

# **MEETING OF THE PARLIAMENT**

Thursday 13 September 2001

Session 1

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## Scottish Parliament

Thursday 13 September 2001

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 09:34*]

### Business Motion

**The Deputy Presiding Officer (Patricia Ferguson):** The first item of business is consideration of business motion S1M-2213, in the name of Mr Tom McCabe, on behalf of the Parliamentary Bureau, which sets out a business programme. I call on Euan Robson to move the motion.

09:34

**The Deputy Minister for Parliament (Euan Robson):** Before I move the business motion, I would like to thank the business managers for their help and co-operation in rearranging today's parliamentary business at short notice. In particular, I thank the Conservative party for agreeing to move its business to next week to allow consideration of stage 3 of the International Criminal Court (Scotland) Bill to proceed.

I move,

That the Parliament agrees the following programme of business—

Thursday 13 September 2001

9.30 am Business Motion  
*followed by* Parliamentary Bureau Motions  
*followed by* Stage 3 Debate on the International Criminal Court (Scotland) Bill  
*followed by* Ministerial Statement on the Future of the SQA and National Qualifications  
*followed by* Parliamentary Bureau Motions  
 2.30 pm Question Time  
 3.10 pm First Minister's Question Time  
 3.30 pm Executive Debate on Physical Chastisement of Children  
*followed by* Scottish Parliamentary Corporate Body Motion on Scottish Commission for Public Audit  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business—debate on the subject of S1M-2066 Mary Scanlon: Men's Health Week, Scotland 7-14 September 2001

Wednesday 19 September 2001

2.30 pm Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Stage 1 Debate on the Protection of Wild Mammals (Scotland) Bill  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business—debate on the subject of S1M-2087 Fiona McLeod: UN Children's Summit: 19-21 September 2001

Thursday 20 September 2001

9.30 am Scottish Conservative and Unionist Party Debate on Juvenile Justice  
*followed by* Scottish Conservative and Unionist Party Debate on Improving Patient Care  
*followed by* Business Motion  
 2.30 pm Question Time  
 3.10 pm First Minister's Question Time  
 3.30 pm Executive Debate on Effective Assessment in Scotland's Schools  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business—debate on the subject of S1M-2119 Paul Martin: Community Issues in Sighthill, Glasgow

Wednesday 26 September 2001

2.30 pm Time for Reflection  
*followed by* Executive Debate on its Support for the Voluntary Sector  
*followed by* Parliamentary Bureau Motions  
*followed by* Motion on the Publication of the Ombudsman for Scotland Annual Report 2000-2001  
 5.00 pm Decision Time  
*followed by* Members' Business

Thursday 27 September 2001

9.30 am Scottish National Party Business  
*followed by* Business Motion  
 2.30 pm Question Time  
 3.10 pm First Minister's Question Time  
 3.30 pm Stage 1 Debate on the Police and Fire Services (Finance) (Scotland) Bill  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business—debate on the subject of S1M-2054 Margaret Smith: RCN Scotland's "Value Nurses" Campaign

*Motion agreed to.*

## Parliamentary Bureau Motion

09:35

**The Deputy Presiding Officer (Patricia Ferguson):** I ask Euan Robson to move motion S1M-2201, in the name of Mr Tom McCabe, which is a timetabling motion for stage 3 of the International Criminal Court (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, at Stage 3 of the International Criminal Court (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when Stage 3 begins and excluding any periods when the meeting is suspended)—

Group 1 and Group 2—no later than 55 minutes

Group 3—no later than 1 hour 25 minutes

Groups 4, 5, 6 and 7—no later than 1 hour 55 minutes

Motion to pass the Bill—no later than 2 hours 25 minutes.—[*Euan Robson*].

*Motion agreed to.*

## International Criminal Court (Scotland) Bill: Stage 3

09:36

**The Deputy Presiding Officer (Patricia Ferguson):** We move on to the stage 3 proceedings of the International Criminal Court (Scotland) Bill. I will make the usual announcements about the procedure that will be followed.

First, we will deal with amendments to the bill. We will then debate the motion to pass the bill. For the first part of the proceedings, members should have a copy of the marshalled list and of the groupings that have been agreed. Amendments will be debated in groups where appropriate and each amendment will be disposed of in turn. An amendment that has been moved may be withdrawn with the agreement of the members present. It is possible for members not to move amendments should they so wish. The electronic voting system will be used for all divisions. I shall allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

### Section 1—Genocide, crimes against humanity and war crimes

**The Deputy Presiding Officer:** Amendment 40 is grouped with amendment 41.

**Christine Grahame (South of Scotland) (SNP):** It is ironic that we are debating the bill against the background of the recent tragic events and also the death yesterday of Anton Gecas. That said, the bill does not deal with terrorism.

Amendment 40 seeks to displace what I call the minimalism of the Scottish Executive test for jurisdiction in pursuing alleged war criminals. It will substitute what I refer to as absolute universal jurisdiction. Members will have to pin their ears back at this point, as there are two kinds of jurisdiction. I refer to the absolute kind, which, by means of amendment 40, I wish to incorporate in the bill. That contrasts with partial universal jurisdiction, which—to put it simply—is the presence test. If amendment 40 is agreed to, it will have the consequential effect of making section 6 redundant. As that is the subject of amendment 41, I will speak only to amendment 40. The bill is inadequate and dismally disappointing. A sullen adherence to the residence test is parochial when we have the opportunity to be truly international.

Although amendment 40 is important, for many it is pretty esoteric stuff. As ministers and a few other souls in the chamber will recall, the

argument was aired at stage 2. Many members will not have read the *Official Report* of the stage 2 debate, nor will they have committed the proceedings to memory. I will refer liberally to the *Official Report* with reference to the residence test.

There are obvious practical anomalies thrown up by the test. I will give an example. Mercenaries from many nations commit a heinous crime against humanity. It is committed against Red Cross volunteers who are engaged in humanitarian work. Two of the mercenaries are Scots; one is a German car trader who has just bought a flat in Glasgow, and another is an Italian who has commercial properties in Scotland and commutes here for business purposes. The latter two, when shopping in Princes Street, are recognised by one of their Red Cross victims. Are they resident in Scotland? Are they residents as defined under section 6 of the bill? I do not know and I suspect that neither do the ministers.

During the stage 2 debate, Iain Gray, the Deputy Minister for Justice, said that a person's uncertainty about their residency would act as a deterrent. That argument was also used during a Westminster debate on the UK bill, to which I will refer later. The argument is that in the minds of the mercenaries there would always be an element of doubt whether the residence element of the legislation applied to them. They might think that they would be arrested and extradited to another country that has jurisdiction over them, or arrested and surrendered to the international criminal court in The Hague.

That argument can be unpicked because uncertainty works both ways. If nations exercise universal jurisdiction, whether it is universal or partial, there is no hiding place. However, war criminals in Scotland might just have a long holiday, ensuring that residency—whatever that is—could never apply. Residency is a complex notion. As with immigration and whether a person is resident, there are many different tests: for tax, for matrimonial law and for education rights.

If we have no jurisdiction, a criminal could flee while awaiting extradition procedures. With the right to arrest, as provided for by my amendment, or even on the presence test, there could be no flight, nor even a safe haven—no uncertainty there. The deterrence argument is a fig leaf for the flaw in the bill.

The minister refuted the argument that criminals might visit Scotland with impunity by stating first that action is being taken to strengthen immigration rules. Does he really believe that a determined, guilty person could not work round those? Secondly, he contended that there might be insufficiency of evidence, even if we had universal jurisdiction. However, that would be determined by the Lord Advocate. If he were

unable to try the case for that reason, it could be remitted to the international criminal court—there are rules allowing that. Thirdly, the minister argued that we should move in step with the statute and the international community.

Universal jurisdiction has been adopted by the following countries: Belgium, Canada, New Zealand, Switzerland, Germany, Argentina, Austria, Belize, Botswana, Dominica, Fiji, Finland, France, Ghana, Iceland, Italy, Lesotho, Luxembourg, Mali, Norway, Sierra Leone, South Africa, Spain, Tajikistan, Trinidad, Tobago, Venezuela. Residence has been adopted by San Marino, Gabon, the Marshall Islands, Senegal and, of course, the UK. I know which group I think is the international community.

**Phil Gallie (South of Scotland) (Con):** Will the honourable lady give way?

**Christine Grahame:** It is nice to be called honourable.

**Phil Gallie:** The member lists the countries that give support to the Rome statute. How many countries have not signed up to it and how many countries have not registered any kind of support?

**Christine Grahame:** That is irrelevant. As I move through my speech I will mention one country that has not signed up.

Two men commit crimes against humanity. One is a Scot, the other is a Canadian. If they were both in Scotland—with the Canadian on holiday—we could prosecute only the Scot. If they were both in Canada—with the Scot on holiday—the Canadians, with partial universal jurisdiction or the presence test, could prosecute both. Under the terms of my amendment, if they were both on holiday in France, Scotland could prosecute them.

In the first example, how could a prosecution properly proceed against only one of the accused, and not his co-accused? We might have two prospective war criminals: one in Scotland and one in Canada. The residence test means that if we had all the evidence that we required and wished to prosecute, we could not prosecute the two together. We must remember that the purpose of the bill is that the national court will be the first court to try the case. The ICC steps in only in other, special circumstances. That is poor law.

Finally, I refer the Liberal Democrats and the Conservatives to the House of Commons deliberations on these very issues earlier this year. There, the Conservative Crispin Blunt argued eloquently for absolute universal jurisdiction and pressed his argument to a vote, which he lost by five votes to 10. It was all aired far more thoroughly at Westminster than we have had the time and opportunity to do here.

Mr Blunt stated:

"Under universal jurisdiction, we will be able to claim the right to protect ... citizens who are victims of such crimes, wherever they are in the world. We do not want to limit such jurisdiction to presence"—

presence, not residence—

"in the United Kingdom."—[*Official Report, House of Commons, Standing Committee D*, 3 May 2001; c 306.]

He moved on to support the amendments of Robert Maclennan, Liberal Democrat, who was arguing for the presence test. Again, in an eloquent and well-argued position for partial jurisdiction, Mr Maclennan said:

"The term 'residence' is complex."—[*Official Report, House of Commons, Standing Committee D*, 3 May 2001; c 310.]

He went on to define it in terms of English law, which varies slightly in some respects from Scots law.

09:45

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Only slightly?

**Christine Grahame:** It only varies because much of the residence test regards tax and immigration, which is, of course, UK-wide.

In English law, the term residence

"bears varying meanings according to its context, and great caution must be exercised before authorities on the meaning of residence in context such as bankruptcy, taxation, or ... poor law ... are applied .... In particular, it is clear that some degree of permanence is required for the acquisition of residence in some contexts, but not, or to a lesser extent, in others."

That was Mr Maclennan's argument. It is an argument that is also sustained in Scotland, where many lawyers are well aware of the complexities of defining that difficult notion of residence.

In the House of Lords, Baroness Scotland said:

"One cannot say with any certainty, for example, that every person who has come to the UK and stayed for two or three years is definitely a resident here. On the other hand, someone who has been here for a matter of days but has displayed every sign of residing here on a more permanent basis may be considered a resident."—[*Official Report, House of Lords*, 12 February 2001; Vol 622, c 85.]

That is common sense.

Robert Maclennan said:

"The trouble is that definitions of residence will have little to do with the degree of moral culpability that is attached to the crimes with which they are charged. The definitions deal solely with the issue of jurisdiction. ... That means that the Bill will hinge on an uncertain test, or on a legally certain but narrow definition. We should not be happy with either."—[*Official Report, House of Commons, Standing Committee D*, 3 May 2001; c 311.]

Robert Maclennan made it clear that that was the

Liberal Democrat position on jurisdiction.

It is interesting that during the debates at stages 1 and 2—brief though they were—the Conservatives and the Liberal Democrats made no representations that reflected in any way the arguments that were put so well at Westminster.

I refer to the deterrence element again. Absolute jurisdiction—which was argued for by Robert Maclennan—would have allowed the immediate arrest of the German car trader and the Italian businessman. The Scottish National Party wants Scotland to play its full part in bringing those responsible for crimes against humanity to justice; as Robert Maclennan said, residence deals only with jurisdiction, not culpability. It is petty-minded, as well as being an uncertain anchor for prosecution.

I quote a contributor to the House of Lords debate:

"This is an opportunity to offer a lead to other countries in an exciting new, international venture. ... We should not sidle towards ... the edge of the crowd; we ought to be looking to give a lead here."—[*Official Report, House of Lords*; 12 February 2001; Vol 622, c 74.]

Well, I know sidling to the edge of the crowd when I see it.

I move amendment 40.

**Lord James Douglas-Hamilton (Lothians) (Con):** I have some sympathy with the case that has been put forward but it is outweighed by other considerations.

On 14 June, the minister gave three reasons for opposing universal jurisdiction. First, it is not consistent with the traditions of Scots law, which is based on territorial principles. Secondly, we have taken universal jurisdiction in the past only where it was required by international treaty. Thirdly, the Administration considered it inappropriate to assume the role of global prosecutor. We agree with the Administration's position, since it would be unrealistic for us to assume the role of police enforcer throughout the world. We believe that universal jurisdiction, unless supported by international treaty, would be unenforceable.

Of course, it may be that there will be further international treaties in the fullness of time, but not at this stage. In any case, the collection of evidence to meet the 110-day time limit would be very difficult to meet. We believe that it would be a mistake, in the first instance, to bite off more than we can chew. The bill gets it about right. However, that does not preclude further legislation. For those reasons, I recommend to my colleagues that they support the Administration.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I oppose amendment 40. We had the same debate at stage 1, and it is a legitimate debate to have. It



shows the maturity of a Parliament that it can at least debate the possibility of incorporating that difference from the UK act into the Scottish bill. However, the arguments against the adoption of universal jurisdiction are quite overwhelming.

