The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 24 November 2010

Session 3

Wednesday 24 November 2010

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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 (Alex Fergusson): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is Dr Maureen Sier, vice chair of the Baha'i Council for Scotland.

Dr Maureen Sier (Baha'i Council for Scotland): Good afternoon, Presiding Officer, ladies and gentlemen. Tomorrow will be America's traditional thanksgiving day. Thanksgiving has been an annual tradition in the United States since 1863 and was, historically, a religious observation to give thanks to God. The event that Americans call the first thanksgiving was celebrated to give thanks that the pilgrims of Plymouth Colony had survived their first brutal winter in New England. The feast lasted three days and provided enough food for 53 pilgrims and 90 native Americans.

All of us have something in life that we are thankful for—it might be our friends, families, health, abilities or whatever lights up our lives and gives us joy. The expressing of gratitude in our busy lives is often forgotten, so today I am delighted to give thanks publicly for two interrelated things that have had the deepest impact on my soul. The first is the spiritual nourishment, sense of purpose and loving community that my religion, the Baha'i faith, has given me, and the second is the fulfilment that my work in the field of inter-faith relations has provided.

I mentioned that those two things are interrelated: they are very much so. The founder of the Baha'i faith, Baha'u'llah, taught over 150 years ago that all the major world religions provide spiritual guidance to humanity. He stated that

"the peoples of the world, of whatever race or religion, derive their inspiration from one heavenly Source, and are the subjects of one God."

My work in inter-faith relations has demonstrated that that is the case. The religious traditions of the world are indeed humanity's great spiritual legacy.

There is another way in which my religion and my work interconnect—both focus their energies on community building. In dozens of communities in Scotland, Baha'is and their friends have set in motion neighbourhood-level processes that empower individuals of all ages to develop their spiritual capacities and to channel their energies towards the betterment of their communities. Inter-faith groups across Scotland are also bringing communities together to learn from each other and to engage in collective acts of service. Both see grass-roots engagement as being essential for creating safe and vibrant communities.

This Sunday is the start of Scottish inter-faith week. It is a week when all over Scotland, communities, including the Baha'i community, will be engaged in inter-faith dialogue. It is a week when Scotland gives thanks for its rich religious heritage, gives thanks for the freedom of belief allowed in this country, and gives thanks for the diverse communities that make Scotland a wonderful place to live. Thank you.

Business Motions

14:04

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-7465, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

Motion moved,

That the Parliament agrees—

(a) the following revision to the programme of business for Wednesday 24 November 2010—

delete

followed by	Stage 3 Proceedings: Children's Hearings (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
6.00 pm	Decision Time
followed by	Members' Business

and insert

2.05 pm	Scottish Government Debate: Scottish Variable Rate of Income Tax
followed by	Stage 3 Proceedings: Children's Hearings (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
6.00 pm	Decision Time
followed by	Members' Business

(b) the following revision to the programme of business for Thursday 25 November 2010—

delete

2.55 pm	Stage 1 Debate: End of Life Assistance (Scotland) Bill

and insert

2.55 pm	Continuation of Stage 3 Proceedings: Children's Hearings (Scotland) Bill—[*Bruce Crawford.*]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-7476, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Children's Hearings (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Children's Hearings (Scotland) Bill—

(a) debate on the groups of amendments specified below in relation to Wednesday 24 November 2010 and Thursday 25 November 2010 shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated for each of those days;

(b) each time limit specified in relation to Wednesday 24 November 2010 shall be calculated from the beginning of proceedings on the Bill on that day and each time limit specified in relation to Thursday 25 November 2010 shall be calculated from the beginning of proceedings on the Bill on that day; and

(c) all time limits shall exclude any period when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in relation to the Bill on each day being called) or otherwise not in progress:

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Groups 1 to 5: 40 minutes

Groups 6 to 8: 1 hour 5 minutes

Groups 9 to 12: 1 hour 35 minutes

Groups 13 to 17: 2 hours 5 minutes

Thursday 25 November 2010

Groups 18 to 22: 25 minutes

Groups 23 to 26: 50 minutes.—[*Bruce Crawford*.]

Motion agreed to.

Scottish Variable Rate of Income Tax

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-7477, in the name of John Swinney, on the Scottish variable rate of income tax. I advise members that time for the debate is very tight.

14:05

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): Members will recognise that I normally take a number of interventions when contributing to parliamentary debates. Today I must place complex detail on the record, so I will take no interventions during my opening speech. However, I will respond to points and take as many interventions as possible during my closing remarks.

Jack McConnell (Motherwell and Wishaw) (Lab): On a point of order, Presiding Officer. This is a debate rather than a ministerial statement, which must be a matter of regret to some of us. Will you clarify whether the initial speaker in a debate should behave as if it is a debate or as if it is a ministerial statement, as the two are entirely different in respect of the interventions, questions and points that might follow?

The Presiding Officer: I am sure that, like other members, Lord McConnell is aware that it is entirely for the member who has the floor to decide whether to take interventions. I have no ruling on the matter—it is not a point of order for me.

John Swinney: In the past few days, a number of criticisms have been levelled at the Government on the issue of the Scottish variable rate of income tax. First, it has been said that we have allowed the tax-varying powers to lapse. That is wrong—the powers are contained in the Scotland Act 1998, and they are there still. Secondly, it has been said that all that was required to operate the Scottish variable rate was for the Government to pay £50,000 per year to HM Revenue and Customs through a service-level agreement, as our predecessors did. That is not the case.

When the Parliament was established in 1999, the Scottish Executive paid £12 million to create information technology systems for the SVR. In addition, the then Inland Revenue agreed to maintain a database of addresses for £50,000 a year. That agreement ended in 2007. When this Government was elected in May 2007, we were advised that if we wanted to invoke the tax-varying powers, the earliest reliable date for implementation of the SVR was April 2009—two years into the session. That would correspond to using the powers in the next session from April 2013—exactly the same timescale that prompted the Secretary of State for Scotland to write to party leaders last week.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the member take an intervention on that point?

The Presiding Officer: The cabinet secretary has made it clear that he is not taking interventions.

Mike Rumbles: On a point of order, Presiding Officer. Correct me if I am mistaken, but that does not imply that we cannot try to get Mr Swinney to take interventions.

The Presiding Officer: That is correct, but the cabinet secretary made it clear to you that he was not taking your intervention.

John Swinney: In May 2007, in one of the first briefings that I received, I was informed that the SVR project was “mothballed” in 2000, and I was presented with three options. Option 1 said that if the Scottish variable rate were applied from April 2008, implementation would be sub-optimal; yield to Scotland from the SVR would be £10 million to £26 million short and we would be required to pay further IT costs of £3.4 million to upgrade the system. Option 2 stated that if the Scottish variable rate were applied from April 2009—the first reliable date for implementation—we would be asked to meet IT costs of £2.9 million for system upgrades. Option 3—the option that I asked my officials to pursue with Her Majesty’s Revenue and Customs—recognised that if the SVR were not applied during this session, IT costs of £1.2 million would be incurred to ensure a 10-month state of readiness thereafter.

Given the fact that the Government, like all the main parties that are represented in the chamber, had made a commitment not to invoke the tax powers, we considered that the work could be undertaken over the lifetime of this parliamentary session, enabling political choices to be made in the next session.

This information is crucial to today’s debate. When this Government came to power, we did not inherit a functional IT system that was capable of delivering the tax power at 10 months’ notice.

Mike Rumbles: Will the minister take an intervention on this point, if I try again?

John Swinney: The £50,000 a year that was paid by the previous Scottish Executive kept the database of taxpayers up to date, but not the IT system. It would have cost the Scottish taxpayer millions of pounds to get it back to a condition in which it was useable, for a 10-month state of readiness. There would have been no point in paying £50,000 per year to update an address

book that could not be used. Consequently, in 2007, I took steps to ensure that there could be a viable system available for use when this session came to an end.

I give way to Mr Rumbles.

Mike Rumbles: I thank the minister for finance for giving way. Can he tell the Parliament today why it has taken him three and a half years to address this point to the Parliament? Why has he kept it secret?

John Swinney: If Mr Rumbles will forgive me, I am coming to that matter, and I will address it at the right point in my remarks.

Scottish Government officials undertook to work with HMRC to ensure that the upgrades could be made. In early 2008 there was further discussion about the option that I wished to pursue: that of paying £1.2 million to achieve a working system for the next parliamentary session. Officials sought clarity from HMRC regarding costs and timescales for making the necessary changes. On 28 May 2008 HMRC advised Scottish Government officials that the process was progressing, but more slowly than had been expected. That sparked a prolonged period of communication by my officials to obtain answers.

Finally, on 28 July 2010, HMRC set out a proposition for further IT work at an indicative cost of £7 million—on top of the millions that had already been paid by our predecessors—to enable the SVR to be exercised by the beginning of 2012-13. Were we not to agree to that approach, the earliest that the SVR arrangements would be available to us would be the following year—2013-14. After dialogue lasting three years, HMRC required an answer within three weeks.

George Foulkes (Lothians) (Lab): The finance secretary will remember that I specifically asked him on 9 September what was preventing him from introducing 1p, 2p or 3p of additional tax. He did not answer that question with what he is telling us now. Why did he not tell us then? He knew it then, but instead he said to me that I could advocate such a measure. He was quite wrong: I was not able to advocate it, because he had ruled it out.

John Swinney: Lord Foulkes will forgive me—I am thankful that I am not the script writer for his speeches.

To be clear, HMRC was asking for an additional £7 million to re-establish an IT system that had already cost £12 million. The same HMRC that has just messed up the tax accounts of 10 million people wanted the Scottish people to fork out millions of pounds more to upgrade their computer system. I took the view that, in the current spending environment, paying out £7 million required further consideration.

We asked for a further meeting with HMRC to clarify why it wanted us to spend millions more pounds of taxpayers' money to update its IT systems. In September, we again reminded HMRC about our suggestion of a meeting, but we received only an acknowledgement and the promise of a call that never came—that is until last week, when the First Minister received a letter from the Secretary of State for Scotland.

Let me dwell for a moment on the secretary of state's intervention. First, as I have made clear, there is no question of the tax powers lapsing. They exist in an act of Parliament, and this Parliament does not have the powers to revoke such an act—unfortunately. Although the Scottish ministers have powers to vary the tax rate, HMRC has a duty to administer it. The Scottish Government cannot be held responsible if HMRC cannot operate timeously or efficiently.

Secondly, if the secretary of state is going to make interventions in such debates, they should at least be complete. There was no mention in Mr Moore's letter or in his press briefings that we had been asked for an additional £7 million at three weeks' notice in order to meet HMRC's demands. After all, £7 million would pay for 275 newly qualified nurses for a year.

Thirdly, Mr Moore did not mention the fact that Westminster was asking for millions of pounds to put its computer system back into the state it was in before the decision to replace it. Although Westminster expected us to come up with the funding, we were not consulted about the replacement, and nor were we told the costs until the end of July.

Fourthly—and perhaps most crucial—the Secretary of State's letter and briefings made no mention of the linkages between the SVR and the United Kingdom Government's income tax proposals in the planned Westminster bill. Indeed, in subsequent media briefings, Mr Moore's spokesmen have described them as "quite separate things". That is simply not the case. I quote the Calman Commission on Scottish Devolution, which recommended:

> "the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC".

The Secretary of State for Scotland says that he intends to legislate to implement the commission's recommendations. From my reading of the draft Scotland bill, the Scottish variable rate is going to be abolished. What we do not know is when the Secretary of State will replace the SVR, what that will cost and who he thinks should pay. Therefore,

far from being separate things, the SVR and the forthcoming Scotland bill are closely related.

I have been accused of misleading the Parliament by my statement last Wednesday that the Scottish Government would not use the tax-varying powers. In every budget document since 2005-06, the finance minister has included a statement as to whether the Scottish Government intends to use the Scottish variable rate of taxation. I continued that convention and was merely making a factual comment for the record.

There is always a judgment on the part of ministers on when is the correct time to advise the Parliament of developments on any issue. I have clearly made judgments on that question that I need to explain to the Parliament. I could have come to the Parliament in 2007 to explain the position then. I chose not to do so, as I had no intention of using the Scottish variable rate and I had asked my officials to remedy the problems that I had inherited. If I had come to the Parliament at that time, I am sure that some members would have criticised me for using parliamentary time to highlight the woeful record of my predecessors—[*Interruption*.]

The Presiding Officer: Order.

John Swinney: As the process of dialogue with HMRC became more and more protracted between 2008 and 2010, I could have come to the Parliament and explained the difficulty. I did not do so, as I believed that a process of discussion between officials on operational issues was under way and that I should not take the issue into an inevitably political sphere. This Administration has, of course, faced that charge before.

Finally, I could have come to the Parliament after 20 August to explain our reasoning for not agreeing to the £7 million proposal from HMRC and for our requesting further discussions with HMRC. I wanted to understand why the cost had gone through the roof and how the proposed Scotland bill would impact on the SVR. The Scottish and UK Governments have been discussing those matters for some months, in confidence. I judged that to come to the Parliament while those discussions were under way would breach the confidentiality that the Secretary of State for Scotland, among others, had requested.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will the cabinet secretary give way?

The Presiding Officer: No. The cabinet secretary should be winding up.

John Swinney: Those judgments have been called into question. I made those judgments in good faith, for the reasons that I have set out, but I express my regret to the Parliament that, in retrospect, I clearly did not get all those judgments correct. In terms of sharing information with the Parliament, I have today placed relevant documents in the Scottish Parliament information centre.

At all times in my term of office as Cabinet Secretary for Finance and Sustainable Growth, I have sought to fulfil my responsibilities to the Parliament and to the people through effective management of the public finances. I have tried to do that in an open and transparent way, and I have done that by challenging whether spending on specific projects was appropriate at times of great financial constraint. When it comes to making the judgment between spending millions of pounds on HMRC computer systems that have never been used or spending on front-line services to protect the welfare of our citizens, I will always take the side of the people.

I move,

That the Parliament notes that the Scottish variable rate (SVR) remains a power in statute; further notes the substantial investment required to make the SVR operate in a way compatible with HM Revenue and Custom's IT system; believes that such expenditure requires careful consideration at a time of huge public spending pressures; further believes that this expenditure requires to be assessed in the context that the SVR is due to be replaced by a new taxation system; calls on the UK Government to specify the costs of its Calman taxation proposals so that the Scottish Parliament can judge whether these costs should be met and that the Scottish Parliament should be informed of these costs before considering whether to give approval to the proposed UK legislation, and records the fact that such costs, under the HM Treasury's own statement of funding policy, should be borne by the UK Government, all of which demonstrates the need for the Scottish Parliament to have full financial responsibility.

14:19

Iain Gray (East Lothian) (Lab): The Government has lodged an extraordinary motion. It seeks to justify the deliberate and—as it turns out—secret disempowerment of this Parliament. Our claim to be a Parliament rests on two powers: the power to legislate and the power to tax. Mr Swinney has chosen to allow the capacity for this Parliament to vary taxes to fall into abeyance.

The finance secretary made it clear in his statement today that, when he decided not to sign off the £50,000 annual cheques from 2007 and not to meet the other requests for a contribution, he knew that the consequence would be that our tax-varying powers would fall into abeyance. Three former finance secretaries on the benches behind me well understood that when they signed those cheques, it was to maintain the power year in, year out. The consequences of failing to carry out that duty are straightforward.

John Swinney: Would Mr Gray reflect on the point that I have put on record today—that when I came into office the Scottish variable rate power was not operable because the IT costs had not been fully put in place, as required by the HMRC systems?

Iain Gray: The point is—[*Interruption*.]

The Presiding Officer: Order.

Iain Gray: The point is that the £50,000 annual payment had been made year in, year out in order to sustain the system. As for the argument that the choice was made only because of an inability to find £1.2 million, £7 million or £26 million—or another of the figures that have been blown around like a snowstorm to hide what has happened—surely the correct thing to have done, if Mr Swinney's view was that the payments should be withheld, would have been to seek the agreement of the Parliament.

This is not simply an operational decision. To not sustain the capacity to vary taxation is not a choice that Mr Swinney had the right to make. He said that he would always take the people's choice, but the point is that the choice to give the Parliament the power to vary taxation was made by the people of Scotland—1.5 million of them, who all put their crosses to say yes to giving the Parliament tax-varying powers. They did not mean some hypothetical power that exists in statute but has been rendered unusable; rather, they meant a real, practical choice that would be available to the Parliament. No Government may simply abrogate either of the two fundamental powers of the Parliament without abrogating the will of the people as well.

Stewart Maxwell (West of Scotland) (SNP): Will the member take an intervention?

Iain Gray: No.

The Scottish Government says that no party has any intention of using the tax-varying power, but that is not true. The SNP itself has sought to use it in the past. The Liberal Democrats in this Parliament have sought to use it to reduce the tax rate, and Green MSPs have argued that it should be used this year to avoid cuts. In any case, Mr Swinney's decisions have rendered the power impossible to use for the next Parliament too, thus binding a future Administration in a way that can be described only as undemocratic. No matter the policies or mandate of that Government, it will not be able to use the tax-varying powers in effect for the course of the next parliamentary session. This Government has failed in the stewardship of this Parliament and has breached the confidence of the people who supported the power in the 1997 referendum.

The only possible justification for the decision would have been that it was taken with the Parliament's agreement. Even then, such a move would have been open to severe criticism. However, the decision was, in fact, taken not just without the Parliament's agreement but without the Parliament's knowledge.

If Mr Swinney was involved in such an assiduous attempt to ensure that the tax-varying power was available, why did he not inform us of that and allow us to share the burden of his difficulty in ensuring that the Parliament had the power? Yesterday, he explained in committee that he did not want to burden us with the information, lest our briefcases became too heavy for us. So far, so flippant.

However, Mr Swinney did not just omit to mention the decision—he hid it behind references to the SVR. In his budget statement last week, he said:

"We have been mindful of the need to consider the effect of the significant tax rises that the UK Government has announced ... I therefore confirm that we will not raise the Scottish variable rate of income tax."—[*Official Report*, 17 November 2010; c 30463.]

That was clearly meant to imply that he had such an option, which he now tells us he knew he did not have.

In answers to parliamentary questions in January this year, Mr Swinney said that the SVR could have raised £1 billion in 2009 and 2010, yet he knew that it could not have done so. No hair-splitting between what is on statute and what could actually be done can be allowed to confuse the issue.

When Mr Swinney said to the Equal Opportunities Committee in May—

John Swinney *rose*—

Iain Gray: I am sorry—I will not give way.

Mr Swinney said to the Equal Opportunities Committee in May this year:

"We could use the tax-varying powers—for example, we could increase the basic rate of income tax by 3p in the pound ... It is clear that that is an option for any Administration".—[*Official Report*, *Equal Opportunities Committee*, 4 May 2010; c 1630.]

Those words were simply not true. [*Applause*.]

The Presiding Officer: Order.

Iain Gray: That was not an oversight or careless words; they were carefully chosen to give a false impression. A deliberate and systematic attempt has been made over years to cover up the situation and the decisions that meant that the SVR was not an option. A deliberate and systematic attempt was made to mislead the Parliament and wider Scotland into believing that

the Government still had the option of using the SVR. To be frank, no matter whose fault that was and no matter when it occurred, to fail to tell the Parliament and to continue to pretend that the option was available is simply unacceptable.

That we must listen day in and day out to Mr Swinney's demands for more powers for the Parliament when we now know that he failed to maintain the powers that the Parliament had is unbelievable. That by doing so, he thwarted the will of the people as expressed overwhelmingly in a referendum is unacceptable, but that he conspired to hide the decision from the Parliament and from Scotland is unforgivable.

The explanation that Mr Swinney has given today is disingenuous and his apology was grudging and unacceptable.

The Presiding Officer: I must ask you to close, please.

Iain Gray: Mr Swinney must apologise fully or consider his position.

I move amendment S3M-7477.1, to leave out from first "notes" to end and insert:

"considers it an abuse of power for the Scottish Government to abandon the Scottish variable rate of tax without the approval of the Parliament and by consequence preventing the Parliament from using this power until 2013-14 at the earliest; further considers it unacceptable for ministers to mislead the Parliament over the existence of these powers; believes that it is wrong that a power given to the Parliament by the people of Scotland in a referendum should be taken away by the action of a minority government without reference to or endorsement from the Parliament, and calls on the Scottish Government to admit responsibility for the lapse of the tax varying powers and to apologise to the members of the Parliament and people of Scotland to whom it has conveyed the impression that these powers are still capable of use."

The Presiding Officer: I call—[*Applause*.]

Order.

I call Annabel Goldie.

14:29

Annabel Goldie (West of Scotland) (Con): I am still not clear whether this fiasco is an SNP mess-up, an SNP Machiavellian conspiracy or both, but one thing is clear: there has been a cover-up. This is not some minor administrative slip by a junior official, nor is it some academic exercise about fantasy powers. There has been a systematic, concerted and conscious cover-up lasting more than three and a half years.

When the people of Scotland voted for our Parliament to have the power to vary income tax, that power was not given to the SNP or to any other party; it was given to the Scottish Parliament. It is the people's power, not Mr Swinney's or Mr Salmond's, yet Alex Neil admitted on radio this morning that Mr Swinney chose to stop updating the HMRC system in 2007, which Mr Swinney has confirmed. Why was the Parliament not told of that decision? It is totally irrelevant what Mr Swinney thought about whether to use the power. It is fundamental that he neutered the power, made it inoperable by any other party and did not tell the Parliament.

John Swinney: Will Ms Goldie reflect on my point that when I became a Government minister, the clear advice that I was given was that the earliest date for a reliable implementation of the SVR was April 2009? The power could not be operated at that time.

Annabel Goldie: Forgive me, but we are in the middle of 2010 and are approaching an election in 2011. Is not that precisely why the finance minister has been negligent in not informing the Parliament of what was going on? To argue, as the SNP has done over recent days, that none of this matters, that the power was never going to be used and that that was made clear at every budget is to completely miss the point. That attitude is grossly misleading and blatantly hypocritical.

Here is why. It misses the point because no minority party in this Parliament of minorities has the right to shackle the other parties. To neuter the ability of the next Parliament to exercise its rights under the Scotland Act is a betrayal of democracy. As we now know, when the SNP rendered the tax-varying powers unusable, it knew what the consequences would be for the next Parliament, but it did not let anyone else know.

