The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 9 January 2014

Session 4

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Scottish Parliament

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[The Presiding Officer *opened the meeting at 11:40*]

General Question Time

Autumn Budget Statement (Barnett Consequentials)

1. Kezia Dugdale (Lothian) (Lab): To ask the Scottish Government how it will allocate the Barnett consequentials arising from the autumn statement. (S4O-02767)

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): As previously announced to Parliament, the Scottish Government's priorities for the consequentials from the autumn statement will be improving opportunities for our people by ensuring that Scotland is the most attractive place in which to do business through maintaining the most favourable business rates environment in the British isles, and by supporting our children and families through a combination of universal access to free school meals for all our primary 1 to primary 3 children and an ambitious expansion of pre-school provision for two-year-olds.

In particular, those policies will add to our social wage—our contract with the people of Scotland to provide support to hard-pressed households and to ensure that our children have the best start in life. The funding that we have announced will provide parents with additional support when they are looking for employment and maintain that support when they are successful.

Kezia Dugdale: I thank the cabinet secretary for that answer, although it is not clear just exactly how much of the £300 million of Barnett consequentials has been allocated by him, how much he has left, and how much he has moved from one year to another in order to deliver on his spending commitments.

In light of that, I ask the cabinet secretary to publish a full breakdown of how he has allocated the Barnett consequentials at the earliest opportunity, so that Opposition members can adequately scrutinise the detail.

John Swinney: The first thing that I will say to Kezia Dugdale is that the consequentials are made up of three different types of consequential funding. The first is resource departmental expenditure limit funding, which must be used on operational Government expenditure; the second is capital DEL, which is for improvement in the capital estate; and the third is £76 million of financial transactions, which—as I have already explained to Mr Bibby in the chamber—cannot be used for operational public expenditure. Therefore, the total resource DEL that is available is £210 million.

The Government has allocated £77 million from that to ensure that we maintain our position—our manifesto commitment—of ensuring that businesses in Scotland do not pay higher business rates than businesses in the rest of the United Kingdom. I now see that Ms Dugdale opposes that approach and that she believes that businesses in Scotland should be paying higher business rates. In addition, her colleague Ms Ferguson said yesterday that we should be reconsidering the small business bonus scheme.

I look forward to the Labour Party explaining to people in Scotland that companies will have to pay higher business rates if the Labour Party has anything to do with it. Higher business rates will damage employment and economic opportunity and make it ever more difficult for people to enter the labour market. Getting people into the labour market is the Scottish Government's priority.

Stewart Maxwell (West Scotland) (SNP): Does the cabinet secretary share my concerns at Labour front-bench members publicly stating over the past two days that they are considering increasing business rates and cutting support for the small business bonus scheme?

Kezia Dugdale: When did we say that?

The Presiding Officer (Tricia Marwick): Order.

Stewart Maxwell: Can the cabinet secretary tell me what impact that would have on small businesses and, in particular, on employment in Scotland?

John Swinney: I share Mr Maxwell's concerns. He has done a very good job in ensuring that the issue has been highlighted on various broadcast media programmes over the past couple of days.

The consequences of not maintaining parity in the business rate poundage north and south of the border would be to return us to the position that we inherited from the previous Government—the previous Labour Government—in Scotland, where companies paid higher business rates than in the rest of the UK and were at a competitive disadvantage. It damaged small businesses and employment prospects in our country. This Government will do everything that it can to maximise employment opportunities in Scotland.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I regret the fact that the cabinet secretary did not make a statement on the consequentials so that the figures could have been clear before the debate on Tuesday. Given that, can he tell us now exactly how much of the

money is going to childcare for two-year-olds and how much is going to free school meals—which of course we support, although it was not our first choice?

John Swinney: That one parliamentary question says it all: it is a classic example of having one's cake and eating it.

Mr Chisholm says that I did not make a parliamentary statement on the consequentials. I made it crystal clear in my local government finance statement to Parliament on 11 December that the Scottish Government would maintain business rate parity with south of the border.

On Mr Chisholm's point about free school meals and extending childcare, the Scottish Government will spend, over a two-year period, £55 million on free school meals; £59 million on extending childcare for two-year-olds in workless households; and a further £3.5 million on expanding the childcare workforce and taking the necessary preparatory steps so that the workforce is able to deal with the policy's implementation.

I respectfully encourage experienced parliamentarians such as Mr Chisholm not to fall into the trap of believing that one can spend money that is available to the Government twice and, as a consequence, damage the employment prospects of people in our country.

Renewables Obligation (Scottish Parliament's Powers)

2. Stewart Maxwell (West Scotland) (SNP): To ask the Scottish Government what its position is on the House of Lords amendment to the Energy Bill that removes the Scottish Parliament's powers in respect of the renewables obligation. (S4O-02768)

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The United Kingdom Government produced the amendment with no prior consultation, and I am deeply concerned that it has chosen to act in that way to remove powers from Scotland. As the Energy Bill was given royal assent on 18 December, UK ministers now have the power to close the renewables obligation in Scotland.

During the past decade we have used our devolved powers over the renewables obligation effectively and successfully, thereby targeting support to reflect Scottish priorities and drive the development of the renewables sector in Scotland. The amendment provides for a fundamental transfer of powers to Westminster on a topic that is central to the future of the Scottish economy.

Stewart Maxwell: Does the cabinet secretary share my concerns about the lack of consultation with the Scottish Government, Scottish ministers and the Parliament on the decision to remove the Scottish Parliament's discretion over the renewables obligation? Does he agree that it serves as a warning that Westminster may strip more powers from Holyrood in the event of a no vote in the independence referendum?

John Swinney: I make clear to Mr Maxwell and to Parliament my concern at the lack of consultation on the matter, and in particular at the UK Government's unwillingness to accept the point that has been put to it. That demonstrates that we would be in a far stronger position if we were able to take such decisions for ourselves based on what is right for the circumstances in the Scottish economy and the Scottish marketplace.

As we have demonstrated through the effective use of those powers during the past decade, we can encourage and support the development of a vibrant new renewable energy industry in Scotland.

Next-generation Broadband

3. Stuart McMillan (West Scotland) (SNP): To ask the Scottish Government what action it is taking to provide next-generation broadband in the west of Scotland. (S4O-02769)

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): The Government and our partners are investing more than £409 million to improve access to next-generation broadband. The programme is being delivered through two major infrastructure projects: one that covers the Highlands and Islands, and another that covers the rest of Scotland.

Those interventions focus on delivering next-generation broadband access to the areas where the commercial market will not go, which includes all the west of Scotland local authority areas. With BT as the private sector delivery partner, we estimate that the investment will mean that next-generation broadband infrastructure will be accessible to 85 per cent of Scotland by 2015 and to 97 per cent by 2017.

Stuart McMillan: I recently carried out a consultation on a separate matter in the Inverclyde area in which a number of my constituents raised the issue of broadband capacity. Can the cabinet secretary provide more details on the roll-out of broadband for the rest of Scotland? When can areas such as Inverclyde expect to have improved broadband connectivity?

Nicola Sturgeon: In terms of coverage, the programme seeks to deliver infrastructure to 95 per cent of premises by the end of 2017. In the rest of Scotland procurement area, coverage is expected to be more than 96 per cent. All local

authority areas will benefit from the roll-out, and a process is in place to enable the programme team to work closely with local authority representatives throughout the deployment.

Super-fast broadband is currently available to 73.5 per cent of addresses in the Inverclyde area, according to Ofcom's survey. According to current modelling projections, investment through the step change programme will result in access to super-fast broadband infrastructure for 96.3 per cent of premises in Inverclyde.

I remind members that there is a briefing—sponsored by Maureen Watt—for members in the Parliament next Wednesday, at which the programme will be gone through in detail and an announcement will be made on which areas will be the next to receive coverage. All MSPs and their researchers are welcome to attend.

Linda Fabiani (East Kilbride) (SNP): I congratulate the Scottish Government on the high level of coverage that it has already negotiated for my own area of East Kilbride. However, can the Scottish Government instigate discussion with South Lanarkshire Council and BT to ensure 100 per cent availability of next-generation broadband to businesses and domestic properties, thus maintaining East Kilbride as a prime technological and industrial location?

Nicola Sturgeon: I am happy to confirm that we will continue to have discussions with South Lanarkshire Council. As with all local authorities, South Lanarkshire Council is a key partner for the Government in the roll-out and delivery of broadband under the programme. The 32 Scottish local authorities contributed a total of £40 million to the programme and some 14 authorities chose to contribute additional funding to further broadband priorities in their areas. Although those did not include South Lanarkshire Council, we know that broadband is a key priority for the council and we will continue to discuss that with it in future.

Alex Johnstone (North East Scotland) (Con): The minister will be aware of the Welsh Government scheme that gives grants of up to £1,000 for those who can demonstrate that they are unable to achieve a broadband connection speed of greater than 2 megabits. Given that there will always be people at the end of the line who are very difficult to serve, will the Scottish Government consider a similar scheme at some time in the future?

Nicola Sturgeon: We currently have our own schemes operating in Scotland. Alex Johnstone will be aware of community broadband Scotland, which is a £5 million initiative that seeks to support rural and remote communities to deliver their own broadband solutions. I am happy to send him more information about that programme, which he can share with constituents in particular communities. I am more than happy to discuss that with him further.

Police Scotland (Meetings)

4. John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): To ask the Scottish Government when it last met representatives of Police Scotland and what issues were discussed. (S4O-02770)

The Cabinet Secretary for Justice (Kenny MacAskill): I meet regularly with representatives of Police Scotland to discuss important issues around keeping people safe in Scotland. The Scottish Government values its good relationship with Police Scotland, and policing in Scotland is performing excellently. Crime is at a 39-year low, violent crime is down by half since 2006-07 and homicides are at their lowest since records began. The risk of being a victim of crime is falling and confidence in the police is high and rising. In stark contrast to England and Wales, we are protecting police numbers and have more than 1,000 extra police officers compared with the situation in 2007.

John Lamont: I received information from Police Scotland that reveals that in 2013-14 £9.3 million of funding for 377 police officers came from outside the Police Scotland budget, including £160,000 provided by Scottish Borders Council for four officers. The cabinet secretary will be aware that the City of Edinburgh Council has announced that it will withdraw funding for its officers. If other organisations follow suit, Police Scotland will have to find the money for 377 officers. Can the cabinet secretary reassure Parliament that funding for the 1,000 extra police officers secured by my party will be protected without the need for further cuts to policing?

Kenny MacAskill: Those matters were quite correctly raised by the late David McLetchie prior to the inception of Police Scotland. Discussions have taken place and are on-going between local authorities and Police Scotland. The particular issue of Edinburgh is being addressed by the chief constable, who is meeting with the leader and deputy leader of the council. As far as I am aware, no decision has been taken, and I am reassured by the chief constable that he is confident that the situation to which Mr Lamont referred will not arise.

Mr Lamont is quite correct that additional officers are provided by that funding—officers that a local authority requires and seeks to have in its area. There are on-going discussions regarding the priorities that local areas have, but neither Police Scotland nor I have any concerns that we face challenges to police numbers. The challenges to the police budget come not from within Scotland but from the huge cuts that are being imposed by

Westminster. It is only through the good governance of this Administration that we are managing to avoid the debacle that is playing out in relation to police numbers south of the border.

The Presiding Officer: Question 5, from James Dornan, has been withdrawn. The member has provided a satisfactory explanation.

Common Agricultural Policy Budget 2014 to 2020

6. Aileen McLeod (South Scotland) (SNP): To ask the Scottish Government what impact the agreed common agricultural policy budget 2014 to 2020 will have on South Scotland. (S4O-02772)

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): We are, of course, very disappointed by the agricultural budget allocation, which has left Scotland at the bottom of European Union funding tables for both pillar 1, which is the direct payments to farmers, and pillar 2, which is the rural development funding that supports our local communities. The United Kingdom Government let us down badly. It failed us in the budget negotiations in Europe, particularly when, unlike 16 other member states, it did not negotiate extra resources for rural development.

Various agricultural sectors are represented in South Scotland, from mainly dairy in the south-west to cereals and general cropping in the south-east, to name but a few, and all will suffer as a result of that dreadful decision.

Aileen McLeod: Given that Ireland—a country of a similar size to Scotland—will receive twice as much pillar 1 funding as Scotland and seven times as much pillar 2 funding per hectare, can the cabinet secretary tell me how our farmers and rural communities across Dumfries and Galloway will stand to benefit from future CAP negotiations in an independent Scotland, in which we will be able to speak up for ourselves in Europe and will not have to let a United Kingdom Government with different priorities speak for us and therefore negotiate a comparatively worse deal for Scotland?

Richard Lochhead: The funding formula that has been agreed in Europe for the agricultural budget that is in place for 2014 to 2019 applies to all member states. Had Scotland been an independent member state at the negotiations, the formula would have delivered an extra €1 billion—that is £850 million—between 2014 and 2019. Our initial estimates show that we have lost out on the addition of half a billion pounds to Scottish gross domestic product and around 2,500 jobs by 2019. That huge missed opportunity for Scotland comes from our not being a member state of Europe, and it shows why it is in the interests of every farmer and crofter and all our rural communities to vote yes in September.

Food Banks

7. Bob Doris (Glasgow) (SNP): To ask the Scottish Government whether it holds information on how many food banks there are and what assistance it can provide to reduce reliance on them. (S4O-02773)

The Minister for Housing and Welfare (Margaret Burgess): We published a report on 17 December that gives an overview of food aid provision in Scotland. The report found that all the food bank providers that were asked had witnessed a sharp increase in demand and they named welfare reform, benefit delays, benefit sanctions and falling incomes as the main factors that are driving that increase.

We are doing what we can to limit the damaging effects of the United Kingdom Government's welfare reforms on the most vulnerable by, for example, committing £20 million in the current financial year and up to a further £20 million in the next financial year to mitigate the effects of the so-called bedroom tax. With full powers over the economy and welfare in an independent Scotland, we would be able to do even more.

Bob Doris: I accept that the most effective way in which to reduce the reliance on food banks in Scotland is to reverse much of the UK Government's welfare reforms. However, will the Scottish Government consider working with food banks and other local partners to ensure that all those who present at food banks are given opportunities to receive advice about income maximisation and, for those who are unemployed, potential pathways to employment? I stress that the key role of food banks is to meet the most basic of human needs and that any support that is offered would need to be given sensitively and in a way that did not deter the most vulnerable from presenting at food banks in the first place.

Margaret Burgess: Informed by our food aid provision study, we are exploring the best ways in which to ensure that all those who use food banks have access to appropriate advice and support. As part of our work to mitigate the worst impacts of welfare reform on those on the lowest incomes, we are providing an additional £7.9 million for advice and support services from 2012-13 to 2014-15.

The member touched on the sensitivity of the issue. Food banks are independent organisations and people are referred to them in moments of crisis, so we have to be careful about when advice is given and consider what advice is appropriate.

With all that in mind, I confirm that we are aware of the matter and want to ensure that everyone

has their income maximised, but we still need to ensure that food banks are allowed to maintain their independence and their charitable aims.

Cromarty Bridge

8. Rob Gibson (Caithness, Sutherland and Ross) (SNP): To ask the Scottish Government what plans it has to repair the Cromarty bridge. (S4O-02774)

The Minister for Transport and Veterans (Keith Brown): The Scottish Government is committed to refurbishing the Cromarty bridge over a number of years, and the feasibility of that is being assessed by Transport Scotland. A trial repair contract for the first five spans was completed in October 2011 and the repairs are being monitored to ascertain the scope of works for future repairs on the remaining 63 spans of the bridge.

The Presiding Officer: Please be brief, Mr Gibson.

Rob Gibson: Are there lessons to be learned from the refurbishment of the dual-carriageway Kessock bridge to ensure that repairs are speeded up and disruption reduced for traffic going to Wick and Thurso?

The Presiding Officer: Please be brief, minister.

Keith Brown: The Cromarty bridge is technically very different from the Kessock bridge, as the member knows. The Cromarty bridge is a low-level, concrete, multispan bridge that has severe concrete deterioration, and the refurbishment that is proposed is to arrest that to improve the bridge's durability and ensure its future use by the travelling public.

There is another lesson that we can learn. Even as the billions were starting to come into the United Kingdom Treasury's coffers from North Sea oil, the bridge was a cheap and cheerful option that we are now having to remedy. That is another aspect of the lack of investment in our transport infrastructure over decades, which a yes vote in September can help to remedy.

First Minister's Question Time

12:00

Engagements

1. Johann Lamont (Glasgow Pollok) (Lab): To ask the First Minister what engagements he has planned for the rest of the day. (S4F-01800)

The First Minister (Alex Salmond): I have engagements to take forward the Government's programme for Scotland.

Johann Lamont: The Scottish Government's white paper compares Scotland's growth rate with the growth rates of a selection of independent countries. If it were proved that Scots would be better off now had we matched the growth of those nations over the past 30 years, would that be a compelling reason to vote yes?

The First Minister: The compelling reason to vote yes is that we could mobilise the natural and human resources of Scotland to create a prosperous and just society in this country. That is the compelling reason to vote yes.

Johann Lamont: So, it is not the compelling reason that the First Minister had in his own white paper. That is interesting.

The First Minister's white paper says that Scots would be better off, if we take the period 1977 to 2007. We asked the Scottish Parliament's financial scrutiny unit to look at the past 30 years for which figures are available. The same comparison, examined over the past 30 years, actually shows that each and every Scot would be nearly £2,500 worse off. What made the First Minister hand pick the 30-year period from 1977 to 2007 rather than use the most up-to-date figures that are available?

The First Minister: Let us take the most up-to-date figures—figures that are part of the "Government Expenditure and Revenue in Scotland" statistics, which are generally accepted and officially noted by Government. They show that over the past five years, Scotland would have been £12 billion better off had we managed our own resources than we were under the London Government. That £12 billion is a great deal of money that could have been invested in the Scottish economy to promote Scottish jobs, to borrow less—which would have been a good thing—or to start the proceeds of an oil fund, as our colleagues across the North Sea in Norway did.

The belief that those resources would not have been used to the benefit of Scottish society is most extraordinary. As that information comes forward in the referendum campaign, people will

see the opportunity to create a more just and prosperous society for an independent Scotland.

Johann Lamont: That is just so much noise—the First Minister did not answer the question that I asked him. With respect, his white paper chose those dates. It is incumbent on the First Minister to explain why so much of his prospectus is based on an argument that bears no scrutiny.

The First Minister is asking the people of Scotland to trust his white paper. However, it has only one page on Scotland's finances and it projects finances for just one year. It looks back to a period that favours the First Minister's case, when the overwhelming evidence is that we would, over the past 10, 20 and 30 years, have been worse off. In his own words, he said that we would be £900 better off, but the truth is that over the past 30 years, by his own rationale, we would have been £2,500 worse off.

That, of course, is the case where there are figures. Where, however, are the price tags for renationalising the Royal Mail, for transformational childcare or for his high-speed rail proposal? No one is suggesting that those are bad things. [*Interruption*.] Even in the real world, no one thinks that childcare and a rail link are bad things. However, we think that we need to know how we are going to pay for them. Every family in the country understands that. So, I say: "Go on. Don't just tell us what you are going to propose. Give us just one—one!—of those price tags and let us see whether it is real."

The First Minister: No one will suggest that those are bad things, but on the basis of its school meals vote, Labour would vote against them anyway.

Let us take any time period that Johann Lamont wants. It is estimated that over the period 1980 to 2011-12—the most recent period for which figures are available—the United Kingdom ran an annual net fiscal deficit of 3.2 per cent of gross domestic product. With our share of Scotland's resources and North Sea revenue, Scotland would over that period have run an average annual net fiscal surplus of 0.2 per cent of GDP. Those are the figures for the years since 1980; I have already given Johann Lamont the figures for the past five years.

According to the latest figures that we have available, Scotland's relative fiscal surplus in 2011-12 was £4.4 billion, or £824 per head. That is the amount by which we would have been better off had Scotland been running its own resources.

Johann Lamont says that she does not think that the white paper is ambitious enough, including on childcare, in particular. The white paper is ambitious because it wants to transform childcare in this country, which would in a parliamentary session cost £700 million. The white paper argues that that can come about because of the revenues that will grow from increasing female participation in the workforce by 6 per cent. If we stay within the UK, we will never be able to afford that because the money will go to George Osborne in the London Treasury and—believe me—he is not thinking of giving extra money to Scotland. He, as Margaret Thatcher did before him, is working out how to take money away from Scotland—as long as nobody finds out.

Johann Lamont: First of all, if we are going to look at this week's vote, one can only presume that the Scottish National Party Government did not want transformational support for childcare, because it voted it down.

Secondly, whatever figures the First Minister has just quoted, he is no longer defending his own approach justifying support for independence in his white paper. I did not say that the challenge for the white paper is that it is not ambitious enough; I said that it does not match its claims with any figures to make it credible and believable.

The First Minister did not answer the question on prices, but what the Government cannot price the Parliament can. It would cost £1.16 billion for Royal Mail and £1.2 billion for childcare, but there is no explanation of how that would be paid for. As for the rail link, even the Scottish Parliament information centre cannot price that. For those of us who live in the real world, a shopping list without a price list is just a wish list, and according to the First Minister's own figures we would have even less money to spend on those things. The First Minister has asked us to publish an alternative to his white paper, but is it not the case that the real alternative to the white paper is called the truth? [*Interruption*.]

The Presiding Officer (Tricia Marwick): Order!

The First Minister: Right. Let us try again with regard to childcare. The white paper outlines that in the first parliamentary term there will be a transformation in childcare with 1,100 hours for three-year-olds and four-year-olds. We believe that that will increase female participation in the workforce by 6 per cent, which will bring us to Scandinavian levels. We also point out that it would release to the Scottish exchequer £700 million, because as people come back into the workforce they will pay income tax, national insurance and VAT. That fund will accrue to the Scottish exchequer, whereas right now it goes down to London. That is why under a fixed budget it is difficult to afford these things.