Christine Grahame listed the countries that have signed up to that concept, but the vast majority of countries have not signed up to it. That means that the practicalities of adopting such a principle are huge. What Christine Grahame is suggesting would mean, for example, that Scotland could detain a French national, although France is not signed up to universal jurisdiction, and attempt to prosecute him or her. The idea that there would be no diplomatic repercussions for Scotland doing that to nationals of countries that had not signed up to the principle is a little naïve.

Many practicalities must be considered in connection with the concept of universal jurisdiction. We could have to prove a case against a person who is on holiday in Scotland, who is just passing through, and who has virtually no connection with Scotland. In cases of international crime, the scene of the crime will often not be in Scotland either. Scotland has legal time limits. In custodial cases, 110 days is all that we have to prove a case against a person, and such practicalities would have to be considered before adopting such a principle.

**Christine Grahame:** What is Pauline McNeill's solution to the problem of, let us say, two co-accused, one of whom has a residence in Scotland and can be tried here—supposing it was appropriate for the case to be tried here—and the other of whom does not have a residence here and therefore cannot be brought to justice in this country? That would mean running a case against one accused, without the co-accused. Is not that a huge problem?

**Pauline McNeill:** Whatever principle is adopted, there will be anomalies, and the anomaly in that example raises an important point. However, Christine Grahame is looking at the bill without considering other measures that are in place, such as other international obligations and the right of extradition. We must consider the whole of international law, not just the bill that we are examining today, to see what powers are available to Scotland and to the UK.

On balance, the practicalities of adopting such a principle mean that I am unable to support amendment 40. It is important to note that the treaty does not require Scotland, or indeed the UK, to adopt such a principle. I therefore oppose the amendment.

**Tavish Scott (Shetland) (LD):** I too encourage my colleagues to oppose amendment 40. I appreciate Christine Grahame's point and she has

been consistent in her advocacy of it at all stages of the bill. However, Pauline McNeill has also made a number of important points.

Christine Grahame intervened to give an example of problems with residence. It is my understanding that, if the co-accused was not resident in Scotland, that is exactly the sort of circumstance in which the international criminal court would take action. That would be dealt with by the proceedings of the court.

Lord James Douglas-Hamilton listed three reasons that were given by the minister at stages 1 and 2 as to why universal jurisdiction is not appropriate for Scotland, the principal one being that the main principle of Scots law is based on territoriality. Paragraph 25 of the Justice 2 Committee's stage 1 report on the bill stressed the importance of maintaining

"internal consistency within domestic law, rather than trying to harmonise with the International Criminal Court in circumstances where that is not required."

**Christine Grahame:** Would Tavish Scott have supported Robert MacLennan's position on the presence test?

**Tavish Scott:** I find it interesting that Christine Grahame raises what is going on at Westminster and what is said in another place, in another context, about a different form of law, where different principles apply. Perhaps she will want to reflect on that.

The second argument that Lord James Douglas-Hamilton mentioned against adopting the principle was that universal jurisdiction has hitherto been enshrined in Scots law only when that has been required by international treaty. Pauline McNeill made the same point. Universal jurisdiction was not part of the Rome statute. Indeed, the treaty has been built by way of international consensus. If one looks at the wider picture, especially in the light of recent events, that is an important measure that the international community can use to make progress. It will help to ensure that, in addition to the countries that have already signed up to or are about to ratify the treaty, many other countries will become involved. That is an aspiration that I hope all members share.

Thirdly, as Lord James said, it has been argued that Scotland would not want universal jurisdiction in this case, because it demands that our legal system assume the responsibility of global prosecutor. That is a worthy consideration, which should be taken into account. For those reasons, I oppose amendment 40.

**The Deputy Minister for Justice (Iain Gray):** During stages 1 and 2, the Executive position was that universal jurisdiction is not the most appropriate approach. There are several key reasons why that is so, which are worth repeating.

We believe that the strongest guiding principle that should inform our approach to this matter is the will of the international community; the clear will of the international community in this respect is the Rome statute. A departure from the international consensus would surely constitute parochialism on our part. It is therefore important to focus on the Rome statute as our legislation moves through its final stage in the Scottish Parliament and particularly as we discuss amendments 40 and 41. After all, the main purpose of the bill is to ensure that Scotland and the United Kingdom are able to ratify the Rome statute on the international criminal court.

The statute is a carefully drafted document that was finalised only after many years of debate and discussion, so it represents the clearest expression of the thinking of the international community on how we should tackle the gravest of crimes. It envisages an approach that encourages individual countries to live up to their own responsibilities in the prosecution of war crimes and other crimes that have been committed by their own citizens. The preamble to the statute says:

“the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions”.

Therefore, national courts will retain primary jurisdiction. However, where individual countries are unable or unwilling genuinely to take action, perhaps for some of the reasons that Christine Grahame has outlined, where conflict has led to a collapse of the local judicial system, or where a dictatorial Government refuses to punish its own abuses, the statute envisages that the ICC will be established, as provided for in article 1,

“to exercise its jurisdiction over persons for the most serious crimes of international concern”.

That contrasts clearly with an alternative approach, which the international community might have chosen to take, whereby ratifying countries would ensure that they had universal jurisdiction to deal with war criminals no matter where they were found or where the crimes occurred. Had that approach been taken, the need for the international criminal court itself would have been much less clear. That was explicitly not the consensus.

Nowhere does the statute stipulate that individual countries should head down the path of prosecuting individuals who have no connection to them. Given the often enormously complex nature of the international conflicts that engender such situations, it is not difficult to see why that is the case.

**Christine Grahame:** Does the minister accept that, although the statute does not say that a

country must have universal jurisdiction, neither does it say that a country cannot have universal jurisdiction and that that is a matter for individual nations? Does he think that Canada has made a big mistake in accepting the presence test, for instance?

**Iain Gray:** Let me address the approaches that other countries have taken a little later in my speech. There were two alternative routes that the discussions on the Rome statute could have chosen to take. One was to promote the idea of universal jurisdiction in as many countries as possible to allow international crimes to be brought to justice and the alternative was to set up the international criminal court as the institution to bring such cases to justice. Setting up the court would not have been required if the alternative approach had been taken. The construction of the international criminal court in and of itself is clear evidence of the non-requirement for universal jurisdiction to be adopted, except in countries where that is the legal tradition, which is not the case in Scotland.

10:00

**Christine Grahame:** I am glad that the minister has such faith in the ICC, but I am concerned that the ICC might move slowly and a nation state with universal jurisdiction will be lost when there is an opportunity to detain and apprehend a suspected war criminal. Such a situation will happen in due course. I may be proved wrong, but I am greatly concerned. Extradition is not a quick process.

**Iain Gray:** That argument is wrong—it undermines the ICC’s credibility before it has been constructed.

It has been pointed out that Scottish legal traditions are reflected consistently in the International Criminal Court (Scotland) Bill. The most important tradition is the principle that territorial jurisdiction is central to the prosecution of crimes in Scotland. In Scots law, criminal jurisdiction is based on the territorial principle. In the absence of legislation to the contrary, the jurisdiction of the Scottish criminal courts is limited to crimes that are committed in Scotland.

That jurisdiction has been changed in a number of instances that lend argument to the Executive’s position. Two statutes that extend jurisdiction of the Scottish courts to offences that are committed outwith Scotland are the Criminal Procedure (Scotland) Act 1995 and the Sex Offenders Act 1997, section 8 of which inserted section 16B into the 1995 act. That level of jurisdiction is contained in the International Criminal Court (Scotland) Bill. Perhaps more relevantly, universal jurisdiction as described by Christine Grahame is taken through the Geneva Conventions Act 1957 and section

134 of the Criminal Justice Act 1988, which provides for the prosecution of the offence of torture committed in the UK or elsewhere by a public official of any nationality. The key point is that in the two latter instances, universal jurisdiction was taken in UK law specifically because it was required by international agreement. That is not the situation in respect of the Rome statute.

Many of Christine Grahame's examples refer to countries with a tradition of universal jurisdiction in their domestic law, which is why it has been carried through to their ratification of the Rome statute. The information is difficult to find, given that many countries have not yet ratified the statute. Switzerland, for example, was mentioned, but it has not ratified it. I understand that Australia and France will not take universal jurisdiction. Many of the 139 countries that have signed the statute have not yet ratified it and some have ratified it without domestic legislation prior to ratification. The situation is complex, but the principle is that countries stick to the principles of their own legal systems.

We are not doing the minimum required by the statute, as Christine Grahame said. Our provisions are perfectly in tune with the principles and philosophy of the treaty, which attempts to build an international approach to dealing with instances where war crimes, for example, cannot be dealt with by domestic courts. Amendments 40 and 41 suggest that we turn our back on that consensus. Not only is such an approach impractical, it risks diverting us from the key business at hand, which is to establish and support the ICC.

There are also practical considerations. If a suspected war criminal with whom there was no Scottish connection were simply on a fleeting visit—shopping in Princes Street perhaps—can it realistically be expected that sufficient information could be gathered against them to meet the time requirements that are an important safeguard in our legal system? It would be much better to arrest and extradite the suspect to a country where there is a connection, or indeed to the ICC itself.

**Christine Grahame:** Does the minister accept that, if we had absolute universal jurisdiction and had detained, for example, a German mercenary on Princes Street but were unable to prosecute because of the difficulties of evidence, the ICC would take over at that point? The point is that in those circumstances the person would have been detained and would be in custody.

**Iain Gray:** If extradition were sought against the person, he would similarly be arrested and detained. Christine Grahame's concern that they would immediately hop on the nearest plane and leave would not apply.

There is the real risk that the encouragement of universal jurisdiction as the route for dealing with such issues would undermine the very institution we are seeking to establish. Christine Grahame's comments add some weight to that argument. It is not hard to see that if the ICC investigated an individual and decided not to take action against him but another country with perhaps no connection at all with the crime or the suspect subsequently decided that they would step in and prosecute, the credibility and robustness of the ICC would be undermined.

There are good reasons of principle why we should not take universal jurisdiction, such as our wish to be consistent with our own traditions and the international consensus. There are also practical considerations, such as the difficulty of prosecuting within the stipulated time limits. For those reasons, we remain convinced that we should stick with the extended jurisdiction in the bill and resist the idea of universal jurisdiction.

I invite Christine Grahame to withdraw amendment 40 and not move 41.

**Christine Grahame:** I do not seek to undermine the ICC in any way—I fully support its existence. I am concerned about the residence test. Aside from the uncertainty and how the test might be manipulated by suspected criminals—

**Iain Gray** rose—

**Christine Grahame:** I want to finish what I was saying. I want to ensure that there is no chance that criminals will escape or that there will be extensive delays in prosecuting criminals—that may occur with the operation of international law. The minister said that the ICC is complementary, but he is aware that the first port of call for prosecution is the domestic court.

**Iain Gray:** I did not intend to say that Christine Grahame wanted deliberately to undermine the ICC. As the bill has progressed, her commitment to its primary purpose has been manifest. My point is that the argument for universal jurisdiction runs the risk of leading inadvertently to the undermining of the credibility of the ICC. I did not intend to imply that she meant deliberately to undermine the ICC.

**The Deputy Presiding Officer:** The question is, that amendment 40 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**FOR**

Adam, Brian (North-East Scotland) (SNP)  
Campbell, Colin (West of Scotland) (SNP)  
Crawford, Bruce (Mid Scotland and Fife) (SNP)  
Cunningham, Roseanna (Perth) (SNP)  
Ewing, Dr Winnie (Highlands and Islands) (SNP)

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McLeod, Fiona (West of Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Reid, Mr George (Mid Scotland and Fife) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fergusson, Alex (South of Scotland) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Johnstone, Alex (North-East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)

McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Ben (North-East Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 26, Against 76, Abstentions 0.

*Amendment 40 disagreed to.*

#### Section 6—Proceedings against persons becoming resident in the United Kingdom

**The Deputy Presiding Officer:** Amendment 41, in the name of Christine Grahame, has already been debated with amendment 40.

*Amendment 41 moved—[Christine Grahame].*

**The Deputy Presiding Officer:** The question is, that amendment 41 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (North-East Scotland) (SNP)  
 Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McLeod, Fiona (West of Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Neil, Alex (Central Scotland) (SNP)

Reid, Mr George (Mid Scotland and Fife) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Fergusson, Alex (South of Scotland) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Johnstone, Alex (North-East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)

Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Ben (North-East Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 26, Against 75, Abstentions 1.

*Amendment 41 disagreed to.*

#### Section 11—Provision of assistance to the ICC

**The Deputy Presiding Officer:** Amendment 1 is grouped with amendments 2, 29, 6, 7, 30, 10, 11, 31, 32, 17, 18, 33, 21, 34, 24, 36, 37, 38 and 39.

**Lord James Douglas-Hamilton:** In lodging amendment 1, we are concerned with the principle that the Lord Advocate's post is one of the great offices of state and that that office is independent of any other person.

Over the centuries, the Lord Advocate has been responsible for our system of criminal prosecution and the investigation of deaths in Scotland. That function was extended in the Proceeds of Crime (Scotland) Act 1995 and the Criminal Law (Consolidation) (Scotland) Act 1995. Under those acts, the investigation of the proceeds of crime and applications for freezing or restraint orders in respect of property liable to forfeiture is in the specific remit of the prosecutor. The International Criminal Court (Scotland) Bill seeks to change that and it represents a whittling away and a diminution of the role of the Lord Advocate.

It is ironic that I should have to defend the Lord Advocate from his colleagues. In response, the Executive takes the view that the functions in part 2, which relates to the provision of assistance to the international criminal court, fulfil the Executive's international obligations. Those functions include directing the chief constable to serve documents; directing the procurator fiscal to apply to the sheriff for a warrant for entry, search and seizure; and directing authorised persons to apply for production orders or warrants in the course of an investigation into the proceeds of crime. The Executive might be correct, but those functions relate to the investigation and prosecution of crime and to the direction of the prosecution authorities in fulfilling those obligations. Therefore, part 2 removes or erodes

the independent element of dealing with extremely serious matters involving crimes against humanity. Great as the expertise of the Deputy First Minister might be, it is, I regret, on a different plane altogether from that of the Lord Advocate.