It is grossly misleading and blatantly hypocritical to claim that none of that mattered. Unless I have missed something, time after time over the past three and a half years, the SNP has trumpeted a local income tax. Unless it was conning the voters and never really intended to introduce a local income tax, why did Mr Swinney say in July 2008:

"We propose that LIT is collected through the existing PAYE system and self assessments. The Scottish Government will pay Her Majesty's Revenue and Customs to administer and collect the tax"?

He went on to publicly praise HMRC's cost efficiency, while the SNP was making those procedures unusable.

In 2008, the SNP's consultation on local income tax said:

"the SVR could, in principle, be introduced relatively quickly."

It went on to praise the HMRC as being the most efficient means of delivering a local income tax, given that it already held the relevant data and had all the experience and systems that were necessary to collect such a tax. In 2008, the SNP

told the world that the HMRC was cost effective, efficient and quick, that it held the relevant data and had the necessary systems, and that it was just a question of pressing the button, because it was all ready to go. How could that be when the SNP had stopped updating the records? It does not add up.

Let me tell you what else does not add up. Whenever the UK Government does or says anything that could be construed as doing Scotland down, who is the first to shout blue murder? Let us take the example of prisoner transfer and Alex Salmond's outrage at the possibility of being cut out of a deal. He was incandescent. As it happens, he was correct to be, but can you imagine the hullabaloo from Messrs Salmond and Swinney if the Westminster Government by act or omission denied this Parliament the right to exercise a power? Alex Salmond and the SNP would take to the streets in protest. What happens when this Parliament is denied the effective use of a Scotland Act power by the SNP? There is deafening silence and cover-up.

Just when did the SNP plan to come clean? Was it really going to produce a manifesto for next May that promised a local income tax, while still keeping quiet? Every word that has been uttered today by Mr Swinney, by his colleagues around him and by the First Minister and their minders will be scrutinised over the coming hours and days. Answers need to emerge about just what happened, who knew what and when, and who ordered the cover-up. Someone somewhere orchestrated a cover-up to deny the people of Scotland the truth. That is the charge that the SNP faces today.

14:35

Tavish Scott (Shetland) (LD): When this nationalist Government is in a hole, two things happen, as we have seen before. The SNP dissembles, shouts, screams, throws mud, makes it up and blames anyone else it can. Then it wheels out Alex Neil. I had thought that ministers had to behave, but not any more—not after last night. There is only one more step that the SNP can take: Mike Russell will be next.

This morning, we were treated to the SNP's spin to the broadcasters. We were told that the nation would receive contrition about the process, not an apology. Today, we got no apology. We were told that the cabinet secretary could not tell us, because it would have meant putting the matter into the political sphere. The SNP did not want to put something into politics—what a joke that is!

The facts of this disgraceful episode are simple, and they show either SNP deceit or incompetence. The first fact is that the Parliament was given the power to vary income tax by the people of Scotland in a vote. That power was given not to a party, a minority Government, a First Minister, or a finance secretary but to the Parliament. Mr Swinney's speech today showed that he does not seem to get that point.

Fact: there is a cost to retaining the mechanism to allow the tax-varying power to be exercised, and how much that is now is nothing more than a political slanging match on which Mr Swinney has poured smoke, smoke and more smoke. The point that matters is that the SNP has stopped that constitutional power being used not only now but by the new Government that will be elected next year. That was not the SNP's decision to make.

Fact: at no stage since 2007 have Mr Swinney or any of his ministerial colleagues—most certainly not Mr Salmond—informed, debated or discussed the decision with Parliament. Was that deceit or incompetence?

Fact: yesterday, Mr Swinney said that MSPs were "too busy" to be told about that 2007 decision. Since 2007, the Cabinet Secretary for Finance and Sustainable Growth has had 110 separate opportunities to present his position. He has presented four budgets, published eight budget revisions, participated in 15 budget debates, made 24 appearances in front of the Finance Committee, and delivered 29 ministerial statements to the Parliament. There have also been a debate on strategic budget scrutiny, two debates on the strategic spending review, and six debates on the Scottish Government's programme. There has also been a debate on improving accountability, but he did not take part in that one—too busy? Too busy to find ways to explain the Government's decision to the Parliament. Was that deceit or incompetence?

Fact: when it proposed the local income tax, the SNP Government said that it would use the tax-varying powers to make it happen. The Government statements on how LIT would be implemented misled the Parliament and any voter who supported LIT on that basis. At no time when they were explaining why the SNP had dropped LIT did Mr Salmond or Mr Swinney explain that they could not implement it because the tax-varying power could not be used. On the day of the ditch, Mr Salmond looked me in the eye at the back of the chamber and explained why local income tax was being dropped. As always, Mr Salmond did not give the truth that day. Was that deceit or incompetence?

Members: Withdraw! Apologise!

The Presiding Officer: Order.

Tavish Scott: Fact: before the budget debate that was held exactly a week ago, the finance secretary's budget document said:

"Our opportunities to vary taxes are limited to the Scottish Variable Rate, which no Scottish administration has chosen to use since Devolution, and some discretion over non-domestic rates. We confirm that we will not use the Scottish Variable Rate power".

When addressing the Parliament last Wednesday, the finance secretary implied that he had considered using the tax-varying power and dismissed it. If that is not misleading the Parliament, what the heck is? Was that deceit or incompetence?

Are the Parliament's tax powers available to use? No. Was the Parliament told that in 2007, 2008, 2009 or this year? No. Can the local income tax be implemented? No. Has Parliament been misled? Yes. Has the finance secretary had 110 separate occasions to tell us what is going on? Yes. Has a minority nationalist Government misled the Parliament? Yes. Has the SNP treated with contempt the people of Scotland, who gave the power to the Parliament? Yes.

Although Mr Swinney is put up today, the blame for this is not his alone. It sits next to him. We have had one sanctimonious lecture after another—[*Interruption*.]

The Presiding Officer: Order.

Tavish Scott: We have had one sanctimonious lecture after another from Alex Salmond on the respect agenda. Today defines Mr Salmond's respect for the Scottish people and the Parliament. Respect is something that one earns. No one will respect Mr Salmond again on the constitution, on Scotland's future and on the government of our country. After the way in which his Government has handled local income tax and after his finance secretary's speech a week ago, Mr Salmond expects to pass a budget and negotiate with other parties. There is no one else to blame. This is the Salmond Government, and it has shown its true colours today. What Mr Salmond and his Government have failed to do today is explain whether all this is mess, deceit or incompetence. Deceit and incompetence are the two words for which his Government will now be known. Respect? Not a chance.

Imagine for a moment what would have happened if the nationalists had been in opposition. What would they have said about a Government giving up powers that people had given to Parliament? Many would have howled, full moon or not. Some would have shed tears. A few ambitious back benchers might have gone on hunger strike until the powers were returned. These are the people who make a constitutional crisis out of the museum that houses the Lewis chessmen, yet the SNP signs away the choices and powers of Scotland's Parliament. The wishes of 1.5 million Scots are discarded without a murmur. Some respect, that.

14:42

Stewart Maxwell (West of Scotland) (SNP): Shakespeare got it right when he said:

"sound and fury, signifying nothing."

That was Tavish Scott's speech and that is the view of the Liberal Democrats. We have had noise but no clarity. As is often the case, there is a lot of smoke but no fire. Despite much Opposition fuss and fury about what happened between 2007 and 2010, there have been no answers about the revelation that Labour and the Lib Dems mothballed the SVR system before 2007. Tavish Scott was a minister at the time, but he said nothing to the Parliament.

Tom McCabe (Hamilton South) (Lab): On a point of order, Presiding Officer. The member has misled the Parliament. His statement is totally and utterly untrue.

The Presiding Officer: As Mr McCabe knows well, that is a matter for the member to correct if he wishes to do so.

Stewart Maxwell: There is nothing to correct. What I said is true. The Labour Party mothballed the SVR system. That is a fact. Tom McCabe was a finance minister in the Administration at the time. When did he come to the Parliament and tell it that his Administration had decided to mothball the SVR? That is what happened. At no point, did that Government tell the Parliament. [*Interruption*.]

The Presiding Officer: Order.

Stewart Maxwell: The UK Government made demands for sums of money that varied between £50,000, £1.2 million, £2.4 million, £3.9 million and £7 million. Despite the best efforts of the Scottish Government, we are still no clearer about what that money was for. There were discussions and letters were exchanged. For all I know, there were e-mails and phone calls, too, but in the end all we got was a refusal by the UK Government to answer legitimate questions and, finally, a £7 million demand with three weeks to pay. Other parties seem keen to hand over millions of pounds without giving answers to legitimate questions, but no competent minister would agree to that.

The first question that the Opposition needs to answer is what budget it would have cut to pay millions to Westminster. It has never been keen on having 1,000 extra police officers, so perhaps it wants to cut a couple of hundred police officers—maybe that is what it would have done—or does Labour want to do what Glasgow City Council has

done and cut hundreds of teachers from the education of our children?

George Foulkes: Will the member take an intervention?

Stewart Maxwell: The second question that Labour members need to answer is why they want to waste millions of pounds on a system that is about to be replaced.

George Foulkes: Will Stewart Maxwell take an intervention?

The Presiding Officer: Order, Lord Foulkes. The member has made it plain that he is not giving way. I am sorry.

Stewart Maxwell: Next week sees the publication of the proposals that will make SVR redundant, yet Labour wants to spend millions of our pounds on a redundant system. The Opposition's position is that we should spend millions on a soon-to-be-redundant system and millions more on the Calman tax proposals—perhaps tens of millions, given that Michael Moore refuses to tell us and perhaps does not even know how much those proposals will cost us. That is an untenable position.

Throughout the debate, Opposition spokespeople have been claiming that the SNP Government has given up the power and that the power is somehow lost. That is nonsense. The power remains and, prior to the past week, the UK Government had never stated that the power was lost. In fact, as far as we were concerned, the power was there and could be used post-2007 in the same way as pre-2007. The UK Government made that absolutely clear in its budget documents.

In 2007, the UK budget document, on page 211, talked about the SVR, its use and the Government's view on that. In 2008, the budget document, on page 113, made the point that the SVR was available and talked about how it could be used. In 2009, on page 156, the budget document stated that the SVR existed and talked about how it could be used. In 2010, on page 123, the budget document mentioned it again. Those were four Labour Party budgets and at no point did the UK Labour Government say that the power was not available, although it had been mothballed.

In case the Lib Dems and Tories think that they are being missed out, I point out that, only a month ago, in "Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy", which is among the comprehensive spending review documents, at paragraph 6.1 on "Self-financed spending", we were told:

> "The devolved administrations ... have responsibility for spending financed from some other sources of revenue, for example ... in Scotland, were this to be used, the Scottish Variable Rate of Income Tax."

There is no mention of the fact that the SVR was not available. Every budget statement since 2007 has said the same thing. Their position is, frankly, untenable on that point.

I will finish on the important point of who should pay for what. The Calman tax proposals make that an imperative question. Despite attempts to rewrite history in the past week, the rules that govern that are very clear and the UK Treasury's statement of funding policy for the devolved Administrations has made the position very clear.

The Presiding Officer: Quickly, please.

Stewart Maxwell: If the UK Government's decision costs the Scottish Government or the Welsh Assembly Government money, the UK Government should pay for it.

I want to quote *Hansard*—

The Presiding Officer: Mr Maxwell, I am sorry, but you do not have time. We must move on.

14:48

David Whitton (Strathkelvin and Bearsden) (Lab): I speak in favour of the amendment. Mr Stewart Maxwell has just asked for some clarity and perhaps I can help him in that regard. The briefing note for permanent secretaries and ministers on the implementation of the Scottish variable rate says:

> "HMRC has recently undertaken detailed feasibility work on the SVR which shows that the earliest date for reliable implementation would be April 2009."

So far, so Swinney. However, it goes on to say:

> "SVR could be implemented a year earlier"—

that is, by April 2008—

> "but such a decision would need to be taken by 5 June 2007 and the resulting timescale would be tight and bring with it increased delivery risks and costs."

Why did Mr Swinney not take the decision at that time, and why did he not come before the Parliament to tell us that that was what he was going to do?

The reasons for the debate and much of the justification for its actions will do the SNP Government no service at all. The fact is that this is a serious matter that came to light only because a minister from another Government put it in the public domain. That undermines the sovereignty and superiority of Scotland's people over this Parliament.

As Tavish Scott said, the ultimate decision on whether powers should be devolved from

Westminster to Scotland—powers to be exercised by a Scottish Parliament—was made by Scotland's people. This Government knows as well as anyone that an intrinsic part of the mandate was the power to vary the basic rate of income tax if the Government of the day chose to do so. That power is not the plaything of this Parliament or any Government, SNP or otherwise.

Yesterday, Mr Swinney appeared before the Finance Committee and told us that the issue of the Scottish Parliament's ability to introduce a variable rate of tax, capable of being introduced within a 10-month period, went back to the briefing that he received from his civil servants when he became a minister.

It was then that he made his first mistake. He ordered the civil service not to pay—it was a ministerial direction—and so began the trail of deception that leads us here today. His second, and most crucial, mistake was not to tell the Parliament what he had done and why—something that he says he now regrets, but only because he has been found out. It is also worth recalling that the new SNP Government was in a habit of making non-payment decisions at that time, over which it got into disputes with Westminster, such as when it did not pay its contribution to the G20 conference or the Shanghai expo. Those issues were made public, so why was the issue that we are discussing today not made public?

We should recall why the Parliament has a tax-varying power in the first place. Former Prime Minister Tony Blair insisted that there should be a referendum on it. The SNP tells us that it is fond of referenda, and it campaigned alongside Labour to ensure a yes vote—I have seen the photographs. Then, having campaigned for a tax-raising power, the SNP became the first political party to ask the people of Scotland for permission to use it. Who can forget the penny for Scotland campaign? I do not know whether the party's defeat in that election soured its attitude towards the SVR. What I do know is that the First Minister has, on many occasions, talked of the sovereign rights of the people of Scotland. In response, I would say that it is the sovereign right of the Parliament to raise or lower the rate of income tax—a right that was voted on by the people of Scotland—and no minister should have removed that right by refusing to pay a bill without bringing the matter before MSPs representing the people of Scotland in the chamber. That is the key issue, and no amount of bluff, bluster or attempts by the First Minister, Mr Swinney or Mr Neil, in his many television performances, to throw up a smokescreen by talking about the more recent demand for £7 million to upgrade the HMRC computer can disguise that fact.

In his letter to the Scottish Secretary, the First Minister says:

> "If HMRC choose to replace their IT systems that is clearly a matter for them."

It is also clearly a matter for us as well, as it is that same IT system that would allow the SVR to be introduced within a 10-month period.

However, the fundamental questions before us today are why Mr Swinney refused to pay the money in 2007 and why he has kept that decision secret ever since and, in so doing, undermined the ability of the Parliament to introduce a tax-varying power. As has been heard, he has had plenty of opportunities to explain. He could have explained the position, for example, in May, when talking to the Equal Opportunities Committee, or on September 9, during a debate on the independent budget review when, as can be seen at column 28354 of the *Official Report*, my colleague George Foulkes asked him what was preventing him from using the power to increase income tax. Mr Swinney replied to Lord Foulkes that the Government's decision was not to use the variable rate. When Lord Foulkes asked, reasonably, "Why not?", Mr Swinney's answer should have been, "Because I told my officials in 2007 not to pay for the upgrade to the HMRC computer so that it would be kept in a state of 10-month readiness." However, instead, he chose, as usual, to attack the UK Government.

It is worth noting that paragraph 2.41 of the IBR report says:

> "In practical terms, however, the SVR could not be used to relieve budgetary pressures in 2011-12 as there would be a lead-in time of at least one tax year before the powers could be used."

That shows that not only MSPs but the three wise men were kept in the dark.

Because Mr Swinney refused to pay this bill, the Parliament is damaged, as are Mr Swinney and the SNP. For that, they will pay a penalty next year. We also heard that there was no point in spending the money because, according to Stewart Maxwell, the system will be redundant next week. I do not think that he was listening to his own cabinet secretary, who said quite clearly that we do not know when the financial provisions of Calman may come into force. It is clear to anyone who has read the Calman document that they cannot and will not be implemented straight away. To say that the system will be redundant next week is simply not correct or credible.

14:54

Gavin Brown (Lothians) (Con): The cabinet secretary has been criticised today for suggesting in the chamber last week that the SVR had been considered but was not going to be used. What

troubles me slightly more, however, is the written word in the budget document itself. On page 63, under the heading "Scottish variable rate", it clearly states:

"In accordance with the agreement between the Scottish Government and the Parliament's Finance Committee on the budget process, the Scottish Government confirms that it will not use the existing tax varying powers in 2011-12."

The document does not just allude to those powers but clearly suggests that they are "existing" and, specifically, that they exist for the financial year 2011-12. It is evident that that is not the case. I will take an intervention at any point from the cabinet secretary if he wants to explain that statement and tell us why the budget document states specifically that those powers are "existing" in 2011-12 when we know that they are not.

John Swinney: That gets to the nub of one of the accusations that have been made. Those powers exist in statute; they are there and have not been removed. That is the point that the budget document makes.

Gavin Brown: They exist in statute, but they clearly do not exist for 2011-12, which is the matter that is under debate.

John Swinney: It is no different from 2007.

Gavin Brown: We hear SNP members mutter that it is no different from 2007; I will tackle that head-on too. The cabinet secretary said that the Government in 2011 will find itself in exactly the same position as the Government that took over in 2007: it would be two years before it could implement the tax powers. Mr Swinney said that it would be April 2009, as he was told in an initial briefing, and he made the same point rather angrily to Annabel Goldie during her contribution.

In his own speech, however, Mr Swinney suggested that an implementation date of April 2008 could have been met. Page 2 of the HMRC document that was released during this debate clearly states:

"April '08 could be substantially met".

It does not say that it might be met; it says that it could be substantially met. It states that it would be "sub-optimal", and that the overall yield would not be as high as in future years. However, with the 3p in the pound rate, the overall yield would have been more than £1 billion. The sub-optimal yield—the lower amount that would be collected, according to HMRC—would be in the region of £10 million and £26 million less. That may well be sub-optimal, but £10 million less than an amount of more than £1 billion is some definition of sub-optimal from the cabinet secretary today.

I will deal with some of the other points that members have raised. One reason that the SNP gives for not proceeding with the SVR is that it would have wasted £7 million, for which we could have had more employees on the front line. The important point, however, is that that was a decision for the Parliament and the Scottish people, not for the SNP Government alone.

It is simply not correct to suggest that the SNP Government could have taken money only from the front line to pay for the SVR. The Government has spent millions on a national conversation. It wants to spend £4.3 million on a central strategic communications budget this year, and it spent £4.8 million on the same budget last year. That amount would have covered the £7 million quite easily, with a little bit left over for strategic communications.

George Foulkes: Has Murdo Fraser told Gavin Brown that the Auditor General for Scotland told the Public Audit Committee this morning that the Scottish Government had an underspend of £253 million in the last financial year?

Gavin Brown: Murdo Fraser has not said that to me, but I welcome George Foulkes's intervention anyway.

A number of courses were open to the cabinet secretary. There were many occasions on which he could have come to the Parliament to tell us what was happening before the decision was made. As a worst-case scenario, the Scottish Government could easily have paid the money at the time to protect the position of the Scottish variable rate and argued about the cost later. It is regrettable that it did not do so.

Elaine Smith (Coatbridge and Chryston) (Lab): On a point of order, Presiding Officer, I wonder whether you can keep us right on material for debates. I asked the Scottish Parliament information centre outside whether we could have the material that the cabinet secretary said in his opening speech he had laid in SPICe. I was told that it was available in the coffee room. I asked whether it was available in the chamber and was told that no, on the instruction of the Minister for Parliamentary Business's office, it was not to be put in the chamber. I took the few copies that were there and put them out in the chamber, but I would like your advice on what should and should not be available in the chamber as material for debates.

The Presiding Officer: I will reflect on that, if I may. I think that it is a matter for the parliamentary authorities rather than the minister, but I will reflect on that and come back to the chamber later.

I call Mike Rumbles, to be followed by Patrick Harvie.

15:01

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): There are two issues that need to be addressed in the debate—first, whether the Scottish Government will take responsibility for the lapse of the tax-varying powers back in 2007, and secondly, whether the Government will apologise for what others have termed the cover-up that it seems to have maintained on the issue for the past three years.

The Government's strategy in the debate seems to be to try to muddy the waters by conflating the issue with the Calman powers in the Westminster bill to be published next week. As far as I am concerned, that approach is simply not acceptable. All the Opposition MSPs are agreed that what has happened is, as the amendment states, an "abuse of power" by the Scottish Government—an abuse that ended the Parliament's ability to use the tax-varying powers, and a further abuse of power for three and a half years to maintain the falsehood that the powers were available to us if we wished to use them.

It is not a defence for the Government to say that none of the Opposition parties wanted to use the powers. That is simply not true. On 12 November 2008, there was a debate about the state of the Scottish economy. I said to Mr Swinney:

"The measures that the cabinet secretary has mentioned were taken before the credit crunch and the downturn. I think all members agree that decisive action to cut taxes is important and that the cabinet secretary could use the powers that are available to him to cut income tax."

Mr Swinney's reply to me was:

"I look forward to Liberal Democrat members' speeches on their amendment. Mr Rumbles and his colleagues must explain to Parliament"—

that is a nerve, is it not?—

"where the consequential reductions in the budget would come from to pay for their proposed tax cuts."—[*Official Report*, 12 November 2008; c 12231.]

We now know that Mr Swinney's reply to me was a simple trick. He knew then that he had already abandoned the ability to reduce income tax and had failed to alert us to it. The fact that the Parliament was misled on the matter is now absolutely clear to everyone.

Just seven months ago, in response to Derek Brownlee, the cabinet secretary said:

"he will know that ... we are required to make a statement about whether we intend to use the Scottish variable rate. I confirmed during the budget process that that would not be the case. Obviously, the Government considers the question in every budget and we will consider it in the ordinary fashion".—[*Official Report*, 15 April 2010; c 25388.]

Some ordinary fashion. Mr Brownlee was clearly misled, and so was everyone else, because the SNP had already given up the option to use the powers.