Johann Lamont should know that, because earlier this week she lodged an amendment that could not be afforded. Her amendment would have cost £100 million when £100 million would not be

available in either year to pay for it. She then said that, in order to finance it, she would not go ahead with free school meals; she would deprive the people of Scotland of free school meals for primaries 1 to 3. I have not even mentioned the cuts in business rates, but they were overtaken by Iain Gray's denial of them. Many of us think that that was a fundamental mistake by the Labour Party that will cost it dear.

I accept—as I did when I looked at the blank faces on the Labour back benches and saw how worried they were about the votes on Tuesday—that, when I say that, I am, of course, being partial. Therefore, let us hear an impartial commentary.

"But despite this win-win situation, Scottish Labour leader Johann Lamont still opposed the move"

on school meals.

"Labour now find themselves opposing a move welcomed by just about anyone with anything to say about education and the eradication of poverty.

Labour are now at loggerheads with charities and campaigners like the EIS teaching union, the STUC, the Unison union and Save the Children, not to mention the Child Poverty Action Group."

That is yesterday's *Daily Record* editorial, which just about sums up the "something for nothing" position of Johann Lamont.

Prime Minister (Meetings)

2. Ruth Davidson (Glasgow) (Con): To ask the First Minister when he will next meet the Prime Minister. (S4F-01804)

The First Minister (Alex Salmond): When I next meet the Prime Minister, it will not be in Scotland, by the sound of it, because he is too posh and too unpopular.

Ruth Davidson: I thought that the Prime Minister's performance yesterday showed a degree of humour and self-deprecation that is wholly foreign to the First Minister. Perhaps he could take note.

This week, we learned that the head of Historic Scotland left her post, after just 30 months, with a £300,000 pay-off, plus pension. That is a huge amount of public money, and it comes straight from the Scottish Government's coffers. Can the First Minister tell us which, if any, of his ministers cleared such a payment?

The First Minister: Agreements on settlements and compromise agreements are settled in the normal way by the civil service. They are not a matter for political discretion; they are a matter for the management of the civil service, as is the case with any other responsible organisation. I am absolutely certain that Ruth Davidson is not going to seriously argue that ministers should interfere in a political sense in such matters.

Ruth Davidson: I take it that the First Minister is saying that no minister of his Government signed off the deal nor should have. Why is that the case? The rules on the issue are pretty clear. Those rules, as published by the Scottish Government, state:

"Ministerial clearance must be obtained ... in relation to any potentially high profile cases."

By any definition, a quango chief being given a £300,000 pay-off after just two and a half years in the job is a very high profile case, and it is one of a long list of pay-offs that have cost this country £56 million in the past two years.

The Scottish taxpayer is footing the bill for those extravagant golden goodbyes and is entitled to some straight answers. Therefore, given the rules, why was the pay-off not approved by a Government minister? Who approved it? Does the First Minister really believe that anyone who voluntarily leaves a job after just 30 months should be walking away with £300,000 of taxpayers' money?

The First Minister: The settlement agreed within the civil service involved the facts and circumstances of the case. The only justification for ministerial intervention would have been if something were seriously wrong with the process—[*Interruption*.]

The Presiding Officer: Order.

The First Minister: The reason for ministerial intervention would be if there were some partiality.

I will make one point to Ruth Davidson that perhaps illustrates the dangers of raising staff and personnel matters in this format. She is perfectly entitled to do so, but there is a danger. She gave the impression that the individual concerned had been in post for a short period of time. She ignored the fact that, as I understand it, the individual had worked in the civil service for a generation.

In these circumstances, people should not necessarily consider only the latest posting. That is why these agreements and compromise agreements are best done with regard to best personnel practice. I say with great respect that, in terms of fairness and natural justice, such things should not be conducted through ministerial or Opposition political intervention.

The Presiding Officer: We have constituency questions, first from Liam McArthur.

Liam McArthur (Orkney Islands) (LD): The First Minister will be aware of the news this week that administrators have been unable to find a buyer for the Orkney-based jewellery company, Ortak. As a result, around 115 jobs are under

threat, including more than two dozen in my constituency.

I am grateful to the Minister for Enterprise and Lifelong Learning and to Highlands and Islands Enterprise for their co-operation in recent days. However, I ask the First Minister to confirm that every effort will be made to give the staff affected all the support that they need. Will he also agree to facilitate any reasonable bid to take on some or all of the vitally important manufacturing roles that are currently based in the Hatston estate in Kirkwall?

The First Minister: The answer is yes to both questions. As the constituency member acknowledged, Fergus Ewing has been deeply involved in this case, and every effort will continue to be mobilised to get a more satisfactory outcome. If the member has any concerns, ideas or thoughts about initiatives, Fergus Ewing's door will be very open to those suggestions.

I am glad that the member acknowledged the efforts of the industry minister, and I repeat that the answer is yes to both parts of his question.

Neil Findlay (Lothian) (Lab): In today's *The Herald*, we read of the case of consultant psychiatrist Dr Jane Hamilton, who is a doctor at St John's hospital in my region. Dr Hamilton has bravely spoken out about the attempt by her employers to gag her from raising concerns about the care that was being provided to women in the unit where she worked.

Dr Hamilton has written to the Cabinet Secretary for Health and Wellbeing on several occasions, asking him to examine her case independently, but to date her request has been declined. Will the First Minister step in in this case and will he condemn the use of gagging clauses in cases in which national health service staff raise concerns about patient care and safety?

The First Minister: I will point out two things that are at the heart of the issue.

First, there has already been an independent investigation into the unit in question. It was undertaken by Dr Margaret Oates, the consultant psychiatrist at Nottinghamshire Healthcare NHS Trust, and it reported in 2012. I will not go through the full range of the findings of that independent investigation for Neil Findlay; suffice it to say that there was an extremely satisfactory report. The independent investigation was undertaken by a consultant physician of high standing outwith the Scottish national health service and it found, for example, that the mother and baby unit was staffed by clinicians with the expected level of specialist knowledge and skills. There was no evidence to support the allegations that the mother and baby unit and the community service were dangerous, unsafe or dysfunctional.

Secondly, the health secretary has been absolutely explicit on the issue of gagging orders. He wrote to health boards on 22 February last year, reminding them that confidentiality clauses are not to be used to suppress the reporting of concerns about practice in the NHS in Scotland. Obviously, I cannot comment on the individual compromise agreement, but NHS Lothian has made it clear that it refers specifically to the protected issues. Neil Findlay is shaking his head, but unless he has seen that compromise agreement he should not dispute that. NHS Lothian has said that the protected issues, which include concerns about patient welfare, bullying and other issues in the national health service, are explicitly referred to in any compromise agreement. If that is the case—if those issues are referred to specifically within any compromise agreement—I am sure that Neil Findlay will be satisfied.

I will ask the health secretary to seek to ensure—if he can, as such things are a matter between the individual and the health board—that there is such an explicit reference to what is protected by law in terms of what people are able to say. If that reference is in the compromise agreement, or if it could be expressed differently, I hope that Neil Findlay will be satisfied. He should not dispute NHS Lothian's claim unless he actually knows that such an explicit reference is not contained in the compromise agreement. I will ask the health secretary to check the matter and to report back to Neil Findlay.

Serious Sexual Offences

3. Margaret Mitchell (Central Scotland) (Con): To ask the First Minister what the Scottish Government is doing to deal with perpetrators of serious sexual offences. (S4F-01808)

The First Minister (Alex Salmond): We have strengthened the law around sex crimes considerably by introducing the Sexual Offences (Scotland) Act 2009, which modernised the law in Scotland. We have also strengthened the sexual offences prevention order and risk of harm order regimes in Scotland by allowing the imposition of positive obligations where that is deemed appropriate by the courts.

The current Criminal Justice (Scotland) Bill seeks to remove the routine requirement for corroboration, which can be a barrier to the prosecution of sexual crime, as the member should know. In addition, the Crown Office has developed a team of expert prosecutors in the national sexual crimes unit, which specialises in the investigation and prosecution of serious sexual crimes in Scotland. Police Scotland has improved the investigation of rape and other sexual crimes by setting up the new national rape task force, the

rape and sexual crime external advisory group, which is designed to inform and improve the investigation of rape.

When Margaret Mitchell considers that range of initiatives that we have created, she will see that this Government, in its term of office, has treated that hugely serious matter extremely seriously.

Margaret Mitchell: I thank the First Minister for that comprehensive response.

Serious sexual offences are among the most heinous crimes that can be committed, and the traumatic effects on the victims can last a lifetime. The First Minister believes that the abolition of corroboration will help to tackle the problem, but a host of expert opinion disagrees. What cannot be disputed is that the abolition of corroboration will not help the low conviction rate in serious sexual offences cases that come to court because those cases have already met the corroboration threshold.

I therefore ask the First Minister to support today the introduction of a pilot scheme for independent legal advice for rape victims at the point when sensitive medical and personal information is requested. I proposed, as an amendment to the Victims and Witnesses (Scotland) Bill, such a pilot based on research carried out by Rape Crisis Scotland, which found that the majority of victims are unaware—

The Presiding Officer: Can we get a question, Ms Mitchell?

Margaret Mitchell: I am coming to the question, Presiding Officer.

That means that totally irrelevant information is used to discredit the victim, which decreases the chances of a conviction. While the debate on corroboration continues, will the First Minister act now and introduce a similar pilot, which is estimated to cost only £20,000, to help tackle conviction rates for rape?

The First Minister: I will ask the Cabinet Secretary for Justice to look seriously at that suggestion. However, Margaret Mitchell is wrong to suggest that the argument for changes to corroboration is based on increasing the conviction rate. The Lord Advocate said that explicitly at the Justice Committee, as she must know.

The argument is that many cases do not get into court because of the general law of corroboration. An example relates to Murdo Fraser's demands just before Christmas to know why a serious offence was not prosecuted in Scotland when the Crown Office and Procurator Fiscal Service had already made it clear that, because of the general rule of corroboration, there was an insufficient basis on which to pursue a prosecution.

That is why, if the Conservative Party is to be taken seriously about such matters, we cannot have a situation in which it raises cases that cannot come to court because of the general rule of corroboration and then says that something must be done about making sure that there is justice for rape victims in Scotland. The two matters must be squared.

Economy (Impact of United Kingdom Budget Reductions)

4. Bob Doris (Glasgow) (SNP): To ask the First Minister what assessment the Scottish Government has made of the potential impact on the Scottish economy of a reported additional £25 billion reduction in spending planned by the United Kingdom Government. (S4F-01803)

The First Minister (Alex Salmond): We will make a very serious examination of the latest threat from George Osborne. We know that the Tory party does not have any idea about that because its spokesman on television last night could not give any idea whatsoever of what would happen if there was a further £25 billion cut in public spending.

The choice facing the people of Scotland is clear: it is between the no campaign's obsession with austerity and this Government's vision, founded on a nation with the principles of fairness and prosperity.

Bob Doris: A suggested Tory attack on vulnerable Scots is to discriminate against young people by withdrawing altogether housing benefit from the under-25s, which is something that I believe an independent Scotland would never consider. What assessment can the Scottish Government make of the potential impact that that Tory plan would have on young Scots, including the 5,200 under-25s in Glasgow who I represent and the 33,000 across Scotland who rely on housing benefit? Will it make urgent representations to the UK Government opposing those plans, which, along with the UK Government's bedroom tax, will only lead to further poverty, fuel family tensions and exacerbate homelessness?

The First Minister: We are deeply concerned about this latest threat to the welfare system and the effect that the measure could have on more than 30,000 under-25s who receive housing benefit in Scotland. Let us remember that the rationale for the bedroom tax and the attack on housing benefit has been the runaway costs of housing benefit in the high-pressure housing areas of the south-east of England; it was not the position of housing benefit in Scotland that led to this assault. Through the measures that we have taken we will continue to support people in

Scotland who are suffering from repeated cuts to welfare benefits.

I hope that, if indeed this threat to housing benefit for the under-25s comes to pass, all the people in the chamber who do not believe that we should control the welfare system in Scotland—not that we could control it, which does not seem to be in dispute—might have cause to change their mind in 2014.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Did the First Minister see today's article in *The Scotsman* by Liberal Democrat Tavish Scott in which he said that George Osborne's £25 billion mistake will seal the fate of the Conservative Party and hasten the election of a Labour Government? Given that the First Minister's whole referendum strategy is based on having a Tory Government in London, how will he scare the Scottish people when they are faced with the prospect of a Labour Government that will boost employment, freeze energy prices and provide the resources for a massive expansion of childcare?

The First Minister: Malcolm Chisholm and I have been around politics for a long time—long enough to remember his resignation from a Labour Government in which he was a minister because it was attacking benefits for single parents. I think that he lasted about a year before he realised that his dreams had been betrayed and he had to resign.

The Liberals' fate is already sealed, so Tavish Scott's forecast of the sealing of the Tory fate should be taken seriously, because he speaks from personal experience in his party. However, the Labour Party's fate will be sealed by the reaction of Ed Balls to the £25 billion cuts, which was not to say that there should be no cuts but to say, "Yes, Labour will do that as well. We'll just make different cuts." Perhaps, at some point, he will tell Malcolm Chisholm what those cuts will be and then Malcolm will have to resign again.

National 4 and 5 Qualifications

5. Kezia Dugdale (Lothian) (Lab): To ask the First Minister whether the Scottish Government considers that schools, pupils and teachers are adequately prepared for the new national 4 and 5 qualifications. (S4F-01801)

The First Minister (Alex Salmond): Yes. The Scottish Government, the Scottish Qualifications Authority, Education Scotland and others have provided unprecedented levels of support for curriculum for excellence and the new qualifications. That includes more than £5 million of additional funding, two extra in-service days to help teachers to prepare for the new qualifications, full course materials for each of the 95 national 4 and 5 courses and specific events for thousands of teachers. That said, we always stand ready to provide more help if needed to ensure that the new qualifications are delivered successfully.

Kezia Dugdale: Alan McKenzie of the Scottish Secondary Teachers Association told the Edinburgh *Evening News* this week that teachers lack confidence in the SQA, and that there are

"complications and confusion around verification, assessment demands that are impossible to adequately meet and a continuing lack of support materials".

He said:

"It would be quite wrong to dismiss the reports … of problems as simply anxiety or ritualistic moaning."

For the sake of all young people in Scotland who face those exams and the future of our radical reform of the curriculum, which the Labour Party started, will the First Minister acknowledge those concerns and take immediate action?

The First Minister: Nobody has dismissed any concerns. In fact, I heard the ministers say exactly the opposite. That is why the unprecedented level of support has been put in place.

On 3 January, Ken Cunningham, the general secretary of School Leaders Scotland, said:

"The preparation, consultation: there's been more than I can ever remember. The amount of effort that's gone into this knocks the others into the corner".

It is interesting to hear Kezia Dugdale quoting teachers unions. If only the Labour Party had listened to the teachers unions and decided to support free school meals for primary 1 to 3.

Mary Scanlon (Highlands and Islands) (Con): This week, Alan McKenzie of the Scottish Secondary Teachers Association also said:

"For the sake of both the young people of Scotland and the future of a radical curriculum reform, please listen to us and let us work together to fix the problem."

Will the First Minister attend to those pleas? Will he listen to teachers, help to fix the problem and give pupils in Scotland the chance that they deserve to get qualifications, educational training and employment?

The First Minister: Speaking on the radio this week, Alasdair Allan, the Minister for Learning, Science and Scotland's Languages, said that we will continue to listen to teachers to ensure that they get further help if needed and that any issues are addressed. That answers Mary Scanlon's question.

Childcare Provision

6. Clare Adamson (Central Scotland) (SNP): To ask the First Minister what plans the Scottish Government has to increase childcare provision. (S4F-01805)

The First Minister (Alex Salmond): As I announced to the chamber on Tuesday, we will increase the number of two-year-olds in childcare and start the process of expanding childcare among that age group to approximately 15 per cent of the total and then 27 per cent in August 2015. That is about 15,000 children.

That is an ambitious plan and, of course, it goes beyond the demand and claim from the Labour front bench of childcare for 10,000 children. [*Interruption*.] Yes, Kezia Dugdale said that on Radio Clyde and Johann Lamont said it in the chamber—10,000 children. We are expanding childcare to 15,000 children in the measures that were announced on Tuesday and I am sure that, in their heart of hearts, members right round the chamber will give that as warm a welcome as Willie Rennie so graciously did on Tuesday.

Clare Adamson: Does the First Minister agree that, when Save the Children, the Educational Institute of Scotland, Unison, Shelter, the Church of Scotland and the Child Poverty Action Group all say that free school meals are a key measure in tackling child poverty, politicians of all parties should listen?

The First Minister: I have already quoted the *Daily Record*; it is absolutely right.

At this stage, the Labour Party should just accept that a broad coalition of people who are interested in the welfare of children in Scotland support free school meals. Sooner rather than later, the Labour Party is going to have to totally reverse its position and accept that it was wrong to do what it did this week. If it does not do that, the damage that will be done to the party at grass-roots level in Scotland will approach the damage that was done by the bedroom tax and other measures; perhaps it will compare only with the damage that has been done by its alliance with the Tory party in the referendum campaign.

I say to Johann Lamont, who is in a ridiculous position: for goodness' sake, reverse what you did, apologise for voting against free school meals on Tuesday and get behind the broad coalition that backs the children of Scotland.

Dog Control Legislation

The Deputy Presiding Officer (Elaine Smith): The next item of business is a members' business debate on motion S4M-08221, in the name of Paul Martin, on the effectiveness of existing dog control laws. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes calls to review the effectiveness of existing dog control laws following what it considers a large number of dog attacks throughout Scotland, including in Glasgow; notes calls for compulsory microchipping of dogs to aid identification of dangerous dogs and encourage responsible dog ownership; considers that the Control of Dogs (Scotland) Act 2010 was a positive step forward in dealing with dangerous dogs and irresponsible owners but considers that more work needs to be done to prevent dog attacks, and notes calls for greater emphasis to be placed on assessing owners and the environment in which dogs are kept.

12:32

Paul Martin (Glasgow Provan) (Lab): I thank all the members who have supported my members' business motion and welcome the fact that it has received support from all the parties that are represented in the chamber.

On Friday 18 October last year, eight-year-old Broagan McCuaig suffered horrendous injuries when she was attacked by two American bulldogs in the back court of her home in the Garthamlock area of my constituency. Were it not for the bravery of a local passer-by, Broagan might not be alive today to tell her tale.

The physical and psychological wounds that Broagan suffered will take a long time to heal. She missed part of her education as she underwent a series of painful operations and skin grafts to repair the damage to her face and other injuries that many of us would consider extremely concerning.

Thousands of similar incidents involving out-of-control dogs have been recorded over the past five years in Scotland. Over that period, there has been a 17 per cent increase in the number of such incidents. Too many children have suffered because of the current dog laws and action must be taken.

Last month, I arranged a meeting with the First Minister and a number of mothers whose children have been the victims of dog attacks: Veronica Lynch, whose daughter, Kellie, was killed by two Rottweilers in 1989; Zoe Hall, whose four-year-old daughter, Sophia Bell, was seriously injured by a Labrador; and Broagan's mother, Tracy Cox. The accounts that we heard were harrowing.

The *Daily Record* has printed a number of pictures of children who have suffered from dog attacks. They do not make comfortable viewing, but they tell the real story of the anguish that many families have experienced as a result of serious dog attacks.

So, what can we do? As a result of last month's meeting involving the First Minister, the Scottish Government has launched a consultation document. I welcome that and the extremely positive discussions that took place during that meeting with the First Minister.

I also welcome the First Minister's commitment to a summit to discuss how we take the issue forward and to look at how to promote responsible dog ownership. I hope that that will allow further debate on the issue and that we will consider putting in place robust measures to develop responsible dog ownership.

I put on the record the fact that I am strongly in favour of compulsory microchipping. We must look at using that method to promote responsible dog ownership. A lack of compulsory microchipping or any mandatory licensing suggests that we are not serious about ensuring responsible dog ownership. Proper enforcement of those control measures, combined with the regular maintenance of a central database, would be integral to their success. We would have to put in place the necessary resources to make a compulsory database a success.

Another measure that might be worth considering is the introduction of a restricted breeds list that is similar to the Irish model. The Irish list includes two breeds that are banned in the United Kingdom and large breeds such as Rhodesian ridgebacks, German shepherds and Rottweilers. Those animals or crosses of them must be muzzled in public places and walked on short leads by people who are no younger than 16. Those dogs earned their place on that list not because they are perceived to be more dangerous than other dogs or more aggressive than Jack Russells or Yorkshire terriers but because of their physical attributes. Their weight, height and jaw strength make them possibly dangerous dogs in public.

Broagan McCuaig was attacked for six minutes while she was being rescued by a grown man who punched and kicked the dogs that were mauling her. As I said, if it was not for that bravery, she would not be here to tell her story. Following such attacks, it often transpires that the owners were not fit to be owners. If a restricted breeds list was put in place, perhaps we could prevent such individuals from being owners.

More focus should be placed on assessing owners and considering the environments that dogs are kept in. When a family wish to rehome a dog from an animal charity such as the Dogs Trust, they are often required to undergo a home assessment. There is scope to introduce such measures for the ownership of dangerous dogs.

In the comfort zone of the debating chamber, it would be easy for us to play it safe and not consider introducing muzzling, licensing, microchipping or a restricted breeds list. However, we owe it to Broagan McCuaig and all the other victims to take robust action in a way that will make a genuine difference.

12:38

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate Paul Martin on securing the debate, although it follows extremely tragic circumstances, which he narrated. I note that the First Minister sat through Paul Martin's speech and I welcome the First Minister's establishment of the consultative forum on how to reduce, if not eliminate, dog attacks.