The Lord Advocate and his staff represent the independent element, which is a major factor in Scotland's criminal justice system. Any attempt to erode the Lord Advocate's powers and functions should be strongly resisted.

If we lose the vote on the principle, we will seek to restore the Lord Advocate's legitimate powers and functions at the first available opportunity. I will seek one division on the issue and not 20, as we consider the principle involved to be important.

I move amendment 1.

10:15

**Tavish Scott:** That was stirring stuff. Lord James Douglas-Hamilton rightly said that the Lord Advocate is independent of other persons. The Scotland Act 1998 provides statutory functions that apply to the Lord Advocate, which are legally enforceable by him. From my understanding of the amendments it strikes me that, as the Deputy Minister for Justice said when the issue was considered at stage 2:

"it would be appropriate to confer new statutory functions on the Lord Advocate only where they relate to his position as head of the systems of criminal prosecution and investigation of deaths in Scotland."—[*Official Report, Justice 2 Committee*, 26 June 2001; c 305.]

There is a need for political impartiality in domestic cases because otherwise the process could be subject to interference. If the amendments were agreed to, the functions that the bill would confer on the Lord Advocate could conflict with his existing role as head of prosecutions and investigator of deaths. Part 2 of the bill handles civil proceedings, which are outwith the usual responsibility of the Lord Advocate, who handles criminal proceedings. Therefore, there is a solid argument in favour of rejecting the amendments.

**Bill Aitken (Glasgow) (Con):** Amendment 1 is important and it deals mainly with the separation of powers. It has to be understood that the role of Lord Advocate in Scotland is a special one and that it is possibly unique in the legal roles of prosecutors, certainly throughout Europe. It has to be remembered that the Lord Advocate is not a minister for the interior, which is the position that many jurisdictions have to fulfil, as envisaged in the statute. It is not a question of the Minister for Justice, whoever that might be in the future, having the ability to overrule the Lord Advocate. The Minister for Justice should not be involved in these matters because there is a dilution of the

principle of independence.

I cannot understand Tavish Scott's apparent suggestion that there is a degree of conflict in what Lord James Douglas-Hamilton is proposing. Conflict is precisely what we are trying to avoid. We are trying to establish the principle that the Lord Advocate is totally and utterly independent from the Government.

It is possibly a natural consequence of devolution that the role of Lord Advocate has been politicised to some extent. That was inevitable, but definitely unfortunate. We are seeking to ensure that the important role of Lord Advocate retains a degree of independence. That is necessary for it to maintain the degree of respect that it has had historically. Even at this stage, we ask the Minister for Justice to re-examine the provision, which would in no way diminish the powers of the bill. We all hope that the bill will become an act. The amendments would be a step towards upholding the independence of the Scottish prosecution system.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I respect the spirit in which Lord James Douglas-Hamilton has lodged the amendments and in which Bill Aitken has spoken to them. I recognise the historic and important role of the Lord Advocate in the Scottish legal system, not least in the Scottish criminal justice system. In the exercise of my duties as the Minister for Justice I have done my utmost to scrupulously remember the important distinction of the Lord Advocate's role as the independent head of the systems of criminal justice prosecution and investigation of deaths in Scotland. Journalists sometimes cannot understand—no doubt to their frustration—why I will not comment on the reason why cases have not been prosecuted. It is not my responsibility nor should it be.

Against that background and that recognition of the importance of the Lord Advocate, I nevertheless believe that the amendments should be resisted. The subject was debated at stage 2 and the Deputy Minister for Justice said at that time that our view is that the amendments are not consistent with what was intended as regards the conferral of ministerial functions provided for in the Scotland Act 1998. If one considers the scheme of that act, post devolution all statutory functions should be conferred on Scottish ministers collectively, so that legally they can be exercised by any one of them. It is for the First Minister to decide which Scottish minister should exercise a particular function through the allocation of ministerial portfolios and responsibilities. The only exceptions to that are in the case of the First Minister and the Lord Advocate, upon whom statutory functions are conferred that may be legally exercised only by them.

As we observed, in the case of the Lord Advocate those functions are well known. They are the functions that he carried with him when he ceased to be a minister of the Crown in the UK Government and became a minister of the Scottish Executive. Before that occurred, the functions previously performed by the Lord Advocate, other than in relation to criminal prosecution and investigation of deaths in Scotland, were transferred to the Secretary of State for Scotland and thereafter to the Scottish ministers. We believe that it would be appropriate to confer new statutory functions on the Lord Advocate only when they relate to his position as head of the system of criminal prosecution and investigation of deaths in Scotland. Those are functions that he is required to operate independently of any other person. He cannot—nor should he—be directed as to how he exercises those functions.

However, the functions in part 2 of the bill that Lord James Douglas-Hamilton wants to provide as being exclusively carried out by the Lord Advocate do not relate to his position as head of the systems of criminal prosecution and investigation of deaths. Those functions fall into three categories.

First, there are functions that relate directly to fulfilling requests from the international criminal court for assistance. Those include section 13 on the taking and production of evidence; section 14 on further provisions on the taking and production of evidence; section 18 on the provision of records and documents; and section 21 on the verification of material. Those functions relate primarily to the implementation of our international obligations, not to the systems of criminal prosecution in Scotland. It is therefore appropriate that they are conferred upon Scottish ministers collectively.

Secondly, there are functions that relate to the taking of civil proceedings. Those include section 19 on the investigation of proceeds of ICC crime and section 20 on freezing orders in respect of property liable to forfeiture. In addition to being examples of Scottish ministers discharging obligations to provide assistance to the ICC, those functions operate in relation to civil matters. They do not relate to the system of criminal prosecution in Scotland.

**Phil Gallie:** I ask the minister to clarify a point. He referred to the requirement to pass on documents to the ICC. In some circumstances, might those documents already be under the control of the Lord Advocate? What action would the minister take in those circumstances?

**Mr Wallace:** By passing this legislation and the United Kingdom then ratifying the Rome statute, we will undertake international obligations. We would want to take action to be as fully compliant

with those obligations as we can. The point is that those are civil proceedings in sections 19 and 20. They do not relate to the Lord Advocate's role as part of the criminal prosecution system in Scotland.

**Miss Annabel Goldie (West of Scotland) (Con):** Surely it is the case that what we have in part 2 is not a civil situation; what we have are preliminary activities that are the prelude to criminal prosecution. Is it not the case that to try to preserve a façade of ministerial involvement is merely to place a fig leaf over what will—and should—remain the fundamental and primary responsibility of the Lord Advocate?

**Mr Wallace:** I indicated that there are three categories. The first one, to which I have referred, is on fulfilling requests that come from the ICC. By their nature, those requests would be directed towards Scottish ministers. Those international obligations are appropriately discharged by Scottish ministers rather than by placing a specific duty on the Lord Advocate. Likewise, functions related to civil proceedings should be discharged by Scottish ministers.

The third category of functions include those in section 15 that direct the chief constable to serve a document or those in section 16 that direct the procurator fiscal to apply for a warrant.

I do not like to challenge amendments on the basis of technicalities or drafting. The points that I have argued relate to substance. However, if Lord James Douglas-Hamilton's amendment 31 to section 16 was to be accepted, a curious position would arise in which a different Scottish minister would have to make a request to the Lord Advocate. That is interesting because the concept of collective responsibility, which binds the Lord Advocate, would mean that he was being requested to do something that, by definition, he had already agreed to do. Where could he exercise a separate, independent judgment on those matters? That is a technical point, but it illustrates that those functions are appropriately conferred on Scottish ministers.

I accept that the directions to the chief constable or the procurator fiscal are similar to the functions that the Lord Advocate would carry out when dealing with prosecutions in Scotland. It is more than likely that—without in any way binding the First Minister—the First Minister would take that into account when deciding which minister would exercise these functions. However, it is far better to leave the position as being that, quite properly, in fulfilling our international obligations those functions are exercised by Scottish ministers, rather than putting it in the bill that the Lord Advocate would exercise them. I ask the chamber to reject Lord James Douglas-Hamilton's amendment.

**Lord James Douglas-Hamilton:** I have about 40 seconds to reply.

I say to the Deputy First Minister that the functions concerned are ancillary and related to criminal prosecution. Those have been the responsibility of the Lord Advocate in the past and, as far as I know, there has never been any problem with his discharge of those duties. We believe that this is a significant diminution of his role, which is unnecessary and regrettable. We wish to press amendment 1 to a vote.

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a two-minute division.

#### FOR

Adam, Brian (North-East Scotland) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (South of Scotland) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North-East Scotland) (Con)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McLeod, Fiona (West of Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Reid, Mr George (Mid Scotland and Fife) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Wallace, Ben (North-East Scotland) (Con)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Butler, Bill (Glasgow Anniesland) (Lab)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Brown, Robert (Glasgow) (LD)  
 Gorrie, Donald (Central Scotland) (LD)

**The Deputy Presiding Officer:** The result of the division is: For 43, Against 58, Abstentions 2.

*Amendment 1 disagreed to.*

#### Section 12—Questioning

*Amendment 2 not moved.*



10:30

**The Deputy Presiding Officer:** I call Iain Gray to speak to and move amendment 43, in the name of Jim Wallace, which is grouped with amendment 47.

**Iain Gray:** Members of the Justice 2 Committee will recall that, during our stage 2 discussion of the bill on 26 June, I agreed to reconsider the provisions in section 12(4). Having reflected on the matter, I am now persuaded that the most suitable course of action—and that which is most consistent with domestic procedure—is to remove the provisions in section 12(4) that refer to consent being given by an appropriate person to questioning on behalf of another person. The effect of amendment 43 is that only the person to be questioned can give consent. I have also given consideration to the amendment 47, in the name of Christine Grahame. Although I sympathise with its intentions, I am not inclined to agree in this instance that it represents the best way forward.

Our objectives are twofold: to fulfil our obligations to provide assistance to the ICC; and to reflect as far as is practicable similar domestic arrangements, where such arrangements exist. In that respect, what amendment 43 proposes does not differ significantly from what takes place daily in Scotland. For example, any suspect may be advised that they are to be questioned, but that they are not bound to answer. Furthermore, if it is thought that questioning by the police has been carried out in an unfair manner, it is highly likely that it will not be admissible in court in evidence thereafter.

The same will apply to questioning undertaken at the behest of the ICC and will be covered by its regulations on admissibility. For example, article 69 of the Rome statute states:

“Evidence obtained by means of a violation of this Statute or internationally recognised human rights shall not be admissible”.

Attempting to define exactly the circumstances in which a person can give consent to questioning not only is unnecessary for the reasons I have just outlined, but might be unworkable in practice. The High Court has consistently declined to set out exactly when a person is considered incapable. Each case must be considered on its merits. Any attempt to provide a fixed definition to be applied in all circumstances could have the unintentional effect of obstructing our obligation to provide assistance to the ICC.

It is worth pointing out what usually happens in Scotland—under this bill or any other similar domestic circumstances—if the police wish to question an individual who is thought, for example, to have a mental disorder. The relevant details are to be found in the current Scottish appropriate

adult scheme, which was introduced in June 1998 by the then Scottish Office. That code of practice, which is based on a multi-agency, non-statutory model, gives comprehensive guidance on such matters, and I believe that it accounts for the legitimate concerns that were raised by the Justice 2 Committee during its stage 2 consideration.

For instance, the guidance specifies that if the officer in charge of the investigation detects signs of mental disorder in the interviewee, he or she must arrange for a medical examination to establish whether an interview can take place. If the interview does proceed, an appropriate adult, as defined by the code, is to be present to ensure, among other things, that the interviewee understands the questions being put to him or her and the implications of their answers.

As a result, I am satisfied that if members accept amendment 43, section 12 will allow us both to fulfil our obligations under the Rome statute and to retain consistency with current domestic procedure and—given the key issue in this regard—that of admissibility of evidence before the competent court.

I move amendment 43.

**Christine Grahame:** I thank the minister for his comments. I am greatly satisfied by what he has said this morning. It shows the value of lodging what might be called “testing amendments” at stage 2. As the minister will recall, he said at the time:

“The current wording of section 12 achieves that aim”—  
the protection of capacity—

“and also builds in important safeguards.”—[*Official Report, Justice 2 Committee, 26 June 2001; c 301.*]

I am grateful to the minister for reconsidering the position and deciding that the earlier provisions were flawed. Given his comments, I believe that we should support amendment 43.

**Lord James Douglas-Hamilton:** I will be very brief. I thank the minister for responding to the draft amendment on the same point that I lodged at a much earlier stage. It is very refreshing to see that he has recognised that the matter required attention. It would be wrong for consent to be given where a person has a mental incapacity and might not be able to give such consent themselves.

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

**Iain Gray:** I have nothing further to add.

*Amendment 43 agreed to.*

*Amendment 47 not moved.*

**The Deputy Presiding Officer:** We come to amendment 3, in the name of Lord James Douglas-Hamilton.

**Lord James Douglas-Hamilton:** I will speak briefly to amendment 3. If I may say so, I am slightly astonished that an Executive in such a modern Parliament still does not support the idea of digital signatures. However, I accept that the minister, in his wisdom, might well support the principle and might wish to deal with the matter by comprehensive legislation covering other circumstances in due course. I hope that, in the meantime, he will accept communications with digital signatures, as they might become commonplace in a relatively short period of time.

I move amendment 3.