On the subject of misleading Parliament, I want to focus on the words of another Scottish minister, Alex Neil, who, on the radio this morning, made the quite outrageous comment that the SNP had made it clear in its 2007 manifesto that it would not use the Scottish variable rate. The interviewer did not pick him up on this, but Mr Neil knew that the SNP had said that, in order to implement its abolition of a council tax and its replacement with a local income tax, it would use the variable rate of income tax. Someone is not telling the truth here.

Of course, we now know the real reason why the SNP failed to introduce its bill to abolish the council tax and replace it with a local income tax. It had nothing to do with failing to gain support in the Parliament and everything to do with the fact that as soon as the bill was published we would have known that the power to raise income tax had already been abandoned. The SNP could not have done it even if it had wanted to.

This Government is a discredited Government. As we have heard, after being found out after three and a half years, it wants to blame everyone else but itself for getting rid of these tax powers. There is a pattern to all of this.

This is clearly the very worst example of an abuse of power by this minority Administration. I sincerely hope that when we agree to the amendment, as I am sure we will, the Scottish Government will do what the Parliament has asked of it: first—I am looking at the finance minister as I say this—accept responsibility for what it has done and, secondly, apologise to the people of Scotland to whom it continues to give the impression that these income tax powers are still capable of use.

The Government is in the process of failing the test of responsible government. Although there is still time to bring things back, I am quite frankly worried about the prospect. I do not think that the Government realises what is happening. As Tavish Scott said, this was either deceit or irresponsibility—and I believe that it was deceit.

The Deputy Presiding Officer (Alasdair Morgan): I call Linda Fabiani, to be followed by Pauline McNeill. [*Interruption*.]

Linda Fabiani (Central Scotland) (SNP): I am sorry, Presiding Officer. I thought that Patrick Harvie was to speak next, hence my confusion.

The Deputy Presiding Officer: I apologise—I did not hear the Presiding Officer call Mr Harvie. I am quite prepared to take him next. I call Patrick Harvie, to be followed by Linda Fabiani.

15:07

Patrick Harvie (Glasgow) (Green): I have a lot of time for John Swinney. Regardless of political party, not everyone who takes a central part in any Government can gain the respect of people in all political parties, even when differences arise. As every member knows, I have not always voted the way John Swinney would have liked and there have been times when, to his regret and mine, I have tried and been unable to reach agreement with him. I hope that he understands the respect that he has gained during his time in office. If we were to ask people to list the decent and capable people in the current Administration, we would find John Swinney at the top of many of those lists. However, in conveying the respect that he has gained over the past few years, I also state my hope that, by the time this debate is over, he understands the anger that even some of those who have respected him bring to this debate as a result of his actions and, indeed, inactions.

I do not want this debate to be seen as a debate between the Labour Party and the SNP; it is, most centrally, a debate between Government and Parliament. Both sides in the debate have a detailed narrative about which Governments said what or did what at what time, but I am clear that, soon after coming to power in 2007, the current Scottish Government understood very clearly that this situation was developing and was not being resolved. Why was I, as a member of the Parliament, not told at that time? Earlier, Stewart Maxwell said that everyone in the Opposition parties should have said which budget the money was to come from if we wanted it to be paid. I would have been delighted to have the opportunity to say what I think ought to have been the priority—but I was not told.

Regardless of political parties, I would have expected any finance secretary in any new Administration in 2007 to have kicked up a storm of anger in explaining that the Scottish Parliament and Scottish Government were unable to exercise the Scottish variable rate power within the expected time period. That should have been put into the political sphere, and it is outrageous to be told now that it was inappropriate for it to be in the political sphere. The issue should have been debated in the political sphere, among MSPs.

If the cabinet secretary is still listening, I will contrast his response in his opening remarks with Nicola Sturgeon's response when she was under pressure to apologise for a misjudgment. She apologised sincerely, calmly and constructively. I would like the cabinet secretary to reflect on that in his closing remarks, to acknowledge calmly and sincerely that some of the judgments were wrong, and to say sorry.

However, I would like more than that. This is not just about blame, about who said what, or about who was responsible; it is also about solutions. It is about ensuring that, in future—not just when an Administration is formed in May by whoever—the powers that exist on paper under the current legislation or under the new Scotland bill that we expect to be introduced soon at Westminster are exercisable in practice. I want there to be a series of practical steps that the cabinet secretary will take over the next few weeks and a commitment from him to report back soon to the Parliament on the progress that he is making in turning a paper power into a practical power as soon as possible.

I was not a politician in 1997, when we were all asked to vote on whether the Parliament and this dysfunctional industry of ours should be set up. I was not even a member of a political party when I was asked to vote. Like around two thirds of the electorate, I voted yes and yes. I did so not because I thought that the SVR power was the only or even the best financial power that we could have; rather, I wanted a Parliament that had at least the potential to defend Scotland against attacks on the public sector from a hypothetical, future right-wing Government, for which I was confident Scotland would not have voted. That situation is not hypothetical any more; we are in it right now.

Linda Fabiani: Oh, Patrick!

The Deputy Presiding Officer: Order.

Patrick Harvie: I want a Parliament that has the political will and the practical ability to defend Scotland against savage attacks on public spending. I do not really want to hear whether the United Kingdom Government or HMRC is to blame, or whether Alistair Darling should have said something different to Parliament years ago. I am not interested in that. I want to know what will be done now.

Obviously, the Greens have a different position on the use of the SVR. We believe that, in combination with an empowering approach to allow local authorities to raise more of their revenues, limited use of the SVR could be made now in a progressive way to allow Scotland to protect the public services that are under attack. It would be disgraceful to have an election next year in which Scotland's public are offered five different ways to hand on Liberal-Tory cuts to Scottish public services. The Greens will continue to advocate an alternative to that agenda—at the moment, it seems that it is the only alternative. In the meantime, I want the current Government, which serves us and is supposed to serve the Parliament's interests, to tell us what it will do to make the powers in question practically exercisable right now.

15:13

Linda Fabiani (Central Scotland) (SNP): I would like to consider two points of clarification.

First, the reason that we are having this debate is that the Opposition parties have no real response to John Swinney's excellent budget statement last week. It was particularly clear that the Labour group had no real response to it. Labour members' contributions showed a lack of real understanding or acceptance of the need for unity for the benefit of Scotland.

The second point that requires to be clarified yet again is that tax powers have not been removed from the Parliament, as some have suggested. They are in the Scotland Act 1998, which only the Westminster Parliament can amend. I suspect that suggesting that they have been lost would be close to misleading Parliament. That is why I have real issues with Labour's amendment. It says that the Scottish Government has abandoned the Scottish variable rate of tax, but it has not. It goes on to express outrage that

"a power given to the Parliament by the people of Scotland in a referendum should be taken away".

It has not been taken away. Why, all of a sudden, are the Labour Party and those who support the amendment, their friends the Lib Dems, so concerned about referenda? Why is that suddenly so important when they are willing to shove through the proposals of the Calman commission, which are a major constitutional change, with no referendum? It seems that Labour and the Lib Dems have selective principles on display.

There is a concentration on process and a fuss about the cabinet secretary not reporting a change to Parliament. Why then did Labour not tell us that HMRC had mothballed the project? Why did the finance ministers Mr McConnell, Mr McCabe and Mr Kerr not tell us that? In fact, given all the manufactured outrage of Tavish Scott and the collective responsibility that the Lib Dems had for eight years, why did they not tell us that there was a non-functional IT system, which was inherited by John Swinney? Why did they pay £50,000, year in and year out? It seems to me that they had no understanding whatever.

The first mention to Parliament of the costs of the system was when Andrew Wilson of the SNP asked in 1999 about administration costs. Jack McConnell's answer—

Tricia Marwick (Central Fife) (SNP): He is not here.

Linda Fabiani: Is he not? That is a shame. His answer included the phrase

"reductions will be made in forward years to reflect the Executive's decision to scale back planned work by the Inland Revenue and the Department of Social Security on preparing for implementation of the Scottish Variable Rate."—[*Official Report, Written Answers*, 10 November 1999; S1W-2195.]

So Labour and the Lib Dems were scaling back implementation work then and actively colluding in the mothballing. I presume that that was because they had no intention of ever using the power.

The SNP Government stated in its manifesto that it had no intention of using the power, and rightly so, because it is a regressive tax. Lower-paid workers would be hit hardest. The tax bill of someone on the minimum wage would increase by 15 per cent, while the tax bill of someone earning around £50,000 a year would go up by only 8 per cent.

Patrick Harvie: Will the member take an intervention?

Linda Fabiani: No, thank you.

That is why I was surprised to see my friend Patrick Harvie calling for the tax to be imposed, especially as he said in a debate in September that he regretted

"that a form of tax-varying power was designed that makes it very difficult, although perhaps not impossible, to justify using it."—[*Official Report*, 9 September 2010; c 28401.]

For the life of me, I cannot see how it is easier to justify using it two months later.

Patrick Harvie is not alone. The Calman commission's independent expert group said that

"arrangements for implementing the SVR are not in place"

and that

"the operational detail required to implement the SVR ... remains unresolved".

The group also pointed out how using the system would create revenue risks for the Scottish Government because of its inherent instability. The system is expensive, too. The fees that have already been paid and the £7 million that is demanded are only for maintaining the system in a state of readiness.

So the question is not why John Swinney refused to pay £7 million to update a system that will not be used, but why Labour and the Liberal Democrats frittered away so much on it. What was bought for Scotland with the £12.4 million? The Inland Revenue gave estimates on the start-up costs for Scottish employers. There would be massive costs to the Scottish budget and to Scottish businesses, all to impose additional taxes on Scottish workers with those on the minimum wage being among the hardest hit. We have been paying fees for the maintenance of something that no one would use because its effects are unpredictable and probably damaging. That seems a bit daft to me. It is the fiscal equivalent of Trident—massively expensive and utterly useless.

Let us have a look at reality. The SNP does not wish to raise the basic rate of income tax to the disadvantage of the poorest in our society. However, the Green Party and some members on the Labour benches want to do that. There are those who support the Calman proposal, but that would not help anyone either, and the worry is that it would make things worse. The only thing that would work is full fiscal responsibility for Scotland. I ask members to reject the Labour amendment and support the SNP motion.

15:19

Pauline McNeill (Glasgow Kelvin) (Lab): As a former member of the campaign for a Scottish Parliament that set up the Scottish Constitutional Convention and the claim of right, I can safely say that I have fought for devolution all my life. Like Patrick Harvie, I am angry about how John Swinney has handled the SVR question and undermined our Parliament.

Those of us who fought for devolution understood the significance of the claim of right and how the Scotland Act 1978—an act without tax-raising powers—was later put right in a referendum with a yes-yes vote when the people of Scotland voted to have tax-raising powers. That is what the people wanted.

Joe FitzPatrick (Dundee West) (SNP) *rose—*

Pauline McNeill: It is on the second answer, to the question on tax-raising powers, that the cabinet secretary will be held to account for his part in undermining the will of the Scottish people. John Swinney came to the chamber today to say that he inherited a tax system that could not exercise that tax-raising power. I listened to what he said. He and he alone had a clear duty to put things right. He had a duty to bring the matter before the Scottish Parliament, but instead we have had an admission in his own words that he chose not to come to the Parliament. No one other than John Swinney had the power to put this right.

Joe FitzPatrick *rose—*

Pauline McNeill: We heard the mothball defence from Linda Fabiani—is she deliberately ignoring the point that has been made by every other Opposition party in the chamber? The matter cannot be put right easily because, in effect, John Swinney has temporarily suspended our powers. The damage has been done and I am afraid that a lot of trust has been broken.

For a nationalist Government with a whole constitutional department devoted to winning independence and more power for Scotland, how can anyone understand how the cabinet secretary could square off his decision? It is out of character for the SNP that John Swinney did not complain about HMRC's behaviour and express outrage at its position. I am at a genuine loss to understand that. Moreover, given John Swinney's clear political experience, I would have thought that a nationalist Government would be a little more careful about being trusted with the devolution—

Joe FitzPatrick: Will the member give way?

Pauline McNeill: I feel that I am being harassed now.

The Deputy Presiding Officer: The member seems to be coping with it. [*Laughter.*] Mr FitzPatrick, I think that it is clear that the member is not giving way.

Pauline McNeill: Thank you, Presiding Officer.

There is all the more reason why a nationalist Government that might not be trusted with the devolution settlement should have insisted on transparency, openness and accountability. That is today's central point. Did Mr Swinney not have confidence in his ability to come to the Parliament and argue his case? Instead, he has treated the matter as trivial when it is much more important. He took a unilateral decision not to pay HMRC or not to resolve the issue. He has failed in his duty and, as Annabel Goldie said, he has bound future Governments.

Among the political charges this afternoon is that Mr Swinney must have known that the issue would be raised again in the context of the budget debate. After the subject had been kept silent for three and a half years, I would have thought that some consideration would be given to it during the budget debate. We know now that, on numerous occasions, Mr Swinney decided not to reveal his hand. At the Equal Opportunities Committee, when Marlyn Glen and Elaine Smith asked him whether he had considered using other levers in the budget, he did not reveal that he could not use that power.

If Michael Moore had not put his letter in the public domain, I wonder whether the cabinet secretary was ever going to tell the Parliament about the matter. Yet another opportunity arose when Patrick Harvie got to his feet during the budget debate and asked the cabinet secretary to raise taxes—many of us disagreed with him—the cabinet secretary could have said to Mr Harvie, "I'm sorry; I forgot to tell you that we can't actually exercise that power in any case."

I find it concerning that paragraph 2.40 of the Beveridge report says:

"There is no reason ... why the Scottish variable rate of income tax ... could not be used".

That report was made to the cabinet secretary's Government. Did he tell the Beveridge panel that

he could not use the tax-raising power? I am sorry to say this, but I think that that was misleading.

I have cited four occasions on which the cabinet secretary had the opportunity to say, "Well, we've had a problem with HMRC" but chose not to say it. Surely he must have anticipated the current situation. Blaming everyone else here will not get John Swinney through the day. I am afraid that belated accountability is not accountability, and a half-hearted apology is no apology at all.

This afternoon the Calman alibi has been used. Let us be clear: this issue has nothing to do with the Calman Scotland bill. The SNP motion states

"that the SVR is due to be replaced by a new taxation system".

That is true. However, in 2007—when, as we have heard, Mr Swinney chose not to resolve the issue with HMRC—he could not use the Calman defence, so he cannot use it now.

Nothing rings true about John Swinney's defence today. He owes the Parliament a proper, sincere apology for withholding this important information, which would have informed the debates that we have had and will inform those that we are still to have.

15:25

Christine Grahame (South of Scotland) (SNP): I want to get some clarity. I think that all of us agree that HMRC, in its words, "mothballed" SVR in 2000.

Members: No.

Christine Grahame: That is what is stated in the briefing note that was given to the permanent secretary and ministers in May 2007. It is a fact.

Paragraph 4 of the note states that, following the Labour-Liberal Administration's

"decision not to invoke the power in 1999 a Memorandum of Understanding ... was agreed between the Inland Revenue (now part of HMRC), the Department for Work & Pensions (DWP) and the Scottish Executive 'to maintain the [then] existing tax infrastructure in the period that the SVR is not being used; and to introduce the tax should the Scottish Executive decide to use the power'."

I would like to know what else the memorandum of understanding said. Was the Labour-Liberal Administration aware that, effectively, the power had been mothballed, on a care-and-maintenance basis? Labour members say that the arrangement is news to them but, apparently, it was known about in 2000. I presume that there were discussions between the Treasury and the finance department.

Patrick Harvie: Will the member take an intervention?

Christine Grahame: I will take some interventions at the end of my speech.

I turn to the silly suggestion that the power has somehow been lost and that, consequently, the constitution of the Parliament has been entirely undermined. That is utter nonsense. We are dealing with a contractual matter between the Treasury and the Scottish Government that relates to payment for the facility. The power is not lost—we are dealing with a contract, not the constitution.

This morning Andy Kerr said as much when pressed during an interview on "Good Morning Scotland". He said that John Swinney had

"given away the major power that the Scottish Parliament has without coming to the parliament".

The interviewer, Aileen Clarke, responded:

"To be fair though Mr Kerr, it's not gone away forever. This isn't irreversible."

Tavish Scott: So it is okay then.

Christine Grahame: Let me finish. Aileen Clarke went on to say:

"If you're willing to stump up the seven million, then you can get it back."

Andy Kerr replied:

"The power remains in statute, but your ability to use it is gone".

The power is still there. I am sorry if that is too simple a constitutional question for those who are trying to rabble-rouse on the back benches. The contract still exists, if members want to pay £7 million for nothing—unless the breaking news is that Labour, the Liberal Democrats and the Conservatives intend to raise tax if, sadly, they get into power next year. Why would they pay money for a system that they could bring into activity within 10 months, which is not a big deal?

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

Christine Grahame: No.

It is a complete nonsense to say that Calman is irrelevant. Why on earth would we pay Westminster money for an IT system for something that will be abolished within months, that we will not use and that will cost us nurses and teachers? I say to Gavin Brown that the example that was given was illustrative of what the funding could provide, instead of buying fresh air.

Why should Scotland pay money for something that Westminster has brought about? Let us look at the terms of HM Treasury's statement of funding policy. It says:

"the devolved administrations will meet all the operational and capital costs associated with devolution from within their allocated budgets".

Fair enough. If we want to introduce free personal care, we have to pay for it. If we want to pay up-front fees for students, that is fine. If we want to have concessionary fares, that is fine. We must bear the costs. However, in this case, the system has been introduced by Westminster without consultation and without discussion, and it therefore does not fit within the contract that has been agreed.

Derek Brownlee (South of Scotland) (Con): Will the member take an intervention?

Christine Grahame: I have sat listening long enough. We have heard not a squeak out of Mr Brownlee so far—or from others on his party's benches, or the Liberal benches. It is they who are now in power.

The Treasury keeps £40 million a year because we introduced free personal care. That is a one-way flow of money. The Treasury takes and takes, even when we do something that saves it money.

Derek Brownlee: Will the member take an intervention?

Christine Grahame: I am on a roll.

I understand that, during the previous eight years, hundreds of millions of pounds that the Executive did not use went flowing back to Westminster.

In answer to George Foulkes, the money that he mentioned is being put into capital projects, because we use Scotland's money for the right things, not for a system that nobody will use—it will be abolished, and there is no purpose to it unless it is intended to raise tax.

15:31

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Most commentators thought at the time that the performance was assured, measured and sincere. The remarks that Mr Salmond made here in the chamber on his coming to office were meant to be words that could fit into bound volumes in university libraries, so that academics could look back on them in times to come and marvel. He said:

"no one party rules without compromise or concession."

He stated that there would be

"no arbitrary authority over this Parliament"

by the Government. He gave a solemn pledge:

"My pledge to the Parliament today is that any Scottish Government that is led by me will respect and include the Parliament in the governance of Scotland over the next four years."—[*Official Report*, 16 May 2007; c 24, 36.]

He did not add—as the finance secretary said to the Finance Committee yesterday—that that would only be in areas where the Government did not think that the Parliament would be too busy, or in areas that were not too political. Ministers would not, of course, wish to trouble MSPs who were busy in their day-to-day work with information relating to a key constitutional power of the institution of which they are members.

Alex Salmond said that morning:

"The days of Scottish Government imposing its will on the Parliament are behind us, although I daresay that there might be days in the near future when I come to lament their passing."—[*Official Report*, 16 May 2007; c 25.]

He did not need to wait long, and he need not have lamented. What we heard from the finance secretary today was, unfortunately, an apology ruined with excuses. In an attempt at contrition, he blamed others. True remorse is never just a regret over consequence; it is a regret over motive.

There was none of that from Alex Neil, the Minister for Housing and Communities, this morning. He said that in 2007, the Government had made it clear that it would not use the tax varying power. No party had used it and no party was going to use it. The Government thought that the £7 million would be better spent on health, education and housing. The issue was not about the previous Executive or Calman or any of the other smokescreens that the Government has raised on this issue.

Nowhere in the start of his speech did the finance secretary mention that HMRC was not simply updating IT—it was not like buying a new version of Excel—it was combining regional national insurance and pay as you earn databases to make one national one. At no stage did the Scottish Government oppose that. In fact, public bodies in Scotland have welcomed that move, which makes things more efficient.

John Swinney also did not say that the Government had wanted to use the mechanism of the SVR. The SVR was the mechanism of choice for implementing local income tax—it was going to be the method used. He today condemned HMRC for being chaotic and shambolic over the past three years, yet two years ago he commended it for its effectiveness and cost efficiency. We know that the SVR was going to be the mechanism of choice, as the Government's proposals stated it categorically. They said:

"the Government believes that earlier preparations made by HMRC for the SVR at the time of devolution should provide a basis for the arrangements that will be needed to implement a local income tax."

I met the cabinet secretary on 11 September 2008 to discuss a local income tax, and it appears that he chose at that time, as well as on many other occasions, not to let me know that operability of the SVR had not been carried on by the Government—[*Interruption*.] I heard the Minister

for Parliamentary Business say, from a sedentary position, that operability had already gone. In its proposals on a fairer local tax for Scotland, in March 2008, the Scottish Government said:

"the SVR could, in principle, be introduced relatively quickly."

If operability had already gone, why did the Scottish Government say that? The minister is welcome to intervene to respond to that point, rather than comment from a sedentary position. If the Parliament was not misled today, was it misled in 2008?

There was no mention of the fact that the Scottish Government considered the mechanism to be a waste of money when it said that it had no intention of using it. When the Government ditched the local income tax, it said that it would campaign on the issue in 2011 and that it would be for the people of Scotland to decide. What the Government did not say was that it had chosen not to maintain the power that would be needed to implement a local tax. We have learned that in 2010, shortly before the election.

To mislead people once might be considered careless; to do so a second time is surely a conscious act. We know that the SNP got rid of a power that it had wanted to use and we know, from today's HMRC briefing, that the SNP inherited an operable system. However, the Cabinet Secretary for Finance and Sustainable Growth could not explain why, over the years, he did not tell the Parliament about the issue. That was the biggest error. In 2007, 2008, 2009 and 2010 he had the ability to inform the Parliament and he had just cause to do so.

During the passage of the Scotland Bill through Westminster, Mr Swinney was an MP. He made powerful speeches in the debates. He said:

"First, the power to raise at least part of its finances is a basic requirement of any Parliament. Secondly, the people of Scotland still have discretion on how the powers should be used ... The people of Scotland have a choice on whether the powers are exercised."—[*Official Report*, *House of Commons*, 23 February 1998; Vol 307, c 52.]