Such attacks are horrendous and avoidable. I stress that they are the fault not of the animal but of the owner. Under the Control of Dogs (Scotland) Act 2010, we shifted to considering the deed, not the breed. I note what Paul Martin said about a restricted breeds list, but in that lies the inherent problem of defining a breed. Many of the dogs that are bred for aggressive purposes are crossbreeds—crosses of lurchers with bulldogs and so on—and are not breeds of dog. One problem with the Dangerous Dogs Act 1991 was that it listed four breeds of dog that were not the breeds of the dogs that then carried out awful attacks. Legislating involves difficult issues.

We need to consider measures carefully. The attack on Kellie Lynch, which has been mentioned, brought about the 1991 act. That was legislating in haste and has proved not to be effective legislation—it is not the only example of that.

A plethora of legislation deals with the important issues that Paul Martin has raised. We have the Dogs Act 1906, the Civic Government (Scotland) Act 1982, the Dangerous Dogs Act 1991, the Control of Dogs Order 1992, the Antisocial Behaviour etc (Scotland) Act 2004, the Animal Health and Welfare (Scotland) Act 2006, local authority byelaws and the Control of Dogs (Scotland) Act 2010. There is lots of legislation out there.

As part of the review, I want us to consider whether that legislation is effective and whether there is an opportunity, in reassessing it and perhaps considering new legislation, for a consolidation act. Instead of having all the legislation scattered to the winds, can we bring it

together to deal with breeding, licensing, the sale of dogs, ownership and so on?

The clock is not showing how long I have spoken for, so it is difficult to tell how much time I have.

I went into the microchipping debate that Claire Baker secured. I am absolutely for universal microchipping, but have issues with its being mandatory—although again, I am open to argument. Will the bad owners—the people who we know breed dogs as aggressive weapons and use them to tear other dogs apart and for dog baiting—have their dogs microchipped? I do not think so. What would happen to the microchips of stolen dogs that are used as bait? They can be removed, although that is a wretched, evil process. Who will update the microchipping records? We already have that under the Control of Dogs (Scotland) Act 2010, which is very useful but it involves tracking particular owners of particular dogs. Dogs changing hands is a difficult issue. That is not to say that the idea is not good, but the details and practicalities are important if we are legislating.

The Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008 are an example of a piece of legislation that really has not taken us anywhere. Those regulations are supposed to regulate the sale of kittens and puppies under the age of 12 weeks. I have submitted a freedom of information request to every local authority in Scotland and cannot find one application that has been made under those regulations. I do not believe for one minute that nobody is selling or dealing in puppies and kittens under the age of 12 weeks, but they are not applying for licences and being checked. The legislation is gathering dust on the shelf.

On the other hand, the Control of Dogs (Scotland) Act 2010—I am not patting myself on the back for it, as the legislation was started by Alex Neil—has been relatively successful. Sometimes with legislation it is a matter of suck it and see. From February 2011 to November 2011, 67 notices were served, and there were 693 investigations. The approach has been going for only two years. In the full year from 27 February 2012 to the same time in 2013, 147 notices were served, but there were 2,080 investigations. What is happening is not good enough, but that is a wee piece of legislation that is working.

When we are considering what to do about these horrendous attacks, we must consider what works and what is sitting on the shelf.

I have no idea of the time, because nothing is working.

The Deputy Presiding Officer: Unfortunately, you should draw to a close now. You have had around five minutes.

Christine Grahame: I have the shortest of paragraphs.

I welcome the continuing debate. The nail has been hit on the head about education, assessments in the home and assessments of lifestyle so that the right people get the right dog for the right reasons and look after it properly.

The Deputy Presiding Officer: Apologies for the clock. We will reset it now.

12:44

Graeme Pearson (South Scotland) (Lab): I congratulate my colleague Paul Martin on enabling this debate on a serious issue: the ownership of dogs and the damage that can be done by dogs that turn out to be dangerous.

The Broagan McCuaig situation yet again highlighted the circumstances in which young people, in particular, can suffer the most awful experience at the hands of an out-of-control dog.

As all members know, daily, there are dozens of incidents involving dogs and, each year, incidents occur that result in serious injury or mishap. Dogs can bite, attack or frighten people. They can be used to provide security for criminals or to deliver a form of intimidation in neighbourhoods or estates. On occasion, dogs attack postal workers or other public service providers in our community. A side issue that we often forget is that dogs also foul public places, which concerns parents, who are worried about their children in public areas.

The whole area is a nightmare in terms of our experience and otherwise, but the context is that there is no doubt that we are a nation of dog lovers. I have owned dogs and enjoyed every moment of that ownership—thankfully, the dogs that were under my control were not involved in any such incidents. However, we need to take cognisance of the matters that my colleagues Paul Martin and Christine Grahame have raised. No matter the amount of legislation that has been introduced, we still face monthly the problems of people being attacked and seriously injured, and we need to try to find some means of dealing with the threats.

I welcome the beginning of a consultation process. I hope that, on the back of that process, an expert group can be brought together to act with some speed to consider the consultation and, on the basis of evidence, to consider the way forward and make recommendations. There is significant public concern about the issue. The group should consider licensing and the opportunity to train owners to ensure that they are

fit and proper people to have dogs under their control. There is no doubt that the danger comes not from dogs per se but from a lack of good ownership and proper control of dogs by human beings. The issue is about people accepting their responsibility.

Microchipping is an important issue. If we know where a dog has come from, we can identify who the owners should be and who should have maintained control. Other issues that the group should analyse are the use of leads in public areas to properly control dogs and the use of muzzles. Muzzles are controversial, and it has been suggested that they can cause more aggression rather than reduce it, but we need to get good advice in that regard. Consideration should be given to the proper enforcement by housing associations of the conditions that apply to tenants with regard to dogs. We should also look at ridding our communities of stray dogs, the numbers of which are of much concern. Thankfully, stray dogs are not often involved in the sort of terrible circumstances that have been described, but they add to the problems and the threats that our communities face.

I am delighted that my colleague introduced the debate and I am pleased to have taken part in it.

12:48

Margaret Mitchell (Central Scotland) (Con): I thank Paul Martin for bringing this important debate to the chamber. It is totally unacceptable that dog attacks occur, as they do every year in Scotland, including some horrendous attacks on children. However, it is also essential that those attacks are put in perspective and that we remember that the vast majority of dog owners are responsible and that the number of dog attacks in Scotland is, thankfully, falling.

A range of measures is currently available to control dangerous dogs and prevent them from posing a threat to the general public. Those include educating owners on how best to train and control their dogs, intervening on irresponsible owners and tough sentencing, including banning orders that disqualify a person from owning a dog. The question is whether those measures are sufficiently robust and are working in practice. I therefore welcome the Government's decision to consider whether further measures such as compulsory microchipping—which is to be introduced in England and Wales next year and which can benefit all dog owners—are necessary.

It is important not to exaggerate microchipping's potential impact on responsible ownership. The Government has revealed that it is estimated that only 50 per cent of dog owners held a licence at the time when mandatory licensing of dogs was abolished. That highlights the problems to do with enforcement. Irresponsible owners will continue to be irresponsible. It would therefore make sense for breeders to be required to microchip the puppies and dogs that they sell.

Compulsory muzzling of all dogs would be excessive and would penalise the vast majority of dog owners, who are responsible and whose dogs present no threat to the public. Furthermore, it would do nothing to prevent the vicious attacks that take place in the home. Nor would it help to address dog attacks on Royal Mail postmen and women—there are more than 100 such attacks in Scotland each year. However, the home assessments to which Paul Martin and Christine Grahame referred would certainly help in that regard.

There should be a move towards tougher banning orders for irresponsible owners and harsher penalties for breaching a dog control notice. South of the border, measures are to be introduced to increase the maximum sentence for an owner whose dog injures or kills, which should help to address the problem of dangerous dogs being bred and trained to act as weapons for their owners. The penalties should be equivalent to sentences for the use of conventional weapons. Such dogs are a world apart from the hundreds and thousands of dogs in Scotland that are not just pets but integral members of the family.

I very much welcome the Government's consultation, but it is essential that measures that are taken to prevent irresponsible dog ownership are fair to the vast majority of owners who have well-behaved dogs. The real objective and difficulty will be to strike the right balance between sending an uncompromising message to irresponsible dog owners, who range from hapless individuals to people who breed dogs with the intention of using them to cause injury, and recognising the rights of responsible dog owners and dog lovers—among whom I count myself and declare an interest, as the owner of 15-month-old West Highland terriers Jack and Jamie.

12:52

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I congratulate my colleague Paul Martin on securing this important debate and I wish Broagan McCuaig a full and speedy recovery.

The motion rightly recognises that the Control of Dogs (Scotland) Act 2010 was a major step forward in tackling the problems that are experienced in many of our communities. The Control of Dogs (Scotland) Bill, which Christine Grahame introduced, sought to ensure that it was not the breed but the actions of a dog that

constituted an offence, recognising that it can be difficult to establish the breed, as Christine Grahame said, and that in the right—perhaps that should be "wrong"—circumstances, almost any dog can become out of control and cause problems.

We have read in our newspapers and heard during the debate many harrowing stories about dog attacks on children—young people whose minds and bodies are scarred because a dog was out of control. The fact that there have been so many instances in the past years suggests that the legislation perhaps does not go far enough or is not being resourced to the level that would make it as effective as it could be.

I accept that no legislation, however robust it is, can entirely remove the possibility of someone being bitten by a dog. However, we must ensure that we have done everything in our power to reduce as far as possible the threat that out-of-control dogs pose.

Let me say that I am a dog lover, like most other members. I regret very much that the lifestyle of my household is such that it is not sensible for us to have a dog. Indeed, it would be downright selfish of us to own a dog, because our working hours are such that there is rarely anyone at home and we could not provide a dog with the amount of exercise or attention that it would need. However, some people seem to see a dog as a status symbol, a fashion accessory or, frankly, a sign of how tough they are, and give little thought to whether the environment and life that they can offer a dog will meet its needs. The consequences of having a frustrated, angry or out-of-control dog are all too obvious.

Paul Martin is absolutely right to call for all dogs to be microchipped and their owners' names and addresses to be registered on a database that can be checked by the police, or by dog wardens, who now have the prime responsibility in this area. Let me demonstrate briefly why I think that a register is needed. Last year, a constituent of mine was out walking her daughter's small dog in her local area. Out of the blue, a larger dog, which lived at the home of her neighbour, ran out of its owner's garden, grabbed my constituent's dog and savaged it to such an extent that the vet had to destroy it an hour or so later.

However, the story does not stop there. My constituent and her daughter were distraught and reported the incident to the police. That is when the problems really began, because the people who owned the house where the dog was on the day in question denied that they were its owners. It belonged to their son. When questioned by the police, the son also denied ownership and claimed that the dog belonged to his partner. She, in turn, said, "No, it's my uncle's dog." The upshot was that it became difficult to identify the owners, which made my constituents' experience even more difficult than it was already.

We need to have a way in which dogs can be easily identified and in which their owners can be traced with some certainty. Microchipping dogs at the point at which they are sold or exchanged should be compulsory. I accept that there are problems attached to that but we can legislate in this country for the movement of livestock so surely it is not beyond the will of parliamentary draughtsmen to put in place something that would work.

As I have said, when we consider the way in which some dogs are trained or bred to be violent or are denied the amount of exercise or stimulation that they need, it is perhaps no wonder that they sometimes go wrong. In previous times, all dogs had to be licensed but that system did not work either. Perhaps we now need to consider licensing the owners but only after they have proved themselves to understand their dog's needs and are committed to training their dogs, and looking after them, as befits their breed type and the owner's home circumstances.

For now, at least, let us get the dogs microchipped and have a real debate around the very welcome consultation that the Scottish Government has undertaken to ensure that we put in place a regime that is not only robust and properly resourced but of which we can be proud, and which gives us some certainty that we have done everything that we can do, as legislators, to try to resolve the issue.

The Deputy Presiding Officer: Several more members would like to contribute to the debate. To allow them to do so, I am minded to accept a motion to extend the debate by up to 30 minutes.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Paul Martin.*]

Motion agreed to.

12:58

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I, too, congratulate Paul Martin on lodging his important motion following the terrible attack that took place in his constituency, and on all the campaigning action that he has taken following that attack.

It is not just Paul Martin's constituency that is affected. Unfortunately, most of us here have stories to tell from our constituencies about terrible attacks, some of which have got into the newspapers. Not long ago, a dog attacked five people in a block of flats in my constituency. Jenny Marra will describe similar attacks. However,

attacks take place every day that we never hear about in the newspapers. It is a massive problem that must be addressed. That is why I welcome the Government's consultation paper, which I hope will lead to changes in the law. The consultation paper ranges broadly and includes important issues such as dog fouling. While we need action there, too, that is not the subject of today's debate, which is attacks by dogs on human beings.

I start with the principle that all that matters here is the safety of children and other people. The rights of no single dog owner override that. We must do whatever is necessary to protect children and young people. As I said in a recent debate on microchipping, I feel particularly strongly about that now that I have four young grandchildren. There is no debate about it—we need microchipping. Patricia Ferguson clearly demonstrated why microchipping is necessary and important.

Licensing should be seriously considered; my current view is that reintroducing it would help in assessing whether owners are fit to possess a dog. We are told that there are issues with enforcement, and indeed when licensing was previously in force, half of dog owners did not license their dogs. However, what we are saying today rests on the assumption that we have a strong dog warden workforce, as we already do in many areas.

With regard to assessing fitness for ownership, we should be saying more frequently, "That person will never have a dog again in their life." If a person has been found guilty of having a dog that has attacked someone, particularly if the attack is serious, they should forfeit the right to have a dog for the rest of their life. Some of my constituents expressed that concern recently, following the attack in the block of flats that I mentioned. I will not go into the details of that situation, but it impressed on me the need for such provision.

The issue of leads and muzzles is more controversial—Paul Martin dealt with it comprehensively and fairly, and I take more or less the same position on the matter. Dog control notices require leads and muzzles for certain dogs, but there are two problems with such notices. First, they are not used often enough—in fact, I believe that some local authorities never use them at all—and secondly they are used after a problem has arisen or an attack has occurred. We need more dog control notices, but—

Christine Grahame: Will the member take an intervention?

Malcolm Chisholm: I am in my last minute—I am not sure that I can. Can I take the intervention, Presiding Officer?

The Deputy Presiding Officer: Yes—I will reimburse the time.

Malcolm Chisholm: Okay.

Christine Grahame: On a brief point of information, the intervention currently takes place not after an attack has happened but at a much earlier stage, when people are concerned for their wellbeing and safety. The notices are used long before an attack takes place.

Malcolm Chisholm: I thank Christine Grahame—who obviously knows about the 2010 act, as she introduced the bill—and I take her point on the matter. In a sense it is consistent with what I am saying. I am not speaking against dog control notices, but we should use them more frequently; that was my fundamental point.

However, pre-emptive action over and above dog control notices may be necessary, particularly as they are not used very frequently. I am inclined to support the Irish system in which certain breeds of dog must be muzzled and on leads at all times. That is the precautionary principle, and I am of course happy to listen to views on and objections to that suggestion in the next few months. However, I restate the principle that nothing is more important than the safety of children and other people, and precautionary action should therefore be supported.

13:02

Jenny Marra (North East Scotland) (Lab): Just this week, Sheriff Alastair Brown commented on a case in Dundee sheriff court that involved an attack on a two-year-old, of which I think that we are all aware. He said that the Dangerous Dogs Act 1991, which John Major's Government introduced after the brutal killing of Kellie Lynch by two Rottweilers, also in Dundee, is insufficient and does not give courts the proper powers to punish.

In the case that was in the news last week, the sheriff was not able to punish the dog owner properly under the 1991 act, so I am very pleased that a review of dog legislation is taking place at Westminster, as that is very important. However, there is so much more that this Parliament can do. Christine Grahame, Kenny Gibson and I have spoken before in the chamber about the dog antisocial behaviour order—or doggy ASBO—legislation that Christine Grahame introduced just a couple of years ago.

I was interested to hear the figures that Christine Grahame gave. She might agree with me that the legislation is not properly understood throughout Scotland, which perhaps offers an

opportunity for a bit of post-legislative work by the Justice Committee. She cited some figures to show that the 2010 act is being used, but in my region Dundee City Council has not issued any dog ASBOs, and only one has been issued in Angus.

Some of the community wardens to whom I have spoken believe that dog control falls within police powers, but the 2010 act places it under local authority control. Given how many dogs and how many dangerous breeds there are in Scotland, it is important that our legislation is clear and unambiguous so that we know who has the power to reprimand the owners and take control of situations.

Christine Grahame: The member mentioned Dundee, and I have the figures in front of me. She is quite right that there have been no dog ASBOs, as she called them. However, the good thing in Dundee is that although there were only two investigations in the first six months, in the following full year there were 136 investigations. I do not think that we should underestimate the significance of dog wardens turning up and investigating an issue. It is a bit of a warning shot in the first place.

Jenny Marra: Indeed. I agree with the member about that. However, I think that we need to improve awareness.

Having looked at the issue over many years, I believe that the legislation that we have in place does not go nearly far enough. Since the introduction of the 2010 act, there have been horrific attacks in Dundee—for example, one little girl was severely mauled by a dog last summer. The legislation that we have in place is not preventing attacks. We need preventative measures because no amount of reprimanding owners after an attack has happened will give any comfort to the children who have been mauled, maimed and terrified in attacks and the parents who have to watch their children go through that.

I believe that we are at the stage when we seriously need to consider muzzling and perhaps requiring leads for dogs in public places. It is not an easy issue to deal with and it is controversial. However, I believe that the Irish Government has produced a list of 10 breeds of dogs and crossbreeds thereof for which specific measures are in place to prevent attacks. I think that we need to look at that. How many more attacks in our communities must we witness until we look properly at preventative measures?

13:06

Hanzala Malik (Glasgow) (Lab): First, I thank Paul Martin for bringing this topic to the chamber. I genuinely believe that it is a very serious issue and I know that he has very serious concerns about it, particularly in trying to help his constituents to overcome the difficult period that they have gone through.

As a young boy, I had some horrific experiences with dogs. I have seen people breed dogs for the sole purpose of making them fight each other. I have seen breeders breed dogs for the sole purpose of being violent guard dogs and the like, with no consideration whatsoever for what the outcome would be if the animal attacked an innocent person or whether the dog itself would be in danger, let alone human beings. It is horrific to experience such violent dogs and the experiences that I had will never leave me. I was once chased by a dog like that, and I can assure members that it is not a pleasant experience.

I think that what most people are now concerned about is seeing an end to there being victims of dangerous dogs, particularly in the home. I am a politician and, like the postman, I have gone to many letterboxes. I can assure you that when a dog jumps at you at the door, it gives you a fright—even at my age. There are therefore issues about how the animals are kept.

Members have suggested that it is not the fault of the animals, which is right: it is not. It is the fault of us, the human beings who are supposed to be controlling, helping and supporting those animals, training them appropriately and ensuring that they have the right attitude for living among children in particular and in human society in general. Our youngsters are at risk from dogs and we know that because we have the facts in front of us. People who have been viciously mauled by such animals carry that experience for the rest of their lives.

We need to take this topic very seriously, and I am glad that Paul Martin has brought it to the chamber today. It is important that all dogs be chipped, but I think that we need to go further than that. The people who perpetrate what I call the crime of breeding dogs specifically to hurt each other and to hurt people are the ones who will not chip the animals and who will still slip through the system. It is important that we ensure that that is not allowed. I have known people to breed dogs in farms and backyards without registering or training them but deliberately making them violent and training them only to be aggressive. That happens all round the world, but we in Scotland need to take the lead once again and ensure that we address the problem in a positive way. We need to get a grip on it, not just in relation to animals coming into Scotland but in relation to farms, businesses, security firms and the like.

The police and armed forces represent a good example in that they have highly trained dogs that do not go around mauling people. It is possible and doable, but we need to have the tools of the

trade, and we need to give people the tools to ensure that the problem is eradicated. We need to visit farms and kennels and ensure that shop owners and those who trade in the business are responsible and chip any animal that they sell.

The Deputy Presiding Officer: That concludes the open part of the debate. I invite Roseanna Cunningham to respond.

13:11

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I welcome all the speeches that have been made and I congratulate Paul Martin on bringing this debate to the Parliament. We discuss the issue today against the background of recent and continuing reports of dog attacks, including the particular cases that Paul Martin mentioned.

It is useful to remind the Parliament that both civil and criminal law can apply in respect of a dog's behaviour, and that the basis and the standard of proof for each is different. I turn first to the civil law. The Control of Dogs (Scotland) Act 2010 gave local authorities new powers to help to promote responsible dog ownership. Where a dog is considered to be out of control, a local authority can issue its owner with a dog control notice . Christine Grahame was right to remind us that the 2010 act is preventative, as a dog attack does not need to have happened before a dog control notice can be issued. It is important to remind ourselves of that.

A number of conditions can be imposed through a dog control notice if it is decided that that is required. As well as a mandatory requirement to have a dog microchipped, other conditions may include having the dog muzzled while in public and the owner having to undergo training in the control of their dog.

Patricia Ferguson: The minister is absolutely right to reinforce the point about prevention, but my colleague Jenny Marra hit the nail on the head when she said that not everyone is aware of the rights that they have so they do not always report it when a dog is beginning to exhibit such tendencies. It might be worth while to have an education programme or advertising programme to help with that.

Roseanna Cunningham: The member is absolutely right about that, but I remind her that the 2010 act aims to empower local authorities to be able to do a lot of this work. I will come back to that later.