**Iain Gray:** We are indeed a modern Executive. The matter is generally under consideration for possible inclusion in future legislation. However, some aspects about the most suitable way to make the required provision have still to be worked out. As a result, it would not be desirable to use the bill as a vehicle to pre-empt what may or may not come along after due consideration. Any legislation that might be introduced on this issue is likely to be all-embracing and cover all appropriate situations where signatures are required by statute and common law. Although I recognise Lord James's modernity, I ask him to withdraw amendment 3.

**Lord James Douglas-Hamilton:** Although I am grateful for the minister's reply, he should at least send a signal that this Parliament is as modern as any other Parliament. For that reason, I will press the amendment to a vote.

**The Deputy Presiding Officer:** The question is, that amendment 3 be agreed to. Are members agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (North-East Scotland) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Hyslop, Fiona (Lothians) (SNP)

Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North-East Scotland) (Con)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McLeod, Fiona (West of Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Wallace, Ben (North-East Scotland) (Con)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)

Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine)  
 (LD)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 41, Against 60, Abstentions 0.

*Amendment 3 disagreed to.*

### **Section 13—Taking or production of evidence**

*Amendment 29 not moved.*

### **Section 14—Taking or production of evidence: further provisions**

*Amendment 42 moved—[Christine Grahame].*

**Iain Gray:** Amendment 42 concerns another matter to which I undertook to give further consideration following the stage 2 debate. Having done so, I believe that the amendment would maintain consistency with the current procedures in domestic law. We are therefore happy to accept amendment 42.

**Lord James Douglas-Hamilton:** We also support amendment 42, as the issue that it deals with is akin to the taking of a precognition. It would be inappropriate to have cross-examination of the kind that is envisaged in the line concerned. Christine Grahame is to be congratulated on having spotted a major defect in the bill and corrected it.

*Amendment 42 agreed to.*

*Amendments 6 and 7 not moved.*

### **Section 15—Service of process**

*Amendments 30, 10 and 11 not moved.*

### **Section 16—Entry, search and seizure**

*Amendment 31 not moved.*

### **Section 18—Provision of records and documents**

*Amendments 32, 17 and 18 not moved.*

### **Section 19—Investigation of proceeds of ICC crime**

*Amendments 33 and 21 not moved.*

### **Section 20—Freezing orders in respect of property liable to forfeiture**

*Amendment 34 not moved.*

### **Section 21—Verification of material**

*Amendment 24 not moved.*

### **Section 24—Limited disapplication of certain provisions relating to sentences**

**The Deputy Presiding Officer:** Amendment 44, in the name of the Minister for Justice, is grouped on its own.

**Iain Gray:** Amendment 44 is a technical amendment. The purpose of section 24 is to disapply any domestic provisions that could affect the sentence calculation of ICC prisoners who are accepted to serve their sentences in Scotland. The ICC alone will determine the length of sentences of prisoners whom it convicts. As chapter 1 of part III of the Crime and Punishment (Scotland) Act 1997 has been repealed, it seems appropriate to remove reference to it from the bill. That is what the amendment does.

I move amendment 44.

**Lord James Douglas-Hamilton:** The minister is correct to approach the matter in such a manner. The international criminal court will be the sole arbiter of its sentences. Domestic legislation that could relate, for example, to early release will, therefore, be disappplied. Will the minister confirm that we are obliged to accept that under the Rome statute?

**Iain Gray:** That is my understanding. Someone who served an ICC-imposed sentence in Scotland would be likely to face deportation on release from that sentence. Indeed, it is difficult to foresee circumstances in which they would not.

*Amendment 44 agreed to.*

### **After section 24**

**The Deputy Presiding Officer:** Amendment 45, in the name of the Minister for Justice, is grouped on its own.

**Iain Gray:** Like amendment 44, amendment 45 is a technical amendment. It is necessary to ensure that when an ICC prisoner is finally released by order of the ICC, he or she will not remain subject to any transfer directions and restriction directions that may have been ordered under the Mental Health (Scotland) Act 1984.

I move amendment 45.

**Lord James Douglas-Hamilton:** We support the amendment. It ensures that the transfer restrictions relating to a person with mental health problems would be removed at the end of a

sentence. At the end of their sentence, the person will almost certainly be deported. Persons who are resident in Scotland will be tried under Scots law. If the person was not resident in Scotland, he or she might have been tried by the international criminal court, but could have served the sentence in Scotland. This is a welcome amendment.

*Amendment 45 agreed to.*

#### **Schedule 4**

TAKING OF FINGERPRINTS ETC

*Amendments 36 to 39 not moved.*

## **International Criminal Court (Scotland) Bill**

**The Deputy Presiding Officer (Patricia Ferguson):** We now move to the debate on motion S1M-2044, in the name of Jim Wallace, which seeks agreement that the International Criminal Court (Scotland) Bill be passed.

10:46

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I thank members, not least those on the Justice 2 Committee, for the work that they have done on this important bill. I also thank those who contributed to the work of the Justice 2 Committee through the submission of written or oral evidence. From the amendments that have been lodged in the light of the committee's deliberations, it is clear that those who gave evidence, the members of the committee and the clerks who served the committee have properly and fully discharged their scrutiny function. The bill has arrived at this stage of the process in a better state because of that work.

I also thank officials in the justice department for their work on the bill—including liaison with the Home Office to ensure that the bill works in tandem with the Westminster act—and the Deputy Minister for Justice, Iain Gray, for his considerable endeavours in the scrutiny of the bill. That scrutiny has been completed within a very tight timetable to enable the United Kingdom to be among the first 60 countries to ratify the Rome statute on the international criminal court.

The amendments that have been debated were lodged in response to concerns that were raised. We also had an important debate on the role of the Lord Advocate and the appropriate forms of jurisdiction. I am confident that the bill is a robust one that will allow Scotland to fulfil its international obligations and play its part in the establishment of a permanent international criminal court.

The events of this week have brought home to us how horrific crimes against humanity can be. However, although the bill will deal with some of the most terrible crimes known to mankind, the Rome statute does not extend the remit of the international criminal court to crimes of terrorism in so far as the definition of those crimes is normally understood. In considering the Rome statute and in setting up the ICC, the international community took the view that terrorist crimes should be dealt with under the 12 or so existing international conventions and protocols on terrorism. Special measures for dealing with terrorism are a reserved matter under schedule 5 to the Scotland Act 1998.

That said, it is too early to arrive at definitive judgments on whether, if it had been in place, the ICC would have been called on to deal with the appalling and destructive atrocities that were perpetrated on Tuesday. What is clear, however, is that the events of Tuesday demonstrate just how far some people are prepared to go in committing terrible carnage and crimes in pursuit of their aims. Whether that crime would have been within the remit of the ICC should in no way deflect from the importance of the need to establish the ICC as an international institution.

We have been reminded constantly of the terrible nature of war crimes. In January, I represented the Scottish Executive at the national Holocaust memorial day ceremony in the Methodist Central Hall. The testimony of those who had suffered in the concentration camps of Nazi Germany, Bosnia, Rwanda and Cambodia brought home the appalling treatment that people can mete out to fellow human beings. We are also reminded of that by the on-going work of the tribunals that have been specifically established to deal with the events in Rwanda and the former Yugoslavia.

One sometimes little-thought-of aspect of the move towards the establishment of a permanent international criminal court is the deterrent effect that it is hoped such an institution on the international stage will have on those who are tempted to commit appalling offences. Even if a few such people are deterred by the fact that the ICC will be in operation and will take action immediately, the efforts of this Parliament and of the international community will have been well worth while.

The International Criminal Court (Scotland) Bill will enable the United Kingdom to fulfil its obligations under the Rome statute and will thus allow ratification of the treaty. Part 1 defines genocide, war crimes and crimes against humanity in exactly the same fashion as the Rome statute does and makes them crimes in Scots law. That is important from the point of view of complementarity, which is the principle that individual countries investigate and prosecute those crimes where there is a relevant connection.

Part 2 makes provision for Scottish ministers to provide assistance to the ICC in its investigations and prosecutions. It does that by making provision for helping with the identification of individuals in whom the ICC has an interest, for taking and providing evidence, for questioning those who are being investigated or prosecuted and for allowing the assets of crime to be traced and frozen.

Part 3 makes arrangements for orders to levy fines, forfeitures and reparations against those convicted by the ICC in response to an ICC request. It also permits those convicted by the ICC

to be brought to Scotland to serve their sentences of imprisonment, which is an important measure of assistance, given that the ICC cannot, by definition, have its own prison.

The latest figures indicate that 37 countries have taken the important step of ratifying the Rome statute. It is gratifying that we are almost two thirds of the way towards the total number of signatories that are required before the court can be established. With the passing of the bill, the UK will be able to add its name to that list of countries and will thereafter be able to take its place among the first assembly of state parties to be established after the total of 60 countries is reached. That will be a momentous and important occasion in the development of international justice, to which our legislation will have made a contribution.

I move,

That the Parliament agrees that the International Criminal Court (Scotland) Bill be passed.

10:53

**Christine Grahame (South of Scotland) (SNP):** I thank the minister for the remarks that he made during stage 2 of the bill in the Justice 2 Committee, which is my former committee. As usual, of course, a little more time at that stage would have been useful.

As the minister said, the fact that the debate on this bill was due to take place yesterday is a bitter irony, as images of a burning New York replaced it on our agenda and the agenda of the world. That was graphic evidence, if any were needed, that this is a small planet where our enemy can steal up on us and where the hatred of one nation or one people by another can be fought out on our television screens blow by horrendous blow. However, the bill does not concern terrorism; it deals with the crimes that are contained within the horrific walls of war and its consequences. Those crimes include

“Wilful killing ... Torture or inhuman treatment, including biological experiments ... Wilfully causing great suffering, or serious injury to body or health ... Unlawful deportation or transfer or unlawful confinement ... Taking of hostages”

and, chillingly,

“Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives”.

How that resonates in the current circumstances.

There is, however, another irony from which I will not flinch: the United States has not signed up to this treaty. I hope that it does, because, without the USA, the treaty is lessened.

The bill gives nations the opportunity to act as one on the small world stage. Barbaric men and women who have committed deeds that are often

too heinous to imagine against their fellow men have merged into the landscape for decades and have led the full life that they denied to others. For such people there should be no hiding place, no sanctuary and no escape from justice. They have committed crimes that will never be time-barred; for them, the passage of time, with the apparent legacy of a decent life, is no defence against their brutality.

The will and the honesty of nation states are required for this legislation to work. If man's inhumanity to man continues, as it seems that it must, those responsible for it—no matter where they are or who they are—must be pursued, judged and punished.

The bill and the corresponding legislation of other signatory nations represent a small but important start. The SNP fully supports Scotland's participation.

10:56

**Lord James Douglas-Hamilton (Lothians) (Con):** In supporting the bill, I express gratitude to Mr Iain Gray for giving an important reassurance. He said that our bill and the UK act mean that there can be no possible scenario in which the ICC has jurisdiction over a British national or serviceman while a British court does not. If serious allegations are made against British servicemen, the UK authorities will examine them. There is nothing new in that situation.

During the debate, I confirmed that the bill will give hope to vulnerable communities that are threatened with harassment, persecution and terror. It serves a useful purpose and should be seen as a warning that, in the event of inhumanity rearing its ugly head, the machinery will be in place to ensure that justice is done. Whatever reservations we might have about effectiveness, cost and legal jurisdiction, we welcome the bill, whose purpose is to bring justice to those who have committed crimes against humanity, and we support it accordingly.

As the Deputy First Minister has reminded us, two days ago we learned the tragic news of crimes against humanity through murderous and premeditated attacks on civilians on a massive and unprecedented scale. That serves to reinforce our will that the bill be passed.

10:58

**Pauline McNeill (Glasgow Kelvin) (Lab):** The stage 1 debate on the bill was aptly timed because it took place the day after Thabo Mbeki had addressed the Scottish Parliament and reminded us of our international obligations. Today, we have our stage 3 debate after the tragic events in the USA have pressed home the importance of the bill

by again reminding us of our moral and legal obligations to the rest of the world.

The UK delegation in Rome has to be commended for its work. It achieved some important changes to the definition of crime that is incorporated in the statute. Articles 6, 7 and 8 make specific advances in international law and the definition of crime. The statute makes the recruitment and enlistment of children under the age of 15 a war crime. Certain sexual and gender offences are now included. The crimes of torture, enforced disappearance and forced pregnancy are now defined in the statute. Crucially, the statute now includes action by non-state actors as well as by officials of state.

We know that 120 countries have voted for the statute. I hope that the seven that voted against it will now sign up to what is an emerging consensus. It is important to note that the wealthier nations paid for 50 poorer nations to come to the discussions on the Rome statute. Let us hope that that kind of sharing of the world's resources continues.

The bill creates a permanent setting for an international criminal court. It is important to note the use of the word "permanent".

In certain circumstances, we can prosecute crime as defined in the Rome statute. That is not to be underestimated. Through the bill and mechanisms such as international treaties and extradition orders, our international law will be more comprehensive. We are signalling to others that we have dramatically increased our chances of prosecuting and convicting all those who commit crimes against humanity at whatever level they operate. Down the chain of command from the highest to the lowest, we will find and prosecute such people.

From the moment it is passed, the bill will catch every crime. That is why our Parliament has rightly been under pressure to complete quickly the stages of the bill's consideration. I thank the members of the Justice 2 Committee for their hard work.

Other important aspects of the Rome statute go beyond prosecuting crime. I will mention one. The establishment of a United Nations trust fund for victims is a crucial element of the bill. It was promoted in another place by the then Foreign Secretary Robin Cook. Those who are found guilty should pay reparations to victims. It is argued that those who abuse their power to torture or murder often abuse their power to make themselves rich.

The ICC will be a new court with new judges, new procedures and new rules. I like to think that we will not simply forget about our role in the ICC after today. We have to ensure that the development of law and the rules and procedures

of the ICC follow the lines that we expect and that the good practices of the Scottish legal system can influence some of the good practices of the ICC.

