree with that.

As Cabinet Secretary for Culture and External Affairs, I am also pleased to remember R B Cunninghame's literary work. In nearly 30 books, which include 200 short stories and sketches, and history and travel books, he draws on his many travels and adventures in Scotland and his beloved South America for inspiration. Alan MacGillivray, who is one of the editors of the recent publication that brings together R B Cunninghame Graham's writings, notes:

"Graham's image has followed a perhaps sadly familiar trajectory: from being a very high-profile politician, esteemed writer and traveller, a flamboyant anti-Establishment public figure, known by his exotic nickname of 'Don Roberto' in tribute to his passionate Hispanic attachments, to being a dimly-recognised name from the past, one of the great neglected band to be found within any literary tradition."

A year after his death in 1936, a memorial cairn for Cunninghame Graham was erected in Dumbarton to symbolise his adventurer's life and Scottish heart. The cairn contains stones from Argentina, Uruguay and Paraguay, where he lived and worked as a gaucho and writer, and the inscription on it briefly covers this life:

"ROBERT BONTINE
CUNNINGHAME GRAHAM
1852-1936
FAMOUS AUTHOR,
TRAVELLER AND HORSEMAN
PATRIOTIC SCOT
AND CITIZEN OF THE WORLD
AS BETOKENED BY THE STONES ABOVE
DIED IN ARGENTINA
INTERRED IN INCHMAHOME
HE WAS A MASTER OF LIFE —
A KING AMONG MEN".

I know that Rob Gibson has already read that out, but I think that it is worth repeating what is a remarkable tribute to any man. The monument was moved to the village of Gartmore after a spate of vandalism and has been restored to its former glory by custodians from the National Trust for Scotland.

In the light of all that, this debate is welcome and timely. It will help to set the record straight and gives the rightful place to a committed champion of the people of Scotland and their home rule. Both culturally and politically, he can rightly be considered one of modern Scotland's founding fathers.

I, too, warmly congratulate Alan MacGillivray and John C McIntyre on the fruits of their work over a number of years. A publication such as that by Kennedy & Boyd of a five-volume collected stories and sketches of R B Cunninghame Graham would represent a most fitting testimony to the literary contribution of any writer. The new collection brings together for the first time for modern readers Cunninghame Graham's short stories, sketches and essays, and the availability of easily accessible editions will give modern readers the opportunity to assess and enjoy the remarkable range of this significant Scottish writer's work. In time, scholars might reveal why R B Cunninghame Graham's work has received so little serious attention in the 75 years since his death, but our responsibility is to ensure that such neglect becomes history. He was unquestionably "a master of life". The suggestion that we put his words on the Parliament building is very fitting, so if we can secure cross-party support for the proposal it will be well worth taking forward.

Patricia Ferguson listed what inspired and motivated Cunninghame Graham: the miners, home rule, and injustice. Those are the same issues that motivated me to get involved with politics and might also have inspired many

members in the chamber to become politically involved. That political thread and the man's truly inspiring memory bind us together, so it is very important that we pay tribute to this inspiration of a man both in this debate and in years to come.

Meeting closed at 17:32.

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