The aim of the 2010 act is for steps to be taken by dog owners before an out-of-control dog becomes a dangerous dog and someone is attacked. In civil law, cases require to be proved on a balance-of-probability basis.

Between February 2011 and February 2013—the first two years of operation of the 2010 act—local authorities carried out approximately 3,200 investigations into potentially out-of-control dogs, as a result of which 240 notices were issued. However, as some members noted, there are large variations in how local authorities are using the legislation. In Edinburgh, for example, 164 investigations were carried out between February 2012 and February 2013, but in the same period Glasgow City Council conducted only five investigations. As an exemplar, I note that Aberdeen City Council conducted 317 investigations. It is difficult to understand why the variations have occurred and I think that a little bit of work needs to be done in respect of that, because these are important powers for local authorities and we are clear that they should be using them to help to control dogs in their communities. I remind members that there is no need to wait for an actual attack, as the provisions can be brought into play before that happens.

Alongside the new 2010 act, we have long-standing criminal laws to deal with dangerous dogs under the Dangerous Dogs Act 1991, which provides for prison sentences. Under existing criminal law, however, a dog owner can be held criminally liable for their dog only if they had a reasonable apprehension that their dog would behave in a dangerously out of control way. That issue has come to the fore as a result of the Dundee case. The Government is determined to ensure that our approach to dog control keeps our communities safe, and I assure members that we will look at whether our criminal laws should be changed to keep them more in line with how the civil dog control notice regime works.

Such a change would have the effect that no prior knowledge by the owner about the likelihood of a dog's aggressive behaviour would be needed before a conviction could be obtained. There would be controversy about that, so it would have to be considered carefully. The criminal standard of proof required is that the case be beyond reasonable doubt, which is a different standard of proof. Consolidation, as suggested by Christine Grahame, would therefore be even more complicated than such exercises usually are, given that we are dealing with both criminal and civil law.

I have a caution on the listing of breeds. I understand why people raised that, but the only time that I have been bitten by a dog—when I was bitten on the face as a small child—a dachshund did it. I am pretty sure that a dachshund would never be listed, so we have to be careful when we talk about breed listing.

Just after Christmas, the Scottish Government launched a consultation to seek views on what new measures may be needed to deal with both the public safety and dog welfare problems associated with irresponsible ownership. Our consultation seeks views on a number of measures that may help to promote responsible dog ownership, although that does not exclude the suggestion, discussion and consideration of other issues.

We have raised the mandatory microchipping of all dogs. Personally, I have to say that it is hard to argue against the mandatory microchipping of dogs in the circumstances. We know that some dogs are still unfortunately mistreated and that where their welfare has been compromised, that can sometimes lead to dogs lashing out, which Patricia Ferguson was right to point out. Compulsory microchipping could reinforce the responsibility an owner should have for their dog's wellbeing. We want to talk to people about the practicality and effectiveness of the widespread microchipping of all dogs.

In addition, we are raising the issue of dog licensing. The reintroduction of dog licensing would have to be done differently to how it was before, because it was ineffective before. It could be done in conjunction with mandatory microchipping—the two are not mutually exclusive—and those two things together probably would promote responsible dog ownership.

Jenny Marra: Will the minister give way?

Roseanna Cunningham: I need to press on, if the member will allow me.

There has to be some question of criteria for ownership. If we are going to reintroduce dog licensing we would need to understand that potential owners are suitable.

We have raised the issue of compulsory muzzling and I hear the views in the chamber. I think that that could be the most controversial aspect of the consultation.

The consultation runs until the end of March and I urge people with an interest to offer their views. In March we will hold a summit, bringing together key interests such as local authorities, the police, victims groups, a wide variety of organisations and others to discuss what more can be done to promote responsible dog ownership.

As a number of people have said, we have to remind ourselves that the vast majority of dog owners and dogs in Scotland are well behaved, socialised and cause no danger to anybody. Our consultation, the summit and our review of the criminal law is focused on seeking views and evidence on what more practical things we can do to increase the safety of all of our community. It is right that the Government is doing that, and what we do can, of course, include measures in addition to the three referenced in the consultation. I congratulate Paul Martin again on bringing forward the issue.

13:18

Meeting suspended.

14:30

On resuming—

City of Edinburgh Council (Portobello Park) Bill: Preliminary Stage

The Deputy Presiding Officer (John Scott): Good afternoon, everyone. The first item of business is a debate on motion S4M-08530, in the name of Siobhan McMahon, on behalf of the City of Edinburgh Council (Portobello Park) Bill Committee, on the City of Edinburgh Council (Portobello Park) Bill at preliminary stage.

Siobhan McMahon (Central Scotland) (Lab): As the convener of the City of Edinburgh Council (Portobello Park) Bill Committee, I am pleased to open the preliminary stage debate. I thank my committee colleagues for their support and assistance throughout the process. My colleague James Dornan is not with us this afternoon, but my thoughts are with him.

This is my first time as the convener of a parliamentary committee. I welcome the challenge, but I could not have met it without my colleagues' support. I thank the committee clerks and the Parliament's legal team for the advice that they have given me and other committee members and for the time that they have given to all aspects of the bill. I thank all who have assisted the committee in scrutinising the bill at preliminary stage, including the experts on common good law who provided evidence to the committee and the objectors, who have engaged in the process and assisted the committee in understanding the issues and concerns that the proposals raise.

The bill is short, extending to only five sections, but it is nonetheless controversial. The action that it would facilitate—the building of a new high school in Portobello park—is not without its critics. The bill presents complex legal issues, which the committee was keen to understand in depth before considering the merits of and arguments against the proposal.

The issue of a much-needed new high school for Portobello has a long history. The consensus appears to be that a new school is needed. Locating the school in Portobello park seems to be the key issue.

Portobello park forms part of an area of land that was purchased by—not gifted to, as the committee's report, which has now been corrected, originally inaccurately stated—the City of Edinburgh Council's predecessor body from Sir James Miller in 1898. The purchase provided that the land was to

"be used exclusively as a public park and recreation ground"

for the community's benefit and contained a condition against building on the park, other than building consistent with the land's use as a public park or recreation ground.

The park's selection as the site for the school dates back to 2006, when the council agreed that it was the preferred location. Planning permission was granted in February 2011 and the intention was to appropriate the park for the new school. However, that was challenged in a judicial review petition in the Court of Session by the Portobello park action group. In September 2012, the inner house upheld the petitioners' appeal, on the basis that existing law on the disposal of common good land does not extend to the appropriation of inalienable common good land. That meant that the council could not move the site from its recreation function to its education function and therefore could not build the school on the park.

The bill was introduced in April last year by the promoter—the City of Edinburgh Council. Its purpose is to remove the legal obstacle that the inner house identified in order to allow the council to use Portobello park as the site of the new Portobello high school. The bill would change the legal status of Portobello park from inalienable to alienable common good land for the purpose of part VI of the Local Government (Scotland) Act 1973. That would allow the council to appropriate the land for its education function and build the school on the park. The bill does not authorise the building of the school, which is subject to the local authority planning process.

Following its introduction, the bill was the subject of a six-week objection period, during which 66 admissible objections were received. At preliminary stage, the committee had to reject any objection to the bill that did not, in the committee's opinion, demonstrate that the objector's interests would be clearly adversely affected. In that context, and after considering each objection carefully, we agreed that seven of the objections did not pass the test and consequently rejected them. If the Parliament agrees to the bill's general principles and that the bill should proceed as a private bill, the committee will look at the remaining 59 objections in more detail at consideration stage.

In considering the bill's general principles, the committee was sensitive to a number of recurring themes that objectors raised in relation to perceived key implications of the bill if it is enacted. In particular, the committee considered claims that the bill would set a precedent for councils to overturn the general protections that are afforded to inalienable common good land by using the mechanism of a private bill.

Although we recognised that it would be open to other councils to follow that route if they so chose, any other such bills would have to be considered in their own circumstances and on their own

merits. The bill makes specific application of the law only in specific circumstances and does not in itself change the general area of the law. We were therefore satisfied that the precedent argument was not sufficient for the bill not to continue to its next stage.

We carefully considered the evidence that was provided on the key issue at the core of the bill: the apparent legal anomaly that exists in the Local Government (Scotland) Act 1973, which allows a council, with the consent of a court, to dispose of inalienable common good land to a third party, but does not allow a council to use such land for a different purpose by appropriating it for another of its functions.

One of the alternative legal approaches that the promoter considered, which some objectors highlighted as the mechanism that should be pursued, was a change in the general law to address that apparent legal anomaly. It was argued that a public bill would not only address the legal anomaly that was highlighted in this case, but have general application throughout Scotland.

To ascertain whether there were any plans for a public bill or other Scottish Government action in relation to the matter, the committee contacted the Scottish Government. We were advised by the Minister for Local Government and Planning that the Government had not reached any decision on the matter, although it was consulting on its forthcoming community empowerment bill, which is intended to include provisions on the management and disposal of common good land. The committee noted that any potential Scottish Government legislation in connection with the issue was likely to be some time off.

Although the committee is aware that this is not part of its specific role, we agreed that we would draw the attention of the Parliament and the Scottish Government to the suggestion that a change in the general law might be appropriate, regardless of the outcome of consideration of the bill.

The committee also examined the other alternative legal approaches that the promoter had considered as options to achieve the same end. Those included appealing the inner house's decision to the Supreme Court; reviewing the status of the park to establish whether it might be categorised as alienable common good land or not part of the common good; disposing of the park under section 75(2) of the 1973 act; applying to the court seeking authority to appropriate the park under section 75(2) of the 1973 act; and petitioning the Court of Session under the nobile officium, which, in essence, provides a legal remedy where one is otherwise unavailable.

The promoter argued that none of the other alternatives would be as quick or as cost effective as promoting a private bill. The committee is satisfied that the promoter was justified in pursuing the private bill process as opposed to other possible legal options at this juncture.

There was some dispute between the promoter and some objectors on what effect the bill would have on the longer-term status of the park. The promoter argued that its inalienable status would be removed only for as long as it was appropriated for an education purpose, but others argued otherwise in evidence. The committee is persuaded that, should the bill continue to consideration stage, an amendment should be lodged that would provide safeguards for any future use to protect the park's inalienable common good status should it no longer be used for an educational purpose.

As well as considering the general principles of the bill, private bill committees must take a view on whether the bill should proceed as a private bill. To that end, the committee had to satisfy itself that the bill conformed with standing order requirements in relation to the definition of a private bill and that the accompanying documents were adequate to allow proper scrutiny of the bill.

On the first point, the committee was satisfied that the bill complies with the standing order definition of a private bill. We were also satisfied that the bill confers on the promoter powers in excess of the general law—in this case, the 1973 act.

On the second point, the committee was required to consider each of the accompanying documents—the promoter's memorandum, the explanatory notes and the promoter's statement, which were lodged by the promoter—and take a view on whether those documents were fit for purpose. We considered, for example, whether the explanatory notes summarised what each provision of the bill does and provided other information to explain the effect of the bill, and whether the promoter's statement detailed the arrangements that were made by the promoter regarding matters such as notification, advertising and distribution of the bill and accompanying documents.

The committee was of the view that, overall, the accompanying documents were adequate to allow for scrutiny of the bill.

Overall, we have carefully considered the arguments for and against the bill and, on balance, we are persuaded by the general principles of the bill. If the Parliament agrees, we will examine the objections in greater detail at consideration stage.

I move,

That the Parliament agrees to the general principles of the City of Edinburgh Council (Portobello Park) Bill and that the bill should proceed as a private bill.

14:39

The Minister for Local Government and Planning (Derek Mackay): I welcome Cameron Buchanan to his place as Opposition spokesperson for the Conservatives on the local government and planning portfolio. This is my first opportunity to do so since he became an MSP.

We are very aware of the importance of the issue to the Portobello community. The bill represents a critical step in the process of allowing the City of Edinburgh Council to consider all the possible options and secure the best possible site and outcome for the provision of the new school.

I formally record my thanks to the committee and its convener and to all the various contributors for their work, which has allowed us to reach this point. Having heard and considered all the evidence appropriate to the debate, it is fair to say that common good land has a long and incredibly complex history, and its treatment is complex, too, so I very much commend the efforts of the committee and the expert witnesses in seeking to bring the matter to a clear and satisfactory resolution.

The City of Edinburgh Council has long identified the need to replace the existing Portobello high school building. As long ago as 2006, the council announced its intention to build a new school on Portobello park, which is its preferred site. I will not go over the history and legal challenges that have resulted in the need for a private bill but, needless to say, I am pleased that we are now approaching the point at which it will be possible for the council to deliver this key project from a position that ensures the fullest possible consideration with regard to delivering the best outcome for the Portobello community as a whole.

The bill has no direct impact on Scottish Government policy and the Government does not have a view on the merits of the proposed site—that is entirely for the council to decide. However, we recognise that there is widespread agreement that the existing Portobello high school is no longer fit for purpose and we believe that the council should be able to achieve what it has identified as its best option. The bill will enable that to happen and so will help the council to meet its responsibility to provide a positive learning environment for young people in the east of Edinburgh.

Whether through local delivery options or broader policy objectives, both central and local government partners have a responsibility to ensure that Scotland's young people—our country's future—are given the best possible opportunity to fulfil and maximise their potential. The bill demonstrates how effective partnership between local government, the Parliament and the Government can facilitate healthy debate as well as solutions to help meet local needs.

More broadly, it is worth highlighting that the Government is content that the bill will have no direct consequences for common good assets elsewhere in Scotland. The bill is deliberately narrow in its focus and will deliver a local outcome to a local challenge. The Government fully recognises the special place that the common good plays in the life of the nation and of many local communities, and the bill in no way erodes that.

I hope that members will forgive me for straying slightly from the specifics of the bill for just a moment, but the point is important. In recognition of the special place that common good holds, our draft community empowerment (Scotland) bill, on which we are consulting, includes provisions that will increase transparency about the existence, disposal and use of common good assets. That bill will also increase community involvement in decisions that are taken about such assets. In the context of today's debate, I am sure that members will agree that that represents a welcome development that evidences the Government's commitment not just to listen to local communities but to enable them to act in delivering local solutions to meet local needs. That reflects the objective of the bill that we are considering today in respect of Portobello high school.

Linked to that, I have noted the committee's comments with regard to the consultation process that took place on the proposals for the new high school. I respectfully suggest that there are almost certainly lessons learned that can be carried over into future community empowerment-related activity. That is something on which I will reflect further.

To return to the bill, there is clearly no debate over the need for the City of Edinburgh Council to proceed urgently with the building of a new Portobello high school, having first flagged its intention to do so in 2006. The committee has received thorough and comprehensive advice and representations from the community, its representatives and expert witnesses, both for and against the council's favoured option. The committee has also given cognisance to the role of the City of Edinburgh Council in respect of its function as the local planning authority, and to the role of the Parliament in relation to legislative competence. The approach that is proposed also broadly reflects current Government thinking in respect of community empowerment. Therefore,

the process to bring us to this stage has been robust. However, by definition, there are always two sides to every debate, and I look forward to members' speeches this afternoon.

14:44

Kezia Dugdale (Lothian) (Lab): I thank the committee for its service to the issue. I live in the Edinburgh Eastern constituency, not far from Portobello high school, and members will know that the private bill process explicitly excludes members who represent the area that is affected by a bill from the bill committee process. When I discovered that, I was anxious that I would not be able to convey to the committee just how important the issue is to the community. However, the committee has done the Parliament proud, producing a comprehensive and fair report, which criticises the process in places but ultimately recommends that the Parliament accept the need for the bill. The committee has served with the utmost diligence and professionalism and deserves credit for that.

I will open and close the debate for Labour. In my opening speech I will describe the urgent need for a new school, and in closing I will seek to address, with the facts, the arguments against having a school on the park.

I welcome all the people in the gallery who have found the time to attend the debate. Their number is big, but they represent a tiny fraction of the number of people who have been actively engaged in the issue for years. In particular, I welcome my colleague Councillor Maureen Child and pay tribute to her for all the work that she has done for years in considering the issues, working with the council and shoulder to shoulder with the community, which has been waiting for a new school for far too long.

I also pay tribute to Peigi Macarthur and her team for their outstanding leadership of a wonderful school at the heart of a community that is pounding with life, culture, sport and opportunity. I worry that in the decade-long battle for a new school the considerable merits and achievements of the current school and its pupils have been almost overlooked.

I want to highlight the work of Portobello for a new school and the parent council. PFANS is a group of people who are dedicated to securing a new school. In progressing the case for the school, the group has enhanced the community itself, building a forum for regular debate about not just the school but wider issues. Its Facebook page has nearly 2,600 members—a sizeable chunk of the community is online and engaged with issues to do with the school's future and the community, demonstrating what can be achieved when people come together to work for the common good of a community about which they care so passionately.

Why do those people care so much? It is 2,596 days since the plans to build a new Portobello high school were approved by the council. Children in the feeder primary schools were asked to give the designers and architects their vision for a new school when they were in primary 2. Those very pupils are now in their fourth year at high school.

Jessie, who was in primary 2 at Towerbank primary school when the new high school was first promised, will likely sit the new national qualifications and her highers in the current building. I asked Jessie to show me round the school, which she did brilliantly. For her, the most pressing issue is the state of the stairwells. There are 1,450 pupils in a column-stack of a school, and when the bell goes at the end of class they all have to fire into the tiny stairwells to move from one floor to another, often getting crushed under incredible pressure. The problem is so big that it drives the timetabling of classes. The timetabling ensures that pupils do not have to go from the top floor to the bottom for their next class, whatever the subject, because of the logistics of getting kids round the school. That is ridiculous.

There are temporary buildings, which have been there for years, where the kids are taught maths and technology. The assembly hall roof blew off in strong winds and the school had to be closed for a day, not because that had made the school dangerous but because it simply would not be possible to get kids from one part of the school to the other, because space is so cramped. The school had to close—that is ridiculous, frankly.

The school has special dispensation not to deliver two hours of physical education each week, because it does not have the on-site sports facilities that would enable it to do so. The school must spend £70 a lesson to get the kids to the Jack Kane sports centre—that £70 comes out of the school's budget—and when the kids get to the centre they get only 15 minutes of sport. That cannot go on. A new school on the park will provide groundbreaking sports facilities, which will enable the school to continue to deliver sport. The school has fantastic sporting merit; it is the heart of basketball in Scotland and contributes considerably to football, rugby and other activities.

The issues that I have set out are familiar to the people in the gallery and the people who are involved, day in and day out, but I am conscious that members of the Parliament might not be aware of the strength of feeling in the community because the issue has been going on for too long.

The Deputy Presiding Officer: You should be drawing to a close, please.

Kezia Dugdale: In my closing speech I will talk about the reasons why the school must be built on the park and counter some of the arguments against that approach. Members should be in no doubt: the people of Portobello want the school and they want it on Portobello park.

14:49

Cameron Buchanan (Lothian) (Con): The City of Edinburgh Council (Portobello Park) Bill will change the law in order to allow the City of Edinburgh Council to appropriate Portobello park to build a school. The Parliament is being asked to approve that straightforward principle today—nothing more, nothing less. It is important that we do not lose sight of the fact that the public realise what the bill is really about. I do not think that it is about the need for a new school, which we all agree on.

A number of us have received correspondence from residents who are concerned about the bill. The question of the competency of the private bill was raised: specifically, correspondence cited the guidance on private bills, which requires that such bills should not be considered if a statutory remedy is not necessary or if a change to the general public law would be more appropriate.

In the context of the former point, some people have raised the alternative sites that are open to the city council for a new school. However, I do not think that it is appropriate for the Parliament to visit that matter in depth, particularly as the council voted unanimously to pursue the Portobello park option via the private bill route. We must accept that Portobello park is the best option for the school.

The second objection to the bill's competency was made in relation to whether other legal solutions were more appropriate. From the evidence that was presented to the committee, I note that there is broad agreement that such options are non-starters and that a statutory solution such as the bill is the only way forward.

However, within that broad agreement, there was a contention that a change to the law on appropriation of common good land should be made through a public bill. I share the committee's view that, given the particular set of circumstances surrounding the new Portobello high school, it is both necessary and acceptable to pursue the private bill option.

Beyond those technical objections, a key concern has been raised by a number of people—namely, the wider implications of the bill as regards common good land. We need to take those concerns seriously, and it is in the best interests of all concerned—including those of us who support the bill—that we demonstrate that no such danger exists, due to the specific area of law that the bill addresses. We must be clear about precisely which area of law the bill relates to. It is not about the broad issue of safeguards for common good land, so we should leave that aside. The bill is about the land at Portobello park and that land alone.

The bill concerns the principle of appropriation of inalienable common good land. Indeed, more specifically still, the bill is about the appropriation of such land for the city council's education authority functions. There are a number of reasons why I do not expect more local authorities to introduce other private bills on the back of this one, although that is what everybody is afraid of. Of course, one key point is that private bills are not commonplace or straightforward in any case, especially when we consider the constraints on parliamentary time. Beyond that point, the appropriation of inalienable common good land for the purposes of education is such a narrow issue that it is not likely to affect many other cases for the time being.

The question whether such cases may be more common in the future, given school building programmes, has been raised in evidence. In that context, I agree with the committee's conclusion that the bill is so narrowly focused on the issue of a school on Portobello park that it is difficult to see how it could lead to a broader presumption in favour of appropriation. Indeed, I think that the broader effect of the bill—if there is any at all—will be that the issues around appropriation will be properly debated and discussed and a mechanism for adjudicating similar disputes will be adopted for the future, which is no bad thing.

In effect, we are discussing a legal anomaly. Local authorities cannot appropriate inalienable common good land but they can dispose of it with court permission. It became an issue following local government reorganisation in 1996. Prior to that, district councils could dispose of inalienable common good land to regional councils, as they were the education authorities. Indeed, such an example was cited in Wishaw, within the old Strathclyde Regional Council.