11:02

**Tavish Scott (Shetland) (LD):** I support the bill. I, too, thank the convener and members of the Justice 2 Committee, who, with the help of consultees and witnesses, conducted detailed investigations into the bill.

The bill is an important step forward in the international role of Scotland and of the United Kingdom. I believe that Scotland has played an important part by speedily ratifying the Rome statute—an international agreement to establish an international criminal court. I can do no better than quote Kofi Annan, who, after saying that the UN would do its part in realising the vision of an international criminal court, continued:

“We ask you ... to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights and that those who violate those rights will be punished.”

Those words stand to this day and hold for the process that all Parliaments in the world will, I hope, go through to ratify and implement the ICC.

The creation of the ICC is backed by the international community. It is a just means to an end, an end that the Parliament should be pleased to play a role in achieving. The Liberal Democrats firmly support the International Criminal Court (Scotland) Bill.

**Ms Margo MacDonald (Lothians) (SNP):** Will the member give way?

**The Deputy Presiding Officer:** The member has finished, I am afraid.

11:03

**Donald Gorrie (Central Scotland) (LD):** I am happy to support the bill fully, but I draw members' attention to what still seems to me to be a defect in our proceedings. The timetable for the bill worked much better than some past timetables have. That is good. However, all the consideration of the bill has been done by about six or eight people. They consider it in the committee. They lead the stage 1 debate. They conduct the entire proceedings of scrutinising amendments at stage 2. They also monopolise—I do not mean that in a harsh sense—the stage 3 debate.

I am sure that those people are good and that they master their subject. Those of us who have not been involved in the scrutiny of a bill are

somewhat apprehensive about taking part in debates on that bill. Each party group tends to follow the spokesperson's leadership on that subject. That means that important bills, such as the International Criminal Court (Scotland) Bill, are the fruit of the intelligence and application of six or eight people, rather than of all 129 members.

We should consider ways of broadening the debate. For example, there could be a seminar on the main issues that have emerged at stage 2 before we have the stage 3 debate so that others will understand what members are arguing about. Our deliberations would have more democratic sanction if the debate at stage 3 were wider. That is worth considering.

**The Deputy Presiding Officer:** Ms MacDonald, do you wish to speak? Your light is on.

11:05

**Ms Margo MacDonald (Lothians) (SNP):** I intervene at this point in the debate because, at the end of Tavish Scott's speech, I wanted to ask whether he considers that anything that we say about the bill has been affected, adversely or otherwise, by the events in the USA in the past 48 hours.

Donald Gorrie made the point that the whole chamber is involved in the bill. Although the bill is highly technical—it is about international law and international regulation—it is at the interface of humanity, politics, individual morality, international crime, legislation on that crime and orderly conduct of the pursuance of war criminals and criminals against humanity.

The events in the USA were of such magnitude that we should not only pass the bill, but pass comments or recommendations to the UK Government, which is the signatory to the Rome statute. The reason for the rush with the Scottish part of the legislation has been to enable the UK to become one of the first 60 countries to ratify the Rome statute. Frankly, I have never thought that that was desperately important. That is a personal point of view.

If the USA does not now sign up to the ICC, the court is greatly diminished, particularly in the wake of what has happened, whose repercussions for international law, commerce and the global economy we can only guess at—there are huge repercussions that we have not even considered yet.

The bill, of course, has the correct intention and will be supported by almost every member. The application of that intention may have been greatly compromised by what happened in the USA and by the USA's absolute determination until now not to sign up to the ICC.

**Phil Gallie (South of Scotland) (Con):** I say to Ms Macdonald that I seem to recall that the USA recently signed up to the ICC and that it did so before Tuesday's horrific events.

**Ms MacDonald:** On a point of information, one of the last acts of Clinton's presidency was to indicate that the USA would take part in the ICC. That had more to do with the internal politics of the USA than with the ICC. The incoming Bush Administration said that it would not sign up to the ICC and that it would not put American servicemen in various parts of the world at risk of almost automatic prosecution.

The USA's position is crucial to whether the ICC can be implemented soon, later or at all. For that reason, I would like every member to debate the much wider question of international criminal justice. We should pass the bill—it is the technical side of international criminal justice—but we have much more to consider and, perhaps, to contribute to the UK's deliberations on the matter.

11:09

**Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab):** Like most members, I imagine, I am pleased to give my whole-hearted support to the passing of the bill. I remember at stage 1 hearing in another capacity somewhat grudging remarks on the timetabling of the bill. The issue is important and properly demands the attention of the Parliament.

While the bill might be described as technical, it is tremendously important. It has been awaited since the aftermath of the second world war and finds its origins in the Nuremberg and Tokyo tribunals. The legislation outlines a democratic response by the democratic world to acts of genocide and associated acts of violence and attack on the world order.

Perhaps against the backdrop of recent tragic events we are seeing the emergence of a worldwide consensus on the establishment of a world justice system. It is regrettable that Ms MacDonald should maintain the line that it is simply a question of the UK rushing to sign up to the Rome statute as though we were caught up with issues of status or just so that we could be involved. There is, of course, a triggering arrangement for effective establishment of the court and I dissociate myself—as I trust many members do—from suggestions of a purposeless abruptness or eagerness on the part of the UK.

Although Christine Grahame adjusted her position during the debate, it is regrettable that she had seemed to suggest exclusivity on the part of the nationalists in relation to the efficient and effective working of the ICC regime. I trust that everyone in the chamber has a keen interest in the

establishment of an efficient and effective ICC regime. That is the clear will of the international community in relation to the Rome statute. It is an achievement of the democratic west. We should celebrate that achievement and not regret the fact that the chamber has shown almost whole-hearted support for the bill, which I commend to the chamber.

11:12

**The Deputy Minister for Justice (Iain Gray):** It is pleasing to note that, despite our disagreements on the most appropriate form of jurisdiction, there is nonetheless overwhelming support in all quarters of the Parliament for the concept and the reality of a permanent international criminal court.

When the target date of July 2002—the fourth anniversary of the promulgation of the statute—was first mooted for achievement of the 60 ratifications necessary to establish the ICC, cynics said that that was unrealistic. I am glad that, in this case, the cynics might be proved wrong and that we will have played our part in that today.

The debate began with Christine Grahame's appropriate and respectful reference to the acts of terror perpetrated earlier this week. Although it has been made clear that the bill does not address terrorism, it is right that the debate should end in a similar vein. The truth is that there is a link between our business today and the atrocities in New York and Washington. Brian Fitzpatrick pointed out that link. Yesterday, our Presiding Officer said:

"we seemed determined to create a more civilised global society in the 21st century."—[*Official Report*, 12 September 2001; c 2407.]

We are so determined. The internationalisation of the rule of law at the heart of the bill is a manifestation of that determination. Like Christine Grahame, I hope that the USA, which has signed the treaty, will also ratify it in due course.

Yesterday, our First Minister said:

"let us remember quietly and proudly the values that the perpetrators of yesterday's atrocities can never overcome."—[*Official Report*, 12 September 2001; c 2410-11.]

The rule of law—justice—was one of those values. The combination of many domestic jurisdictions in the structure of an international criminal court and the extension of the cover of responsibility under the law to most of the world and to the most extreme circumstances of war and tyranny are marks of progress that terror might delay but cannot halt. Our small contribution to that has been delayed by 18 hours; it should be delayed no longer. I ask members to support the bill.



## Scottish Qualifications Authority

**The Presiding Officer (Sir David Steel):** We are running ahead of ourselves, but we now come to the ministerial statement by Jack McConnell on the future of the Scottish Qualifications Authority and national qualifications. The minister will take questions at the end of the statement as usual, so there should be no interventions.

11:15

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** On 14 August, almost all Scotland's school exams candidates received accurate certificates of their examination results.

The fact that I am able to make that simple declaration today represents a great step forward. I know that members will join me in thanking the chairman of the Scottish Qualifications Authority, John Ward, the board, Bill Morton and all the staff at the SQA, and the teachers and staff throughout Scotland's schools, colleges and local authorities for all their hard work. The Education, Culture and Sport Committee and the Enterprise and Lifelong Learning Committee helped to build consensus on the way forward, which has been of immense value in turning the organisation around. Nicol Stephen and the ministerial review group provided the scrutiny and transparency needed month after month.

Personally, and on behalf of members, I would also like to thank the many civil servants in our own education department who helped deliver this year's success. I want to highlight the role of Colin MacLean. Not many people would have accepted without hesitation the role of national exam co-ordinator. He was brave and committed when his experience and abilities were needed. I am sure that we are all grateful that he said yes.

However, I know that members will agree that, in reality, this year's timely delivery of accurate certificates simply represents a return to an acceptable standard of performance. Scotland's students have a right to expect that the country's exams system will provide them with a certificate for their hard work. They were let down badly last year. I am determined that they should not be let down again. That is why we have quickly completed a review of the current status of the SQA. A report of that review is published today. In my statement, I will describe briefly the outcome of the 2001 exams round, before outlining my decisions for the future.

At this time last year, more than 16,000 individual candidates had been affected by late or inaccurate certificates. Approximately 40,000

appeals had been submitted. The SQA was in total disarray and some said that the system was so fundamentally flawed that it was beyond recovery.

Thanks to the hard work of many people, on 14 August almost all Scotland's candidates received accurate certificates of their results. That might represent a significant improvement on the standards achieved before 2000. Those candidates who did not receive their certificates had immediate access to assistance from their schools and colleges, and from SQA helplines. Even better, the SQA was already aware of and working to resolve many of the queries.

The first success came on 4 August, when the SQA provided the Universities and Colleges Admissions Service with details of the results of over 19,000 university and college applicants from Scotland, three days ahead of schedule.

On 10 August, electronic statements of results were delivered to all the schools and colleges that could use them. That gave staff an early opportunity to prepare for the return of their students for the new term. Those statements were confirmed by delivery of hard copies to all schools and colleges on 13 August. The preparations by staff meant that the candidates who had queries about their results—a small minority—were able to approach their centres and the dedicated helplines that the SQA had set up for advice.

The SQA is working hard to resolve any remaining queries and to process appeals from those candidates whose performance on the day did not live up to expectations. I am pleased to report that the number of appeals received so far has fallen by 31 per cent, which indicates an encouraging confidence in the results awarded.

With the 2001 exams round almost complete, it is time to look to the future. Thanks to the efforts of the Parliament's committees, much of the work of consulting stakeholders in the process has been done and there is already consensus on the issues that need to be examined. We must reform the SQA and improve the implementation of national qualifications.

The review of the initial implementation of new national qualifications indicated that changes are required to make assessments by teachers more effective and focused, and to reduce unnecessary duplication of effort. I am determined to ensure that unnecessary administrative burdens associated with assessment are reduced. The national qualifications task group is advancing that issue as a priority. A sub-group to review English and communication is under way, as are SQA reviews of the larger uptakes.

A consultation document on radical changes to assessment models within the new qualifications

will be published soon. The document will outline two models, although consultees will be free to propose any other suggestions. We will ensure that the implications of any changes are fully thought through before decisions are taken or changes implemented.

Scotland needs an effective and reliable awarding body that is independent of political interference and which delivers a rational and coherent awards system. Abolishing the SQA is not a credible option, nor is it an option to transfer the authority's functions to the Executive. It is important that the provider of Scotland's qualifications is seen to be independent of political pressures.

The priorities that led to the creation of a single national awarding body, the promotion of parity of esteem between vocational and academic qualifications and the creation of a coherent and integrated national qualifications framework remain key objectives for us all. It would therefore not be appropriate to break up the SQA.

Two main options were compared in detail. Although the transfer of the organisation to agency status would provide more direct lines of accountability and responsibility to ministers in respect of the SQA's functions, that would bring problems of its own. Neither of the Parliament's committee inquiries into the SQA recommended that the organisation's governance model be altered radically. Indeed, the Enterprise and Lifelong Learning Committee specifically rejected agency status.

The keys to successful delivery of the SQA's functions will be effective management and improved communications. The pressures and concerns experienced by all those involved even in this year's broadly successful process make it clear that a great deal remains to be done. That work is best done against a background of stability. The inevitable disruption associated with any radical change of status would be an unacceptable distraction, which could put delivery of next year's exams at risk. I do not believe that such a risk is justified when confidence in Scottish education as a whole is at stake.

Therefore, I have decided that the SQA will be retained as an Executive non-departmental public body, but only on the basis that we must have reform of the board, effective stakeholder involvement and measures to secure permanent improvements to management and organisation.

I will improve the monitoring of the SQA and put in place arrangements to improve its accountability to ministers and stakeholders. All that will require legislation, and my ministerial colleagues have agreed that I should produce detailed plans as soon as possible.

In line with the Enterprise and Lifelong Learning Committee's recommendation, the SQA board will be reduced to between seven and nine members. Members will be appointed by ministers and will be provided with appropriate induction and training. As recommended by the committee, an advisory body will be created, with representatives of all the stakeholders in Scottish education. That body will provide opinion and advice on qualifications and education matters, which will ensure that the SQA board focuses on governance and management. It will also allow key stakeholders an opportunity to give informed advice and comment to the SQA and ministers without the constraints that membership of the board and, therefore, shared statutory responsibility for its decisions, must impose.

The 2001 exams round has been successful, but there must be no complacency about the future. I will continue to monitor carefully the SQA's performance, and the Executive will work closely with the SQA to support it in improving its own effectiveness and continued successful delivery for 2002. The SQA's management statement and financial memorandum will be redrafted, making clear the relative roles and responsibilities of the SQA and the Executive, while setting clear priorities and objectives for the SQA. I share the Enterprise and Lifelong Learning Committee's concerns about the need for accurate management information, therefore I will also require a rigorous annual planning process, setting out the SQA's plans for delivering the exam round and other qualifications priorities each year, with agreed monitoring arrangements against those plans.