There is no question that the power was removed unilaterally and undemocratically. For that, there requires to be a full apology.

15:37

Derek Brownlee (South of Scotland) (Con): During the past few years under a minority Government, we have learned of many examples from previous parliamentary sessions of the roles and responsibilities of the Parliament and the Government becoming conflated, because in practice the Government of the day commanded a majority in the Parliament. Of course, there is an important distinction between the role of the Executive and the role of the Parliament. That is not a constitutional nicety but the foundation of the authority on which the Scottish Government sits and the foundation of how the Scottish Parliament operates.

The issue that we debate today is perhaps the most glaring example of ministers' ability to take decisions over which the Parliament might properly think that it should have oversight, although it has become apparent that in practice there is no parliamentary oversight.

The Scottish Government is a minority Government. When it was formed, many people expected it to fall quickly. It could have fallen at any point, and could still fall relatively easily. Ministers should not lightly take decisions that have far-reaching consequences, because they might not remain ministers even during the current parliamentary session.

When we consider the background to the powers on the standard variable rate, it is interesting to consider the rules that apply to the Parliament. It is clear—and I do not dispute—that nothing in the standing orders of the Parliament, the Scotland Act 1998 or any of our written procedures requires the Government to tell us about the decision that it took in 2007. However, that is odd, because there are detailed rules in standing orders about tax-varying resolutions. For example, only a member of the Scottish Government may lodge a tax-varying resolution, which must be approved by the Parliament, and if it is the foundation of a budget bill and is voted down, the budget falls.

A written agreement in 2005 between the Scottish Government and the Finance Committee, which clearly has the locus on the SVR, covers the budget process but is silent on the SVR. We had a review of the budget process earlier in this session of the Parliament, and the issue never arose. Why? Because no one ever thought that the decision that the Scottish Government took could be taken. It was never a prospect. It is perhaps unfortunate that we did not think about that, but it is regrettable that the Scottish Government did not tell us what was happening.

Patrick Harvie, who rather spoiled his speech towards the end when he laid into the UK Government, made a valid distinction about the power to exercise the SVR in practice. I accept that the provisions in the Scotland Act 1998 have not changed, but the referendum was on the power and, in practice if not in law, surely that power must be retained by the Parliament unless the Scottish people determine otherwise. There is a clear distinction between the legislation and the power, just as there is a clear distinction between the political decision on whether to exercise the power and its availability.

The thing that troubles me most about the issue is why the Parliament was not told at the beginning of the session about the cabinet secretary's decision. I still do not understand that; perhaps the cabinet secretary will explain it better when he concludes. If the cabinet secretary had come to Parliament to explain the position, and if the Parliament had had the opportunity to debate the issue and take a view on whether the payments should be made or HMRC was acting unreasonably, the current mess would not have arisen. We would have had our say and taken a view, and the Government would have kept Parliament informed.

I am struck by the timeline—although I must say that I do not know whether this is a partial timeline. The First Minister's letter of last week refers to the establishment of the system and payment of £12 million in 2000. The letter from HMRC dated 27 April 2007, which has been released today, refers to a project board that met "last month", which is March 2007. That indicates that certain decisions needed to be taken in 2007. The First Minister's letter talks about decisions in 2007 and states that in 2008 HMRC sought further money. The timeline then goes to July 2010, when, the First Minister says, the Government was asked for £7 million, and it finally ends on 20 August 2010, when, the First Minister says, the Scottish Government offered talks about which it has heard nothing.

I would like clarity from the cabinet secretary. Given that we now have from the First Minister details of what happened in 2000 and 2010, and we have one letter and a briefing note for ministers from the permanent secretary from April 2007, is the cabinet secretary prepared to release all of the correspondence and project board minutes in the timeline? Until we see the full timeline and every piece of correspondence, we cannot be sure that we are not being given simply a partial story. Given the Parliament's lack of faith in the Government's decision, the clarity and transparency that would be provided by publishing the information in full would be helpful.

I say to Christine Grahame in passing that the Calman commission was established by a vote of the Parliament. She may not like that fact, but it was the will of this Parliament that the Calman commission should exist.

I end simply on one point. Other members have called for an apology, and the cabinet secretary can consider whether he wants to give one more fully than he did in his opening speech. Much more important to me than an apology is that we get some answers. We need to get to the bottom of the issue, some clarity on who took decisions and when, and the full publication of all the correspondence in the public domain, so that we and the public can draw conclusions.

15:43

Andy Kerr (East Kilbride) (Lab): We have all listened carefully to the cabinet secretary in this debate. Let us remind ourselves that this debate is happening only because someone else from another Parliament drew the matter to our attention. I certainly believe that the cabinet secretary has offered no defence for what has been and will remain the greatest act of political sabotage in the post-devolution period.

The situation began with an initial decision, a cover-up and then a series of deceptions throughout the lifetime of the Parliament that bring us to this difficult position. I share Patrick Harvie's view: I believe that I got on personally very well with Mr Swinney. He had a choice today about how he came to the Parliament to explain the situation, and I think that he made the wrong choice about how to resolve the matter with us.

Some documents have been released, and I share Derek Brownlee's view: we want to see all the documents that are available. However, the documents do not help Mr Swinney much—they condemn him even more for his lack of action and lack of clarity to the Parliament. In effect, they say that, if the Government had paid £50,000, it could have collected perhaps £890 million out of £900 million.

The previous Administration maintained the power. Pauline McNeill was correct to refer to the mothball defence. We made it clear to the Treasury that we would not use the power, but we mothballed it and we ensured that we could have it back within 10 months. John Swinney has decided to drive a coach and horses through that policy.

Joe FitzPatrick: Will Andy Kerr give way?

Andy Kerr: If members care to read the document further, they will see that it shows that release 1, which would have cost £227,000, could have kept the whole situation running. [*Interruption*.]

The Deputy Presiding Officer: Order.

Andy Kerr: John Swinney chose to take a different decision. That must be cast in the light of what he has told us throughout his time as cabinet secretary. The draft budget, which I presume that he signed off, says:

"Our opportunities to vary taxes are limited to the Scottish Variable Rate".

They are not, because he has given away the effective power.

Much has been said about statute. There is no point in having the power in statute when the Government and the Parliament have no capability to use it.

Joe FitzPatrick: Will Andy Kerr give way?

Andy Kerr: I am happy to give way.

Joe FitzPatrick: Andy Kerr asserts that the previous Labour-Lib Dem Government mothballed the power. When was that decision taken and why was it not brought to the Parliament? Was he aware of the state of unreadiness of that mothballed system?

Andy Kerr: The state of readiness is clarified in the policy document that we have received today, which says:

"The advice from HMRC's IT partners is that even if the decision is not to invoke SVR during the life of the coming Scottish Parliament it is recommended that the work associated with the Define period ... be undertaken".

Who decided not to do that work? Mr Swinney. That is, sadly, the heart of the debate. The cabinet secretary made that conscious decision. As has been said, the Government would go to battle for the Lewis chessmen. However, when the Scottish Parliament's single biggest power has been removed from us, we hear not a squeak from the cabinet secretary, because he knows that the decision was the wrong one at the wrong time. [*Interruption*.]

The Deputy Presiding Officer: Order.

Andy Kerr: We are now on day 6 of this fiasco. It began with excuses about letters from Michael Moore not revealing the truth and continued with the claim that it was Calman's problem. Then we heard that our briefcases were not big enough to take the information. Today, we have got some documents—not all—that in no way support the cabinet secretary's position.

John Swinney told the Equal Opportunities Committee:

"We could use the tax-varying powers—for example, we could increase the basic rate of income tax by 3p in the pound."—[*Official Report*, *Equal Opportunities Committee*, 4 May 2010; c 1630.]

That simply is not true for 2011-12—it could not be done. That is the nub of the issue.

We need not only contrition from Mr Swinney about his role and an apology for not informing the Parliament but an understanding that he made the wrong decision. One and a half million Scots said that they wanted the power in the Scottish Parliament, but he and his colleague Mr Salmond have taken it away. That has been done by the unilateral decision of a minority Administration. All that we have heard from other members about sovereignty and the Parliament's rights was laid aside by Mr Swinney.

We move into the cover-up period—the deceit and misdirection. That misdirection was perpetrated by none other than Mr Salmond, too. He always goes on about how

"We in the Scottish Government believe that sovereignty in Scotland lies with its people",

but he did not trust the 129 people who are elected by our people in Scotland enough to tell us about the decision that had been taken.

Alasdair Allan (Western Isles) (SNP): Will Andy Kerr give way?

Andy Kerr: Perhaps Alasdair Allan can explain why we did not know about the decision.

Alasdair Allan: I merely ask Andy Kerr whether he can confirm which minister decided to mothball the power.

Andy Kerr: There we have the mothball defence again. We ensured—[*Interruption*]—the information is in the documents if members care to read them. For the sake of £50,000, at the drop of a hat, and within 10 months, the Parliament could have used the power. [*Interruption*.]

The Deputy Presiding Officer: Order.

Andy Kerr: The cabinet secretary removed that power from the Parliament. He thought that he was better—he knew better—than 1.5 million Scots. How many of his Cabinet colleagues agreed with the decision? Why do they not simply tell us that the main perpetrator of the deception was the Scottish Cabinet?

The Administration is a minority Administration. We were promised better, and we have not had it. This Government and all Governments are entrusted with power, and I believe that the SNP has abused its power. The stewardship of our nation deserves better, and the cabinet secretary must account for his actions.

As many members, including Patrick Harvie, have said, the relationship between Government and Parliament has been put under huge strain by the cabinet secretary. Since 1999, there have been Scottish ministers who, to put it bluntly, have gone for less, either because they decided to do so or because they were sacked. Mr Swinney needs to reflect on his actions. He should not say that it was someone else's problem or that it was all about taxation and who foots the bill; it was a decision for which he must be held accountable. Before the debate, I said to other members that what Mr Swinney should do was make life easy for us all by admitting to the Parliament that he had got it wrong and that he owed us an apology for the initial decision, for the deception and cover-up that took place, and for his removal from the Parliament of one of its key powers. The decision was his decision, for which he must be held accountable.

15:51

John Swinney: I have listened carefully to the debate and I intend to respond with care to members' comments. I am grateful to Mr Harvie for the kind remarks that he made in the opening part of his speech, because throughout my parliamentary career—both as a member of the House of Commons and as a member of this institution—I have endeavoured to live up to the obligation to act with honour and openness in all that I do, and it is in that spirit that I will conclude the debate.

Let me correct one point that Mr Kerr just made, which was that if the £50,000 payment had been sustained, that would have delivered 10-month operability for the system. That is not the case, as the document that I have released today—and I will certainly give consideration to the publication of further documentation—makes clear. If I had wished to exercise the Scottish variable rate in April 2008, I would have had to pay an extra £3.4 million to make that happen. If I had wanted to do it at what is described as the most reliable moment—April 2009—it would have cost £2.9 million.

George Foulkes *rose—*

John Swinney: I will try to respond to the points that have been made as helpfully as I can, if members will give me the opportunity to do so. I will proceed in that fashion.

I had no intention of exercising the SVR in 2008 or 2009, because I had stood on a manifesto commitment not to do so. The mistake that I made at that time was not to come to the Parliament with that information, and I regret the fact that I made that mistake.

Michael McMahon (Hamilton North and Bellshill) (Lab): Will Mr Swinney take an intervention?

John Swinney: If Mr McMahon will allow me to develop my points, I will give way in a moment.

There was a third option in the advice that I was given, which was that I could establish 10-month readiness for the SVR if I spent £1.2 million over the course of the session to enable that choice to be made by the next Parliament, and that was the option that I instructed my officials to pursue. To my regret, that position did not advance as quickly as I would have liked it to. I am not making a comment that is designed to blame someone; I am simply expressing a reality that I think we are all familiar with, which is that sometimes HMRC does not get the systems work under way as quickly and effectively as it might do. I am not blaming HMRC; I am accepting responsibility because it has not proved possible for an option that I preferred, which I set out to take forward, to make as much progress as I would have liked it to.

Let me quote from the briefing that I was given when I became a minister:

> "If the decision is not to invoke SVR during the life of the Scottish Parliament it is recommended that the work associated with 2 phases, at a total cost of £1.2m, should be undertaken to maintain the current 10 month state of readiness."

That is the option that I went for—that is what I wanted to happen, but it has not materialised, and I regret the fact that progress has not been made.

Margo MacDonald: Will the minister give way?

John Swinney: If Margo MacDonald will forgive me, I want to put some more comments on the record.

Pauline McNeill asked me two critical questions during her speech. She said that I had a duty to put right the problem that I inherited, and that I had a duty to bring that to Parliament.

Johann Lamont (Glasgow Pollok) (Lab): It is a problem that you created.

John Swinney: Johann Lamont mutters that I created the problem, but I ask her to look at the briefing note that I received, which said that there would be an additional cost to making any of the systems operable.

In relation to the first of Pauline McNeill's points, the decision that I took to opt for option 3 at a cost of £1.2 million to establish the 10-month readiness was my attempt to put the situation right. That is what I tried to do. I also had a duty to bring that to the Parliament, and on that point I made a misjudgment. I should have come to the Parliament at the very beginning, when we did not make the progress that we thought we would make with HMRC, and after the discussions in August, which were designed to ensure that we made as much progress as we could.

Mike Rumbles: On that very point, I go back to my first intervention. The point is that the minister has had three-and-a-half years and more than 100 opportunities—[*Interruption*.] "Oh shut up"?

The Deputy Presiding Officer: Mr Rumbles, please!

Mike Rumbles: The minister has had 100 opportunities to inform Parliament about the situation. He has not made one mistake, he has made more than 100 mistakes. Is his regret for being found out rather than for not informing us?

John Swinney: I am trying to make some progress towards resolving the issue to the Parliament's satisfaction. With the greatest of respect, I am not sure that that was the most helpful contribution.

I have accepted in front of the Parliament today that I made a number of wrong judgments. On a number of occasions, I made decisions in good faith to ensure that the 10-month readiness would be in place during the next parliamentary session, and I did not come to the Parliament to explain those decisions. I apologise to the Parliament for that error of judgment in not coming to the Parliament to ensure that those issues were addressed.

In working on this situation, I aimed to ensure that the problem that I inherited was properly and fully addressed during my term in office. Unfortunately, not enough progress has been made to enable that to happen, and I regret that.

In the work that the Scottish Government has undertaken to address the issue, I have focused on how we can take steps to ensure that it is resolved. Clearly, as the information that I have published shows, any amount of money can be spent to upgrade IT systems and ensure that they are operable. That can be done. No power has been lost for all time. If the Parliament is prepared to spend a sum of money to upgrade an IT system to ensure that the 10-month operability is available, it can make that choice. I have not taken that choice away from the Parliament; it is still available.

Jeremy Purvis: The deadline was 20 August.

Patrick Harvie: Will the cabinet secretary give way?

John Swinney: I will give way to Mr Harvie.

The Deputy Presiding Officer: Briefly, Mr Harvie.

Patrick Harvie: I am grateful. Will the cabinet secretary support an amendment to the budget to that effect?

John Swinney: That is a choice for the Parliament to make in the context of the choices within the budget process. Parliament has the opportunity to take a decision to spend money and invest in the IT systems if it wants to exercise the SVR powers. I simply make the point that the difficulties and challenges of public expenditure cannot be ignored when we are making such judgments.

Jeremy Purvis: Will the cabinet secretary give way?

John Swinney: I have to conclude my remarks.

I hope that what I have said has helped to resolve the difficulties that the Parliament faces with the issue. I have apologised to the Parliament for the fact that I did not share information with it as I should have done. I have learned that lesson, and I hope that the Parliament accepts that today.

The Deputy Presiding Officer: That concludes the debate on the Scottish variable rate of income tax.

I have something to say in relation to a point that Elaine Smith raised earlier about documents. The issue has been looked into briefly in the limited time available. There does appear to be some confusion over the documents to which Elaine Smith referred. The Presiding Officers are going to try to ensure that the situation does not happen again.

Children's Hearings (Scotland) Bill: Stage 3

16:00

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is stage 3 proceedings on the Children's Hearings (Scotland) Bill. Members should have the bill as amended at stage 2, which is Scottish Parliament bill 41A, the marshalled list, the groupings, which the Presiding Officer has agreed and, this time—members should listen because there is something slightly different—a supplement to the marshalled list, containing manuscript amendments lodged today that the Presiding Officer has agreed may be taken. The supplement also provides details about which groupings those amendments fall in. The division bell will sound and proceedings will be suspended for five minutes before the first division, for a voting period of 30 seconds.

Section 1—The National Convener

The Deputy Presiding Officer: We come to group 1. Amendment 1, in the name of the minister, is grouped with amendments 2, 109 and 118.

The Minister for Children and Early Years (Adam Ingram): The amendments deal with the appointment of the national convener and principal reporter and ensure the involvement of children and young people in the appointment process. We had planned to involve children and young people in the appointment of the first national convener through non-legislative means, but it was clear at stage 2 that the Education, Lifelong Learning and Culture Committee favoured provision in the bill to that effect and in respect of any subsequent national convener appointments.

There were some technical issues with the amendments accepted by the committee at stage 2. For example, they would have required consultation on the appointment with every person under the age of 18 in Scotland. I have therefore sought to make alternative provision. Amendment 1 provides that ministers "must take reasonable steps" to involve children and young people up to the age of 21 in the selection of the first national convener. We have already had initial discussions with partners about how that will work in practice.

Amendment 2 is consequential to amendment 1. Amendment 109 makes the same provision as amendment 1 in respect of children's hearings Scotland, which will have responsibility for subsequent appointments or reappointments of national conveners.

In making that provision in respect of the national convener, it is right to make the same provision in respect of the principal reporter. Amendment 118 provides for that and is supported by the Scottish Children's Reporter Administration.

I move amendment 1.

The Deputy Presiding Officer: No other member has asked to speak—[*Interruption*.] Suddenly members have asked to speak.

Ken Macintosh (Eastwood) (Lab): I was waiting too politely.

I thank the minister for lodging the amendments. The committee discussed the issue at stage 2 and agreed specifically on the involvement of children in the appointment of the national convener. There was a series of amendments designed to put children at the heart of the children's hearings process. I am happy to offer Labour's support for the minister's revising amendments.

The minister was intending to lodge amendments on a related issue, which was to establish a reference group of children and young people. The committee discussed the matter between stage 2 and stage 3 and I believe that the minister has established a working group that can fulfil that purpose and that he intends to address those issues through regulations. I would welcome confirmation of that today.

Karen Whitefield (Airdrie and Shotts) (Lab): Like Mr Macintosh, I welcome the amendments, which are based on a fundamental point that was raised consistently with the committee during its deliberations on the role of the new national convener. There has been some tension about the functions and role of the national convener. The stakeholders, who have been anxious at times, are a little more comfortable as we reach the end of our deliberations on the bill.

It is important that all stakeholders are involved in our deliberations on the setting up of the new body, children's hearings Scotland, and, in particular, on the national convener. The involvement of children in that role is vital and sets the tone for how the bill will improve things so that we not only listen to children's experiences but reflect their concerns.

Adam Ingram: I thank members for their support for the amendments and I confirm the points that Mr Macintosh made about a national reference group. I hope that we can take that matter forward in short course.

Amendment 1 agreed to.

Amendment 2 moved—[Adam Ingram]—and agreed to.

After section 9

The Deputy Presiding Officer: We come to group 2. Amendment 3, in the name of Elizabeth Smith, is the only amendment in the group. I call Elizabeth Smith to speak to and move the amendment.

Elizabeth Smith (Mid Scotland and Fife) (Con): There is a simple principle behind amendment 3—namely, the assurance that there will never be any facility for any person who occupies the office of national convener or of principal reporter to intervene to direct or guide the decision-making process of a children's hearing.

At stages 1 and 2, there was some debate around the definition of the legal advice that could be provided; in particular, about whether that could be interpreted as a facility to direct what ought to happen as opposed to a factual statement of the legal options and what could happen. There is, I suggest, a subtle difference between the two and it would not be appropriate for the national convener to be in too powerful a position when it comes to providing legal advice.

If improving legal representation for children is one of the main objectives of the bill, it must ensure that there are appropriate checks and balances. That is why the independence that is enshrined in amendment 3 is crucial. I hope that members will support the amendment.

I move amendment 3.

Karen Whitefield: Throughout the committee's deliberations on the bill, volunteers who serve on our children's hearings panels every day told us that they thought that their independence was absolutely central to the fair and just operation of the children's hearings system. They thought that that independence was vital in ensuring that the children and young people who appear in front of those panels had confidence in the system. Amendment 3 is a helpful addition that enshrines in statute the independence of children's hearings panels. It is important that we put that on the record to ensure that there is confidence in the system in the years ahead.

Adam Ingram: I support amendment 3, which makes clear the parameters of the powers of the national convener and the principal reporter in respect of a hearing. It supports and protects the independence of the hearing, which is a key principle of the bill and one that is demonstrated across all its provisions.

Although the national convener has a statutory duty to provide independent advice to a hearing, the principal reporter also has the right to attend a hearing and can make submissions to the hearing. I welcome the fact that the amendment makes it clear that neither the national convener nor the principal reporter can guide or direct a hearing in the carrying out of any of its functions.

Amendment 3 agreed to.

Section 10—Power to change the National Convener's functions

The Deputy Presiding Officer (Trish Godman): We move to group 3. Amendment 4, in the name of the minister, is grouped with amendments 122, 159, 6, 123, 160, 161, 150, 150A, 150B, 150C and 162. That includes the manuscript amendments.

Adam Ingram: This group of amendments relates to the order-making powers under sections 10 and 17. Those powers will enable the functions of the national convener, under section 10, and the principal reporter, under section 17, to be altered in the future and will enable ministers to specify the manner or period in which a function conferred on either person or party is to be carried out. The bill provides that those orders are to be subject to affirmative procedure.

As members may recall, Ken Macintosh lodged an amendment at stage 2 that would have required ministers to consult widely prior to using the powers. The amendment was withdrawn on the basis that I would work with Mr Macintosh to prepare appropriate amendments for stage 3. I have subsequently lodged amendments 4 and 6, which require consultation with children, young people and others to take place, as appropriate, prior to the functions of the national convener and the principal reporter being amended or ministers specifying how and when a function is to be carried out.