However, following local authority reorganisation, that was no longer an option. Therefore, we have arrived at a position where a local authority can dispose of, sell off and develop inalienable common good land with court permission, but it cannot use the land to provide much-needed and long-overdue school premises, as it has no power, and there is no legal process of adjudication, should it wish to do so. It seems, on a point of principle, unfair to allow such an anomaly to stand in the way of a new school that we know is much needed.

As we have heard, and as the committee found, the private bill route is the best option for resolving the very specific set of circumstances in Portobello. The bill gives the City of Edinburgh Council a mechanism to appropriate Portobello park, as the case highlights that there is no existing means for it legally to do so. Because of the obvious need for a school and because we can satisfy ourselves that, realistically, there is little danger of setting a wider precedent due to the focus on Portobello park and the very particular circumstances surrounding it, we have no good reason to oppose the bill. Indeed, given the desperate need for a new school, we support it.

14:54

Fiona McLeod (Strathkelvin and Bearsden) (SNP): As a serial member of private bill committees, it is appropriate that I thank the committee members and the convener in particular, the committee clerks and the legal team that provided us with advice. The City of Edinburgh Council (Portobello Park) Bill has been perhaps the most complicated private bill that I have considered so far, not only in a legal sense but because the committee has, in its quasi-judicial role, had to walk a very fine line in responding to the deluge of emails that it has received from the public. We have found it very helpful to have our convener supporting and leading us in our work.

I will focus on three areas with regard to our committee report on the bill: the alternatives to a private bill; the precedent that may be set by such a bill; and—if I have time—the consultation process that was undertaken.

When the City of Edinburgh Council suggested to the Parliament that a private bill was the correct route to go down, it listed the alternatives that it had considered, which the committee convener went through in her opening remarks. I draw members' attention to paragraphs 74 to 96 of the committee's report, in which we comprehensively go through the alternatives that the council considered and the reasons that they were rejected, and conclude that a private bill was the correct route to follow. Paragraph 97 on page 18 states:

"The Committee is satisfied that the Council was justified in pursuing the private bill process and none of the other possible alternatives to achieve its objective."

We took a lot of time and care in coming to that conclusion.

Much has been made of the notion that, if the private bill proceeds and is passed, we will be setting a precedent that other councils throughout Scotland could follow. The convener has already addressed that concern, as did Cameron Buchanan. I refer members, when they are making their decision, to paragraph 68 on page 13 of the report, which shows that to some extent that can already happen. Motherwell, Kirkcaldy, West Dunbartonshire, South Lanarkshire and North Lanarkshire authorities have all used various routes to enable them to take inalienable common good land and use it especially for educational purposes. What the City of Edinburgh Council proposes to do in the Portobello park private bill is not unique, and follows a tradition. The bill will not set a precedent, as it is not the first time that such a route has been followed.

We commented at paragraph 120 of our report—as the minister mentioned in his remarks—that we thought that the City of Edinburgh Council had gone through a fairly comprehensive consultation process, but that some mistakes and areas in which it could have been better had been identified. We noted, however, that some of the problems that had occurred at the beginning of the process had since been rectified.

A lot of the emails that we received highlighted that the City of Edinburgh Council went out and consulted young people and pupils. I do not see that as a negative—it is entirely positive. There is no reason why young people and pupils should not or cannot be consulted on their future. I commend the report to Parliament.

14:58

Alison Johnstone (Lothian) (Green): I declare an interest as a City of Edinburgh councillor from 2007 to 2012; a current Lothian MSP; and a board member of Fields in Trust.

The controversy over Portobello park goes back many years and has been deeply divisive for the community. During my time as a councillor, I was very critical of the way in which the council had handled the decision on whether a replacement high school should be built on the common good land that is the park. I visited the school at that time and shared with parents and young people a real desire to replace the 1960s Portobello high school, which was poorly designed in the first place and has not stood the test of time or been adequately maintained.

However, I believe that the council has been too dismissive and, at times, disrespectful of those in the community who did not want the school built on the park. Regardless of where anyone stands on this debate, it is important that they are able to state a position without fear of ridicule or demonisation, otherwise the process of moving on after a conclusion is reached becomes so much harder.

Hindsight is a great thing but it is clear that, had we all known in 2005 what we know now, a different set of options and potential paths would have been followed, and a new school would now be up and running and delivering the quality secondary education that our young people need and deserve. However, we are now in 2014. The need for a new high school has grown, not diminished. The condition of the school has worsened. I am no longer a councillor but, as an MSP, I have to take a position on this private bill, which is the council's way of dealing with the common good status of the park that would otherwise prevent a school from being built there.

It is no longer 2005. Nine years have passed since the council first made its decision. The choices that we face now, with so much water having flowed under the bridge, are different. The school has planning permission to be built in the park and a contractor is in place to do that. Community consultation a year ago had a massive response and a fairly hefty majority in favour of building in the park. However many criticisms one can level at the community consultation, it is difficult to argue that the will of the community is other than that which emerged from the consultation.

In the unique circumstances in which we now find ourselves and having weighed up all the issues over a long period, I will support the bill today but seek strengthening of assurances and protections concerning the future of the site itself and the compensatory green space. The issue now is the conditions that are attached to the school being built at one end of the park. What assurances can be secured that new playing fields will always be accessible to the community at large? What certainty is there that, once the new St John's school is built, the old high school site will be transformed into high-quality green and open space to be enjoyed for generations to come? The council has moved some distance on those matters, but they must now be secured for the long term. More generally, I want to be sure that, even with a school in place, the land on which the school sits remains common good land and, crucially, that the decision made by MSPs in this case does not establish a precedent for other common good land in Scotland.

I lodged an amendment to today's motion to see whether Parliament would be prepared to take a view at this stage on some of those concerns. My amendment has not been selected for debate, but I welcome the committee's recommendation that the bill should be amended to strengthen protection of the site's common good status and I urge committee members to pursue the issues raised as the bill moves forward.

High-quality schooling is essential to Edinburgh's future success, as with any city, but so is an appreciation of the need to preserve and enhance Edinburgh's green recreational spaces. There is an opportunity here to build a positive future in both regards and I trust that, in time, the city village of Portobello will regain all the cohesion that makes it such a special part of the city.

15:02

Elaine Murray (Dumfriesshire) (Lab): Colleagues may be surprised that a member who represents a constituency in the south of Scotland should be taking part in a debate on a bill brought to Parliament by the City of Edinburgh Council to resolve a particular issue that prevents plans for a new school from progressing. However, I was brought up in Edinburgh and I have very pleasant memories of Portobello, particularly of the outdoor swimming pool with a wave machine, which most people here are probably too young to recall. However, that is not why I am speaking in the debate. I am interested in the issues around the common good land and the reasons why the bill was introduced. The obstacles preventing the plans for the new Portobello school from progressing have arisen because of what seems to be an anomaly in legislation that was passed over 40 years ago.

Common good funds are the assets and income of the former burghs of Scotland: portfolios of land, property and investments that by law exist for the common good of the inhabitants of the former burghs, not of the residents of the current local authorities. Title to common good assets is held by successor local authorities, so the Local Government (Scotland) Act 1973 transferred the assets that were held by the town councils to the new district councils that were formed in 1975; after that, the Local Government etc (Scotland) Act 1994 transferred them to the new unitary authorities in 1996.

Some town councils transferred the town's common good assets in 1975 to new trusts in order to prevent them from being taken over by the new district councils, and properties were purchased or gifted to communities for specific purposes or for the benefit of a particular group of residents. Some common good assets were owned by burghs that did not have town councils prior to 1975. The situation is very complex, so knowledge of and documentation on common good properties is often very poor. For example, a number of properties in Dumfries were recently found to be common good properties, which people had not been aware of previously.

Portobello park is part of an area of land that was purchased by the council in 1898. That was two years after Portobello, which had been a

burgh in its own right, was incorporated into Edinburgh by an act of Parliament, so the common good property is owned by Edinburgh rather than by Portobello. As we have heard, the land was sold on specific conditions, which has resulted in its having inalienable common good status.

The Local Government (Scotland) Act 1973 enables inalienable common good land to be disposed of with the consent of the Court of Session or a sheriff, and it enables the court to impose conditions that other land should be substituted for the land that is lost. However, as we have heard, inalienable common good land may not be appropriated—that is, used for an alternative use by the council. Although it can be sold off, it cannot be used for alternative uses by the same council. As we heard from Cameron Buchanan, that was not a problem before 1996 because education was the responsibility of the regional council, to which the land would have been disposed, but with unitary authorities the council is no longer able to do that. The bill seeks to address the anomaly that, in the case of this particular asset and this particular council, the inalienable common good land can be disposed of but not appropriated by the local authority for another purpose.

There is no doubt in my mind that the proposed school, which will be a community school, will be of benefit to the community. I am sure that that will be the case. I note that the bill does not circumvent the planning process in any way. However, there is still an issue about whether the 1973 act needs amendment, because we could have a whole load of other bills of a similar type coming along unless we look at the principle and the problem with that act. It will be interesting to see whether the proposed community empowerment (Scotland) bill contains a proposal on the matter.

Andy Wightman and James Perman undertook a review of common good land in 2005, and they recommended that we need a new common good act because the Common Good Act 1491 is still the main act that governs the use of common good land, obviously amended by all the subsequent bits of legislation. It may be that we need a consolidation bill on common good property.

The Deputy Presiding Officer: Many thanks. We move to the closing speeches, and I call Derek Mackay. [*Interruption*.] Perhaps I have not called the right person. Forgive me, minister. I should have called Cameron Buchanan.

15:07

Cameron Buchanan: I will pick up on a few of the points that were made in this afternoon's debate, which has been constructive.

Elaine Murray raised the issue whether the bill somehow circumvents the 2012 judgment of the Court of Session. I refer to the important point that the committee made, that it is for the courts to apply and interpret the law and for the Parliament to legislate to change it when it is appropriate to do so. This is one such occasion. The court judgment highlighted what many of the experts have pointed out, including Roy Martin QC, who described in his oral evidence to the committee the anomaly whereby the Local Government (Scotland) Act 1973 allows the disposal of land with the consent of the courts, but not appropriation for another use. I mentioned that in my opening speech. I do not accept the argument of those who seem to believe that, when the court finds such an anomaly, it is for the Parliament to sit back and blithely accept it. Indeed, as I argued previously, although I do not see many similar cases coming to the fore in the short term, the principle should be addressed for the sake of consistency in the future.

I note the criticism of the process, which is not entirely unfounded. As everybody has said, there were shortcomings in the council's consultation on the bill. It is extremely regrettable that fundamental mistakes were made with the organisation of the consultation. Indeed, the previous administration of the city council has by no means covered itself in glory over the whole affair. Evidence to the committee demonstrated that as far back as 2006 there were indications that the status of the land and the council's right to appropriate it would be challenged in the courts. Why it was not done then, we have no idea. Given the inevitability of that court challenge, the fact that the council proceeded with the planning and delivery process solely on the basis of legal advice, regardless of how expert that was, meant that the project was always going to be a hostage to fortune. The land's status and the council's rights in that regard should have been established definitively long before the 2012 Court of Session judgment.

There has been some discussion about the effects of this contentious issue on the Portobello community. I understand the concerns of those within the community—and indeed people further afield—about the loss of common good land, or any parkland, in our cities and towns. As Alison Johnstone said, such land is of tremendous value, and we have less and less of it, so it is important. However, I do not think that that is the issue here. The issue is not about common land but about the school. We all agree that it is an excellent school, which is well founded and has great sporting

abilities and a great future. However, Portobello needs a new school.

The important thing is the commitment of the City of Edinburgh Council to designate the existing site of the Portobello high school as a new park or similar recreation facility and give it Fields in Trust status. That undertaking is critical and we must hold the council to account over it. Its importance can hardly be overstated, as it means that the overall loss of green space within Portobello will be kept to a minimum.

Many have talked about the reason that we are here today considering Portobello park as a stand-alone case and not delaying for a general review of the legislation in the area of alienable common good land. That reason is the desperate and urgent need for a new school building in Portobello and the fact that we cannot delay the project any longer. Portobello's high school is a good school: staff and pupils work hard and should be proud of their good reputation in the city. However, we have to question how we can produce confident learners and instil pupils with that all-important sense of belief and persuade them of their worth when at the same time we continue to teach them in a building that is not fit for purpose and is in desperate need of replacing. Quite simply, we cannot dismiss the effect that learning in such an environment has on the school ethos.

It is because the pupils of Portobello deserve a new school now and because there are no good reasons to oppose the bill that I am pleased to confirm my support.

15:11

Kezia Dugdale: Having established the case for the school in my opening speech, I intend to address some of the counterarguments, the first of which is common good.

The status and future of common good land has been at the heart of the recent debate around the school on the park. Early in my tenure as an MSP for Lothian, I organised a public meeting specifically on the issue in Portobello town hall. Two hundred and fifty people came—so many that we had to open the upstairs part of the hall and sit people there, where there were not the tables, maps and materials that we were using to try to work our way through the arguments.

I invited Andy Wightman to speak and he came and talked to the community about the history of common good, what it meant and what it was for in an informative, engaging and enlightening way. After that, people at the public meeting sat round tables with giant maps and cut-out versions of the school and tried to work out where else in Portobello the school could go. Where could it possibly go on the map if it was not going to be in the park? The answer was that despite the 17 different options that we had, the park was the only credible option for the new school. The few alternatives that were available would have resulted in a school on a compromise site and would have taken far longer to deliver, at a much higher cost—money that would have been taken away from other schools in the City of Edinburgh Council area. The park clearly is the best site for the school. We took that very clear message from the public meeting of 250 people that night.

Common good by its very nature exists for the benefit of the community and the bill is in the best interests of the community. It is important to note that there will be no change to the status of common good land. The park itself will continue to be common good, but common good for the purposes of education. The neighbouring Portobello golf course, which was recently granted diamond jubilee park status, is protected in perpetuity for the purposes of public recreation.

I thank Fiona McLeod for highlighting the sections of the report that address the question of precedent—paragraphs 68 to 70—which are worth highlighting in detail. They say:

"While the Committee accepts that it will be open to other councils to follow the private bill route if they so choose, each case would have to be considered on its own circumstances and merits."

Each case like this would require its own bill. Paragraph 69 says:

"The Committee is also of the view that, in narrow legal terms, this Private Bill by definition cannot set a precedent as it only makes specific application of law in these defined circumstances and does not itself change the general area of law."

That is so clear in the report that it should allay anybody's concerns.

"The Committee is, therefore, content that any such precedent effect is not closely enough linked to what the Bill actually does for it to constitute a valid reason why the Bill should not proceed to the next Stage."

As I said, it is so clear.

I thank Alison Johnstone for raising the issue of green space. I recognise that all political parties support the school on the park. However, she was right to highlight the issue of green space. There are 74 hectares of green space in the Portobello area. We will lose 0.4 hectares when we build the school. PFANS put that fact in its briefing paper for today's debate.

The new school will provide two full-sized pitches for the community, so that the Portobello park area will be able to be used as a community facility in a way that it is not currently.

Anyone who drives out to the A1 or on to the bypass through the site will see that the park is

simply not used, except by the occasional dog walker. The idea that this facility is used regularly for sport just does not stack up.

We need to recognise that in many ways this is not just about Portobello high school. All the pupils of St John's primary school, too, want a new school and our decision today will also impact on their future. What greater common good is there than the education of our children? The arguments for the bill stack up and I am pleased to add my name in support of it.

15:15

Derek Mackay: Again, I offer the Government's position, which, as is normal with private bills, is to remain neutral. However, I can say that we have certainly explored a constructive approach to the bill this afternoon. I think that the committee convener, Siobhan McMahon, helpfully and comprehensively covered the committee's views and some of the detail, which made it clear that further work needs to be done as the bill progresses to take account of many of the expert views that have been expressed.

There is, as Dr Elaine Murray so eloquently pointed out, a wider debate to be had about common good assets. I could be accused of being an anorak about common good funds, having been involved with them since the age of 16— [*Interruption*.] I hear Christine Grahame saying that she is the biggest anorak in the Parliament—

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I did not!

Derek Mackay: —and she might have a point. However, although there is a wider parliamentary debate to be had about common good assets, that is for another day. This afternoon, we are discussing very narrow and specific interests relating to Portobello high school and the bill before us. We look forward to the on-going consultation and engagement on the community empowerment (Scotland) bill, which will provide an opportunity for some of these issues to be aired.

After all, members are right. Because of its very narrow focus, which was accurately highlighted by Cameron Buchanan, this bill is without precedent. Fiona McLeod was also right to highlight the issue of precedence and returned to the issue of consultation by exploring how local authorities make choices, engage with people and take forward that particular programme. Nevertheless, we believe that the process is robust.

This has been a journey. People might well have changed their position on the matter over time as circumstances have changed or as a greater understanding of the available opportunities and options has been reached. Alison Johnstone helpfully made the case about circumstances moving on with regard to the condition of the building itself; indeed, that is the issue on which this debate has been particularly consensual. No one disagrees that a new school is required. Different sections of the community might debate where the new school should be sited, but this bill facilitates the option of proceeding with the council's preferred choice.

For all those reasons and given our understanding of the complexities of common good and other factors, Government will continue to be constructive and take forward consideration of such matters. Members will vote as they please at decision time but, although we recognise all the points that have been made in this afternoon's debate, we will continue to remain neutral.

15:18

Alison McInnes (North East Scotland) (LD): First of all, I extend my sympathies to the deputy convener of the committee and will, in his absence, close the debate on the committee's behalf.

I, too, thank the committee clerks and our legal team for their support and the convener and I thank my fellow committee members for the conscientious way in which they carried out their work. I repeat the committee's thanks to all those who made representations to us. In their dealings with the committee, objectors and supporters have been courteous and reasonable, and all parties have presented their arguments in a coherent way. Committee members have certainly had no shortage of reading material, but I assure everyone who submitted evidence or objections that we read it all and reflected carefully and at length on the points that were made.

I will start with some brief comments about common good land, which is an area of law that can give rise to complexities and uncertainty. The evidence that we received from witnesses who have experience in the area suggested that it can often be difficult to establish whether common good land is alienable or inalienable, because that might involve consideration of factors including how a burgh came into possession of the land and the use to which it has been put.

Interestingly, one commentator noted that prior to 1996, the park was the responsibility of the City of Edinburgh District Council as a recreational asset, while education was a function of Lothian Regional Council. As Cameron Buchanan explained, had it been proposed then that the land be used for educational purposes, that would have involved a transfer from the district council to the regional council, following an application to the court for authorisation. That would have been a

disposal under the Local Government (Scotland) Act 1973. With the introduction of unitary authorities, such a transfer would have been an appropriation by education from recreation—rather than a disposal—which is not possible under the 1973 act. The bill seeks to remove the legal obstacle to appropriation, which currently prevents the building of the new Portobello high school on Portobello park. It is clear that there is a legal obstacle at the moment, and it is also clear that there is a pressing need for a new school. Kezia Dugdale spoke passionately about that.

The bill is narrow in its remit, as a private bill should be. It seeks only to allow the appropriation of a specific clearly defined piece of land by another department of the same authority, and only for the purposes of education.

From the many emails that we have received this week, I know that many people are not happy with the committee's preliminary conclusions and, indeed, challenge our right to have reached those conclusions. Nevertheless, the fact is that the committee has, after due consideration, concluded that the bill conforms to the definition of a private bill, so we recommend to Parliament that it proceed to the next stage.

I will now return to some of the issues that were raised in the committee's consideration of evidence. The committee is keenly aware of the benefits and value in urban areas of open space such as Portobello park. With that in mind, we sought to clarify what measures the council proposed to compensate for the loss of that space. We appreciated that such measures were not in themselves part of the bill, but we wished to clarify what the status of any such replacement space would be, particularly in view of the potential loss of the “inalienable” status of the park.

As part of the committee’s site visit to the park, we also visited the current high school site to see what area would be covered by the proposed replacement space. We also sought clarification from the promoter about what safeguards would be put in place in relation to that area. We were reassured by the promoter’s commitment to protecting the area from a future change of use by giving it Fields in Trust status which, we understand, would consist of a legal agreement with the National Playing Fields Association, which dedicates such areas to public use and recreation and similar uses in perpetuity. We have also urged the council to consider similar protection for the area of open space that would remain at the park following the proposed construction of the school.

In considering the general principles of the bill, the committee—in addition to receiving written and oral evidence from experts in common good law—heard from the promoter; from Portobello park action group, the main objector; and from the group Portobello for a new school, who are supporters of the bill.

As part of the requirements of the private bill process, promoters are obliged to set out in the promoter's memorandum details of the pre-introduction consultation that was carried out regarding the bill’s proposals. Other members have talked about that. The promoter went into some detail in the memorandum regarding the measures that it had taken to make the consultation in its view a meaningful exercise. Those included the distribution of information leaflets to individual households, a number of exhibition and roadshow events, and two public meetings.

Objectors, however, presented arguments alleging serious flaws in the process, including a shortened consultation over the Christmas holiday period; the lack of a balanced approach in relation to the content of leaflets, presentations; and displays in public areas; the survey format and the analysis of results.

Although we noted the lengths to which the promoter appeared to have gone to publicise the consultation, to engage with those who would be affected and to highlight the planned introduction of the bill, we also noted the range of claims and levels of dissatisfaction with the process that were detailed in objections. In our report, we encourage the promoter to reflect on lessons that have been learned during the process.

At this point, it is probably worth noting what the committee has not done. The committee did not feel that it was appropriate for it to take a view on issues that are properly for the council to reach a position on. For that reason, we did not explore the detail of the review or the options appraisal, or issues such as planning conditions.