I have emphasised the importance of effective management. The process of appointing a new chief executive for the SQA is already under way, and we have begun the recruitment process for a chair and a number of other board members, because many of the current board are due to relinquish their posts in December. Following today's announcements, I will quickly review the appointments that are required and take action to secure stability and the new organisation that we want to be in place.

The successful delivery of results to Scotland's young people this summer showed that the system can, and will, work when it is managed effectively. However, the system is far from perfect and a great deal remains to be done to improve its effectiveness and to reduce the burdens on schools, candidates and the SQA. The package of measures that I have outlined today will provide the SQA, and the system as a whole, with the best possible opportunity to get back on track for the long term and will continue to restore confidence in the system. Scotland's students deserve nothing less than the best qualifications system

that we can possibly provide, and I am convinced that the measures will help deliver that.

One year ago, the low point in the morale and reputation of our once-proud Scottish education system was reached. In August, we began the renewal that was required, but that was only a beginning. Simplifying the system and permanently improving the management are now our immediate goals. By tackling them, together, we can make our education system the envy of the world again.

**Michael Russell (South of Scotland) (SNP):** I welcome the minister's statement and join him in paying tribute to all those who have been involved with the exam results this year, in particular the SQA chair, John Ward, Bill Morton, the SQA board, all the SQA staff, the teachers and staff in Scotland's schools, colleges and local authorities, and the Minister for Education, Europe and External Affairs and his team, who have worked very hard indeed. What I have to say in my question is not a criticism of any or all of those people.

I also pay tribute to Colin MacLean. I did not tell the minister too early on that Colin MacLean and I were at university together, in case it prejudiced the minister against him. The minister's tribute to Colin MacLean, however, highlights the problem with his statement. I do not know whether the minister will agree, but I think it is true to say that, to all intents and purposes, the SQA has been operating as an agency over the past year, and has needed to operate as an agency to fulfil its functions. It is obvious that the SQA will need to continue to operate with the type of support and direction that that implies throughout the next period of years. That is absolutely clear from page 10 of the minister's statement, which indicates an arrangement with a non-departmental public body that is far from ordinary.

I have three clear questions for the minister. First, if the close relationship has started to put things back on track, surely the lesson is that that close relationship will be necessary over a period of years to restore the necessary confidence in the Scottish exam system. The views that the committees took last year, sound as they were, have been overtaken by events, because it is the SQA's operating under agency status that has made the difference over the past year.

Secondly, if the aim of us all, as it has to be, is to restore normal service, surely we should have wide consultation on the status of the SQA, rather than an *ex cathedra* pronouncement. The pronouncement closes down debate on a matter that requires more discussion.

Thirdly, I accept that all reform is difficult and takes time, but surely it would be possible over a

period of years to design a system that could make the SQA again the gold standard of Scottish education while paying attention to the clear difficulties of serving two different client groups, schools and colleges. The minister's statement in no way recognises the demands of those two client groups.

Will the minister confirm, first, that his statement means that the SQA's agency status is being changed to something else and that it does not mark a reversion to the status quo? Secondly, instead of closing down the options, will the minister confirm that we will have a consultation period to consider the options? Thirdly, instead of assuming that the needs of the different client groups are similar, will the minister ensure that the needs of those groups are addressed? Everybody in Scottish colleges and schools will tell him that the core of the problem—bringing together two organisations that never gelled in their ethos or work—still remains. That matter was at the heart of the Education, Culture and Sport Committee's report.

**Mr McConnell:** I thank Mike Russell for his thanks and congratulations, which are much appreciated. I knew that Colin MacLean and Mike Russell had been at university together. I am always keen to embrace consensus in the chamber and to work closely with the Opposition and colleagues. I can assure Mike Russell that at no time did I see that as a difficulty for anybody.

I am happy to answer Mike Russell's questions directly, but also wish to make a general point. A number of factors made this year's exams round a success. The most consistent factor in the months between last autumn and this summer was that every decision was taken with the objective of delivering the certificates on 14 August accurately and on time. That meant that, at times, there were calls from Michael Russell and others to change the system. We rejected those calls, because to change the system during the year rather than ensuring that it was working could have damaged the production of certificates. Stability is as much a consideration as anything else. Quite apart from the principles involved, the organisational upheaval that would be required were the SQA to move to agency status makes that option a non-starter.

We need to keep our eye on the longer term. Michael Russell talked about restoring normal service. In my view, normal service in the Scottish examination system should be an independent awarding and certification body. We should keep that objective to the forefront of our minds, instead of taking a short-term decision based on the current situation.

There will continue to be a close relationship between the SQA and the education department,

because that relationship has been of benefit over recent months. However, it needs to move on to a new level. The SQA, particularly the board of the SQA, needs to carry out to the best of its ability the responsibilities that it has been given. Consultation will take place on the proposals that I have set out, because this Parliament demands that in its procedures for scrutinising draft legislation. However, if today I did not make clear to everyone involved—to the staff of the SQA, to this Parliament and to everyone—what I see as the best way forward, I would be failing to live up to my responsibilities. I hope that Michael Russell will concede that I am averse to doing that.

The member pointed out that the SQA has to serve two different client groups. I believe that we have a body that can deliver exam certification and deal with assessment issues for both schools and colleges in Scotland. Our job is to ensure that it works better than it does at the moment.

**The Presiding Officer:** A large number of members have indicated that they want to ask questions, so I appeal for brevity.

**Murdo Fraser (Mid Scotland and Fife) (Con):** The Conservatives, too, welcome the minister's statement—I thank him for making an advance copy available to us. We welcome the fact that the 2001 exams round was a success and join others in paying tribute to all those involved in making that happen, including the civil servants. However, we should not forget that it was a success benchmarked against the disaster that happened the previous year, under the minister's predecessor.

The minister says that monitoring of the SQA and accountability are to be improved. That is very welcome, as there are still serious administrative difficulties within the SQA. How does the minister see improved accountability and monitoring working in the future if, as he said in his statement, the SQA must be independent of political pressures?

**Mr McConnell:** I welcome Murdo Fraser to the front bench and to a seat that may appeal to him. I thank him for his comments. I can think of no more able deputy for Brian Monteith.

I take the point that the member makes. It is absolutely critical that we be clear about the distinction between the role of ministers and the role of those who deliver examination awards and certificates. As we have proved over the past nine months, it is possible for us to have a close relationship with the SQA that involves our assisting that body, while not overriding its decision-making processes. We were able to deliver the certificates on 14 August without doing that. As, in the months and years ahead, the SQA gradually accepts more direct responsibility and

the department adopts a less prominent role, the sort of relationship that I have described can be maintained. The SQA will be independent of political control in its duties, but political responsibility will be vested in the Minister for Education, Europe and External Affairs and their deputy.

**George Lyon (Argyll and Bute) (LD):** I offer my thanks to all the SQA staff and civil servants who worked so hard to make the 2001 diet a success. As the father of two girls who were involved in the process, I can say that we were much relieved when the results came through.

The minister touched on an issue that is raised with me constantly in schools by teachers. They believe that the assessment process through the year acts as a barrier to delivering a successful exam diet. The minister said in his statement that there would be radical changes to that process. What will be the timing of those changes? Will they be introduced for next year's exam diet, or will there be some simplification for this year's exam diet, on which we have already embarked?

**Mr McConnell:** I am very pleased that George Lyon's daughters managed to receive their certificates. I wish that I had been in that position at 9 o'clock on the Tuesday morning concerned, but that is another story.

The required changes fall into three categories. First, there are changes that can be implemented immediately. Changes in both administration and process are currently being made.

Secondly, there are the reviews that will take place for individual subjects. The reviews for some of the larger subjects, such as English, maths and the science subjects, have begun and we want to ensure that all those reviews are completed by Christmas. If we can take any action in the second half of the academic year, we will do so, but the reviews will at least be complete long before the next academic year begins.

Thirdly, there is the longer-term consultation on the more radical options that need to be considered. There is serious concern throughout the system. Some people believe that a review of the current system will be enough. Many others believe that, at the end of the day, more radical options may need to be taken. A full 12-week consultation on that issue will begin before the end of this month. I hope that next Thursday afternoon the Parliament will have a chance to debate it.

**Karen Gillon (Clydesdale) (Lab):** I welcome the minister's statement and associate myself with the congratulations that have been offered to those who were involved in the successful delivery of the 2001 diet. In particular, I pay tribute to Anton Colella, who brought the perspective of the school to the heart of the SQA. That perspective had

been very much lacking and its introduction to the SQA was long overdue.

It is vital that we build on the success of the 2001 diet. Success with the SQA should be a given, rather than an exception. The measures that the minister has outlined will go some way towards ensuring that. Our students need that kind of guarantee.

My first question follows on from George Lyon's, and concerns consultation. Given that much of what the minister has suggested will have an impact on the 2002 diet, how does he envisage the consultation taking place? What will be the timetable for that consultation and for what I assume will be a subsequent bill? Obviously, that will have an impact on the timetable of the Education, Culture and Sport Committee.

My second question concerns the make-up of the board. How does the minister see the board shaping up, to ensure that all the stakeholders are involved much more effectively and that they are able to take on responsibilities and respond to the challenges of managing the SQA?

**Mr McConnell:** I repeat my thanks to the Education, Culture and Sport Committee, under the convenership of both Karen Gillon and her predecessor Mary Mulligan, for its contribution to the consensus that we have managed to develop.

The consultation that took place as part of the committees' deliberations last autumn and much of the discussion that has taken place since then will contribute to the decision-making process that this Parliament will undertake before next summer. I am keen to discuss with Karen Gillon and Alex Neil the possibility of reducing the Executive's normal 12-week consultation period, so that we can move quickly to debate a full bill here in the chamber and elsewhere. We can build consensus around the proposals that I have outlined, and I hope that that happens. However, I also want to ensure that people have an opportunity to make appropriate comments on the proposals.

I remind the chamber that the current chair of the SQA board will relinquish his post at the end of this year. Some board members are due to relinquish their positions in December. We want to get the new board and the new arrangements up and running as quickly as possible. That will help to give people confidence in the system as we move towards the exams next spring.

In my view, all appointments to the new board will be appointments of people to a body that will manage the SQA. Those appointments will no longer be based on individual stakeholder interests and divided loyalties. The persons appointed will be responsible for the SQA and for the proper and efficient delivery of the SQA's work.

The advisory body will cover the stakeholders' interests and should have a wide membership and a wide remit. We want to consult in some depth before we produce final proposals on how to proceed with the advisory body.

**Alex Neil (Central Scotland) (SNP):** As the convener of the Enterprise and Lifelong Learning Committee, I welcome those of the minister's recommendations that are based on that committee's report. As a general rule, I recommend to the Executive that it should listen to the Enterprise and Lifelong Learning Committee as much as possible. I particularly welcome the creation of the new board and the advisory body.

I have a number of questions. First, the committee recommended that consideration should be given to the SQA's management structure below board level. Will the minister ask the new board and the existing management to reconsider that issue and to ensure that the byzantine structure that was in place is made much more efficient and effective?

Secondly, I ask the minister to examine the remuneration and terms and conditions that are being advertised for the position of chief executive. The SQA is now so important that, to attract the right person, the status and remuneration package for the chief executive should be brought into line with those for the chief executive of Scottish Enterprise or similar quangos. I worry that the right calibre of candidate might not be attracted by the advertised remuneration.

My final two points relate to the proposed legislation. Last year, the statutory duties and responsibilities of the minister and his powers over the quango were a problem—he might recall that there was some controversy over those matters. I suggest that we build into the bill legal powers for the minister, so that he can give specific directions to the SQA if and when required. I also suggest that he should build into the bill a statutory requirement for board members, when acting as such, to give primacy to the interests and priorities of the SQA and not to any other interests that they might have. That would bring matters into line with the committee's recommendations and with normal practice in the private sector.

**Mr McConnell:** I will consider Alex Neil's final point when we draft the bill. Let me be clear: we intend to take additional ministerial powers in the legislation, but they will not be wide-ranging ministerial powers that would allow ministers to interfere in some of the more delicate aspects of the examination system, because that would not be right and proper. We intend to take powers over matters such as the issues that were raised about the number of board meetings and the way in which the management of the board is conducted. Ministers should be able to intervene

in such matters, if their intervention is required or agreed to.

The interim chief executive of the SQA and the SQA board chair are reviewing the body's management structure and are consulting my department on their review. A review committee has been established, on which a representative of my department sits. We are fully involved in the review process and will ensure that a proper new structure is put in place, although we might have to wait for the appointment of the new chief executive, to give that person a role in signing off the final structure.

I have made it clear to John Ward that I will consider positively any proposals that he might make to ensure that we get the right person in post. As Alex Neil is aware, if additional finance is required, I will not hesitate to make it available.

**Dennis Canavan (Falkirk West):** What further consideration has been given to the suggestion that, in cases where both the candidate and the school are dissatisfied with the outcome of an appeal, marked examination scripts should be returned to the school for checking, so that justice is done, and seen to be done?

**Mr McConnell:** Mr Canavan is aware of my personal sympathy for the proposal that marked examination scripts should be made available. The SQA, which has the main role in considering that matter, has been conducting a consultation exercise and is due to consider the outcome of that consultation in the near future. I know that there are strong views inside the education service against making such a facility available. However, I still take the view that in certain circumstances, returning marked scripts might help to give people confidence in the examination results. I do not want that option, or proposal, to be taken off the agenda in the immediate future. As I said, the SQA will consider the issue and I continue to hold the view that it should be considering it positively.

**Dr Sylvia Jackson (Stirling) (Lab):** If the outcome of the consultation process is that it will be too difficult for scripts to be returned to schools, will the minister at least support the idea of using the information from the marking process for professional development purposes and to help teachers?

**Mr McConnell:** Sylvia Jackson made an excellent point. One of the lessons that must be learned from the way in which the marking process is administered and information from it utilised is that not enough teachers are learning from the marking that takes place each year. Even in the short time in which I have been closely involved with the exam process, it has become clear to me that there is a problem in that schools do not understand why their candidates fail to gain

examination awards. We have already improved feedback to schools and will continue to do so as part of the revised marking arrangements.