I believe that the amendments are in line with Kenneth Macintosh's original amendment and make what I believe to be proportionate provision. I acknowledge the strength of concern about the use of the powers, particularly in relation to the national convener and the powers that could be bestowed on him or her. Karen Whitefield's amendments 122, 123 and 150 seek to address that concern by making the powers subject to super-affirmative procedure, which would introduce a much greater level of scrutiny. I am content to accept the amendments, subject to the seven manuscript amendments, which I am grateful to the Presiding Officer for accepting for debate today. Those manuscript amendments do not change the substance of Karen Whitefield's amendments or the parliamentary procedure that she proposes. Rather, they ensure that the pre-consultation will be proportionate. For example, amendment 150C provides for the publication of draft orders, rather than for a draft order to be sent to every person in the country under the age of 21.

I hope that the Parliament will accept my manuscript amendments along with Karen Whitefield's amendments. If it does, there will no longer be a need for my amendments 4 and 6, and

I will seek leave to withdraw them at the appropriate time.

For the moment, however, I move amendment 4.

Karen Whitefield: I am grateful to the minister for the discussions that he has had with me on this subject and the fact that we have been able to get some consensus on the issue.

I lodged these amendments in an attempt to be helpful. Throughout the committee's deliberations on the bill, there was a central concern around the role of the national convener. A number of concerns were expressed at stage 1 and stage 2. A change to the role of the convener might be necessary in the future—none of us can see into the future and, therefore, we cannot possibly envisage what might be appropriate at a later date. Equally, however, we need to ensure that all the stakeholders are confident that the changes are the right ones, that any change will be subject to full parliamentary scrutiny and that people will have an opportunity to be involved in the discussions about whether any changes are appropriate. That is why a number of panel chairs, reporters and a number of children's organisations thought that the use of super-affirmative procedures to scrutinise any proposed changes would be appropriate. I am grateful to the minister for listening to those concerns. Labour will support my amendments and, I am happy to say, the minister's manuscript amendments.

Margaret Smith (Edinburgh West) (LD): I welcome the minister's comments and his acceptance of Karen Whitefield's amendments on super-affirmative procedure, even if it has meant that we must consider even more amendments. I believe that the minister had concerns about the possibility that the introduction of the method might lead to delay and might be an excessive response to the minor changes that were proposed. However, I believe on balance that, given the difficulties that we have had throughout the progress of the bill, and some of the concerns that have been raised about the functions of the national convener and the principal reporter, it is prudent to ensure that the Parliament has the ability to properly scrutinise and amend any proposals to change the functions of those two posts and to ensure that there is proper consultation with stakeholders, including young people.

Several of the key stakeholders have had, and still retain, concerns about the provisions, and it is only right that the Parliament should undertake proper scrutiny of any changes, irrespective of who the responsible minister might be at that time.

As Karen Whitefield says, we do not know what changes might be made in future, but we know that, by agreeing the amendments today, the Parliament will ensure that it and stakeholders have the opportunity to give proper scrutiny to any changes that are proposed.

We will support the amendments, including the manuscript amendments.

Bill Aitken (Glasgow) (Con): It has been apparent, not only from what the minister said today—which was confirmed by Karen Whitefield—but from my reading of the way in which this matter has progressed, that the issue of the national convener has not been without its sensitivities or, indeed, controversy. There is sound merit in Karen Whitefield's amendment 122 and it is pleasing that the minister recognises that. Subject to the withdrawal of amendment 4, which I am sure is forthcoming, the Scottish Conservatives will support the package of amendments.

16:15

Adam Ingram: It appears that we agree on the way forward on this issue, and I welcome that. On the basis that members will support Karen Whitefield's amendment and my manuscript amendments, I seek leave to withdraw amendment 4.

Amendment 4, by agreement, withdrawn.

Amendment 122 moved—[Karen Whitefield]—and agreed to.

Amendment 159 moved—[Adam Ingram]—and agreed to.

Section 11A—Monitoring and review

The Deputy Presiding Officer: We move to group 4. Amendment 5, in the name of the minister, is grouped with amendments 97, 98 and 98A.

Adam Ingram: The feedback loop has been widely welcomed as a means of ensuring that panel members are better informed and better able to take decisions in the best interests of children. There has, however, been considerable discussion—including at stage 2—about exactly what it is for, what information should be gathered and what the bill should provide for.

I am clear that the feedback loop should provide information for panel members on the actions taken by local authorities to implement supervision orders, the impact of those actions on children and the type of interventions that are working well. I believe that panel members will take progressively better decisions once they have access to that kind of information.

In addition, the information should provide at a local level a tool to facilitate open and professional

discussion between panel members, local authorities and area support teams. Nationally, the information will allow the national convener to plan and develop training for panel members. If it is to work effectively, we need to strike the right balance between collecting useful information and placing new burdens on local authorities.

It follows that I do not support the amendments to the feedback loop provisions that the committee accepted at stage 2. They would require the provision of quarterly feedback to all panel members on each supervision order that is put in place. We should think about that for a moment. There are around 13,000 children under compulsory supervision at present. To prepare four reports each year for each of them and to provide those reports to each of the three panel members would involve the production of more than 150,000 such reports each year, which I do not believe is proportionate.

Even if reports were brief and were to be provided on a six or 12-monthly basis, there would still be tens of thousands of them, which would have a significant impact on the workload of social work departments and the delivery of services.

Of even greater concern than the workload and bureaucracy that would be created is the amount of confidential information about children that would be flying around the system. It is clear that panel members need that information to take decisions at hearings, and there are safeguards in place to ensure that it is handled appropriately—for example, panel members leave the papers with their reporters straight after the hearings. A whole new system of safeguards would be needed if they were to get more personal information as has been suggested. It is particularly concerning if the information is not directly related to the hearings that they are about to attend.

It is worth noting that panel members do not want that information, and have expressed concern that the amendments that were accepted at stage 2 would

"place an extraordinary bureaucratic burden on local authorities and divert precious resources away from child protection".

They recommend that the Parliament should delete those amendments, and that is what my amendment 97 proposes. In lodging it, however, I was conscious of the calls at stage 2 for the bill to contain more detail about the information to be collected through the feedback loop. I have sought to provide that through my amendment 98, which gives the national convener the power to collect information on the implementation and impact of supervision orders, to feed that information back to panel members annually on an anonymised and aggregated basis, and to lay it before the Parliament. I believe that that offers a reasonable and proportionate way forward.

Ken Macintosh's amendment 98A seeks to make it more explicit that the information that is gathered should include outcome data—that is, data on how the wellbeing of children has been affected. I see merit in that and I am happy to support his amendment.

Amendment 5 would remove a provision that was contained in another amendment that was agreed to at stage 2. Section 11A requires children's hearings Scotland to monitor and review the operation of the hearings system. There are clear links between that provision and the feedback loop in that both seek the gathering of information on how the system is working. Given the detail about the feedback loop that amendments 98 and 98A introduce and the information that they will allow to be collected, I do not believe that section 11A is required.

I move amendment 5.

Ken Macintosh: As several witnesses and members highlighted at stages 1 and 2, the feedback loop is one of the most important innovations or reforms that the Government is introducing under the bill because it offers the opportunity to focus on outcomes for children, rather than simply on the processes for dealing with them. Children in Scotland states in its briefing to members before today's stage 3 proceedings:

"The most valuable contribution of this Bill to the improvement of Scotland's landmark Children's Hearings system ... would be to enshrine in law the duty to robustly gather, analyse and report the actual impacts of its decisions on the lives, life chances and well-being of our ... children".

At stage 2, the committee made it clear that we wanted greater clarity as to how the feedback loop would operate, and we agreed to two amendments on the issue—one that covered the gathering and dissemination of information at a national level and one that focused on feedback for individual panel members. I believe that we agreed to the latter amendment because many of us have heard from panel members who have complained about being kept in the dark as to the outcome of their decisions. I am sure that some of us have experience of cases where children have gone from one year to the next under a supposed compulsory supervision order but with no actual contact with social services.

The purpose of the amendment was to highlight and focus attention on any improvements or lack of improvements to the welfare or wellbeing of the child. It was certainly not to overburden panel members with information or to overbureaucratise the hearings system. It is clear, however, that

many panel chairs and others are worried that that will be its effect. In addition, I would not claim that the amendment that we agreed to at stage 2 on the monitoring and sharing of information at a national level contained the only wording that would achieve that objective.

Having taken advantage of the minister's offer to discuss the issue further after stage 2, I am reassured that he shares the objective of using the feedback loop to improve outcomes for children who appear before the panel. Children in Scotland, which, along with the other children's organisations, was pivotal in drawing attention to the issue and which drafted the stage 2 amendments, has suggested, albeit reluctantly, that if we are to agree to the Government's amendments in the group, we should further support amendment 98A to clarify that it is the wellbeing of children that is at the heart of our thinking. I welcome the minister's comments on the Government's support for amendment 98A.

Panel members should be kept informed of the impact that their decisions have on the lives of the children who come before them. That will allow panel members to learn from their own experiences and the shared experience of others. I believe that amendment 98A will help to achieve that aim. For those reasons, I urge members to support all the amendments in the group.

Elizabeth Smith: One of the most important messages that we received from many stakeholders in the children's hearings system was about the need for better monitoring and sharing of relevant information, particularly when it comes to the implementation of compulsory supervision orders. The minister is correct to raise concerns about overburdening panel members and the possibility of sensitive information being too voluminous. The amendments in the group, particularly amendments 98 and 98A, ensure that the process will be much more transparent and rigorous and that it will provide panel members with relevant information about the circumstances of children who have been subject to compulsory supervision orders. The provision of an annual report will also be an important part of the process. We support the amendments.

Margaret Smith: The feedback loop is one of the most important features of the bill and the discussion on the issue serves to remind us that we are striving to achieve a better children's hearings system that delivers better outcomes for children.

Throughout the process, some of us felt that panel members would benefit from more specific feedback on what actually happened to children and young people as a result of their decisions. Of course, some of those decisions have been agonised over, and panel members certainly put a great deal of time and effort into ensuring that they do the right thing. Constituents of mine who have volunteered their time to be panel members have told me that they sometimes felt that they just did not get what one would think of as reasonable feedback about the actual impact of their decisions and whether they had benefited the children and young people in question.

As a result, I have always felt that feedback was important, not only to volunteer morale as part of an on-going support system but, more important, to the development of the system and, indeed, its volunteers, who need to know the effects of their decisions and have information about services and outcomes to ensure that they learn lessons about the effectiveness of particular interventions. Like many others, I believe that such a move will lead to better decision making.

Evidence on the level of information sought differs. Some want more personalised information—I have to say that I was minded to go in that direction myself—while others are content with a more general amount of outcome data, information on whether local authorities have implemented orders and so on. However, the children's panel chairs group is quite clear on the issue. In a letter to the minister today, it states that it remains opposed to the notion of individualised feedback for panel members and cites concerns about the impact on resources and confidentiality.

Bearing that in mind and given that, for me, one of the major driving forces has been the best interests of panel members and their feelings about the system that they will have to implement, we will, on balance, support the Government's amendments 97 and 98 alongside Mr Macintosh's amendment 98A. We believe that general feedback to panel members on an annual basis is a helpful and proportionate way forward that will give the national convener and panel members information to improve the system and outcomes for our children.

The Deputy Presiding Officer: I call the minister to wind up.

Adam Ingram: I have nothing more to add, Presiding Officer.

Amendment 5 agreed to.

Section 17—Power to change the Principal Reporter's functions

Amendment 6 not moved.

Amendment 123 moved—[Karen Whitefield]—and agreed to.

Amendment 160 moved—[Adam Ingram]—and agreed to.

Section 27—Children's hearing: pre-condition for making certain orders and warrants

The Deputy Presiding Officer: We move to group 5. Amendment 124, in the name of the minister, is grouped with amendments 125 to 131, 22 to 33, 36 to 39, 143, 40, 42 to 50, 53 to 60, 62, 69 to 71, 76, 79 to 82, 86 to 90 and 108.

Adam Ingram: This is a group of 57 amendments. Members will be glad to know that I do not intend to speak to all of them.

Members: Hear, hear.

Adam Ingram: The amendments relate to three main topics: making provision for new grounds when a child is already subject to a compulsory supervision order; clarifying the powers of a review hearing when it defers a decision on a compulsory supervision order; and simplifying the bill provisions.

Members will be particularly interested in two policy changes, the first of which is made by way of amendment 70. The amendment introduces a new order called an interim variation of the compulsory supervision order, which will apply when the child is subject to a compulsory supervision order and, at a review hearing, the hearing defers a substantive decision for the purposes, perhaps, of further investigation. The interim variation contains many of the components of the interim compulsory supervision order, offering the same flexibility and protections while ensuring that the child remains subject to a single order. As a result, it is simply an adjustment to the existing compulsory supervision order.

16:30

The second change will be made through amendment 80, which will change the policy in section 151 covering the determination of appeals. The amendment seeks to restrict the sheriff's powers when disposing of an appeal. Currently, when a sheriff is disposing of an appeal and is either confirming or overturning a children's hearing decision, they could make another order, including a compulsory supervision order. Amendment 80 will amend section 151(3) to provide that the sheriff may only make an interim compulsory supervision order or an interim variation of a compulsory supervision order, or grant a warrant to secure the child's attendance. The amendment was lodged to make it crystal clear that the sheriff's powers under section 151, which we are due to debate in the next group of amendments, do not undermine the role of the hearing. It will allow a sheriff to put in place urgent supervision measures or a warrant to secure attendance while a child waits for a hearing to review his or her changed circumstances.

The remaining amendments in the group will simplify the bill's provisions or make consequential amendments as a result of the three issues that I mentioned. I do not propose to go through those amendments in detail, but I am happy to expand on individual amendments if members would find that useful.

Members: No.

Adam Ingram: I move amendment 124.

Ken Macintosh: I thank the minister for his comments and welcome the Government's approach of introducing interim compulsory supervision orders. It is clear that the minister wishes to address concerns and to rebalance the relationship between sheriffs and the court system and children's panels. However, I do not think that what has been proposed goes quite far enough; I hope that we will address that matter when we consider the next group.

I will speak specifically to amendment 25, which proposes to leave out section 83, because of a concern raised by SCRA Unison members, among others. They highlighted that section 83 currently does not make much sense. It requires a hearing to review any existing supervision measures before fresh grounds are put to the child and family. To be meaningful and to reflect the child's situation fully, fresh grounds would have to be considered in any review of current supervision measures. Section 83 does not permit that to happen. Therefore, I am pleased that the minister has agreed to remove section 83, which will address that concern.

The Deputy Presiding Officer: Minister, do you wish to add anything else?

Adam Ingram: I suppose that I had better respond to Mr Macintosh's point about amendment 25.

Under section 83, when the principal reporter arranges a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of a child, and such an order in relation to the child is already in force, the hearing must review the existing order before it proceeds to determine whether to make a new order. Amendment 36 will insert a new provision to deal more fully with that complex issue. The new provision will apply where a grounds hearing is considering the child's case and a compulsory supervision order in relation to the child is already in force. Where the new grounds are accepted, the hearing must proceed in the same way as a review hearing, and it may make interim variations as necessary.

Amendment 25 is consequential to amendment 36.

I think that that is all that I require to say.

Amendment 124 agreed to.

The Deputy Presiding Officer: I remind members who is in the chair. Be warned: I am not hearing you very well.

Amendments 125 and 126 moved—[Adam Ingram]—and agreed to.

Section 28—Sheriff: pre-condition for making certain orders and warrants

The Deputy Presiding Officer: We move to group 6. Amendment 155, in the name of Karen Whitefield, is grouped with amendments 157 and 158.

Karen Whitefield: I am grateful to the minister and his officials for taking the time to discuss with me the motivation behind the amendments in the group, which relate to section 151, and particularly the powers of sheriffs on appeal.

Section 151 has generated considerable concerns, particularly in the past few weeks since the conclusion of stage 2. The bill provides for an extension to the role of the sheriff that is a deviation from the current provisions and the underlying ethos of the hearings system. Everyone in the Parliament would agree that children's hearings are the best forum for any decision about a referred child. Section 151 will provide for the first time that, whether or not the sheriff is satisfied that the hearing's decision to which the appeal relates was justified, and where he or she is satisfied that the child's circumstances have changed since the original decision was made, he or she may substitute his or her decision.

That is a deviation from current practice and is, in my opinion, unhelpful. The primacy of children's hearings as the key decision maker would be undermined by such an extension. The measure could lead to increased numbers of appeals and a cynical bypassing of hearings by appellants who seek an opportunity to have a child's case reheard and a sheriff's decision substituted. Those are not just my concerns. I have received representations from the Unison reporters section, chairs of children's panels, children's charities and some sheriffs, who do not think that the new power is necessary.

I am particularly keen for the minister to respond to the point that has been made to me about why sheriffs need that additional power, given that a right of appeal exists. If there is a need to overturn a decision, that could be considered on appeal. I am particularly keen to know whether the Scottish Government asked the Sheriffs Association whether it had a view on the matter, because it appears to me that there is no appetite among the judiciary for such a change. I have lodged amendments 155, 157 and 158 to respond to those concerns and to ensure that we maintain the current position on appeals.

I move amendment 155.

Bill Aitken: I listened carefully to the arguments that Karen Whitefield advanced, which certainly have some merit. She is entirely correct that the interests of the child must be paramount.

A few weeks ago, I attended, along with the minister, a function at Glasgow city chambers at which there was an opportunity to discuss with panel members—some of whom had served for in excess of 30 years—their attitudes. They expressed the view repeatedly that the system is best dealt with on the basis of informality but is becoming more formal and legalistic. That is inevitable. We all fully understand that there must be an appeals process or there will be difficulties with compliance with European legislation.

At the end of the day, we must consider how effective the overall system will be. At present, sheriffs simply have the power on appeal, if they feel that the children's hearings system has erred in law, to remit the matter back to the particular hearing to deal with accordingly. That is the situation that Karen Whitefield's amendments 155, 157 and 158 adhere to. However, urgent situations could arise that might be recognised by the system only during the appeals process. Therefore, we are persuaded that there is merit in the bill as it stands. We shall not support Karen Whitefield's amendments, although I concede that the points are arguable.

Margaret Smith: This is one of the areas in which the argument is finely balanced and there is merit on both sides. It is clear that the issue has given rise to a certain amount of concern from children's panel chairs and others. Some have suggested that, by increasing the powers of the sheriff in this way, the Government is going against the ethos, efforts and nature of the children's hearings system. I do not believe that that is the minister's intention. However, I accept that many will support Karen Whitefield's amendments. I am minded to be one of them.

I believe that the right of appeal remains the best way forward, albeit that there would be no need to go through an appeals process if sheriffs were given extended powers. Like Karen Whitefield, I am not aware of the Sheriffs Association asking for that extension of powers, although I appreciate that it might have difficulty in doing that in any formal way. Most panel members and the members of the Education, Lifelong Learning and Culture Committee—I think that I can speak on behalf of us all—want to see as little court involvement as possible in the process and as much involvement as possible of the children's

hearings system. I agree with Bill Aitken in that regard.

Having met the minister to discuss this and other issues, I know that there are concerns about potential delays in reviewing decisions if the powers of the sheriff are not extended. On balance, I believe that the existing appeals process deals adequately with the situation. I find myself moving towards supporting Karen Whitefield's amendments. As I said, the argument is finely balanced; there is merit on both sides.

The Deputy Presiding Officer: I call Ken Macintosh. Please be brief, Mr Macintosh.

Ken Macintosh: I simply restate my concern about the extension of powers for sheriffs to overrule decisions of the panel. As Karen Whitefield pointed out, that is both unhelpful and unwanted.

The issue was flagged up at stage 1 and stage 2, and it is being raised again at stage 3. As I suggested earlier, there is a balance between the lay justice system—the volunteer nature of the children's panel—and the more formal procedures of the criminal justice system. I worry that this step is in danger of tipping the balance too far towards the sheriff court. Like Margaret Smith, I do not believe that that is the minister's intention, but it could be the effect of the provisions; the process could be abused. Bill Aitken made the point strongly and well that we are already worried about an overly legalistic system. I am unsure why Mr Aitken, having made that point, did not continue the logic of his argument into support for Karen Whitefield's amendments. I certainly think that we should support her amendments.

Adam Ingram: There has been intense lobbying on the issue over the past week or so. My view is that that has generated rather more heat than light. I do not understand the scale of resistance to the provisions. They are entirely intended to support the best interests of the child, to ensure the maximum protection for children and, in particular, to avoid undue and potentially harmful delays in getting children the type of supervision that they need. Those values are my priority.

I understand that decisions around this issue require a careful balancing act. Two distinct points of view are before the chamber for consideration today. For my part, I whole-heartedly stand by the provisions in the bill. They allow the sheriff to serve the best interests of the child if he is satisfied that the child's circumstances have changed since the hearing made its decision. Indeed, the decision could have been made several weeks or months before the sheriff considers the matter. Although the sheriff may consider that the decision of the hearing was right and justified at the time that it was made, it may be clear to him, having heard several days of representations from all parties, including the child, that the compulsory supervision order or directions within it no longer meet the needs of the child.

Karen Whitefield's amendments in the group take us back to the current position. The sheriff would be powerless to take any action to ensure that the child had immediate access to more appropriate support, and he would not be able to refer the child to a hearing for a review of the compulsory supervision order. He would even be prevented from using the no-order principle, which is a fundamental tenet of Kilbrandon and the children's hearings system.

16:45

The child would have the right to seek a review of the compulsory supervision order, as would the relevant person, but they would need to wait three months to do so. It is rare for a child to seek a review of a compulsory supervision order; a child is dependent on the relevant person doing so on his or her behalf. What if the parenting skills of that relevant person were the reason for the child's being referred to a hearing? Is it right that the child should have to depend on that person to seek a review or that they should have to wait for three months for a hearing to reconsider the circumstances of their life?

Even more disturbing is the fact that a child could have to wait for up to 10 months for the annual review of their compulsory supervision order, if the relevant person did not seek a review on their behalf. Would it not be better to allow the sheriff to refer the child to a hearing to review the order, as the bill allows? Under the provisions of the bill as it stands, such a review could be available to a child within weeks of a decision by a hearing, but only if the sheriff has the power to refer the child to a hearing.