As the convener and Fiona McLeod have already stated, the committee was very conscious of the concerns that have been expressed by objectors and others in relation to the possibility of the bill’s setting a precedent for local authorities to use the private bill process as a means of undermining the protection that is afforded to inalienable common good land. I therefore welcome the minister’s clear statement that the bill will have no direct consequences on common good land elsewhere.

Although the committee accepts that it will be open to other councils to follow the private bill route if they so choose, each case would have to be considered based on its own circumstances and on its own merits, as others have said. We are, therefore, satisfied that the precedent argument is not sufficient to prevent the bill from continuing to consideration stage.

Alison Johnstone talked about the need to strengthen assurances. The committee will seek amendments to the bill at the next stage to ensure that, should the park no longer be used for the proposed purpose, its inalienable status would be protected. That should reassure those who have concerns about the park's future status. On the question of replacement open space, I refer again to the promoter's commitment to protect the area by giving it Fields in Trust status.

I am pleased to support the motion that the general principles of the City of Edinburgh Council (Portobello Park) Bill be agreed to, and believe that the bill should proceed as a private bill.

Title Conditions (Scotland) Act 2003

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-08666, in the name of Christine Grahame, on behalf of the Justice Committee, on its report on the inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003. I call Christine Grahame to speak to and move the motion on behalf of the committee. Ms Grahame, you have 10 minutes or thereby.

15:26

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Ah. "Thereby" is tactful. I welcome the opportunity to open the debate on behalf of the Justice Committee and thank all those who provided written submissions and gave oral evidence to the committee.

You may feel that you have drawn the short straw, Presiding Officer—perhaps we all have—because I have 10 minutes yet again. I may struggle to fill the time, although I probably will fill it. Fear not—the subject is full of life. On the face of it, it looks like the driest of dry topics—and, my goodness, we have had a few of those in here—but not a bit of it. Although the language is technical and the law is a bit tricky, it is to do with day-to-day problems that cause real distress and angst for people.

First, here is the tricky bit. There will be a test afterwards. I should say in passing to my colleague Colin Keir, who is lurking somewhere behind me—I am sworn to non-disclosure of this, so I am breaking a promise—that his request for an explanation in pictures is, regrettably, not practicable in the chamber. So, let us take a deep breath.

Title conditions are legal obligations that appear in the title deeds of land and buildings. They burden one property for the benefit of another property and survive changes in the ownership of the properties concerned. Often, they appear in the title deeds of groups of properties, and the owners in question have mutual rights to enforce the conditions against each other.

The word "burden" should not frighten the horses; I will give an example. Members may have been there themselves. If they have not, I am sure that they will have had constituents who have been in this pickle: when communal repairs to the roof or stairwell of a tenemented property are urgently needed, but only those who are affected—let us say the top-floor flat occupants—feel the urgency as they watch the damp patches

spread across the ceiling and hear the drip, drip, drip of unwelcome rainwater in the eaves. If there is no factor to instruct—more of that later—the situation is even more trying. The six or eight tenemented properties may share the liability for the cost of the repairs to the roof, but because of those tricky little title deeds and those burdens, saying it is easy, while getting the money for the work to be done is quite another matter.

We can add to that mix the difficulty in getting repairs agreed and paid for when some of the properties in the tenemented building are owned by people who exercised the right to buy those properties from the local authority, while other properties are rented from housing associations. Mixed ownership makes it even more difficult to get any kind of agreement, no matter what it says in the title deeds about getting the leak in the roof fixed.

It should be an advantage to have a factor who is employed to manage all that for everybody in a tenement or a bigger development where there are shared liabilities for repairs and maintenance of what I will call common property—which means roofs and stairwells, although it can include walls, fences and so on. If people have a good factoring service that they pay for, that is all well and good, but it is very difficult for people to switch factors if they are not happy with the service. Why is that? It is because—this is what it says in those tricky little title deeds—it can require the agreement of two thirds of the people who own the properties.

The first problem is that not all tenement flats are occupied by the owners. When there are absentee landlords, who does one tell or ask for agreement? It is tough enough in any event to get agreement, let alone to know who to ask. The first step would be to make it easier, one way or another, for those who require information to identify the landlords. The committee's view is that the Government should legislate so that factors could tell everybody else who owns the various flats. That is not easy, however, because it would breach data protection rules. I know that the Government is not keen to do that; it would be helpful to know why because it is a big issue for people. It would also be helpful if the Government would tell us what it would do.

I move on to another tricky issue; this one is worse. Section 53 of the 2003 act gives neighbours a right to enforce burdens in title deeds—do members remember what those are?—against each other, in which there is something called a "common scheme" and the properties are "related". I will test the Presiding Officer on that later. The phrase "common scheme" and the word "related" are very vague. After all, a person will know that the roof above their block of flats or the common stairwell that they share with each other in their tenement might give them a responsibility to pay for their maintenance and repair.

However, the trouble is that they might also be liable for some other common scheme of maintenance, perhaps at some distance, in the development in which they live. That might involve, for example, open areas that are not right next door to a person's block of flats, above their head, or the stairwell and are not identified clearly in those tricky title deeds. What on earth does that mean a person is responsible for? That has caused a lot of problems.

The matter is so tricky that we asked the Government to invite the Scottish Law Commission—who are just the chaps and chapesses to deal with tricky legal issues when one does not know what to do—to review section 53 as part of its work programme. Thankfully, it has accepted that recommendation, so I hope that, in due course—as the lawyers would say—the matter becomes so clear that even I and perhaps Colin Keir and John Lamont will understand it.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I congratulate Christine Grahame on doing an admirable job in explaining very complex areas of law. Does she agree that part of the problem lies with how solicitors report to their clients? There is an obligation and need for solicitors to explain clearly to clients what responsibilities and obligations they must undertake when they buy properties.

Christine Grahame: If only John Lamont had waited until to the end of my riveting speech—I will come to that.

I know that this is riveting stuff—I have said so several times and I need to keep on saying it—so members will be sorry to see me sit down, but this is the final straight, unless of course John Lamont is hungry for more. The issue concerns land maintenance companies such as Greenbelt Group Ltd. I will not malign the company; the matter does not apply to it alone, but I merely use it as a convenient name that is publicly recognised as a company in this field. Speaking of fields, that is sometimes what residents find around their front door instead of the paid-for manicured lawns and well-tended shrubs for which they pay land maintenance companies a fee.

It is quite common on a modern estate to have open green land that is owned by a company that then charges for its maintenance. However, the trouble arises when the company does not maintain that bit of green space but the bill still lands in the homeowner's letterbox. As with the reluctance of those who are not immediately affected by roof leaks, those who are distant from

the thriving weeds and overgrown shrubs are not keen to get involved in taking the maintenance company to task. There are rules set up—those might be in a deed of conditions binding all the people on a big estate, which may be 60 to 100 people, to share such costs—that require them to set up an owners association to deal with the maintenance company, but they do not bother to do that. Consequently, everything gets stuck in individual disputes, amounting on occasion to the refusal of a homeowner to pay his or her bill, which certainly gums up any prospect of replacing the maintenance company.

Our recommendation—although we accept, especially in the current stringent climate, that it is a long-term goal—is that local authorities take over and see to the maintenance of such green spaces, much in the way that they eventually do the maintenance of roads in such developments. The committee felt that some mechanism for resolution is needed now—perhaps mediation—to resolve disputes in the interim.

Intriguingly—a word that only lawyers and former lawyers would use in the context—land maintenance companies might not be legally entitled to charge, being both the owners of the land and imposing the burden for maintenance while asking other people to pay for it. It is arguable that being able to look at the land and walk over it is not a benefit.

There was a delightful and slightly mischievous interchange between Professor Rennie and Professor Reid on whether land maintenance companies can charge at all, which is discussed on pages 18 to 20 of our report. I commend it to all who are with me so far. I could expand on that, but I do not have the time and—hey!—I do not want to spoil a good read. However, it is a rallying call to some chirpy lawyer out there to bring forward a test case, particularly if they can find the required man or a woman of straw who might access legal aid to fight one of the big boys.

I come to Mr Lamont's point. I offer a word in the ear of prospective house purchasers, which is already imparted by lawyers, I think. The excitement and drama of purchasing a home—some of us have been there—should not drown out the voice of the lawyer in the purchaser's ears telling them in plain English, I hope, about liabilities for the roof. For instance, the person who owns the top flat might be liable for all the roof maintenance. The lawyer should also tell people what the deed of conditions might mean to their monthly bank balance.

It is better for the home owner to attend to a few loose slates or a leaking gable before they invest in an unnecessary replacement kitchen. Although the law needs to be overhauled in some areas and tweaked in others, it is also a home owner's responsibility to ensure that the fabric of the house is not neglected for the sake of some more glamorous gadgets.

I am 33 seconds over. That is not bad.

I move,

That the Parliament notes the conclusions and recommendations contained in the Justice Committee's 8th Report, 2013 (Session 4): Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003 (SP Paper 338).

The Deputy Presiding Officer: That is not bad.

15:36

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I am pleased to respond to the debate, which falls under the heading of post-legislative scrutiny by the Justice Committee.

The work that the committee carried out was, as we might expect, wide ranging. Among the main issues were property factors and land maintenance companies. I will say something about those, because most members will have dealt with cases involving one or the other of those subjects—if not both—at some point in their careers.

There has, of course, been relatively recent legislation in the area: the Property Factors (Scotland) Act 2011, which was introduced by Patricia Ferguson. Therefore, I am not surprised to see her in the chamber. The Government has carried out work to implement the 2011 act, which provided for a compulsory register of factors and land maintenance companies, a statutory code of conduct and the Homeowner Housing Panel. Home owners can apply to the panel if they believe that their factor or land maintenance company has failed to comply with the code of conduct or has otherwise failed to carry out its duties.

Since it started operating on 1 October 2012, the panel has received more than 300 applications. About two thirds have related to property factors, and one third to land maintenance. As members might expect, a number of those applications have subsequently been withdrawn or rejected for a variety of reasons. Applicants must, first of all, go through the complaints procedures that the factor or land maintenance company itself operates; the panel exists to deal with disputes on matters that have not been resolved, for example on standards of service. The panel has now heard about 20 cases and decisions are published on its website.

The 2011 act did not deal with all the issues on property factors and land maintenance companies. In particular, it did not make any changes on

switching or dismissing and replacing factors or land maintenance companies, which is one of the key points that the committee considered.

The 2003 act contains provisions on the dismissal and replacement of factors. In new housing developments, the housing developer often appoints a factor through a manager burden. Manager burdens are time limited, with the normal period being three years. Once the initial period has expired, owners can appoint a different factor. That is done either by simple majority or through provision that is laid down in the title deeds. Once the manager burden has expired, a two-thirds majority can always dismiss and replace a factor regardless of what the title deeds say. In right-to-buy cases, a two-thirds majority can dismiss and replace the factor straight away.

Our view is that those legislative provisions on factors are generally satisfactory. The provisions on manager burdens allow a period of stability when a development is new; thereafter, home owners have the opportunity to switch factors.

The committee raised some specific points on right-to-buy cases. As issues in that area seem to be declining, given the fall in right-to-buy sales and the Government's planned abolition of the right to buy, we are not planning any legislative changes on switching of property factors.

However, we agree that the legislation is not always easy to understand, so we will issue guidance on a number of issues, including information on the duration of manager burdens that builds on the explanatory notes to the 2003 act, and information for factors on making a home owner's details available to other home owners, which might make it easier for home owners to obtain the necessary majority to switch factors. That relates to the point that Christine Grahame made about disclosure of owner information—she mentioned the difficulties with data protection. There is the added complexity that data protection is a reserved rather than a devolved matter, which means that addressing the issue in legislation would result in further difficulty for Parliament.

We will also provide public-facing information on dismissal and replacement of factors, and a guide on establishing residents associations. In some cases, guidance may be included in the publication "Common Repair, Common Sense", which the Government took over from Consumer Focus Scotland last year. It is a well-written publication, which we will expand to provide further information to flat owners.

As I have said, there is existing legislation on dismissal and replacement of factors. The position is, however, much less clear when it comes to the dismissal and replacement of land-owning land maintenance companies. We have given serious thought to legislation in that area and have consulted on the issue. We are not saying that we will never legislate; if voluntary routes cannot deliver progress, we will legislate, but at the moment we are preparing a code of conduct on dismissal and replacement of land-owning land maintenance companies, which will cover matters such as the majority that is required, information that companies should provide to home owners, the transfer of the ownership of the land, and future arrangements for maintaining the land.

As our response to the committee indicated, we decided against legislation at this stage because land maintenance companies have been subject to recent legislation—the 2011 act. It was also uncertain whether legislation would be any more effective than a code of practice and any such legislation would, of necessity, be complex. It was a marginal decision—we could have legislated—so we will review the effectiveness of the code, keep the matter under close scrutiny and will come back to the Parliament, if necessary.

In our response to the committee, we indicated that, in the longer term, we will carry out a review of the arrangements that are in place for land maintenance on housing estates. Thoughts from members on what we could consider in that review would be very welcome.

The committee also raised concerns about access to the Lands Tribunal for Scotland. I know that my colleague Sandra White has particular concerns in that area. The issue that the committee raised was expenses liability. We are considering various potential options and, as we promised in our response to the report, I will write to the committee on the matter again. Potential options include—as the Lands Tribunal suggested in supplementary written evidence—a cap on expenses or changing the provision in the 2003 act on expenses to refer to "reasonableness" rather than to "success".

The Lands Tribunal also suggested that it could be authorised to make more decisions on the basis of written material and site visits in order to reduce expenses. I understand the concerns that have been expressed about individuals facing potentially large bills for expenses, but we need to ensure that we are treating all parties fairly. We will write to the committee with our further thoughts.

The committee considered section 53 of the 2003 act, which gives enforcement rights to neighbours in respect of certain real burdens in title deeds that were created before 2004. The section was not in the original draft bill that the Scottish Law Commission proposed, but was added as the bill made its way through Parliament. The committee recommended that the commission review section 53. The Government has accepted

that and, as the committee's convener indicated, the Law Commission has agreed to a reference in that area. Work on that is most likely to commence early in its ninth programme, in 2015.

The Government is grateful for the committee's report. We have responded to it and have provided an action plan. We will keep the committee and Parliament closely informed and will carry out monitoring, where that is necessary.

I will make a small final point. I am acutely conscious that, once again, we are involved in a debate in which David McLetchie's sense of humour is sorely missed. He could always be relied on to provoke laughter from even the most unpromising material and his absence is felt nowhere more than in debates such as this.

The Deputy Presiding Officer: Hear, hear. Many thanks.

15:44

Graeme Pearson (South Scotland) (Lab): I acknowledge the minister's point about the absent member, who was a tower of strength in my time on the Justice Committee. On occasions, he was a good shield when our convener got out of hand.

Our convener mentioned that this is a dry topic. My experience in two years as a member of the Justice Committee was that we visited many a dry topic. There is no doubt that, when I received the paperwork for the inquiry, I did not look forward to an exciting time. However, it was on occasions an exciting time, as witnesses expressed diametrically opposed views on whether the subject was being properly or badly covered.

The inquiry did not represent the first time that the convener had led me astray on such matters and got me involved in complex issues that are difficult to deal with. Nevertheless, I feel a better person for having gone through the experience. I have no doubt that I will cope with such challenges much better in the future.

I thank the committee clerks, the people who gave evidence to enlighten the committee about the challenges that are faced and the officials who supported the committee's work.

The Title Conditions (Scotland) Act 2003 was a key part of the Parliament's reform agenda for land ownership in Scotland, alongside elements that included the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Tenements (Scotland) Act 2004. The 2003 act updated the law on obligations—title conditions—as they appear in title deeds that pass ownership of land and buildings.

As well as binding original buyers, title conditions bind future buyers, so they create perpetual obligations that run with the land. That is the nub of many of the issues that caused conflict as we listened to witnesses, who seemed to be ignorant of the fact that such obligations passed to them or to much prefer the notion that the obligations never existed in the first place.

The inquiry into the 2003 act had four main elements. We sought views on whether the act creates a barrier to switching property factors and on whether it offers sufficient recourse for people who are dissatisfied with the services of land-owning maintenance companies. We sought experiences of the options that are available under the act to vary or remove existing real burdens. We also considered the practical operation of section 53, as we have heard.

We made many recommendations, which covered a host of elements of our debate. I will not repeat much of what has been said about that. It became apparent that, as much as the factors issue that our convener outlined caused concern, particularly in tenemental property, a great deal of emotion and heat was created when we discussed those who are involved in land management companies and the impact of those companies' work on estates and new housing partnerships.

That conflict involves a number of elements, one of which is the contract that is deemed to exist between occupants of homes and the companies that provide services in the area, including green space services. Another issue is the ability of tenants or home owners to vary their relationship with service providers. It is fair to say that there was a quandary about whether the services are provided at an economically viable rate and about the quality of service delivery. There was no way of resolving that satisfactorily in debate in the committee.

The recommendations, which our convener outlined and to which the minister has responded, offer a way forward in a difficult set of circumstances. I look forward to colleagues contributing to the elements of the debate.

15:49

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I welcome the opportunity to speak in this debate on the Justice Committee's inquiry into the effectiveness of the Title Conditions (Scotland) Act 2003.

I was a substitute member of the Justice Committee when it conducted its inquiry. The written and oral evidence that we received was informative and very useful in understanding the issues in hand.

During my time as an MSP, I have been contacted by many constituents who have had

concerns about the operation of property factors and in particular the mechanisms surrounding so-called land-owning maintenance companies. Those companies are given ownership of common property in new housing developments, such as parks, open spaces and play areas, with the burden attached to maintain that land in exchange for a fee.

The committee found that there were issues surrounding the dismissal of land-owning maintenance companies, particularly where residents were unhappy with the level of service that was being provided. I welcome the Government's response that it will prepare a code of practice. Perhaps during the debate the minister can outline the proposed timetable for the work to prepare the code.

Although the inquiry focused on the provisions that deal with property factors, the report very much touched on issues that are relevant to local government. The committee heard that land-owning maintenance companies sometimes came about when local authorities withdrew from taking on the responsibility for the maintenance of open spaces around new developments.

The report was right to note that local authorities need to look seriously at whether the maintenance of those common areas is being carried out in a fair and equitable way. The adoption and maintenance of common spaces would have resource implications for local councils, but we must be careful to avoid creating disparities in the services that are provided to council tax payers in new-build property developments and those in older developments who have their open spaces maintained for free by their local authority.

I highlight to members that, in the Government's response to the inquiry, it noted that Clackmannanshire Council has recently called for a change in the law so that the adoption and maintenance of public spaces should be treated consistently with the adoption of associated public roads, footpaths and street lighting.

I welcome the Government's indication that it will take steps to promote the use of owners association schemes to maintain common areas in the short term and work with local authorities in the long term to consider the future role of councils in the maintenance of land in new developments.

The inquiry came across some interesting, if perhaps technical, points about the 2003 act. We heard that there were issues surrounding the enforceability of real burdens where a land-owning maintenance company was involved. In order to create a burden, a developer must own both the property to be benefited by that condition and the property to be burdened by the condition. Typically, developers do not transfer the common areas to land-owning maintenance companies until after all the houses in the new estate are sold, which means that they no longer own the benefited property.

That was all explained to us very clearly by Professor Robert Rennie, who taught me conveyancing and commercial missives at the University of Glasgow. At times, the committee evidence session felt more like a tutorial, but the committee heard that there were issues surrounding the enforceability of real burdens. That is important, because it relates to the rights and obligations of home owners. The Government's response to the inquiry does not appear to acknowledge the legal uncertainty over that point, which is perhaps disappointing. Although there was disagreement about the extent to which that was an issue in practice, I urge the Government to look closely at whether a change in the law is needed in that area.

Professor Rennie and others also told the committee that there were issues surrounding the enforcement and application of section 53 of the act, which extends enforcement rights of real burdens where a "common scheme" is created with "related properties". We heard that the unintended consequence of section 53 may be to create rights where none had existed before and that it went much further than what was necessary to ensure that housing associations can continue to enforce burdens against owners, which was the primary motive behind the section. I therefore welcome the Government's response that it will invite the Scottish Law Commission to review that section.

As modern housing developments become more common, issues surrounding property factors and the maintenance of shared spaces will affect more people. Some of my constituents certainly feel that there is room for improvement on the right of home owners to enforce their rights in relation to common areas and spaces in their developments. I hope that, following the inquiry, we can take steps to provide greater clarity and fairness in this area of the law.

The Deputy Presiding Officer (Elaine Smith): We now turn to the open debate, with speeches of four minutes, please.

15:54

Roderick Campbell (North East Fife) (SNP): It seems a long time since the Justice Committee took evidence for its inquiry into the Title Conditions (Scotland) Act 2003, but it was in fact in March last year. In the short time available, I will make a few points, although I cannot promise the convener the levity that she might hope for.

It is common ground that section 53 of the 2003 act does not work in its current form. As Professor Rennie said,

"what section 53 may have done is give people enforcement rights in pre-2004 title conditions that they did not have before the legislation."—[*Official Report*, *Justice Committee*, 19 March 2013; c 2531.]

Section 53 was not part of the original Scottish Law Commission proposal but was inserted at stage 2 to cure a particular problem. There might be a lesson for the Parliament in that about consideration of bills at stage 2. Section 53 is unclear and it is virtually impossible for advisers to advise their clients competently on it. I therefore welcome the fact that the section has been referred to the Scottish Law Commission, although I am disappointed that it might be 2015 before the commission can start work on that.

I move on to land-owning maintenance companies that manage common parts of estates and the difficulties with removing them. It came out of our inquiry loud and clear that, where the land-owning maintenance model prevails, the rules in the 2003 act to enable a majority of owners to change factors have no practical role at all because, where common areas are owned by such companies, the manager is not technically a factor or manager, as the company manages not other people's property but its own property. Even if a factor can be changed, while the original factor retains the land, factor 2 will have nothing to manage.