**Miss Annabel Goldie (West of Scotland) (Con):** I, too, welcome the extent to which events have moved on from this time last year. However, I remain concerned about one aspect of the SQA. I echo the minister's view that there should be stability for the SQA—that is extremely important for the morale of staff—but stability can induce atrophy. I am aware that one of the most helpful, if embarrassing, indicators of the extent of last year's deficiencies was the independent report that was procured by the Executive. Would it be appropriate for the current regime to consider the appointment of an independent auditor to examine existing management practices and procedures?

All is not well at the SQA. I am engaged in the case of a young constituent who is unable to secure his place at the University of Glasgow because, allegedly, his results were never sent from the SQA to that university. Accidents can happen in any organisation, but if the public's confidence is to be maintained, it is important that some evidence is made available to show that the current regime is as good as it can be, pending what might happen in future. The involvement of an external assessment procedure to help the SQA could be instrumental in attaining that objective.

**Mr McConnell:** In addition to the report that the Executive commissioned—which, I agree, was central to directing some of the improvements that were required—the new chair, John Ward, whom I appointed, brought in an initiative to secure improved independent internal audit arrangements. Yesterday, during my discussion with him, he confirmed that those arrangements will continue as long as he is in post and through the transitional phase. We expect those arrangements to continue beyond that. A proper, robust internal audit arrangement within the SQA for both procedures and finances is critical. I know that John Ward is personally committed to that arrangement.

**Cathy Peattie (Falkirk East) (Lab):** I thank the minister for his statement on the SQA and I congratulate all those who are involved in education—particularly teachers—on the delivery of the 2001 diet.

I want to flag up the changes that led up to last year's tragedy, because the two organisations involved did not work together. That happened because there was a failure to consider the ethos of each organisation. It was clear to the Education, Culture and Sport Committee that the trade unions and the people who work in the SQA were not listened to, although they were clear—as were teachers—that the organisations were not working

well together. Communication in the delivery of the diet was a problem, as was communication within the organisation. Will the minister ensure that all those who work within the SQA are involved in the consultations about the changes within the organisation?

What is the time scale for the review of national qualifications? The Education, Culture and Sport Committee heard a fair amount about young people in colleges feeling that they had been left out and there is a fair amount of difference between how schools and colleges are treated. I am interested in hearing the minister's response to those questions.

**Mr McConnell:** There have been significant improvements in the arrangements for colleges, even in recent weeks. Over the past 10 months, I have been conscious of the fact that the focus was predominantly on schools and that the colleges were feeling a bit left behind. I know that the SQA is in the process of establishing a new further education advisory forum, which will be chaired by a college principal and will meet for the first time in October. The SQA has also followed up the successful secondment of Anton Colella—to which Karen Gillon referred earlier—with the secondment of John Young from the Scottish further education unit, to provide internal expertise on the further education perspective.

A number of other bodies and arrangements are being put in place that will secure improvements to the delivery of results not only to colleges, but to other bodies. Sometimes, we forget that the SQA has a working relationship not only with schools and colleges, but with other client groups such as employers, training providers and higher education institutions. We need to ensure that all those different stakeholders have the necessary input.

The SQA's current board members and I are committed to ensuring that those who have a stake in the organisation, including those who work for it, are listened to. The ministerial review group that we set up last year had a key role in ensuring that those views were taken on board and that the new advisory body will do the same.

**Tavish Scott (Shetland) (LD):** Will the minister give an undertaking that the remit of the proposed advisory body that he announced today will include an examination of higher still? Many of the representations that I received from teachers in my constituency related to the ability of higher still to deliver. Will he also undertake to examine any outstanding cases in which individuals are still seeking resolution from the SQA for last year's results?

**Mr McConnell:** I have some reservations about referring to individual cases from last year, although individual cases that require attention

from the SQA and those who have responsibility for them will always come to light. We made it clear that some final decisions on people's awards would be made during the appeals review and that that was an appropriate conclusion to a difficult time for everybody. Clearly, there will always be individuals who are caught up in an administrative process that can leave them with longer-term difficulties. If administrative matters can be resolved to deal with some longer-term problems—in particular, for some college students—I am sure that the SQA will try to deal with that and my department will give help, if that is appropriate.

On the review of higher still, a national qualifications task force is reviewing the national qualifications, including higher still. It is my view that the implementation of all those qualifications needs to be reviewed as a matter of some urgency. The new advisory bodies are unlikely to be in place before the middle of next year at the earliest, so it is more appropriate for the task force to take forward the agenda as a matter of urgency in this academic session. However, in the longer term, I hope that the advisory body will keep a general watching eye on a range of assessment matters, not only the SQA's performance on exam certification.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** I welcome the minister's statement. Will he give us further information about the impact of this year's appeals? Last year, the problem with appeals was one of the key concerns of many members. What is the present position? Can we feel confident that that position will continue for the foreseeable future?

**Mr McConnell:** We do not yet have figures for the standard grade appeals, which were due only recently. However, the higher appeals—including the urgent appeals—show a much better picture than the previous year. In a normal year, the number of appeals is about 20,000. We believe that the figure is in the low 20,000s this year. That is a significant reduction on the 40,000 in the year 2000. That shows that there is a renewal of confidence in the system and in the results. The certificates were delivered on time, but—equally, if not more, important—people also believe the results on their certificates.

It might be helpful for the member to know some of the up-to-date figures. This time last year, there were more than 4,000 individual appeals for higher level mathematics; this year, the figure was 1,755. For physics, there were more than 2,200 appeals last year; this year, the figure is down to 670. The fact that young students in Scotland believe the results on their certificates is the most important indicator that we have turned a corner that we needed to turn.

**Mr Murray Tosh (South of Scotland) (Con):**

The minister looks relaxed and confident occupying the First Minister's seat. Perhaps he aspires to fill it on a permanent basis.

I want to pursue Dennis Canavan's point about the accountability of the SQA to the presenting centres—the schools. I understand the minister's response that the SQA is reluctant to return marked scripts to schools because that might achieve nothing. However, if by some kind of protocol the return of marked scripts to schools facilitated dialogue between the presenting centres and the appeals panels, the detailed scrutiny of the submitted appeals material might provide a substantive safety net that would improve schools' and pupils' confidence in the appeals process. I am sure that the minister has had professional experience of how there can be discordant outcomes not only from examinations but, on occasion, from the appeals process.

**Mr McConnell:** I am sure that the SQA will examine the range of possibilities when it examines the outcome of its consultation on that issue. It is right and proper that it should do so. I made my position clear in answer to Mr Canavan's question. I do not underestimate the difficulties that the return of scripts might involve for marker recruitment and other issues, but I hope that it is being considered positively. However, I will say one thing: last year, access to marked scripts was very important because people had a serious crisis of confidence in the results that they had received. Although the pressure might now be off, the issue remains and must be addressed.

There are many other more important issues. Sylvia Jackson made an important point on how teachers can learn from the feedback that they receive on their marking of candidates' examination scripts. In the past four weeks, the real grief that I have come across about this year's results is from young people who believed that they had attained a certain standard but discovered, when they sat the final examination, that the course that they had been pursuing in their school had perhaps not been as complete as it should have been. A small minority of teachers need to learn from the results year on year. If we can get that right, we will tackle the situation in which people have high expectations that are squashed when they receive their certificate.

**Bristow Muldoon (Livingston) (Lab):** Further to Mr McAveety's question on the appeals system, my constituents have identified problems with the urgent appeals system, which produces results that are too late because they are beyond the deadline that universities have set for conditional acceptances. Does the minister expect that, in future years, the SQA will work with Scottish universities to match up those dates, so that

young people who achieve the required levels are able to take up their university courses?

**Mr McConnell:** There are a number of issues about entrance to university. Long before I was a member of the Scottish Parliament, when I was at Stirling University, I was involved in the problem of the difference in starting dates for the new academic terms. A range of issues is involved, which includes the entrance procedures of Glasgow University and some of our more traditional institutions, which differ slightly from those of the majority of universities. I hope that when this year's examination round is finally complete, Wendy Alexander and I will be able to discuss those important issues in some detail.

I am certain that further improvements can be made and I hope that the problems can be resolved between the SQA and the universities without direct ministerial involvement. I strongly urge any individual candidates who are having problems to follow the age-old procedures that have tended to resolve such matters. They should contact the university to try to get special cases arranged for them.

**Donald Gorrie (Central Scotland) (LD):** As part of his reforms of the SQA, does the minister plan to ensure that a truly independent person or body will exist whose task it will be to ensure that, year by year, a consistent standard is achieved so that an exam pass indicates the same sort of ability and application year by year? There might be pressures from politicians, teachers or the SQA to have more people passing exams. That could lead to pressures to reduce standards. I hope that the minister will ensure that there is a proper system to resist such pressures.

**Mr McConnell:** Donald Gorrie has made that point on a number of occasions in this chamber and, I am sure, elsewhere. It is a good point. When we are trying to drive up standards and ensure that more people achieve qualifications of a higher level, it is difficult to avoid the accusation that examinations might be becoming easier so that more people pass them. If politicians were interfering with examinations in that sort of way, or if those who are responsible for examinations were inadvertently creating those conditions, that would indeed be a farce—one that I would obviously want to avoid.

Donald Gorrie makes a specific suggestion for a body that might look into this issue, even from time to time. It is possible that that will be one of the functions of the new advisory body. In our consultations, I will certainly want to consider such a function. Associated with the new body, that particular function—being performed perhaps every three years, or perhaps relating to specific subjects—could mean that independent consideration was available to reassure everybody



throughout Scotland that politicians were not changing results to get good headlines.

**Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab):** I join other members—most of those who have spoken, I think—in thanking the minister and his team, the staff at the SQA, and the teachers and examiners. I think that most of the thanks were genuine. I did not think that the minister's statement was an ex-cathedra pronouncement, and I suspect that it would take a better man than Mike Russell to raise the minister to the episcopacy. A lot of work that was done to prepare for what it was thought would happen with this diet has been rendered redundant. Again, I thank the minister for that.

Will the minister look seriously at Dennis Canavan's point on the return of scripts and materials? Will he make that a priority in bolstering the return of confidence in the examination system? I am pleased that such a return of confidence was evidenced by what the minister said about maths appeals. Either now or later, will the minister give details on the measures of externality that will be brought into the structures of the SQA and into the oversight of the SQA so that, again, returning confidence might be bolstered?

I represent a constituency that has one of the highest graduate populations in Scotland. I was therefore especially delighted with what happened with this diet—as I am sure my predecessor would have been.

**Mr McConnell:** I hope that the advisory body—and perhaps some of the other measures that we have put in place in the system—will provide the sort of external scrutiny that we require. We do not see any need to continue with the ministerial review group, but the lessons learned by that group were clear—external scrutiny and transparency played a key role.

I have already made my position clear on returning marked scripts and the difficulties and the benefits that that might bring. I hope that the SQA will make a decision on that in the near future.

**Irene McGugan (North-East Scotland) (SNP):** The Education, Culture and Sport Committee report drew attention to the difficulties that were caused by split sites, with workers being located in up to five different places. In light of the minister's decision on the status of the SQA, what investment is being committed to overcoming those and related problems? Will that support be sustained and guaranteed?

**Mr McConnell:** One of the more amusing incidents of the summer involved the SQA computer back in July when, after I had wandered round the country for six months saying, "You

never know what might happen—the computer might blow up," the computer, of course, blew up. We were faced with what could have been a difficulty, but I am thankful that the computer had not yet been installed so we did not lose any information. One of the reasons for ensuring that there were proper back-up facilities was to deal with the problem of split sites and to ensure that the electronic transfer of data between those sites was secure.

The issue of split sites remains and I do not think that that situation can be efficient for the SQA. I will ensure that the board considers that matter urgently. It must consider its location or locations, and it must choose the right location or locations for the longer term. We will then clearly need to discuss with the board the financial and managerial implications of that. The issue remains; it will not go away.

## Parliamentary Bureau Motion

**The Presiding Officer (Sir David Steel):** The next item of business is Parliamentary Bureau motion S1M-2202, on the meeting of Parliament next May in Aberdeen.

*Motion moved,*

That the Parliament agrees to meet in the King's College Conference Centre in Aberdeen in May 2002 on dates to be confirmed in the Business Bulletin.—[*Euan Robson.*]

12:06

*Meeting suspended until 14:30.*

14:30

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Scottish Enterprise Budget (Social Justice)

**1. Johann Lamont (Glasgow Pollok) (Lab):** To ask the Scottish Executive what proportion of Scottish Enterprise's current budget is spent specifically on social justice issues and what steps it is taking to ensure that Scottish Enterprise is involved in supporting the Executive's commitments in this area. (S10-3766)

**The Minister for Enterprise and Lifelong Learning (Ms Wendy Alexander):** Scottish Enterprise estimates that it will spend £76.5 million during the current financial year on matters relating to social justice. Our strategy document, "A Smart, Successful Scotland", made it clear to Scottish Enterprise and Highlands and Islands Enterprise that the Executive expects its cross-cutting initiatives, particularly social justice, to be at the centre of their work.

**Johann Lamont:** I am sure that the minister will agree that it is a central commitment of the Executive and the Parliament that equality and social justice are the responsibility of all departments and agencies, not just those that fall under the remit of social justice.

Does the minister agree that all agencies and bodies funded by the Scottish Executive should play their part in using the levers of influence, power and money at their disposal to support that commitment? Recognising the potentially powerful role that Scottish Enterprise can play in a constituency such as mine, will the minister give a commitment to monitor and review progress on this within Scottish Enterprise and to consider ways in which good practice can be developed across Scotland?