There are reasons why I stand by the provisions in the bill. I have lodged amendments that restrict the power of the sheriff to making only an interim compulsory supervision order, an interim variation of such an order or a warrant to secure attendance at a hearing. Amendment 80 in the previous group removes the sheriff's power to make a compulsory supervision order under section 151.

To make the short-term orders to which I have referred, the sheriff needs to have the power to vary or terminate any order that is in force, to avoid the highly unsatisfactory situation of a child being subject to two orders at the same time. My amendments serve to limit the lifespan of the power to 22 days, after which a hearing will review the order and make its own decision. A hearing

has always had the power, under section 151(4), to overturn a sheriff's decision. There is no question of undermining the position of the hearing as the primary decision maker.

I have said all along that use of the power will be rare. I know from current practice that sheriffs respect the hearing's position as the primary decision maker. The number of children whom the power would affect would be minimal, but the impact on the individual child who benefited from its use could be significant. Without such a provision, a child could be left in limbo for too long, subject to a compulsory supervision order that did not provide the support that the child needed. Decisions around such provisions send a clear message to children about whether they are at the centre of the hearings system, as they always should be. I argue that the provisions of the bill demonstrate clearly that children are at the centre.

Karen Whitefield: In their contributions to the debate on this group, members have indicated that there are concerns about the issue to which it relates. All of us recognise the importance of getting the balance right, but concerns about the new provisions that extend the sheriff's powers have persisted since day 1. Despite the best efforts of Government ministers and officials to convince them to the contrary, key stakeholders such as our reporters and children's panel chairs have been unable to accept their arguments. The minister's commitment or intentions are not in dispute, but today we are voting not on intentions but on legislation—on what the extended powers actually do.

The minister has restated his arguments but, in my opinion, he did not address my central question: if children have the right to request an appeal, why would they not use that right? Why would an appeal not be a more appropriate vehicle for bringing about a change of decision if that was appropriate?

Later today we will vote on amendments concerning advocacy. Children will not be solely reliant on parents or responsible adults, and I would like to think that they will have access to greater advocacy and support. They should have access to social work staff, who could also be present to represent them. It is overstating things to say that we are leaving the children concerned to the whim of parents who might have poor parenting skills.

For those reasons, I press amendment 155.

The Deputy Presiding Officer: The question is, that amendment 155 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As it is the first division today, there will be a five-minute suspension.

16:51

Meeting suspended.

16:56

On resuming—

The Deputy Presiding Officer: We come to the division on amendment 155.

For

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)

Stephen, Nicol (Aberdeen South) (LD)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tolson, Jim (Dunfermline West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Gil (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 60, Against 62, Abstentions 1.

Amendment 155 disagreed to.

Amendments 127 to 129 moved—[Adam Ingram]—and agreed to.

The Deputy Presiding Officer: I use my power under rule 9.8.4A(c) to extend the time limit for debate on the next two groups, to prevent the debate from being unreasonably curtailed.

We move on to group 7. Amendment 7, in the name of the minister, is grouped with amendments 14, 17 to 19, 135, 137 to 142, 34, 35, 72, 77, 84, 85, 89, 95, 151 and 152. I draw members' attention to the pre-emption information in the groupings paper.

Adam Ingram: The amendments will make minor technical and drafting changes to the bill; none will alter the policy. They seek to achieve consistent terminology and to clarify existing provision in the bill. For those reasons I do not propose to go into the amendments individually, but I will be happy to provide more detail should members require it.

I move amendment 7.

Amendment 7 agreed to.

Amendments 130 and 131 moved—[Adam Ingram]—and agreed to.

Section 29—Children's hearing: duty to consider appointing safeguarder

The Deputy Presiding Officer: We move on to group 8. Amendment 8, in the name of the minister, is grouped with amendments 9 to 11, 11A, 13, 15, 156, 16, 16A, 21, 41 and 78.

Adam Ingram: The amendments in group 8 relate to safeguarder policy. I have proposed minor changes to the bill to provide greater consistency on the appointment of safeguarders. Safeguarders will be able to be appointed under three separate provisions: by a children's hearing, by a pre-hearing panel, and by a sheriff. Appointment by a pre-hearing panel is new. The approach is very much welcomed by safeguarders and other partners and will introduce flexibility and efficiency into the system.

I made a commitment during stage 2 to review the role of the safeguarder, particularly in court proceedings, through secondary legislation. With that in mind, I have lodged amendments that will introduce more flexibility into the safeguarder provisions in the bill to complement the work that is planned for developing the role of the safeguarder through the implementation process. I

have also proposed minor changes to the bill to provide better consistency on when safeguarders may be appointed.

17:00

I turn now to Ken Macintosh's amendments. I believe that we both share the same goal, which is to work out the optimal solution on safeguarders through secondary legislation. His amendments 156 and 16A relate to the termination of safeguarder appointments and will, in effect, remove such consideration from the bill and provide for it to be developed later through secondary legislation. Amendment 11A seeks to extend the scope of my amendment 11 in relation to court-appointed safeguarders and will enable the appointment to continue when a sheriff remits consideration of a child's case back to the children's hearing. Those amendments are helpful.

I urge members to support all of the amendments in the group, except amendment 15, which I do not intend to move as it is superseded by Ken Macintosh's amendment 156.

I move amendment 8.

Ken Macintosh: I thank the minister for his comments. The purpose of amendments 11A, 156 and 16A is to allow safeguarders to continue in post, protecting the interests of the child no matter who appeals the decision of the children's hearing to the sheriff court. We discussed the issue at stage 2, and we agreed that a safeguarder has the right to lodge an appeal against a panel decision and to accompany the child throughout the process. Unfortunately—I apologise for this—I picked up the issue wrongly from the minister's reply at stage 2, and we did not extend the right to cover situations in which it is the child, parent or relevant person who appeals.

I remind members of the evidence that we received. At present, an arrangement is practised in some sheriff courts whereby the safeguarder concerned continues to safeguard the interests of the child by following them into the appeal and participating in the process. In other words, the hearing appointment continues into the appeal and beyond, until the hearing reaches a substantive decision. However, the procedure does not appear in the current legislation. Safeguarders have argued that it is absurd to deprive a child of the protection of a safeguarder at the very time when he or she needs it most. It makes equal sense, if the appeal is successful, for the safeguarder to follow the child back into the reconvened children's hearing. Of course, if the appeal is unsuccessful, the safeguarder's appointment terminates.

Amendments 11A, 156 and 16A will achieve that objective by amending the way in which a sheriff appoints a safeguarder by removing section 32, which covers termination of a safeguarder's appointment, and replacing it with a ministerial power to make regulations covering the termination. It leaves up to the minister the decision on how far through the process a safeguarder's appointment will last, but I hope that he accepts the argument behind that.

Amendment 8 agreed to.

Amendments 9 and 10 moved—[Adam Ingram]—and agreed to.

After section 29

Amendment 11 moved—[Adam Ingram].

Amendment 11A moved—[Ken Macintosh]—and agreed to.

Amendment 11, as amended, agreed to.

Section 29A—Children's hearing: duty to consider appointing an advocate

The Deputy Presiding Officer: We move to group 9. Amendment 12, in the name of Christina McKelvie, is grouped with amendment 61.

Christina McKelvie (Central Scotland) (SNP): Amendment 12 is consequential to amendment 61—if, indeed, amendment 61 is agreed to. I hope that it will be.

Amendment 12 is required to remove a contradictory part of the bill that was inserted at stage 2. As members of the Education, Lifelong Learning and Culture Committee will be aware, advocacy services have been the subject of a lot of scrutiny during the passage of the bill. I should note that Ken Macintosh did quite a bit of work in promoting the amendments, which has moved the issue forward. I lodged a probing amendment at stage 2 to see what we could do to improve the services that are available for children who are subject to the panels.

I make it clear to members who might not have had the opportunity to follow the arguments closely that advocacy is not about someone speaking on the child's behalf but about helping the child to understand what is going on and to express their opinions to the panel. Advocacy is not about an adult thinking that they know best, but about enhancing the central idea of the children's hearings system, which puts the child and the child's welfare at the centre of proceedings.

In that spirit, amendment 61 will place a duty on a panel's chair to ensure that the child knows that the advocacy service is available. That will ensure that the child has access to the help that he or she might need in order to present their case properly.

When the children's hearings system was created, the state took on itself a duty of care for the children who would be involved in the system. Amendment 61 will enhance that duty of care by bringing support to children and helping them to express themselves to panels in the most appropriate way. Each case is different for each child and each child has different needs. It is difficult to put in legislation exactly what will be needed in each case. I hope that the amendment provides a compromise that will make it a bit easier for children to participate in hearings.

Amendment 61 is supported by Scotland's Commissioner for Children and Young People, Children 1st, Children in Scotland and—with a note of caution—the children's panel chairs group. I thank the minister for his considered input and I thank the other committee members for helping to frame the debate properly. I hope that we have an amendment on which we can all agree. I am pleased to bring amendments 12 and 61 to the chamber.

I move amendment 12.

Margaret Smith: Decisions that are taken at children's hearings can shape lives, so it is important that the child's voice and opinions are heard and that we do what is necessary to ensure that that happens. We have heard that it is important that the system does not become too judicial or too far removed from the child's needs. Another concern that the committee heard was that children should not find themselves swamped in a room full of adults. If one adult in the room is an advocate who is there to work on the child's behalf, that is positive. Advocacy assists us in hearing the child's opinion and their individual needs.

Section 77 allows the child to have someone present to represent them, but amendments 12 and 61 are worth while. I accept that, although we agreed at stage 2 to an amendment that required the hearing to consider whether an advocate should be appointed, views among stakeholders differ—members will see a common theme in the bill—about how advocacy should be provided.

Christina McKelvie's amendment 61 makes it clear that the panel's chair

"must inform the child of the availability of children's advocacy services",

which are defined. The amendment also sets out the practical provisions that secondary legislation would cover, which is helpful. The amendment represents a slightly lighter touch, while retaining access to support.

We are content to accept amendments 12 and 61, which I thank Christina McKelvie for lodging. They represent another move towards assisting the child in finding their voice in the children's hearings system.

Ken Macintosh: I add my support for amendments 12 and 61, which Christina McKelvie has lodged. At stage 2, the committee had a long discussion on the subject, and particularly on achieving a balance between acting in the child's best interests and not overburdening children's panels with too many adults. We have addressed and returned to the theme of an overlegalised system in which the child's voice is drowned out.

Barnardo's proposed the amendment to which we agreed at stage 2, which was a good compromise. It left the decision to children's panel chairs, who could assess whether a child needs an advocate. However, Christina McKelvie and the Government have come up with an alternative amendment that will allow advocacy support to be put in place before a hearing, so a child can be prepared effectively for the hearing. Amendment 61 also outlines the service that will be provided.

I am happy to support amendment 61.

Adam Ingram: I welcome amendments 12 and 61. Advocacy support for children in the hearings system is an issue that I have discussed frequently with partners during the development and parliamentary passage of the bill. There is consensus about the benefits to children of advocacy support, so I am sure that Christina McKelvie's amendments will find favour in Parliament.

Amendment 61 offers a better way forward than section 29A does. Crucially, it will mean that help and support should be available if and when required—before, during and after a hearing and not just at the hearing.

The introduction of a regulation-making power is also a positive step. As I have said many times, and as Margaret Smith and others have acknowledged, there is still no consensus on exactly what support is needed or who should provide it. It will be important to ensure that the right support is available and that the arrangements for providing it are effective and proportionate. All that detail can be set out in the regulations once that has been decided. Our implementation working group already has a voice of the child sub-group; I am sure that it will enjoy getting its teeth into the matter.

I support amendments 12 and 61, and I hope that Parliament will do so, too.

Christina McKelvie: I make it clear that the proposed measure is not about representation; it is about giving the child the support to understand what is happening to them through the panel system. I think that it will ensure that the child's voice is not lost. I press amendment 12.

Amendment 12 agreed to.

Section 30—The Safeguarders Panels

Amendment 13 moved—[Adam Ingram]—and agreed to.

Section 31—Functions of safeguarder

Amendment 14 moved—[Adam Ingram]—and agreed to.

Section 32—Termination of appointment of safeguarder appointed by children's hearing

Amendment 15 not moved.

Amendment 156 moved—[Ken Macintosh]—and agreed to.

After section 32

Amendment 16 moved—[Adam Ingram].

Amendment 16A moved—[Ken Macintosh]—and agreed to.

Amendment 16, as amended, agreed to.

Section 39—Contact directions

Amendments 17 and 18 moved—[Adam Ingram]—and agreed to.

Section 41—Notice of child protection order

Amendment 19 moved—[Adam Ingram]—and agreed to.

Section 50—Automatic termination of order

The Deputy Presiding Officer: We move on to group 10. Amendment 132, in the name of Ken Macintosh, is the only amendment in the group.

Ken Macintosh: Amendment 132 seeks to amend section 50, which provides that a child protection order should cease to have effect if the applicant for the order has not attempted to implement it by the end of a period of 24 hours from the making of the order. The amendment that we agreed to at stage 2 provides that if the child is not successfully removed to a place of safety within six days of the making of the order, the order will cease to have effect. Amendment 132 seeks to change that period from six days to 10 days.

A child protection order is an emergency order that is sought when there is an urgent need to protect a child who is deemed to be at significant risk of harm. The fact that the child is at significant risk is what prompts the urgency, so it would be concerning if there were delayed implementation. We supported the stage 2 amendment because there are potential European convention on human rights issues, and it would be inappropriate for a child protection order, which is an emergency order, to continue for a prolonged period of time.

However, it is not unheard of for families to evade the authorities by hiding in order to avoid their child being removed to safety. When that happens, professional concerns for the child's safety are heightened. Members will recall that the issue was raised at stage 2 not just by Unison members of the Scottish Children's Reporters Administration, but by Scotland's Commissioner for Children and Young People.

I do not suggest that altering the timeframe from six days to 10 would entirely alleviate those concerns, but I would welcome an assurance from the minister that he is aware of them. Perhaps he could provide an outline of how he intends to address the matter and monitor the situation.

I move amendment 132.

Adam Ingram: In focusing on the timeframe after which child protection orders automatically cease to have effect when implementation has not been possible, it might be helpful to start by briefly outlining my thinking behind the introduction of such a timeframe at stage 2 and to explain the process that the Government has followed in reaching the position that is reflected in the bill.

17:15

As Mr Macintosh said, child protection orders are emergency orders that are designed to support local partners in taking quick and decisive action to protect a child who is at risk of significant harm. Such orders are made by the sheriff in the absence of the child and their parents. We believe that process to be entirely appropriate, given the serious and immediate nature of the situations that are being dealt with. That said, it is crucial that we have in place robust structures to ensure that actions such as those that are directed through child protection orders remain appropriate and proportionate to a child's needs. We achieve that through holding regular reviews in the form of second and eighth day hearings to consider whether the emergency measures that are in place are still appropriate, and what the longer-term needs of the child might be. Both review points are linked to the implementation of a child protection order.

What happens when the CPO cannot be implemented? We know that the majority of child protection orders, including all CPOs to prevent the removal of a child from a place of safety, are implemented immediately. However, it is simply not appropriate to ignore the fact that that is not the case for every CPO. Allowing an emergency order, such as a CPO, to run for an extended period of time is not acceptable or appropriate. It was with that in mind that we lodged a stage 2

amendment, which introduced a six-day timeframe, after which a CPO that had not been implemented would fall. At the same time, Mr Macintosh lodged and subsequently withdrew a similar amendment that proposed a timeframe of 72 hours. I was therefore surprised to see that he had lodged another amendment in advance of today's proceedings that proposed a significantly longer timeframe than that to which he and the committee agreed at stage 2.

On the timeframe, the six-day period has been identified with the clear support of the Association of Directors of Social Work and the Association of Chief Police Officers in Scotland. That is particularly important as local authorities will have responsibility for implementation of the majority of CPOs. Similarly, the police will have the power to take decisive action to protect a child when a CPO is not in place. The ADSW and ACPOS felt that the stage 2 amendment struck the right balance by allowing sufficient time for agencies to exhaust all necessary avenues when they seek to implement a CPO, while ensuring that a robust and rigorous structure is in place for considering the changing circumstances of a child when it has not been possible to implement an order for an extended period of time.

I understand that concerns have been raised with Mr Macintosh about the impact that such a timeframe could have on the ability of front-line practitioners to offer the necessary protection to children, particularly when they have absconded to another jurisdiction, for example. I see no reason why the process that we have set out for the protection of children should not be implementable and effective in such circumstances. When a child or family has absconded, whether in Scotland or another jurisdiction, we expect local services to engage with partners, irrespective of the areas in which they operate, so that emergency action can be taken to ensure the immediate care and protection of that child.

The critical point is that a CPO need not be in place for such action to be taken. Instead, agencies may involve the use of alternative emergency powers on an interim basis, while a Scottish CPO is being sought, if that is appropriate. It is entirely feasible that that process should be applied, especially given our intention to replicate current practice by arranging for CPOs that have been made in Scotland to have effect elsewhere in the United Kingdom.

I have seen no evidence that suggests that a 10-day timeframe would offer any more protection than the six-day period that was identified by stakeholders and accepted by the committee at stage 2. We need to be able to respond to children's needs in a way that is proportionate and appropriate. The suggested extension of the timeframe would in no way help us to achieve that: on the contrary, it would increase the potential for CPOs to be implemented in circumstances that may bear no resemblance to those that were considered by the sheriff at the point at which the order was made. That, compounded by the lack of involvement of either the child or their family in a decision that has a significant impact on them over a potentially prolonged period, causes me real concern.

I recognise that this is a challenging issue and that a balance has to be struck, but I am entirely confident that the bill will best achieve that as it is currently set out. I therefore ask Ken Macintosh to seek to withdraw amendment 132.

Ken Macintosh: I thank the minister for his comments. As I indicated, I do not think that 10 days is the solution to the problem; I simply wanted to re-emphasise the concerns that have been raised by more than one body about the issue. The minister mentioned the second and eighth day hearings review system and the alternative powers that are open to local authorities. I accept that it is a challenging issue and one that we need to keep an eye on. On that basis, I seek leave to withdraw amendment 132.

Amendment 132, by agreement, withdrawn.

Section 58—Local authority's duty to provide information to Principal Reporter

The Deputy Presiding Officer: We come to group 11. Amendment 133, in the name of Ken Macintosh, is grouped with amendment 134.

Ken Macintosh: Amendments 133 and 134 amend the threshold at which cases are referred to the children's reporter. From its inception, one of the fundamental features of the children's hearings system has been that the reporter should act as an independent gatekeeper to the system and should take the decision whether a child should be referred to a hearing. That is on a dual test of whether a ground is present and whether compulsory measures are necessary.

The proposed change in the bill is quite radical because it removes the role from the reporter by imposing a prior filter. No longer will all children to whom a ground relates be referred to the reporter for the exercise of independent judgment on whether compulsory measures are necessary. That will be decided instead by the local authority. That potentially allows a local authority to hold on to cases where there should have been a referral and compulsory help for children. It is worth highlighting that, in these days of constrained budgets, there will be great temptation for local authorities to save money and not to refer children.

In fact, the minister argued at stage 2 that his intention is to reduce the number of cases going to the hearings system. My worry is that the bill compromises the independence of the reporter and essentially reduces the reporter's role from that of gatekeeper to one of a processor, who automatically passes on all cases.

I move amendment 133.

Margaret Smith: I think that I understand the motivation behind Mr Macintosh's amendments. We all know that there are children who are slipping through gaps in the system, so if the grounds for referral were widened, more children might benefit. I can totally understand that the financial difficulties that local authorities find themselves in give an added impetus to his motivation.

What Mr Macintosh is suggesting is that we take away the current two tests to be met for referral to a hearing, which are that

"the child in is need of protection, guidance, treatment or control"

and that

"it might be necessary for a compulsory supervision order"

to apply, and instead extend referral to cases where a section 65 ground applies. I am not sure whether that would not risk overloading the hearings system. Does he have any information about the extra number of children and potential costs associated with the amendments if the lower test were to apply? Does he feel that there might be potential delays in the system as a result?

We remain very much committed to the children's hearings system being there for the most vulnerable of Scotland's children. I certainly hope that, in taking forward the getting it right for every child agenda, there will continue to be a reduction in the number of children being dealt with by hearings, their need for support having been met without recourse to a panel. I am a little unsure whether we would continue to see such a reduction in the number of children being dealt with if we opened up the grounds in the way that Mr Macintosh suggests in these amendments.

Adam Ingram: The amendments are similar to amendments that were lodged by Ken Macintosh at stage 2, which sought to lower the threshold for referral to the reporter from that in the bill as introduced. As Margaret Smith said, the amendments would remove the two conditions for making a referral that are set out in the bill, as amended at stage 2: that the child is in need of protection, guidance, treatment or control; and that the child might be in need of compulsory measures of supervision. It is important that that two-pronged test remains.

What Ken Macintosh proposes is that local authorities and police need be satisfied only that a section 65 ground applies before they refer a child to the reporter. It removes the responsibility on them also to consider whether compulsory measures of supervision might be required, which is a responsibility that local authorities currently have. Such a change would undoubtedly lead to a significant increase in the number of inappropriate and unnecessary referrals and would cut across the principles of the getting it right for every child approach and the work on early and effective intervention.

We have seen a reduction in the number of referrals to the reporter in recent years as a result of the growing practice of multi-agency pre-referral partnerships, which have grown in number under GIRFEC. Children are being helped and supported more quickly and effectively without the need for referral. We do not want a return to the days when a child had to wait for the investigation by a reporter and then, perhaps, for the decision of a hearing before she or he had access to the support that was needed. That is what would happen if amendment 133 were agreed to.

I reassure colleagues that there is no suggestion that children who should be referred are being missed—that is not the case. The number of children who are being referred to hearings is increasing, which indicates that the right children are being referred to the reporter for the right reasons.

I strongly believe that the provisions in the bill strike the right balance. They support the exercise of professional judgment at the local level and ensure that children are provided with fast and effective support. They support the role of the reporter in making decisions on who should be referred to a hearing, they fit with GIRFEC and they will ensure that the number of inappropriate referrals is kept to a minimum. More important, practice shows that to be so. Research that was published by the SCRA in April supports the positive impact of pre-referral screening in reducing the number of inappropriate referrals to the reporter.

On that basis, I ask Ken Macintosh to withdraw amendment 133 and not to move amendment 134.