Alternative thinking is required if we are to tackle that problem. Some witnesses from the factoring side talked optimistically about changing managers. For example, the witness from Greenbelt Group mentioned its consumer choice programme. However, there seems little evidence of interest in that on the part of house owners. Therefore, with respect, I think that we are likely to need something more radical. The community right to buy was mentioned and is at least worth considering, but we should not pretend that purchasing such areas would have the attractions that purchasing parts of rural or sporting estates would have. Compensation would need to be paid and legal expenses would be incurred, so that approach would clearly not be for the faint hearted. The Government favours a code of practice, although the devil will be in the detail of such a code. However, I am pleased that the Government recognises that the issue needs attention.

In relation to the enforcement of demands for payment against property owners in respect of costs that are incurred in maintaining areas of estates, evidence to our inquiry suggested that, depending on the terms of the title deed, such demands might be unenforceable in so far as they relate to a property that does not have a connection to the owner's property. If there is no right or servitude over the common land, it is possible that the land maintenance company has no right to recover costs from an owner. I slightly disagree with John Lamont, in that I thought that the professors were slightly divided on the issue of enforceability, but they agreed that a test case would assist. Obviously, the land maintenance companies seem to be in no hurry to resolve the issue, so we will just have to see whether the man of straw with legal aid that the convener referred to emerges any time soon. More particularly, I welcome the Government's acceptance that, in the long term, arrangements for land maintenance should be discussed and reviewed with local authorities, developers, the maintenance companies and, of course, consumer representatives.

On the legal expenses that are involved in taking applications to the Lands Tribunal for Scotland, ironically, one point that has been expressed in evidence on the Tribunals (Scotland) Bill, which the committee is still considering, was about the desirability of keeping any expenses in the Lands Tribunal moderate and therefore in keeping with expense rules in tribunals generally. One point that emerged from our inquiry is that the Lands Tribunal's approach to expenses prior to the 2003 act was normally not to make an award of expenses against someone who had unsuccessfully defended an application. Of course, that approach was curtailed by the terms of section 103 of the 2003 act. The Tribunals (Scotland) Bill currently allows for the Lands Tribunal to make an award of expenses. It would be appropriate to review the whole issue of the level of expenses when the new system starts operating, if the Lands Tribunal still operates in that new system. That is of reasonable urgency.

15:59

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I am grateful for the opportunity to speak in the debate. As colleagues will know, I am not a member of the Justice Committee, but I listened to the committee's deliberations on the Title Conditions (Scotland) Act 2003 and read with interest the papers that the committee and its witnesses produced during the inquiry.

As colleagues heard from the minister, in the previous session of Parliament I took through a member's bill to regulate the factoring industry, and it is from that viewpoint that I offer my observations on the committee's report, particularly as it relates to switching factors.

I must admit that I had a feeling of déjà vu when I read the report, because many issues that the

committee heard about were all too familiar from my experience. How do we make it easier for owners to switch factors, when there are so many complicating factors? What changes can we make that would be fair to everyone involved?

The committee has explored the area thoroughly and identified the problems. In most situations, a two-thirds majority of owners is required before a change can take place. However, what do people do when they cannot persuade two thirds of owners to come to a meeting, or when the majority of owners rent out their properties and are not easily accessible? The obvious answer is to reduce the number of people who are required to make a change, but how low do we go without making the process inherently undemocratic or unfair? How do we prevent a small group of people from making decisions that have an effect on the majority, albeit that the majority might be silent or even apathetic?

I understand from the Scottish Government response that the Government plans to consider whether the code of conduct for property factors should be changed to allow factors to give owners the contact details for other home owners in a development or property. I can understand why the Government wants to consider the approach, which I agree would be a step forward.

However, I sound a note of caution. Owners who are resident in an estate or building can easily contact other resident owners simply by putting a mailshot through their doors. The mailshot does not have to be addressed; it can just be delivered. As members know, the problem arises when an owner is not resident in the property. In my experience, a non-resident owner who has not put in place a mechanism that makes him or her contactable is unlikely to be interested in changing the factor or in getting involved in discussions about doing so. Indeed, they might not co-operate at all if a cash outlay happens to be in the equation. By making it possible for factors to give out contact details we might enable people to fulfil a requirement to contact all owners, but that will not guarantee owners' co-operation, which is the important aspect.

Another area that I hope the Scottish Government will consider and perhaps act on is the agreements that are put in place for new developments. As we heard, the developer often makes an agreement with a property factor before work is completed on the estate or properties. The arrangement will often specify that the deal is in place for a period of, say, two years after the project's completion. Therefore, people who buy properties in the development should know what the agreement is. However, in many areas developers have left developments uncompleted because of the economic downturn, so that first hurdle has become almost insurmountable. That means that owners can be left in limbo, finding that they just cannot switch. I have dealt with a difficult case like that in my constituency and, thanks to the work of a determined and committed group of owners, a switch eventually took place, but I wonder whether the Scottish Government will consider how the issue might be addressed, preferably without people having to have recourse to the courts.

The Deputy Presiding Officer: You must conclude now, please.

Patricia Ferguson: Thank you, Presiding Officer.

I hope that the Scottish Government will consider people who do not have a factor but need one. Properties throughout the country are deteriorating rapidly, simply because factors are not in place.

I would have liked to have talked about land-owning maintenance companies, but I do not have time to do so, other than to say that the position is complex and I do not know how we can make it more simple—if I did, I would wave my magic wand and do that today.

16:03

Christian Allard (North East Scotland) (SNP): I welcome this debate. I joined the Justice Committee a few months ago, too late to have any input into its excellent report, "Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003"—not the most engaging title, if I may say so.

As we heard, the report is about properties and land, and their ownership and maintenance. I note that the Justice Committee and the Scottish Government agree that we have a cultural problem with land and property ownership in Scotland. Today we have an opportunity to tackle a culture that glorifies consumerism for the many but reserves ownership and control of properties and land for the few.

Last night, BBC 1 Scotland exposed that culture in its excellent programme, "The Men Who Own Scotland". BBC reporter David Miller used the examples of Scandinavian countries and France to show how different the culture is in other countries. Paul Wheelhouse, Minister for Environment and Climate Change, gave our party's vision for the future. It is a vision that I share—a vision of our rural and urban communities taking a full part in managing land and properties.

I agree with the BBC programme last night and with the response of the Scottish Government today: we do not need a revolution or even

legislation to change this culture. We need to define the direction of travel for the future of property and land in Scotland as regards both ownership and management. Doing nothing is not an option, as the report said. A strong code of practice is the start that our communities need to gain control of the management of land and properties—management that they are paying for. I join John Lamont in his call for more information on the timing of the establishment of such a code from the minister.

In January 2009, in my home town of Westhill, more than 110 residents heckled the boss of the firm Greenbelt Group over the upkeep of open spaces. The boss admitted that pictures showing the lack of upkeep of treasured open spaces in the neighbourhood were "terrible". I remember that the public meeting was long and heated, with members of the Scottish Parliament sitting alongside Aberdeenshire Council employees, representatives of developers and councillors to hear the explanations from the company. I was there, and the explanations were not adequate then and are still not adequate now.

The committee and the Government found that the main reason that the position of consumers of services that are provided by landowning land maintenance companies appears to have improved in recent years is that individuals and organised groups of residents have given up. After many years of fruitless negotiations and protests, they have returned to their normal lives.

The local resistance to the Greenbelt Group has largely dissipated in my home town, with the majority of the Leddach Grange residents appearing to have grudgingly accepted that payment is unavoidable. They feel let down, not only by the people from the Greenbelt Group but by local authorities and local developers. Firms such as Greenbelt continue to profit while residents pay through the nose for relatively basic services. I thank Charlie Flint for his email on that subject—Charlie formed the Leddach Grange residents association in August 2005. The picture is the same across the region that I represent. I hear that maintenance charges recently increased from £163 to £228 in Inverurie, Aberdeenshire.

I feel that more top-down, complex and impractical legislation is not what is required, as we want to reflect the aspirations of our communities—both urban and rural. I thank the members of the Justice Committee at the time of the inquiry for their work and the Scottish Government for its measured response.

16:08

Alison McInnes (North East Scotland) (LD): I join colleagues across the chamber in thanking those who submitted evidence during the review of the practical operation of the Title Conditions (Scotland) Act 2003 and in thanking the clerks for their work during the course of the inquiry.

A decade on, it is important to consider whether the act is really working for consumers and whether home owners are sufficiently able to appoint or dismiss traditional property factors or enter into meaningful discussions with landowning maintenance companies. That is essential if we are to preserve the integrity of those relationships and, in turn, the integrity of the buildings or open spaces concerned.

The committee has identified a number of areas in which the act has arguably fallen short of expectations. For example, it has been criticised for being complex, incomprehensible or impractical for home owners who want to exercise their right to switch property factors.

The committee concluded that more could be done to foster a culture of common maintenance and tackle home owner apathy through education and the formation of residents associations. That would help to preserve and enhance the quality of our housing stock, and I welcome the Government's commitment to produce guidance on that.

In the limited time that I have, I would like to highlight the need to further consider the relationship between home owners—most commonly in modern private developments—developers, councils and landowning property maintenance companies. I expect that the majority of MSPs, if not all, have been contacted by constituents who have experienced difficulties with businesses operating in this area. It is certainly an issue in Aberdeen and Aberdeenshire.

There are cases where residents believe that the maintenance of communal areas has not occurred for months or even years; cases where residents are pursued for payment for work that they believe has not taken place; and cases where residents are faced with what they deem to be unjustified rises in management charges.

I have long been concerned that there seems to be insufficient means of redress for home owners who are dissatisfied with the standard of service that is provided. They are often left feeling helpless and bound to a company against their will. It strikes me as perverse that those who have the foremost interest in the condition of those spaces too often have no opportunity to influence or contribute meaningfully to their management.

I appreciate that the situation appears to have improved in recent years, as the committee acknowledged in its report, but there still seems to be no mechanism for dealing with disputes about charges, and in reality there is no option for people

to change their provider if the service falls short of expectations.

The committee suggested that a mediation service could be set up to assist with bill disputes, and that the Office of Fair Trading may wish to re-examine the market. Those suggestions are worthy of serious consideration, and I am a bit disappointed at the Government's response, which suggests that little progress will be made in either of those areas despite the fact that the committee has deemed them a priority.

The decision by local authorities to transfer the burden of responsibility for the maintenance of communal areas is a pragmatic response to limited budgets, among other pressures, but they must retain a long-term interest in the condition of communal space. Maintenance of public open space is of a different order—as it is of community benefit—to the maintenance of shared private interests such as roofs or stairwells.

I urge local authorities and the Government to heed recommendation 8 in our report, and to use the levers at their disposal to ensure that land maintenance arrangements are fair and sustainable. That will help to promote good relations and allow urban green spaces and amenity lands such as play parks to be cherished, as we know how valuable those are for the whole community in boosting physical activity and mental health, attracting investment and creating places where people want to live. We must also remember the practical considerations, such as the fact that, in this day and age, those spaces may provide sustainable urban drainage schemes, and the failure of SUDS schemes will have a wider community interest that goes beyond particular private owners.

The Deputy Presiding Officer: The member should come to a conclusion, please.

Alison McInnes: In seeking to improve standards in the property management and maintenance sector, many of the issues centre on devolving power to the most local of communities: residents who share a stair or neighbours on an estate. We have a responsibility to ensure that those people are aware of their rights and are sufficiently able to exercise them, which will empower them to improve and take pride in their homes and local areas.

The Deputy Presiding Officer: I am afraid that we are a bit tight for time, and if I am to include everyone in the debate I need members to stick to their four minutes, please.

16:12

Sandra White (Glasgow Kelvin) (SNP): I thank the other Justice Committee members and the clerks, and I also thank Jenny Marra, who proposed that we carry out an investigation into the provisions on title conditions. Although the legislation may seem complicated and dry, it is very much a people's act and it affects many people's lives.

I thank the minister for her comments on access to the Lands Tribunal for Scotland. That issue has certainly caused much anguish in my constituency in the west end of Glasgow, where people who wished to appeal against a development being built in a front garden of a property, of all places, found that it would cost them tens of thousands of pounds. I appreciate that the Government is progressing recommendations in that respect, because we need to look at the issue. We should not expect ordinary people to have to spend £10,000 or £20,000 on appealing against a development.

Another issue is the switching of factors. I take on board Patricia Ferguson's comments about the Homeowners Housing Panel, which I agree has done a fantastic job. There are problems at times with the two-thirds majority requirement and with absentee landlords, and it is important that we look at those issues. The committee received evidence to suggest that the Data Protection Act 1998 is not a barrier and does not prevent factors from giving out the names and addresses of other proprietors.

I welcome the minister's comments and the Scottish Government's move forward in that regard. The problem of absentee landlords is not just about repairs but about getting something done in a tenant's property or wherever. It is important that everyone is told about the repairs that are to be done, how much they may cost and where things will go from there.

I want to comment on the situation of switching factors. I have many cases, as I am sure other members have, but for a particular one involving a property in the centre of Glasgow I have visited both factors and residents. Everything in that case has been done according to the legislation, but even though a new factor has been appointed the previous factor will not pass on information to them and has held on to floats and residents' moneys. I know that we can go to the Homeowner Housing Panel on the issue, but what do we do when a factor ignores residents' wishes? That is a very real problem generally and not just in that particular case.

On repairs issues, factors can be taken to the Homeowner Housing Panel and it can tell them that they are in the wrong and that the residents and home owners are in the right, but the factors can refuse to accept the panel's recommendation. What recourse do home owners have in such cases? I ask the minister and the Government to

look into that; real issues are taken to the Homeowner Housing Panel but factors ignore the panel's recommendations. What recourse do residents and home owners have?

I know that time is short, Presiding Officer—I see you nodding to me—so I will finish here. The 2003 act is a very important piece of legislation because it is about fairness for residents—and factors—and ensuring that they get the good service that they pay for.

16:16

Colin Keir (Edinburgh Western) (SNP): I associate myself completely with the comments made earlier about David McLetchie's sense of humour—he is definitely missed in this chamber.

Like my former colleagues on the Justice Committee, I thank the witnesses who gave evidence to the committee for our inquiry. We went from feeling that it was a dry debate to feeling that it was a very important and quite fascinating one. Members have highlighted most of the inquiry's findings, but I will explain what I got out of the inquiry.

I could feel Patricia Ferguson's frustration when she was speaking earlier about the difficulty of getting things changed in relation to landlords, tenants and buildings. In my previous existence as a councillor, I was chair of the City of Edinburgh Council regulatory committee that dealt with licensing for houses in multiple occupation. We dealt with all the problems of burdens and the fact that factors did not act responsibly in some instances. It was deeply frustrating, for example, trying to get representatives of eight properties together when three or four of them were absentee landlords. I fully understand where Patricia Ferguson is coming from on that kind of issue, which can be very difficult, particularly when it comes to common repairs and the like. Dealing with those matters took a lot of time.

As an MSP, I have dealt with various related issues in my constituency. In my area on the west side of the city, we have a number of suburban-type properties that have factors and burdens, including management fees, and we have had difficult situations with them. For example, as was mentioned earlier, although developments might have been built with the idea that there would be residents associations, many of them become moribund. The fact that there was no residents association made it difficult for me in a particular case to identify who was paying what to whom and who represented and could speak for the community.

In that case, frustrations built up among residents regarding the relationship with the land management company that dealt with a grass area. The residents felt that they were not getting value for money and that there was no way of getting their voice heard by the management company, so the relationship between the two parties fell apart. Indeed, it was a good example of how things can go wrong.

There had been a turnover of residents, but the current residents thought that one area was supposed to be a part of the land management scheme. It turned out that the land was not part of the scheme. The land was terribly overgrown, but the land management company said that it could not deal with the land because to take it on would mean that the company would be seen as being liable and having presumed ownership.

I thoroughly agree with the comments that all members have made about the difficulties, and I welcome the minister's comments. The legislation deals with something that is very important to people who live in particular areas. We must do our best to sort out the difficulties.

16:20

Jenny Marra (North East Scotland) (Lab): A critical function of this Parliament—and one that, as I know many colleagues agree, we do not do enough of—is post-legislative scrutiny to review our laws and check whether they are serving people properly. It was with a few sighs that, last March, the Justice Committee undertook its inquiry into some of the provisions of the Title Conditions (Scotland) Act 2003. As Sandra White said, I must take some responsibility for the suggestion, but I think that the outcome has been very good.

The 2003 act is a technical piece of legislation, as Christine Grahame explained to us very well, but it is critical to people when their property comes up against the issues for which it provides. I took a particular interest in section 53, having been approached by concerned constituents and persuaded that it was not working as was intended and has had unintended consequences. Those concerns were borne out by the evidence that the Justice Committee heard last year.

Section 53 is about the right of neighbours, or people in "related properties", to enforce burdens against each other. I will not go into an explanation of burdens, because I do not think that I could do it better than the committee convener did. The problem is that enforcement rights can be found to exist where no one intended them. Professor Robert Rennie, who has already been quoted in this debate and is one of Scotland's leading property lawyers, said that the effect of section 53 could be to create rights where none existed before feudal abolition and that people who were not subject to conditions before 2004 suddenly become subject to burdens without their consent.

We were told that section 53 is causing uncertainty. With the provision on "related properties", it is difficult for people to work out who might have a right to enforce a burden against their property in the future, and it is costly for prospective property owners to instruct lawyers to work out who might have that right of enforcement against them—say, if they decide to build an extension to their property. Often, solicitors cannot identify an exhaustive list of who may or may not have enforcement rights against their clients. There is uncertainty in a field of law in which it is highly desirable for people to have as much certainty as possible, especially when they are buying a property.

Several law firms explained the problem. Biggart Baillie described it in its written submission, and Brodies LLP and Pinsent Masons raised similar concerns and frustrations. In the light of the uncertainty, which affects property sales, and the evidence that section 53 was inserted by a stage 2 amendment to the bill, as Roderick Campbell said, with the intentions and consequences perhaps not being properly scrutinised or foreseen at the time, I agree with the Justice Committee's recommendation that section 53 be referred to the Scottish Law Commission for review, and I welcome the Scottish Government's acceptance of that recommendation.

I note that the review will most likely commence in 2015 as part of the ninth programme of law reform, but I ask the minister for guidance on when she anticipates that we will see a change in the law as a result of the review. The review of section 53 is a satisfactory outcome of the Justice Committee's inquiry, and I thank the clerks, the convener and those who gave evidence.

16:24

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I must admit that when I saw this debate listed in the *Business Bulletin* last week, I did not immediately want to get involved in it, but on closer inspection I realised that the issues that were raised in the inquiry have probably been raised with the majority of MSPs by their constituents at one time or another. I thank the Justice Committee for finding time in its busy schedule—it has lots of bills going to it—to get involved in this post-legislative scrutiny. I know how difficult it is to find time to do such work.

My interest is twofold. I am interested as a constituency member who has constituents with on-going problems with factors involved in land maintenance, as already mentioned by Christine Grahame and others. I am also interested as convener of the Infrastructure and Capital Investment Committee, which next week will begin consideration of the Housing (Scotland) Bill, which covers many areas relating to housing, including the right to buy, licensing requirements for mobile home sites with permanent residents, allocation of social housing and the use of the Scottish secure tenancy. It also includes the amendment of local authority powers to enforce repairs and maintenance in private homes, a registration system for letting agents, and part 3, which, among other things,

"allows local authorities to apply to the private rented housing panel for enforcement of the repairing standard, setting out the procedure for such applications and the right of appeal."

I hope that Government officials who are dealing with the Housing (Scotland) Bill will have read the Justice Committee's report and its recommendations, which I certainly will quiz them on. I will also ensure that my committee's clerks have a conversation with the Justice Committee's clerks, to see whether anything can be included in the bill to strengthen it and deal with some of the issues raised by the Justice Committee's inquiry.

John Lamont articulated very well much of what I wanted to say about land management issues. I am a constituency member for Aberdeen, an area in which there is a housing boom. It is a large part of my constituency casework. Like John Lamont, I am concerned that home owners are not always well informed of their legal obligations on the purchase of a home. I remember that when my husband and I purchased our house more than 20 years ago, the solicitor told us among other things that we could not keep chickens. However, Mike Marriott from the Greenbelt Action Group said in evidence that buyers do not have the obligations spelled out to them, which I think is more common.

Like John Lamont, I believe that ideally green spaces in new estates should be looked after by local councils, as they look after green spaces in older estates. As a regional member, I was at the meeting with Greenbelt in 2011 that Christian Allard mentioned, which was very heated, as he said. It really is sad that these situations arise simply because companies such as Greenbelt cannot agree with house owners what level of land maintenance their fees should cover. As Alison McInnes said, there is not a simple solution because Greenbelt owns the land, so changing factors will not necessarily make much difference.

I sympathise with Patricia Ferguson and Sandra White on the factoring of the beautiful Glasgow tenements, which lots of people have bought to let, meaning that there is not the pride in those lovely tenements.

The Deputy Presiding Officer: Could I ask you to conclude, please?

Maureen Watt: I welcome the report, which I am sure will inform my committee's deliberations on the Housing (Scotland) Bill.

16:28

John Finnie (Highlands and Islands) (Ind): In the small amount of time available, I intend to concentrate on the land maintenance issue and commend some of the evidence that we heard, which I will read to members:

"Our mission is to champion an industry committed to improving the quality of living in Scotland by providing this and future generations with properly cared-for open spaces where people want to live, enhancing the value of homes, and adding to the recreational and general amenity in each development."

That came from Greenbelt, a company that has been mentioned a few times and a company—I will be generous—with which there was some confusion when initially I contacted it. I successfully made contact via the recorded delivery system of the mail, to broker a meeting with a constituent that was to take place with the site manager. Of importance was familiarity with the site. My constituent, whom I contacted yesterday, told me that it was not particularly successful, given that the site manager had difficulty finding the house. That in itself suggests that there may be a lack of familiarity with the area.