Ken Macintosh: I welcome the comments from Margaret Smith and the minister. In response to Margaret Smith's points, it is worth emphasising that it is the bill that is changing the current system. In other words, the criteria that currently apply are being amended. What we are introducing through the bill is a filter—a pre-screening mechanism—for the local authorities. If the system is currently in danger of being overloaded, we should introduce other ways of handling the numbers. The reporter will have to

investigate all cases that come to them, and it is very important that the balance of the decision making rests with the reporter. I would argue that giving the reporter the responsibility for making the decisions is far more in keeping with the GIRFEC principles than is allowing the local authority to decide, on its own grounds, not to refer cases. If we want to hold local authorities accountable for the service that they provide, it would be better to have an independent mechanism. I believe that we should go back to using the original procedure—which has always been the case—whereby all cases are referred to the reporter, who then makes the decisions on whether they should go to hearings.

I press amendment 133.

The Presiding Officer: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
MacDonald, Margo (Lothians) (Ind)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 39, Against 75, Abstentions 0.

Amendment 133 disagreed to.

Section 59—Constable's duty to provide information to Principal Reporter

Amendment 134 not moved.

Section 65—Meaning of "section 65 ground"

Amendment 135 moved—[Adam Ingram]—and agreed to.

Section 66—Determination under section 64: no referral to children's hearing

17:30

The Presiding Officer (Alex Fergusson): We now come to group 12. I am using my power under rule 9.8.4A(c) to extend the time limit for the next group to prevent the debate from being curtailed. Amendment 136, in the name of Kenneth Macintosh, is the only amendment in the group.

Ken Macintosh: Amendment 136 seeks to entrench in statute the current power and practice of reporters to refer children voluntarily for support from local authorities, health boards or voluntary organisations. We discussed this issue at stage 2 and, as I highlighted then, among the benefits of the current system of voluntary referrals that are used by reporters is the fact that it helps reporters to keep children out of the children's hearings system and subject to compulsory supervision orders. [*Interruption*.]

The Presiding Officer: Order. Everyone except Mr Macintosh is making rather too much noise.

Ken Macintosh: Following our discussion in committee, the minister indicated his agreement with the spirit of the stage 2 amendments and his intention to lodge his own amendments at stage 3. I understand that the minister has since had reservations about that approach. In the absence of Government amendments, I have lodged an alternative amendment that addresses the same issue but will, I hope, be more palatable to the Government.

I move amendment 136.

Bill Aitken: It seems that the amendment is arguable. I understand that there were discussions at stage 2 but that, as Kenneth Macintosh said, they failed to bring about total consensus. Having examined his current wording and compared it to his previous wording, it seems that there is a significant improvement. We will listen carefully to what the minister has to say, but we are minded to support amendment 136.

Adam Ingram: We discussed this issue at stage 2. As Kenneth Macintosh said, I undertook to lodge amendments on the matter. However, as I explained in my letter to the committee of 11 November, following detailed further consideration, I decided against doing so. It is not clear to me that changing the law in the way that is proposed will make any tangible improvements to the way in which things operate at present. Things work well at the moment partly because they are voluntary. Putting things on to a statutory footing might put that at risk.

It follows that I do not believe that amendment 136 is necessary to secure appropriate voluntary interventions for children and young people. Under section 21 of the 1995 act, local authorities can already, and frequently do, ask others to help them to provide the support that children need. Section 175 of the bill also makes provision for mutual assistance in the performance of functions under the bill.

That said, I appreciate the desire to reflect existing practice in law and to formally recognise the role that others play in the provision of voluntary support for children and young people. Amendment 136 will do that, and I think that it is sufficiently flexible to provide reassurance that the statutory arrangements that it proposes will not undermine the existing arrangements.

I am, therefore, happy to support amendment 136.

Amendment 136 agreed to.

Section 80—Determination of claim that person be deemed a relevant person

Amendments 137 to 141 moved—[Adam Ingram]—and agreed to.

The Presiding Officer: Amendment 20, in the name of Adam Ingram, is grouped with amendments 63 to 68, 83, 91 and 107.

Adam Ingram: Amendments 20, 63 to 68, 83, 91 and 107 deal with rights of participation in the hearings system, the right to become the child's relevant person and the right to become involved in decisions on contact. They seek to provide flexibility in the bill so that it may respond to changing family relationships and developments in case law.

As members will know, this area of society is characterised by constantly changing relationships, and changing attitudes to those relationships. It is also expected to be under constant scrutiny by the courts, and Ken Macintosh quite rightly referred at stage 2 to the fact that it is an area of developing case law. I

therefore consider it necessary for there to be some flexibility in the bill, so that we can respond to future changes without having to introduce primary legislation.

Amendment 20 allows for future changes to the criteria for deemed relevant person status that are outlined in section 80. Section 80 provides for those who do not automatically qualify as a relevant person by applying the legal test in section 185 to demonstrate that they have a "significant involvement" in a child's life. That significant involvement will allow them to access the same rights and duties as a relevant person. The amendment allows that test to be amended if it is required in future to respond to developments in this area. I consider it appropriate that the bill should be able to accommodate any changes that may be required in the future.

Amendments 63 to 68 insert similar flexibility in those provisions that protect the rights of those who are not relevant persons or deemed relevant persons but who have a right of contact with the child. As I explained at stage 2, those amendments were lodged in response to a court judgment that confirmed that those contact rights must be afforded an appropriate level of protection. They allow an individual to enjoy rights of participation for the purposes of reviewing a contact direction made by the hearing, and amendments 63 to 68 allow that right to be extended.

A person who considers that they meet the conditions—which will be specified using an order-making power—will have the right to seek a review of the contact direction. If the hearing decides that the conditions are satisfied, it will review the contact direction.

Amendment 107 amends the definition of "relevant person" in section 185. Those who meet the legal test that is set out in that section will automatically become the child's relevant person without the need for consideration of a pre-hearing. Amendment 107 therefore allows further categories to be added to the list of those who automatically become the child's relevant person.

Although I am confident that the provisions in the bill accurately protect the rights of those in the children's hearings system, these amendments are necessary to provide flexibility around this developing area of legal consideration. They will also serve to future-proof the children's hearings system, which was one of the key objectives of the reform programme.

I move amendment 20.

Elizabeth Smith: One of the most difficult issues that we discussed was what could be deemed an appropriate definition of "relevant person", bearing in mind that the representations made by such a person could be the most important factor in deciding the child's future, and given, as the minister mentioned, the changing social trends within family structures.

Concerns were expressed about the possibility of narrowing the definition so that it might exclude those persons who previously would have had an automatic right to be present at a hearing. It was put to the committee that there would be serious cause for concern if it excluded guardians, adoptive parents, long-term foster carers or grandparents.

Concern was also expressed about how the proposed changes to section 80 would impact on the process of deciding relevancy, and whose responsibility that would be. In particular, it was noted how difficult it might be to come up with a satisfactory definition of "significant involvement", and for how long that would have to be proven.

Some of the most technical legal aspects of the bill that we discussed relate to section 80 but, after some initial doubts, the Scottish Conservatives are satisfied that the process has been rigorously debated. Given what the minister said about improving flexibility, we are happy to support the amendments.

Amendment 20 agreed to.

Amendment 142 moved—[Adam Ingram]—and agreed to.

Section 80A—Appointment of safeguarder

Amendment 21 moved—[Adam Ingram]—and agreed to.

Section 100—Meaning of "interim compulsory supervision order"

Amendments 22 to 24 moved—[Adam Ingram]—and agreed to.

Section 83—Review to be carried out where compulsory supervision order already in force

Amendment 25 moved—[Adam Ingram]—and agreed to.

Section 85—Grounds accepted: powers of grounds hearing

Amendments 26 and 27 moved—[Adam Ingram]—and agreed to.

Section 86—Some grounds accepted

Amendment 28 moved—[Adam Ingram]—and agreed to.

Section 89—Some grounds not accepted: application to sheriff or discharge

Amendments 29 to 31 moved—[Adam Ingram]—and agreed to.

Section 90—No grounds accepted

Amendment 32 moved—[Adam Ingram]—and agreed to.

Section 95A—Child fails to attend grounds hearing

Amendment 33 moved—[Adam Ingram]—and agreed to.

Section 96—Children's hearing to consider need for further interim compulsory supervision order

Amendments 34 and 35 moved—[Adam Ingram]—and agreed to.

After section 96

Amendment 36 moved—[Adam Ingram]—and agreed to.

Section 103—Application for extension or variation of interim compulsory supervision order

Amendment 37 moved—[Adam Ingram]—and agreed to.

Section 103A—Further extension or variation of interim compulsory supervision order

Amendment 38 moved—[Adam Ingram]—and agreed to.

Section 103B—Sheriff's power to make interim compulsory supervision order

Amendments 39, 143 and 40 moved—[Adam Ingram]—and agreed to.

Section 108—Safeguarder

Amendment 41 moved—[Adam Ingram]—and agreed to.

Section 111—Withdrawal of application: termination of orders etc by Principal Reporter

Amendments 42 to 44 moved—[Adam Ingram]—and agreed to.

Section 112—Determination: ground not established

Amendment 45 moved—[Adam Ingram]—and agreed to.

Section 113—Determination: ground established

Amendments 46 to 49 moved—[Adam Ingram]—and agreed to.

After section 113

Amendment 50 moved—[Adam Ingram]—and agreed to.

Section 115A—Child's duty to attend review hearing unless excused

The Presiding Officer: We come to group 14. Amendment 51, in the name of the minister, is grouped with amendment 52.

Adam Ingram: Section 115A was introduced at stage 2. It requires that, where an application for a review of the grounds determination is made in relation to a person who is still a child, that child must attend the review hearing unless they are excused by the sheriff. If they are excused, the child may still attend the hearing. That places the child under the same obligations and provides the same right to attend as in relation to the original hearing to establish the grounds.

Amendment 52 inserts a new power into section 115A to provide the sheriff with the power to issue a warrant to secure the attendance of the child at any such review hearing. The power may be exercised only if the sheriff is satisfied that there is evidence that the child would not otherwise attend the hearing.

Amendment 51 makes a minor drafting change to clarify that the provisions apply only where the person involved is still a child within the meaning of the bill at the time of the review hearing.

I move amendment 51.

Amendment 51 agreed to.

Amendment 52 moved—[Adam Ingram]—and agreed to.

Section 117—Recall of grounds determination: sheriff's power to refer other grounds to children's hearing

Amendment 53 moved—[Adam Ingram]—and agreed to.

Section 118—Recall of grounds determination: sheriff's powers where no section 65 grounds accepted or established

Amendments 54 and 55 moved—[Adam Ingram]—and agreed to.

Section 119—New section 65 ground established: sheriff to refer to children's hearing

Amendment 56 moved—[Adam Ingram]—and agreed to.

After section 119

Amendment 57 moved—[Adam Ingram]—and agreed to.

Section 120—Children's hearing following deferral or proceedings under Part 10

Amendment 58 moved—[Adam Ingram]—and agreed to.

Section 121—Powers of children's hearing on deferral under section 120

Amendments 59 and 60 moved—[Adam Ingram]—and agreed to.

After section 122A

Amendment 61 moved—[Christina McKelvie]—and agreed to.

Section 124A—Review of contact direction

Amendments 62 to 68 moved—[Adam Ingram]—and agreed to.

Section 133—Duty to arrange children's hearing

Amendment 69 moved—[Adam Ingram]—and agreed to.

Section 136—Powers of children's hearing on deferral under section 135

Amendment 70 moved—[Adam Ingram]—and agreed to.

After section 136

Amendment 71 moved—[Adam Ingram]—and agreed to.

Section 140—Breach of duties imposed by sections 138 and 139

Amendment 72 moved—[Adam Ingram]—and agreed to.

Section 146—Secure accommodation: placement in other circumstances

The Presiding Officer: We come to group 15. Amendment 73, in the name of the minister, is grouped with amendments 74 and 75.

Adam Ingram: Section 146 provides a regulation-making power to place a child in secure accommodation in circumstances where the child is subject to a compulsory supervision order that does not itself include a secure accommodation authorisation. The bill contains powers to make other orders, including an interim compulsory supervision order, a medical examination order and a warrant to secure attendance. Taken together, amendments 73 to 75 ensure that regulations under section 146 can make provision for the emergency placement of a child in secure accommodation when they are the subject of any of those other orders but a secure accommodation authorisation was not contained in the order.

I move amendment 73.

Amendment 73 agreed to.

Amendments 74 and 75 moved—[Adam Ingram]—and agreed to.

Section 148—Appeal to sheriff against decision of children's hearing

Amendments 76 and 77 moved—[Adam Ingram]—and agreed to.

Section 149—Safeguarder

Amendment 78 moved—[Adam Ingram]—and agreed to.

Section 151—Determination of appeal

Amendment 157 not moved.

Amendments 79 and 80 moved—[Adam Ingram]—and agreed to.

Amendment 158 not moved.

Section 152—Time limit for disposal of appeal against certain decisions

Amendments 81 and 82 moved—[Adam Ingram]—and agreed to.

Section 155A—Appeal to the sheriff against decision affecting contact or permanence order

Amendments 83 to 85 moved—[Adam Ingram]—and agreed to.

Section 157—Appeals to sheriff principal and Court of Session: children's hearings etc

Amendments 86 to 90 moved—[Adam Ingram]—and agreed to.

Section 158A—Appeals to sheriff principal and Court of Session: contact and permanence orders

Amendment 91 moved—[Adam Ingram]—and agreed to.

17:45

Section 159—Review of requirement imposed on local authority

The Presiding Officer: We come to group 16. Amendment 144, in the name of Ken Macintosh, is grouped with amendment 145.

Ken Macintosh: Amendments 144 and 145 seek to amend sections 159 and 160, both of which provide for the procedure to be followed where a local authority disputes that it is the relevant local authority for a child. However, the bill does not provide a child or relevant person with either a right of appeal or the right to give evidence to the sheriff on the identity of the relevant local authority. That failure to recognise the right of the child or the relevant person to be heard in relation to such a significant issue as who will service the compulsory supervision order is worrying.

However, the problem can be very simply addressed if we agree to amendments 144 and 145, which seek to include the child and the relevant person among those from whom the sheriff may hear evidence and to extend to the child and relevant person the right of appeal against the sheriff's decision.

I move amendment 144.

Adam Ingram: As Ken Macintosh has confirmed, these amendments to sections 159 and 160 have been lodged to continue the theme of trying to ensure that children are involved in the hearings system instead of simply having the process happen to them. The bill provides that the duties under a compulsory supervision order, interim order or medical examination order should be borne by the relevant local authority, which must implement or pay for the measures in such orders. Section 159 applies where such a duty is imposed on a local authority by a children's hearing or sheriff. If the local authority is satisfied that it is not the relevant one for that child, it might apply to the sheriff for a review of the decision to impose the duty on it. Section 160 provides for a right of appeal against the sheriff's decision in such circumstances.

Broadly speaking, the relevant local authority for the child is the one in which they predominantly live or, if that criterion does not apply, the one to which the child has the closest connection. The determination of the relevant local authority does not take account of a period of residence in a residential establishment or any connection with an area that relates to such a period of residence. Although ministers have powers to adjust the provision further to ensure that changes of residence as a result of compulsory intervention do not result in an inappropriate shift of responsibility for the child between local authorities, the child's relevant local authority might legitimately change during the child's involvement in the children's hearings system.

As we have heard, amendment 144 seeks to add to the list of those from whom the sheriff may hear evidence in determining the relevant local authority for a particular child. Currently the bill states that evidence may be heard from any local authority or the national convener. Amendment 145 seeks to allow the additional people set out in amendment 144 to have a right of appeal to the sheriff under section 160.

Although I agree with the principle of Ken Macintosh's endeavours to make the process inclusive for children, I do not agree with these amendments because the test of determining a child's relevant local authority is one of fact, not of opinion, and does not require a child, a person representing the child, a relevant person or relevant person's representative to have any say—and rightly so—for the purposes of these provisions. Nor should the determination of a relevant local authority matter to the persons introduced by amendment 144. Compulsory supervision orders are made independently of resource and need and the relevant local authority, regardless of which it turns out to be, must implement them.

Finally, the amendments are not clear about the nature of the evidence that the persons listed in amendment 144 would be required to give. Perhaps Mr Macintosh can share his thinking on this, but it is not clear to me why the representatives of the child or relevant person should have a right of appeal that is independent from that of the child or relevant person. The amendments seem to set up a rather odd situation in which, even if the child or relevant person does not wish to appeal a decision, their respective representatives could still do so.

I urge Ken Macintosh to withdraw amendment 144 and not to move amendment 145.

Ken Macintosh: I appreciate the minister's response, but am not entirely convinced by his fundamental argument. He suggests that the test of the relevant authority is one of fact, not opinion. If that were the case, why are we asking local authorities to give evidence? It is clear that the test is not one of fact, otherwise that would be established. We are asking the relevant local authorities to give their opinion. If we are asking them to do that, we should certainly ask the child for his or her opinion, and we should also ask the relevant person for their opinion. That would be the nature of the evidence. We are asking that the sheriff can call on them, whereas they are currently not allowed to be called. Such decisions

are vital for children. The child certainly has an interest in which local authority looks after them and the decisions that they take. As the minister said, we should put the interests of the child at the centre of things.

The Presiding Officer: The question is, that amendment 144 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Henry, Hugh (Paisley South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 60, Against 58, Abstentions 3.

Amendment 144 agreed to.

Section 160—Appeals to sheriff principal: section 159

Amendment 145 moved—[Ken Macintosh].

The Presiding Officer: The question is, that amendment 145 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Henry, Hugh (Paisley South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 60, Against 59, Abstentions 3.

Amendment 145 agreed to.

Section 161—Enforcement of orders

The Presiding Officer: We come to group 17. Amendment 92, in the name of the minister, is grouped with amendments 93 and 94.

Adam Ingram: Amendments 92 to 94 relate to the enforcement of orders. The bill currently provides for the police to intervene in the enforcement of compulsory supervision orders, interim compulsory supervision orders and medical orders where required. That is not a new policy; the police already have similar powers under the Children (Scotland) Act 1995. Taken together, my three amendments seek to ensure that children under any order contained in the bill may benefit from the same protection by making child protection orders, child assessment orders and orders that are made by a justice of the peace under section 53 subject to law enforcement. That brings the bill's provisions fully into line with the 1995 act.

I move amendment 92.

Amendment 92 agreed to.

Amendments 93 and 94 moved—[Adam Ingram]—and agreed to.

Section 169—Amendment of Vulnerable Witnesses (Scotland) Act 2004

Amendment 95 moved—[Adam Ingram]—and agreed to.

The Presiding Officer: That is as far as we are able to go with consideration of the bill this afternoon. Therefore, I am left with no choice but to suspend the meeting until 6 o'clock.

17:54

Meeting suspended.

18:00

On resuming—

Business Motions

The Presiding Officer (Alex Fergusson): Before we come to consideration of business motions, I point out that consideration of amendments in the Children's Hearings (Scotland) Bill will continue at 2.55 tomorrow afternoon, beginning at group 18.

Our next item of business is consideration of business motion S3M-7466, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 1 December 2010	
2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Debate: Annual Fisheries Negotiations
followed by	Stage 1 Debate: End of Life Assistance (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
6.00 pm	Decision Time
followed by	Members' Business
Thursday 2 December 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Liberal Democrats Business
11.40 am	General Question Time
12.00 pm	First Minister's Question Time
2.15 pm	Themed Question Time Health and Wellbeing
2.55 pm	Ministerial Statement: Forensics Modernisation Programme
followed by	Stage 1 Debate: Wildlife and Natural Environment (Scotland) Bill
followed by	Financial Resolution: Wildlife and Natural Environment (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 8 December 2010	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motion

followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 9 December 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12.00 pm	First Minister's Question Time
2.15 pm	Themed Question Time Justice and Law Officers; Rural Affairs and the Environment
2.55 pm	Scottish Government Business
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business—[Bruce Crawford.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-7464, also in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out an extension to the stage 1 timetable for the End of Life Assistance (Scotland) Bill.

Motion moved,

That the Parliament agrees that the timetable for Stage 1 consideration of the End of Life Assistance (Scotland) Bill be extended to 3 December 2010.—[*Bruce Crawford*.]

Motion agreed to.

Parliamentary Bureau Motions

18:01

The Presiding Officer (Alex Fergusson): The next item of business is consideration of three Parliamentary Bureau motions. I ask Bruce Crawford to move en bloc S3M-7467 to S3M-7469, on the approval of Scottish statutory instruments.

Motions moved,

That the Parliament agrees that the Number of Inner House Judges (Variation) Order 2010 be approved.

That the Parliament agrees that the draft Regulation of Investigatory Powers (Scotland) Amendment Order 2010 be approved.

That the Parliament agrees that the Waste Information (Scotland) Regulations 2010 be approved.—[*Bruce Crawford*.]

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

The next item of business is consideration of a further Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-7470, on the designation of a lead committee.

Motion moved,

That the Parliament agrees that the Transport, Infrastructure and Climate Change Committee be designated as the lead committee in consideration of Low Carbon Scotland: The Draft Report on Proposals and Policies: Scotland – A Low Carbon Society.—[*Bruce Crawford*.]

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

Decision Time

18:01

The Presiding Officer: The question is, that amendment S3M-7477.1, in the name of Iain Gray, which seeks to amend motion S3M-7477, in the name of John Swinney, on the Scottish variable rate of income tax, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tolson, Jim (Dunfermline West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Gil (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Somerville, Shirley-Anne (Lothians) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 77, Against 46, Abstentions 1.

Amendment agreed to.

The Presiding Officer: The question is, that motion S3M-7477, in the name of John Swinney, on the Scottish variable rate of income tax, as amended, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Annabel (West of Scotland) (Con)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tolson, Jim (Dunfermline West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Campbell, Aileen (South of Scotland) (SNP)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Gil (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Somerville, Shirley-Anne (Lothians) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 76, Against 46, Abstentions 1.

Motion, as amended, agreed to,

That the Parliament considers it an abuse of power for the Scottish Government to abandon the Scottish variable rate of tax without the approval of the Parliament and by consequence preventing the Parliament from using this power until 2013-14 at the earliest; further considers it unacceptable for ministers to mislead the Parliament over the existence of these powers; believes that it is wrong that a power given to the Parliament by the people of Scotland in a referendum should be taken away by the action of a minority government without reference to or endorsement from the Parliament, and calls on the Scottish Government to admit responsibility for the lapse of the tax varying powers and to apologise to the members of the Parliament and people of Scotland to whom it has conveyed the impression that these powers are still capable of use.

The Presiding Officer: The question is, that motions S3M-7467 to S3M-7469, in the name of Bruce Crawford, on approval of SSIs, be agreed to.

Motions agreed to,

That the Parliament agrees that the Number of Inner House Judges (Variation) Order 2010 be approved.

That the Parliament agrees that the draft Regulation of Investigatory Powers (Scotland) Amendment Order 2010 be approved.

That the Parliament agrees that the Waste Information (Scotland) Regulations 2010 be approved.

The Presiding Officer: The question is, that motion S3M-7470, in the name of Bruce Crawford, on designation of lead committee, be agreed to.

Motion agreed to,

That the Parliament agrees that the Transport, Infrastructure and Climate Change Committee be designated as the lead committee in consideration of Low Carbon Scotland: The Draft Report on Proposals and Policies: Scotland – A Low Carbon Society.

Point of Order

18:04

Margo MacDonald (Lothians) (Ind): I have a point of order, Presiding Officer, on which I will be brief. I seek your guidance on whether I should ask permission to move a motion without notice. I can do so now or tomorrow, if that would be more convenient. The motion that I seek to move concerns the outcome of today's debate on the Scottish variable rate of income tax. I propose that all the papers relating to the debate should be sent to our two previous Presiding Officers asking them whether they will give us a commentary on everything that happened.

The Presiding Officer (Alex Fergusson): It is at the discretion of the Presiding Officer to take a motion without notice. I am not minded to accept it at this point in time. Please think about the matter overnight and come back to it tomorrow, Ms MacDonald.

Scottish Veterans Charter

The Deputy Presiding Officer (Alasdair Morgan): The final item of business today is a members' business debate on motion S3M-7415, in the name of Jeremy Purvis, on a Scottish veterans charter. The debate will be concluded without any question being put.

Motion debated,

That the Parliament appreciates the service that the men and women of the armed forces veterans community in the South of Scotland and beyond have made to the nation; values the breadth of commitment made by veterans, including carrying out what it regards as uniquely dangerous and challenging conditions of service; appreciates that, as a result of the particular characteristics of armed forces service, many veterans might need to call on support for physical and mental health problems, employment advice and social care; believes that there should be sensitivity with regards to the unique nature of military service when designing and delivering such services, and would welcome a Scottish veterans charter that would allow all public bodies to be able to recognise their duties and responsibilities in providing support to veterans and that would ensure that all veterans and their families are reintegrated, without disadvantage, to civilian life.

18:05

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I thank the members who have stayed for the debate and those who have supported the motion in my name.

Members from all parts of Scotland will have represented their constituents at armistice day commemorations two weeks ago. In Peebles, I saw colleagues, families and friends of a young man who has recently given his life in the service of his nation. In Galashiels, I saw veterans of the combined services who have served their country. One of the proudest but most solemn duties that I perform in my role of MSP is to lay a wreath on behalf of constituents.

Supporting former members of our armed services should not be for one day a year alone, no matter how significant that day is. The recognition that the Parliament's powers over devolved matters touch the lives of every veteran and their families, carers and loved ones in Scotland led to the formation of the cross-party group on supporting veterans in Scotland, the next meeting of which is in mid-December. All members are welcome to attend.

The recognition during the time in which the group has met that we need to do more for veterans, and to do it better, led me to propose the establishment of a network of local authority veterans champions. I thank all of them for their commitment, time and work. They met Veterans Scotland in Stirling yesterday. I felt that it was appropriate to seek parliamentary time for a debate on the next steps.

The cross-party group has discussed and taken up issues of mental and physical health and wellbeing; the training—and lack of it—of social work staff in relation to veterans' needs; and housing policy and housing allocation practice. We have considered the sensitive issue of drugs and alcohol misuse among veterans, and have discussed with members and veterans their concerns about criminal justice and the veterans community in prisons. We have discussed how priority treatment in health services is not being delivered on the ground to the standard that all of us would like.

In all those areas, we have discovered that, regrettably, delivery is patchy and inconsistent and that staff have various levels of awareness of veterans' needs. Most alarmingly, we have found repeated cases of a lack of awareness among public bodies of the guidance, prioritisation policies and best practice that are expected of them. That is not meant to be a criticism of public bodies or the Scottish Government: individuals within public bodies are dedicated staff, many of whom have known veterans and have them in their families. Although the minister and I have had differences during today's proceedings, I know of his enthusiasm and dedication in this area.

However, the services are not of the standard that I believe is appropriate. That has led me to propose that there should be a charter for veterans in Scotland. I am aware of the work of the United Kingdom Government in the area, which is currently with ministers for consideration. I am also aware that some public bodies in Scotland, such as Stirling Council, already have corporate policies. The Parliament should commend that council on taking a lead. I propose that public bodies should adopt such a charter, which would establish the principles to which they should adhere when they provide services to veterans. The charter need not rely on UK Government actions, as it relates to the functions of devolved bodies here in Scotland.

I propose that the principles of the charter should be broadly straightforward. The charter would recognise that the men and women of the Scottish veterans community have served our nation and our nation's interests through dedicated service. They may have been called on to serve in circumstances that have led to physical and mental damage. The charter should establish principles according to which public bodies in Scotland recognise the unique characteristics of service in how they deliver public services, in order to afford all members of the veterans community and their families the dignity, respect and level of service that correspond to their needs.

Tomorrow I will be e-mailing all colleagues in the Parliament with more information regarding the charter, and I will be writing to all public bodies in Scotland, including local authorities and health boards, with the draft of the charter, asking them not only to adopt it but to adopt the principles within it.

All too often I have seen in my area casework in which guidance has not been adopted because the legislation is not so strict. Practice on the ground is not the same as a board's policies or an organisation's corporate approach.

It is appropriate to take the next step forward. We owe those who have served our country not just our thanks and commemoration on one day each year; we owe them a guarantee that the services for which we in the Parliament are ultimately responsible are the best that can be provided, and that due recognition will be provided of the commitment and service that veterans have given. In doing that, we should respect the particular circumstances of their needs.

I hope that the campaign that I am starting this evening for a veterans charter will be successful. I hope that it will be backed enthusiastically not only by the Government but by public bodies throughout Scotland. We should take this step forward to provide the services that we all believe should be provided to veterans. A charter will allow veterans, their families and carers a document through which they can hold public bodies to account, and which they can say is theirs and theirs alone.

I hope that the document is adopted in Scotland, and I have pleasure in speaking to the motion.

18:12

Angela Constance (Livingston) (SNP): I add my congratulations to Mr Purvis on securing tonight's members' business debate. He has worked hard with colleagues such as Keith Brown to establish the cross-party group on supporting veterans in Scotland, which does a good job.

I very much like the idea of a veterans charter, particularly as it could encapsulate all that we should be doing at a strategic level for our veterans. Having a charter that plainly states what all public bodies should be striving to do and what their duties are could go some way towards tackling the often inevitable problems that are faced by people who have seen active service, whether those are physical health problems, a disability, mental health problems or associated social issues.

Charters are all very well, but actions speak better and louder than words. I very much hope that we succeed in securing a charter. Public agencies must be persuaded to be willing signatories, and they must then actually do what they have signed up to do. After all, our servicemen and servicewomen do without question what they have signed up to do on behalf of their country. As individuals, as citizens, as a Parliament and as a Government, we should ensure that there is a social contract for veterans, in recognition of what they do for us.

I have a particular interest in veterans who end up in the criminal justice system. Colleagues will recall a members' business debate earlier this year on that issue. I hope that a veterans charter would reflect on how the criminal justice system, at every stage from arrest to the worst-case scenario of sentencing and post-release supervision, could be better tailored to support veterans. For instance, community justice authorities could have a veterans champion.

With more alert services, we could be doing much more to prevent veterans from becoming involved in the criminal justice system. In that respect, a veterans charter could be a valuable tool. No one is above the law, but we cannot escape the significant mental health issues that are faced by many veterans who end up incarcerated. There is much more to be done in that respect.

I take the opportunity to ask the minister what progress has been made on having more reliable data on the number of veterans in Scotland's prisons. In the debate earlier this year, he said that he would pursue the issue at UK level with the new Secretary of State for Defence and the minister with responsibility for veterans, to build on the assurances that the Scottish Prison Service and the Ministry of Defence have given to work together on the matter. We do not want numbers for numbers' sake; we need better information about the profile of veteran offenders, because that will enable us to build up a better picture and have a better chance of rehabilitating veterans who end up on the wrong side of the law.

I draw members' attention to a recent report by the Howard League for Penal Reform, "Leave No Veteran Behind: The Inquiry into Former Armed Service Personnel in Prison visits the United States of America", which notes interesting parallels and differences between the UK and the USA in relation to veteran offenders. I should say that on both sides of the Atlantic veterans are far less likely to offend than are the general population, but when veterans offend the offence is more likely to be serious and to involve violence. Veterans tend to serve longer sentences. They also tend to be older: 30 per cent of veteran offenders—a significant proportion—are over 55. Of course, that figure is based on data on the

prison population in England and Wales. We need more information on Scotland.

The Howard League for Penal Reform's report floats the idea of a veterans court, a good example of which is in Buffalo in the USA. I am not instinctively drawn to specialist courts, because I think that our courts system should be able to deal day to day with the special issues that are associated with women offenders, drug offenders, domestic abuse offenders and veteran offenders. However, the approach is worthy of consideration, given its success across the Atlantic. I ask the minister to discuss the report with the Cabinet Secretary for Justice.

18:17

Trish Godman (West Renfrewshire) (Lab): I congratulate Jeremy Purvis on securing the debate. I was pleased to sign his motion and to support the charter.

In the motion, Jeremy Purvis alluded to veterans who live throughout Scotland. He was right to do so. All members have veterans of all ages among their constituents, from very young men to people who served in the 1939 to 1945 world war and the Korean war. I am proud to be a member of the cross-party group on supporting veterans in Scotland. I am also proud to represent Erskine home. Erskine, which has spread its protective wings over other parts of Scotland, plays an exceedingly important role in the care and rehabilitation of veterans.

It is a sad fact of life that Governments down the years have not shown enough concern for the veterans who have given loyal service in the Army, Royal Navy and Royal Air Force. That indifference has been challenged in recent times, and changes are taking place with a view to assisting veterans to adjust to civilian life. However, as Jeremy Purvis pointed out, that change is not happening fast enough.

It is politicians who send men and women to war, so it follows that politicians have a bounden duty to ensure that when veterans return—often badly wounded, not coping and suffering post-traumatic stress—they are provided with the means to engage in everyday life in their communities. Given that that is the underlying principle of Jeremy Purvis's veterans charter, I think that, although members of the Scottish Parliament do not send our men and women to war, we have a responsibility for them when they return to Scotland.

As Jeremy Purvis said, all members attended remembrance services last week. I have laid wreaths in Port Glasgow and Greenock for more than 27 years, representing the Scottish Parliament, and Westminster on behalf of my husband. I would have thought that after 27 years fewer people would be attending such ceremonies, but that is not the case. I am seeing much younger men and women, who have come back from Afghanistan and Iraq.

In the past, little attention was paid to the suffering of wounded veterans. For example, it took years before the Westminster Parliament followed the lead of the Administrations in New Zealand and Australia in paying compensation to the veterans who had suffered so dreadfully at the brutal hands of Japanese guards in prisoner-of-war camps in Asia.

Any country that is willing to send its young men and women to engage in military combat bears a heavy responsibility for ensuring that they are treated compassionately on their return. Much has been done in recent times, but we must remain vigilant. Many of the world war two veterans were more or less told to get on with it when they returned to civvy street. There was little or no understanding of the physical, mental and social problems that many experienced when they returned to these shores. We have a better understanding now but, as I said, it is still a sad state of affairs that, in many cases, those who return from Iraq and Afghanistan face the same difficulties in adjusting to civilian life and find that services to support them do not exist.

I said that I am pleased to take part in the debate, but I am angry that we have to have it. Help and support for those who lay down their lives on our behalf should be automatic. We have an important debt to pay those who are engaged in the dreadful business of killing and dying on our behalf, and for far too long this country of ours has ignored their needs and concerns. We face many challenges in this place, and we have difficulty in resolving many of them, but this one should not be difficult. We know what the services should be, as Jeremy Purvis and Angela Constance have said, and we know that they should be available, but they are not.

At the very least, as the motion states, we should ensure that

"all public bodies ... recognise their duties and responsibilities in providing support to veterans"

and ensure that they and their families are appropriately supported and that they are reintegrated into civilian life. I thank Jeremy Purvis again for securing this debate.

18:21

John Lamont (Roxburgh and Berwickshire) (Con): I begin by congratulating Jeremy Purvis on securing the debate.

We hold many members' business debates in this Parliament on a variety of interesting subjects, but our topic today must surely be one of the most important: how we best look after those who have chosen to protect our country by serving in our armed forces.

The issue is of particular importance as our armed forces continue to be engaged in combat operations overseas. When we hear the word "veterans", the common image is of those who have fought in the world wars and are now rather elderly, but in recent years the realities of our involvement in Iraq and Afghanistan have meant that the image is changing. Indeed, many of those who are recovering in veterans respite homes across the country are in their early 20s.

Scotland has a proud military tradition. It is right that we collectively underline our appreciation and admiration for the bravery of our armed forces as a whole.

It is interesting to hear from other members about their experiences of veterans and veterans groups in different parts of Scotland. As a Borders MSP, I am particularly proud of the contribution that borderers have made, not only to our armed forces but to the cause of veterans. The strength of our armed forces is a result of the bravery of thousands of individuals, and I am proud that hundreds of those brave men and women have come from communities throughout the Borders. Among some of the better-known names from the Borders is the Earl Haig, who dedicated his later life to the welfare of ex-servicemen, travelling extensively throughout the world to promote their interests and to argue for improvements to their welfare. As the founder of the Earl Haig Fund, which is also known as Poppyscotland, he helped to start the tradition that, perhaps more than anything else in the past century, has focused attention on the issue.

It is clear that, even when not in combat, the military lifestyle is unique in the demands that it places on the lives of service personnel and their families. Whether because of the long periods of deployment, the unusual stresses of the environment in which they work or the risks involved, our service personnel have a unique occupation. Although many manage the transition smoothly, moving from that environment into regular civilian life undoubtedly presents real challenges for many others. That is why it is so important that adequate support is in place to help ex-servicemen and women to integrate back into normal civilian life. As we have heard, the issues affecting ex-servicemen and women are varied.

I commend Veterans Scotland for its work to promote issues regarding Scotland's veterans. It acts as a co-ordinating voice for the benefit of the ex-service community in Scotland, and it has been instrumental in making the Scottish Government listen and learn about the fate of our veterans. It is important to recognise the role of the many local and voluntary organisations that provide daily support to veterans who need or ask for assistance. It is right that those services are provided by a mix of public bodies and charities. The Government cannot and should not try to do everything, and the charities and voluntary groups bring to the table expertise and experience that are invaluable in supporting veterans and their families.

Assisting those who return from active service has been a challenge to our society for centuries. We should recognise that not enough has been done to support such people in the past. I am pleased that that seems to be changing, perhaps as a result of the current realities of war and the tangible reminder of the debt that we owe to those brave men and women. However, we must not make that a reason for complacency. That is why the debate is important, as it keeps the issue in the public eye.

People who have put and continue to put their lives on the line for their country should expect the full support of members of the Parliament and our wider society. I hope that the debate has demonstrated that we give that support.

18:25

Hugh Henry (Paisley South) (Lab): I thank Jeremy Purvis for giving us the debate and allowing Parliament to record its thanks for and appreciation of those who have served us well. He is right to focus in his motion on what we should do as part of our responsibility to those people.

I grew up in the grounds of what was known as Erskine hospital in Trish Godman's constituency—it is now the Erskine home, as she said. My father was a prisoner in a Japanese prisoner-of-war camp for nearly four years. The fathers of all my friends suffered in one way or another—at the hands of the Japanese or in the theatre of war in Europe. When I was young, it was not unusual for me to mix with men who had lost limbs, suffered terribly in explosions or suffered—as my father did—privation in prisoner-of-war camps.

In the interests of consensus, I will not introduce disagreement into the debate. However, suffice it to say that, when I was a boy, the veterans from the first world war who lived in Erskine hospital had a very different view of Earl Haig from the benign view that John Lamont presented. They still had bitter memories of what they thought that Earl Haig had done.

I grew up in what I now know was a wonderful, caring and supportive environment. The people who were privileged to be there received huge

support not just from the staff but from the local community, because everyone was in it together. However, although that environment was as good as it was and was much better than the circumstances in which my father's comrades often had to live outwith it, I reflect that the veterans still received little counselling for the horrors and little direct medical support, although Erskine tried to do its best. That was because we as a society had not learned how to cope with people who came back from war.

We are in a much better place now than we were then. We have learned about the psychological and physical consequences of war, but we still make mistakes and we still fail. Undoubtedly, for those who are worst affected, the services—imperfect as they are—are probably much better than the services for those who are less severely affected but who are still traumatised and suffering as a result of their active service. Far too many servicemen are addicted to alcohol or drugs, too many are in prison and too many are suffering homelessness. As long as that remains the case, we as a society are failing.

It is therefore right that we exhort and encourage people to work together better and specify how we want that to be done. That is not just because society must pay a terrible price when we fail in our endeavours but because it is a disgrace that we allow individuals who are suffering because of what they have gone through to have to bear the consequences of that turmoil.

Jeremy Purvis is to be congratulated. It is right for the Parliament to put on the record the fact that we can and should do better. More power to his elbow.

18:29

The Minister for Housing and Communities (Alex Neil): I, too, congratulate Jeremy Purvis on securing a debate on an issue on which there is widespread consensus in the Parliament, even if attendance is depleted because of the late finishing of the main business. Across the Parliament, members are determined to do what we can, within the powers and resources that are available to us, to help veterans and the wider veteran community.

Before I deal with the idea of a charter, I will take the opportunity to update Angela Constance on the point that she raised, given that I gave an undertaking in a previous members' business debate to pursue the issue of veterans in prison. Discussions are well under way with the Ministry of Defence and the Ministry of Justice to progress the matching of the Scottish Prison Service prisoner database with the MOD database of known service leavers. A number of detailed protocols require to be agreed between the SPS and the MOD's Defence Analytical Services and Advice, and the SPS is working towards securing them. However, it has proved impossible simply to transfer the SPS database, as that would breach data protection legislation. Other steps to circumvent that problem are being investigated.

In addition, a targeted survey of self-reported veterans in custody is being developed to explore post-service issues and offending behaviour with a view to getting a better understanding of veterans' characteristics and precipitating factors that lead to imprisonment. The survey questionnaire is being designed and content will cover: demographic characteristics; service and post-service history; offending behaviour and criminal history; substance misuse issues; mental health functioning; employment status; accommodation and homelessness; access to services in the SPS; access to services that are provided by specialist veterans associations; and other ancillary topics. In October, the process began of distributing it to those ex-service personnel who can be identified through the prisoner record system. Responses will be anonymised and confidential, and a report will be available in December, so I hope that Angela Constance will accept that we have pursued that issue vigorously.

Jeremy Purvis makes a strong case for a veterans charter. As he makes clear in his motion, a charter would ensure that public bodies recognised their duties and responsibilities in providing support to veterans. It would be a tangible commitment to veterans that I have no doubt would be well received.

As members will be aware and as Jeremy Purvis mentioned, the UK Government has reached a fairly advanced stage in the development of an armed forces covenant, which will provide a framework for communication with military personnel and veterans, as well as the public and service providers. It is expected to be ready early in the new year.

The aim, direction and even the wording of the armed forces covenant will be informed by a report by a task force chaired by a Scot—Professor Hew Strachan of the University of Oxford. That report will be published later this month, and the UK Government will make a formal response to it early next year, in advance of the issuing of the covenant. Naturally, the Scottish Government has been and will continue to be fully involved in the process of bringing the covenant into the public domain.

Indeed, we have already had a significant input into the work of the task force. In October, I met Professor Strachan to discuss his work and to give a Scottish Government perspective. The professor also met Dr Kevin Woods, our lead civil servant at

the time and the Scottish Government's armed forces and veterans champion, and policy officials have fed into the consultation process around the report. I can reveal that, in his discussions with us, the professor made it clear that the Scottish Government had made significant progress in tailoring public services for the armed forces community and that Scotland was in a much stronger position than other parts of the UK in that regard.

Although the task force report is not yet in the public domain, I can say that it will make a range of recommendations in respect of veterans, many of which will coincide with the motion's proposals on a veterans charter. At this stage, it would not be appropriate for me to go into further detail on a report that has not yet been published, but I can assure members that the call for a charter sits well with what the report is likely to say.

My only cautionary note is that it is important to develop work on that front in a way that is predicated on the removal of disadvantage from, not the provision of advantage for the veterans community in accessing public services. That is also the view of Veterans Scotland. I give an undertaking today that we will consider the scope of the veterans charter as part of our implementation of the armed forces covenant as it applies to Scotland, although it will obviously take time to put that in place. We will also consult on it.

There will be many issues to consider, but I can tell members that we will wish to draw into that work the views and ideas of all interested parties, and we will do that on a cross-party basis. This is not a party political issue; we want to maximise consensus in all aspects of the covenant and in relation to a possible charter.

In the meantime, we cannot sit back and wait for the covenant. We must continue to develop our work in meeting the needs of veterans and influencing policy and the delivery of services by public bodies. As the minister responsible for housing, I am pleased to say that the Housing (Scotland) Bill will receive royal assent by Christmas, and it contains the specific commitment to remove the disadvantage faced by veterans who are trying to get on to waiting lists for council and housing association houses in Scotland.

We as a Parliament, not just as a Government, are committed to those who have fought for our country and offered to make the ultimate sacrifice. A great deal of detail has to be worked out on all aspects of the issue, including housing, education and health, and in a range of other services. I can also confirm that we will be able to implement our policy of extending the concessionary bus fare scheme to disabled veterans from 1 April next year. We will continue to work with our colleagues and the various agencies in London, as well as with all the relevant organisations in Scotland to progress with the work. When the armed forces covenant and the task force report are published, we will act with speed to examine the recommendations and take them on with a view to action, not words.

Meeting closed at 18:37.

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