From conversations with neighbours and others, it is clear that there are non-payment issues, performance issues, cases of people not being billed and uncertainty over ownership. Part of that, I think, comes down to what we might call performance management, and the issue of subcontracting also features.

At its outset, the committee report says:

"The Committee recognises the value in having in place an effective system to keep the country's housing stock properly maintained."

It is important for people to have avenues of redress and, in that respect, the Homeowner Housing Panel and the committee's suggestion of mediation have both been mentioned in the debate.

This legislation has been called complex—indeed, I believe that the convener called it "a bit tricky"—and, as a result, I went to the layman's explanation as set out in the explanatory note to the 2003 act. It says:

"The Act achieves greater clarity in the law"

because it implements

"the recommendations of the Scottish Law Commission".

Given Rod Campbell's comments about the specifics of section 53, it is interesting that the issue will return to the commission. In fact, it is not only section 53 that requires to be clarified.

We had discussions with and heard differing views from some of Scotland's leading academics. I also note the heavy caveat attached to Consumer Focus Scotland's legal opinion, which says:

"we have reached the conclusion that it would be preferable in the consumer interest to clarify and simplify the legal position by amending the existing legislation."

I do not have much time to cover other matters but I want to comment on John Lamont's point about the Government's response to recommendation 8, which Alison McInnes also mentioned in her speech.

In that recommendation, the committee recognises

"that green space has a wider benefit to communities and that there is a role for local accountability."

I want progress to be made and am pleased that the Government agrees that one option is for local authorities to adopt and maintain the land. I commend Clackmannanshire Council's approach in that respect, but I am disappointed that the Convention of Scottish Local Authorities is not going to act on it. I would certainly favour such an approach. Indeed, I can think of a particular area in Inverness where, on one side of the street, there is a long-standing estate where the council is doing an excellent job of maintaining properties; on the other side, where residents are still paying their council tax, that is not the case. I am not being critical of Highland Council—it has been very supportive of the residents in the area—but I think that people should be able to look to their local authority for support and that there should be continuing involvement from authorities. Indeed, that is how I want this issue to be progressed.

16:32

Jim Eadie (Edinburgh Southern) (SNP): Despite my obvious deprivation in not being a member of the Justice Committee, I am nonetheless grateful for the opportunity to take part in this debate. Jenny Marra has reminded us of the relevance of the committee's post-legislative scrutiny of the 2003 act—and, indeed, that such scrutiny is a key role of the Parliament—and the debate has largely been constructive with many good contributions from across the chamber.

The clear consensus is, as Roderick Campbell made clear in relation to the operation of section 53 and common schemes, that the act is not operating as effectively as it should be, and I note that the Law Society of Scotland has welcomed the decision to refer the matter to the Scottish Law Commission for review. I, too, very much welcome the fact that this recommendation by the

committee has been accepted and implemented by the Government.

There is little doubt that the relationship between home owner and factor is tremendously important and can, as colleagues have observed, sometimes be problematic. Like other members, I have received correspondence from troubled constituents for whom that relationship has broken down. I was particularly struck by Patricia Ferguson's comments about non-resident owners. How does one change factors or ensure that common repairs commence when a majority of owners are absent or apathetic? That very well made point resonates with my own experience as an Edinburgh constituency member serving many tenemental properties in Marchmont, Morningside and Polwarth, and such issues certainly affect many people across the city of Edinburgh.

Ensuring that the act's operation and implementation are as effective as possible is of the utmost importance and, indeed, John Lamont and the Law Society of Scotland have highlighted the need for solicitors to point out home owners' responsibilities and obligations when advising clients on such matters.

The Office of Fair Trading came to the conclusion, in its evidence to the committee, that few options are available to home owners who are unhappy with the service that they receive from their factor. In its submission, it states:

"the options available to homeowners who were unhappy with the service provided were not effective."

Clearly, this is a matter of real concern and an area in which further progress needs to be made.

I have received personal accounts from constituents who say that they have no choice over who provides their property maintenance services and few options available to them when standards of service are not met. The area of consumer choice—the issue that Alison McInnes highlighted well—requires further action so that we can address the issues that our constituents bring before us almost weekly.

As some of our constituents have reminded us, they perceive there to be a complete absence of effective choice, and a shortfall in their right to redress. I think that the Scottish Government recognises that in its response. I accept that the Homeowner Housing Panel, which was introduced by the Property Factors (Scotland) Act 2011, will go some way towards alleviating that concern. However, I am of the view that more needs to be done to address issues that cause the most concern to home owners, such as the cost of services.

I look forward to the Scottish Government taking the necessary steps to remove some of the complexity in this area and, more critically, to providing assistance and information to empower home owners in order to bring about an improvement and a rebalancing of the relationship between the factor and the owner. In doing that, it will provide an invaluable service to our constituents and the people of Scotland.

The Deputy Presiding Officer: We now come to closing speeches. I remind all members who participated in the debate that they should be in the chamber for the closing speeches.

16:36

Margaret Mitchell (Central Scotland) (Con): I am particularly pleased to take part in this afternoon's debate, not least because, as Jenny Marra pointed out, post-legislative scrutiny is so rarely carried out in the Parliament and opportunities are consequently lost to review some excellent and not so excellent legislation that has already been passed and which, without doubt, could be improved.

Ten years on from the passing of the Title Conditions (Scotland) Act 2003, it is indeed timely that some of the more problematic provisions in the act have been the subject of the Justice Committee's inquiry, for this is not just some arid technical bill. As the minister, the committee's convener and other members have pointed out, and as all MSPs know from their constituents' cases, the provisions within it relating, for example, to the factoring of properties, impact on peoples' lives and their relationships with their neighbours.

The Government's response to the report's recommendations was published in September 2013. Ideally, this debate would have taken place as soon as possible thereafter, when the evidence and the findings were uppermost in members' minds. However, due to the pressure of the legislative programme and the priority that is given to introducing new legislation, the debate is only now taking place.

The inquiry was relatively short and covered only one part of the 2003 act. It is significant that, despite that, the committee felt it necessary to make as many as 11 recommendations. I will concentrate on a couple of the major ones, starting with the concerns surrounding the dismissal and appointment of factors. Of concern is the 30-year period that prevents owners of properties that were previously the responsibility of local authorities from switching factors. Clearly, that period is too long, which is why the committee recommended that the timescale be reviewed. The Government rejected that recommendation and instead stated that the Property Factors (Scotland) Act 2011 should be allowed to bed in before

further changes were made. Although it is a pity that the recommendation was not accepted, it is, nonetheless, welcome that the 2011 act introduces a code of conduct for factors and more regulation.

It is important that the application of those provisions is closely monitored, as the issue of switching factors was of concern in the debate surrounding the 2011 act and remains a concern now. The minister's assurances in that regard are appreciated.

The committee also heard about the problems that are associated with the appointment and dismissal of landowning land maintenance companies that have been well documented in today's debate and have been detailed by my colleague John Lamont. I very much welcome the Government's agreement to introduce a new code of conduct for those companies.

Concern was also expressed about the operation of section 53, which gives rights to enforce restrictions on property to arguably too many owners. The Government's decision to refer the issue to the Scottish Law Commission is, therefore, a good one.

This has been a good debate and I hope that it will be one of many post-legislative scrutiny debates in 2014.

16:40

Graeme Pearson: The debate has been a useful exercise in revisiting the decisions that were made by an earlier Parliament about what has proved to be a complex area of relationships.

Two points arise from our discussion this afternoon. First, the maintenance of property—houses and flats—and the environment around those houses and flats is critical if one is to maintain the quality of living that we would hope for in Scotland. The committee acknowledged that solicitors have a part to play in ensuring that those who become owners of property are aware of their responsibilities in that regard and understand the implications that arise from those responsibilities. The Law Society acknowledged that it has a duty in that regard and indicated that it delivers that advice. However, from the evidence that the committee heard, there is little doubt that owners seem vague about whether that information has been passed to them. At the very least, therefore, there is an issue with the communications that are received and understood by clients at the important time of purchase and sale.

Secondly, it is fair to say that both factors and land maintenance companies provide an important service and expect—and probably require, in business terms—stability in the relationship. However, the committee heard in evidence—and we have heard from various members this afternoon—that there seems to be, at the very least, an absence of trust in the relationship between property owners and those companies that deliver a service. In that context, the recommendations on transparency in the costs of services, the quality of service that can be expected and the timescales that apply to the delivery of that service are vital. Some members have commented on the apparent inability of companies to understand the needs of property owners, and that is part of the problem that we dealt with during our committee discussions.

The committee spent a great deal of time in gaining an understanding of the issues around land maintenance companies and their fees. Collectively, as was seen during our discussions, we came to understand that there is a real need for tenants or owner associations to deal with those issues. The fact that two eminent academics disagreed so obviously in front of us was not only juicy and much enjoyed, but reflected the fact that there is a need for the Scottish Law Commission to have a look at how section 53 relates to the circumstances. Its advice on that would be much welcomed.

The Government's moves to issue guidance on this whole area of activity and the way in which data can be transferred between the various owners are welcomed. Nevertheless, I proffer to the minister that, as well as guidance, continuing and obvious commitment from Government to oversee the circumstances that we have discussed this afternoon and a commitment to deliver will be significant in leading the way forward in the future.

16:45

Roseanna Cunningham: This has been a helpful and constructive debate. Graeme Pearson was right to remind us fairly early on that this legislation was the third part of the early parliamentary reform of land and property ownership in Scotland. However, of the Land Reform (Scotland) Act 2003, the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003, the latter is perhaps seen as the least sexy of the three.

The debate has demonstrated the inevitable complexities of the 2003 act and how it can have a significant effect on peoples' lives. It has also demonstrated the value of post-legislative scrutiny, particularly in areas that are technical but have real impact. Like Patricia Ferguson, I, too, wish that I had a magic wand to deal with all the issues raised on the timescale in which we might wish to do so.

Many members, including Graeme Pearson and Roderick Campbell, have understandably commented on landowning land maintenance companies, which I will shorten to LMCs, if the Presiding Officer is happy with that. The Government fully recognises the concerns in that area and the difficulties that arise in relation to dismissing and replacing LMCs. That is why we said in our response to the Justice Committee that

"doing nothing is not an option".

That is also why we are committed to preparing a transparent code of practice on the switching of landowning LMCs and why we will legislate if a voluntary code does not work.

Patricia Ferguson: I sincerely hope that the minister will take my intervention in the way that it is intended. I draw her attention to the fact that, when I originally proposed that we should regulate property factors, the Government's attitude was that we should not do so but instead have a voluntary code and, if that worked, that was fine but if it did not, it would then look to legislate. Had we gone down that road, we still would not have any legislation to regulate property factors. It might just be worth thinking about whether the same might apply to landowning land maintenance companies.

Roseanna Cunningham: I understand where the member is coming from. I was about to go on to talk about the timescale for the code as was raised by John Lamont. A draft is being prepared and we aim to circulate that in spring, with a view to finalising it before the end of the year. That is the timescale to which we are working.

John Lamont and Roderick Campbell also raised questions related to the enforceability of burdens in favour of LMCs. That is not a matter for the Government; rather, it is matter for the courts or the Lands Tribunal for Scotland. I know that Consumer Focus Scotland was planning a test case, but it no longer has a remit to do so. Although the Government can see the benefit of a test case, it is not for the Government to raise such a case.

I will move on to the role of local authorities in land maintenance that some members mentioned. The committee noted in its report that local authorities might still have a role in relation to the maintenance of common areas. The Government agrees that authorities have a role in areas such as planning and the adoption of roads; indeed, in some cases, authorities may wish to carry out maintenance at their own hand. The Government welcomes that option but does not consider that we could require authorities to carry out land maintenance. However, we will work closely with local authorities and others on our forthcoming review of land maintenance arrangements.

The committee convener, Christine Grahame, and John Lamont mentioned the problem of people not being told about land maintenance arrangements when they bought their property. I have mentioned that general issue to the Law Society of Scotland to emphasise that conveyancing solicitors should tell their clients about obligations in that area. I note that the Law Society was the only external organisation to provide a briefing for the debate and I think that it has taken that issue on board.

For new-build properties, the consumer code for home builders, in force since April 2010, lays down that developers should provide information to home buyers on management services to which the buyer would be committed. We follow up any breaches of that code, so members are welcome to draw any potential breaches to my attention.

Although not raised specifically by any member, the Scottish Government's consultation on the home report asks, at question 23, whether an additional question on land maintenance fees should be added to the property questionnaire.

I will now turn to factors. As well as issues in relation to land maintenance companies, the debate also showed that there continue to be some concerns about factors. I accept that switching is low. That is partly because switching a factor will always be more difficult, given that a collective decision is required to switch factors—that is not the case for energy companies—and partly because consumers do not have enough information on how to switch. We will produce a comprehensive guide on that and we will do more to encourage residents' associations, an issue raised by some members.

Patricia Ferguson asked specifically about factor arrangements in uncompleted developments. We are committed to addressing that issue through guidance on managing burdens and also possible model title conditions for factors.

Sandra White and other members raised concerns about consumer access to the Lands Tribunal. I reiterate that I will consider the issues further in the context of potential primary legislation—I remind members about the Tribunals (Scotland) Bill—and tribunal rules. I will write to the committee on expenses caps and other potential options.

Sandra White raised a couple of other small points and I will deal separately with those directly with her.

Alison McInnes referred to potential OFT interest. The OFT considers that it has already examined the Scottish market. However, it plans to examine the English market, which may be what she is picking up on.

Rod Campbell questioned the SLC's timescale for considering section 53. The SLC is currently on its eighth programme, which runs until the end of 2014. Jenny Marra wanted to know the likely timescale of the Government's response to what it will recommend, but the SLC will probably take a couple of years to provide its report, which in turn means that it is likely that implementation will be post-2016, which is to say, of course, in the next session of Parliament. We will, of course, draw the SLC's attention to the debate.

The Government has welcomed the committee's report. We have responded and will carry out follow-up actions. Such work shows the value of the committee system. We will keep the committee informed about progress.

16:51

Elaine Murray (Dumfriesshire) (Lab): The debate has been rather more interesting than its title might have suggested it was going to be. Indeed, it has concerned a number of issues on which, as we have heard, many MSPs have received representations over the years and on which the Parliament passed legislation to try to address some of the complex matters that are involved.

When I said that we were having the debate, Jenny Marra confessed to me that it was partly her responsibility that post-legislative scrutiny had been undertaken on the matter. The inquiry—during which the committee took evidence on how the Title Conditions (Scotland) Act 2003 works, what its unintended consequences have been and how it could be improved—is a welcome instance of post-legislative scrutiny.

The act concerns the obligations that appear in the title deeds when properties are purchased. Those are the sorts of things that buyers ought to read but often do not. Many of us are often not aware of what is in our title deeds until it is too late and consequences have arisen.

I was not a member of the Justice Committee when the inquiry took place and, although I was a member of the Parliament when we passed the act, I struggled to recall the detail of its contents. Therefore, I am grateful to the clerks for the informative notes provided to me and, indeed, grateful to all the members who took part in the debate, as I have learned something from their speeches.

Title conditions are a complex area of law and, although many home owners are affected by the burdens contained in their title deeds, there is, in general, a lack of knowledge and understanding of how the legislation works, what the obligations mean in practice, and whether and how they may be altered. As the debate has demonstrated, the issues that were raised in the inquiry affect many people and, in particular, can have a big effect on home owners.

As the convener said, the committee focused on the provisions in the act relating to the appointment and dismissal of property factors and the operation of the land-owning maintenance model. That is an arrangement whereby a private company owns the green space and, in some cases, facilities such as the sustainable urban drainage schemes—SUDS—and requires neighbouring properties to pay for the servicing of those areas through burdens in their title deeds.

I will reflect on the points raised in the committee's inquiry and the debate and on the Government's response to the committee's report.

Section 53 of the 2003 act gives neighbours the right to enforce real burdens against each other where there is a common scheme and the properties are related. However, the committee heard concerns about how that works in practice. Jenny Marra, in particular, reflected on the uncertainty that purchasers have about who might have the right to enforce burdens on them and the confusion that that can cause during the purchase of properties.

A key recommendation of the report was that section 53 be referred to the Scottish Law Commission for further consideration, as it seems to have created difficulties and confusion. Several members commented on the fact that it has not been a satisfactory provision. The committee welcomes the Scottish Government's commitment to refer the section to the Scottish Law Commission, and I hope that the referral will allow the issue to be resolved.

On land maintenance companies, the committee heard a lot of evidence about the complexity of the law on the land-owning maintenance model. It is clear that many members are familiar with the problems that their constituents have faced and with the fact that the model can be highly unsatisfactory as far as home owners are concerned. They have no choice of service provider—the developer selects the service provider—and little recourse is available to them, as it is sometimes uncertain whether the provisions of the 2003 act apply.

In contrast, the Property Factors (Scotland) Act 2011, which was introduced by my colleague Patricia Ferguson, was drafted to include arrangements on standards of service and reference to the Homeowner Housing Panel, but I was interested in Sandra White's comments, which indicated that factors ignoring decisions by the Homeowner Housing Panel might be causing problems.

Although legislation is not forthcoming "at this stage", the Government's commitment to provide a code of practice on dismissing and replacing land maintenance companies is welcome. Codes of practice may work well, but they may not, and I am pleased that the Government has committed to reviewing the code's effectiveness after three years and that it has not ruled out legislating in the future if that is necessary.

The committee also expressed the view that local authorities could have a role to play in overseeing the maintenance of green space around developments, and that has been reflected in the Government's commitment in the long term to review the role of local authorities. I understand the frustration that some members have expressed about the fact that certain areas are maintained by the local authority, whereas similar areas in newer housing estates are not—that is frustrating for residents, too. However, I think that we can understand why, at the current time, local authorities might be reluctant to offer their services, given the financial restraints that they are under.

Alison McInnes made reference to the fact that there is little that owners can do to seek redress when the service that maintenance companies offer is not satisfactory. I think that the committee will be disappointed that the Government does not intend to fund a mediation service, which relates to the point that Alison McInnes made. The Homeowner Housing Panel and the small claims procedure are useful mechanisms, but the committee took the view that a transparent mechanism needed to be established. Perhaps the Government could reflect further on that.

The committee heard of concern about the operation in practice of section 63 of the 2003 act, which sets maximum time limits on how long a manager burden can last. In particular, when a property is purchased under the right to buy, that period is 30 years, which seems to be a long time. The minister mentioned that the Government intends to abolish the right to buy, but there will still be a number of people who have bought their property fairly recently who will have quite a long period of time to run on those contracts. It remains a concern that a two-thirds majority is required to switch property factor and that that is creating a barrier to switching.

Patricia Ferguson and other members mentioned absentee landlords and commented on the fact that contact does not ensure co-operation. Mention was also made of the situation in which developments are abandoned before they have been completed, which can give rise to problems in switching factors.

On data protection, the Government's commitment to consult the Information Commissioner's Office prior to providing guidance to the property management sector should help to clarify matters, as should the Government's intention to provide more information on its website and guidance, and to include that in the code of practice for property factors.

The committee raised concerns about lack of accessibility to the Lands Tribunal, which relates particularly to the objector's liability for expenses. I was interested in the point that Roderick Campbell made about whether that might be of import to the Tribunals (Scotland) Bill.

Christian Allard referred to the need to change the culture. It is clear that there is a need to promote a culture of mutual responsibility in relation to the maintenance of common areas, and I am sure that the committee will be interested to learn what further steps the Government intends to take, following its commitment to examine the issue in future.

The committee's inquiry has been helpful in raising issues to do with the operation of the 2003 act. I also believe that, as other members have said, it demonstrates how useful post-legislative scrutiny of acts passed by the Parliament can be. It is unfortunate that the current legislative workload of the Justice Committee makes it extremely unlikely that it will be able to undertake similar post-legislative scrutiny in the near future. However, I am sure that other committees will take up that opportunity, and I hope that today's debate and the issues that the Justice Committee raised in its inquiry will stimulate them to undertake similar exercises.

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today's business.

The first question is, that motion S4M-08530, in the name of Siobhan McMahon, on the City of Edinburgh Council (Portobello Park) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the City of Edinburgh Council (Portobello Park) Bill and that the bill should proceed as a private bill.

The Presiding Officer: The next question is, that motion S4M-08666, in the name of Christine Grahame, on the report on the inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003, be agreed to.

Motion agreed to,

That the Parliament notes the conclusions and recommendations contained in the Justice Committee's 8th Report, 2013 (Session 4): Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003 (SP Paper 338).

Point of Order

17:00

Kenneth Gibson (Cunninghame North) (SNP): On a point of order, Presiding Officer. I raise a point under rule 7.3.1 of standing orders. At First Minister's question time, Ruth Davidson made various claims about a public servant of long standing who recently left the civil service's employ.

First, that individual had been in the civil service's employ for more than 30 years—not the 30 months that Ms Davidson suggested. Secondly, Ms Davidson failed to tell us that the paragraph that she quoted from the Scottish public finance manual makes it clear that ministerial approval is not required for an existing voluntary scheme such as that concerned. Thirdly, although the Scottish ministers approved the severance scheme that formed the basis for her questions, the terms were set by none other than the United Kingdom Government, which she supports.

That information is readily available from the most basic search. I urge Ms Davidson to correct the record formally at the earliest opportunity, to ensure that no accusations of incompetence or hypocrisy are made against her. I ask you, Presiding Officer, to support that.

The Presiding Officer (Tricia Marwick): As Mr Gibson and other members know, what is said in the chamber is not a matter for me, as I have said time and again. That was not a point of order, but what was said is on the record.

Meeting closed at 17:02.

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