**Ms Alexander:** I am happy to give a commitment that we will monitor and review good practice. The member might want to note that in "A Smart, Successful Scotland" we said that we were going to consult on the performance measures for the Scottish Enterprise network. The performance measures are currently out to consultation and some of them are drawn directly from the Executive's social justice strategy.

**Mr Kenneth Gibson (Glasgow) (SNP):** Does the minister recognise that the social justice agenda would be more deliverable if the Minister for Finance and Local Government had not

recently cut—sorry, I meant to say realigned—£35 million from the social justice budget?

**Ms Alexander:** The general point that is being made is that social justice is the responsibility of us all. I am sure that Mr Gibson would not demur from the fact that meeting some of our objectives in health care, for example, makes a strong commitment to the social justice agenda.

**Phil Gallie (South of Scotland) (Con):** Will the minister confirm that Scottish Enterprise was established to promote the economic development of Scotland? Does she agree that the best way to improve Scotland's social welfare would be to ensure a healthy business climate? On that basis, does the minister not agree that Scottish Enterprise would do better to concentrate on its core product?

**Ms Alexander:** The member will understand that I prefer to trace the antecedents of Scottish Enterprise to the Scottish Development Agency, which was created by a Labour Government in the 1970s. Mr Gallie points to perhaps the fundamental philosophical difference between Conservative and Labour members: we believe that social justice and economic efficiency are two sides of the same coin and not irrevocably split in the way that the Conservative party believes.

### European Union (Education and Training)

**2. Scott Barrie (Dunfermline West) (Lab):** To ask the Scottish Executive what plans it has to encourage young people to take up opportunities available through the European Union's ERASMUS, LEONARDO and European voluntary service education and training programmes. (S10-3742)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** The Scottish Executive currently offers regular opportunities for participation in these EU programmes to schools, students and youth groups. Regular information days and conferences are held, roadshows are planned on youth for Europe, and Eurodesk provides information and advice electronically and directly on request.

**Scott Barrie:** The minister may be aware that considerably fewer young people go from Scotland to other European countries under the aforementioned schemes than vice versa—with the exception of the Republic of Ireland. Bearing that in mind, does he accept that one factor could be our poor record in foreign language teaching? What concrete proposals does he have to encourage more young people to participate in such exchanges?

**Mr McConnell:** I think that the problem may be foreign language learning, rather than foreign language teaching, but I agree with the general

thesis. There is a problem, not just in Scotland, but throughout the UK, with the number of young people taking up those particular opportunities. I would like to think that in Scotland we could take a particular initiative that would increase participation. I would be happy to consider that.

### Oil and Gas Industry

**3. Elaine Thomson (Aberdeen North) (Lab):** To ask the Scottish Executive what plans it has to support the oil and gas industry to ensure that it continues to play an integral part in the economy. (S10-3744)

**The Deputy Minister for Enterprise and Lifelong Learning and Gaelic (Mr Alasdair Morrison):** As vice-chairman of pilot, the joint oil industry and Government working group, I take a close interest in the work to sustain a strong and vibrant UK oil and gas industry. I expect that industry to continue to have long-term importance for the Scottish and UK economies.

**Elaine Thomson:** The minister will be aware of the success of the "Offshore Europe" conference in Aberdeen last week. It is the second-biggest oil and gas show in the world and attracted 25,000 visitors from 78 countries. However, a major concern was raised about the impact of skills shortages onshore and offshore. If not addressed, they may impact on future investment decisions in the UK sector over the coming 30 years, when another generation of young Scots could be finding employment in the industry. How does the Scottish Executive intend to ensure that those skills shortages are tackled?

**Mr Morrison:** Elaine Thomson is right that the exhibition in Aberdeen was a great success. I will correct her on one detail though; 25,000 people attended from 89 countries. The spirit at that exhibition was successful and upbeat.

We recognise that there are skills shortages in the industry, which threaten it to some extent. One of the achievements of the pilot working group has been not just forecasting requirements, but ensuring that we meet the needs of the oil and gas sector. The Executive, with UK colleagues, is playing a full role in that.

**Brian Adam (North-East Scotland) (SNP):** Further to Elaine Thomson's question on skills shortages, does the minister agree that part of the problem is that oil companies have been too willing to downsize and outsource and in various other ways create a climate of uncertainty and a lack of confidence in the future? Will the minister take every step to encourage the industry to maintain staff levels throughout any future fluctuations?

**Mr Morrison:** Given the tone of Mr Adam's question, it is obvious that he has not recently

engaged with people in the oil industry. He certainly could not have engaged with them at the conference last week. We appreciate that there is a skills shortage and we are addressing it.

**Mr David Davidson (North-East Scotland) (Con):** While this Parliament has no locus to levy corporation or windfall taxes on the industry, it can influence the competitiveness of the support businesses to the extraction sector, especially the high-tech and expanding companies in the north-east. Will the Executive give an assurance that there will be a return to uniform business rates, and an assurance that the use of the tartan tax, which would drive those small companies out of Scotland, will be avoided?

**Mr Morrison:** It is worth documenting that we have no plans to use the tartan tax and that we are engaged with the oil industry at both Executive and UK levels.

#### School Meals (Nutritional Standards)

**4. Patricia Ferguson (Glasgow Maryhill) (Lab):** To ask the Scottish Executive what progress is being made in encouraging local authorities to adopt the guidelines under the Scottish diet action plan on nutritional standards in school meals. (S10-3768)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** Responsibility for the implementation of the Scottish diet action plan guidelines lies with local authorities. However, implementation has not been uniform and consideration is currently being given to the most appropriate way to ensure that those standards are adopted throughout Scotland.

**Patricia Ferguson:** In view of the fact that implementation has not been the same across the board, will the minister consider making the guidelines mandatory?

**Mr McConnell:** Creating mandatory guidelines would not be without its difficulties, but we must consider that option. Standards are applicable across the board for schools in England, and minimum standards may be appropriate in Scotland. We wish to discuss the issue further, and to ensure improved uptake and better quality. I will be discussing that with my colleagues and others in the months to come.

**Tommy Sheridan (Glasgow) (SSP):** What nutritional health qualifications are the suppliers of school meals to children obliged to hold?

**Mr McConnell:** That is a matter for local authorities, but may be precisely the sort of issue that requires discussion when addressing national minimum standards.

**Dorothy-Grace Elder (Glasgow) (SNP):** Does the minister share my concern about the basic

hypocrisy of trying to improve school meals when schools in some of the poorest areas of Glasgow are installing giant sweet-vending machines, containing tooth-rotting material, because under Labour Glasgow cannot afford to run her schools without getting children's sweetie money?

**Mr McConnell:** I hesitate to dignify the question, but it requires a full response. It is easy to see some of those issues in isolation. The result of schools managing to attract more young people to stay in the school grounds during the school day is that fewer young people are involved in motor vehicle accidents in the local community, there is less litter in the local community and schools have fewer problems. In addition to healthy eating, a number of other school management issues must be taken into account.

Tomorrow I will be involved in launching the kidzcard—a very good Glasgow City Council scheme. I have to say that Glasgow City Council in particular has been taking the lead in Scotland in introducing breakfast clubs, healthy eating, fruit for every young school pupil and a number of other initiatives, for which they should be praised, not condemned. I hope to do that tomorrow morning at the Gorbals leisure centre.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** The minister answered my question.

**The Presiding Officer (Sir David Steel):** Well you do not need to ask it then, Mr McAveety. [*Interruption.*] Order.

**Mr McAveety:** I hate to be heckled by a Glasgow sweetie wife. Glasgow City Council pioneered the provision of fresh fruit for young kids in schools, free swimming for all under-18s, and a whole range of other initiatives. Next week, at Quarry Brae Primary School, we will identify how we can support kids' healthy eating. That should be welcomed, not misrepresented. [*Interruption.*]

14:41

*Meeting suspended.*

14:56

*On resuming—*

**The Presiding Officer:** Order. I suspended the meeting for quarter of an hour. Members will be pleased to know that that was due to a false alarm. Someone was repairing the fire alarm system next door at New College and pulled the wrong wire out. It is always better to be safe than sorry.

We may find that question time is a little interrupted by the public coming back into the gallery, but we must rise above the noise. I will extend open questions for quarter of an hour and

then First Minister's questions for quarter of an hour. We will see how we get on with the debate. I would still like to have decision time at 5 o'clock but it depends on the pressure on the debate.

I will not go back to Mr McAveety's supplementary question because it was not one anyway. *[Applause.]*

### National Qualifications Framework

**5. Des McNulty (Clydebank and Milngavie (Lab)):** To ask the Scottish Executive what progress is being made on simplifying the national qualifications framework. (S10-3767)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** The national qualifications task group has met twice and is taking early action to simplify new national qualifications and to reduce work load for teachers and lecturers. I will publish a consultation paper in the near future on longer-term issues connected to internal and external assessment within the new national qualifications.

**Des McNulty:** I thank the minister for his response. He will be well aware of concerns among students, teachers and parents about the over-complex nature of the national qualifications framework and its adverse impact on work loads. Can he reassure me that when the task force reports, change will be implemented as speedily as possible?

**Mr McConnell:** I can absolutely reassure the member that any changes agreed will be implemented as speedily as possible. As I explained this morning, some specific changes will be possible this year. Longer-term changes need to be the subject of proper consultation. I am not in favour of making radical changes to the education service and our systems. We do not have consent within the system, but I believe that we can achieve consent if we conduct the consultation exercise properly. There will be changes, if changes are the outcome of the consultation.

**Ian Jenkins (Tweeddale, Etrick and Lauderdale) (LD):** I point out that some of the extra complexities of higher still, such as the intermediate levels, have worked well. Will the consultation ensure that attention is paid to what is genuinely considered to be serious over-assessment in the system and too much administrative bureaucracy?

I will introduce a little more complexity by asking whether the minister will reconsider the idea of one-size-fits-all subjects. I hope that he will consider each subject on its merits when the simplification takes place.

**Mr McConnell:** The national qualifications task group is currently looking at all subjects one by

one, and quite rightly too. There is a problem of over-administration and over-assessment in the higher years of the school curriculum. That needs to be tackled, and I am sure that it will be tackled as part of this exercise.

**The Presiding Officer:** Question 6 has been withdrawn.

### National Flag of Scotland

**7. Irene McGugan (North-East Scotland) (SNP):** To ask the Scottish Executive, further to the answer to question S1W-15533 by Mr Jim Wallace on 14 June 2001, what heraldic conventions the flags flown from its buildings observe and whether any heraldic definition of colours for use in the national flag of Scotland exists. (S10-3759)

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** Flags flown from Executive buildings are supplied by reputable flag makers, whose production techniques observe heraldic conventions. Those conventions regard such matters as size, shape, proportion and the positioning of crosses and shields.

On the heraldic definition of colours, the saltire is variously described in the public register of all arms and bearings in Scotland as an argent cross on an azure background or as the white cross of St Andrew on a blue field. Argent, as members will know, is a silver colour, although it is conventionally shown as white given the practical difficulties of using silver. It is worth noting that heraldic descriptions of the colours of the saltire are not prescriptive in their application to flags. Any saltire whose background colour is clearly blue is acceptable.

**Irene McGugan:** Given that the heraldic definition of colours for flags is problematic, is the minister aware that the Lord Lyon King of Arms is on record as agreeing that the definition of a colour for the national flag would best be done by the Scottish Parliament? Does not the minister agree that it is entirely appropriate for the Parliament to take a view on the recognised and approved colour of our national flag to avoid the present uncertainty and confusion about shades of blue?

**Mr Wallace:** I accept that it is within the power of the Parliament to stipulate the shade of blue that is to be used. It is no doubt also in our power to stipulate whether we want to opt for argent or white. However, for the reasons that I am about to elaborate on, the Executive does not believe that it would be beneficial to have such regulation. To stipulate a precise colour would mean that people who had been flying flags with different shades of blue would suddenly find that the flags that they had been flying quite properly and in all good faith

might no longer fit the statutory requirement. They might find that they had been inadvertently contravening the law. Also, if one thinks about it, flags that are exposed to the elements are subject to weathering and fading, even if manufactured to a precise specification.

We fly the saltire with great pride, and it would not be to the dignity of the saltire if people felt inhibited in some way because they felt that they were not meeting a precise definition.

**Alex Johnstone (North-East Scotland) (Con):** As the blue of the union flag represents Scotland's proud and prominent position within the union, could not we at least guarantee that the two shades of blue are the same?

**Mr Wallace:** Although I am not as knowledgeable about the union flag as I am about the saltire, I imagine that the same considerations would apply to the shade of blue in the union flag as to that in the saltire.

**Dennis Canavan (Falkirk West):** Was the Deputy First Minister serious in his answer to Irene McGugan and in his previous written answer to me, in which he told me that regulation would be inappropriate because

"the colour and condition of flags flown outside for example is inevitably affected by exposure to weather and sunlight."—[*Official Report, Written Answers*; 14 June 2001, p 388.]?

Is not that as daft as saying that football clubs should not define their colours because, as the match goes on, the jerseys inevitably get sweatier and dirtier?

**Mr Wallace:** Mr Canavan should have listened carefully to a practical consideration. No one has ever suggested that the colours of Rangers, Celtic, Aberdeen or Dundee should be defined by law.

### Crown Estate (Meetings)

**8. Tavish Scott (Shetland) (LD):** To ask the Scottish Executive when it last met representatives of the Crown Estate and what matters were discussed. (S1O-3748)

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** The Scottish Executive is in regular contact with the Crown Estate on a range of issues.

**Tavish Scott:** I am pleased about that.

Is the minister aware that the Crown Estate removes £1 million per annum from salmon farms in Shetland and many millions of pounds per annum from salmon farms throughout Scotland? On the grounds of rural development, will she consider the proposals that the Shetland Salmon Farmers Association put to her department and the Crown Estate for a reinvestment of those

moneys in, for example, environmental impact assessments, hydrographic surveys and sea bed monitoring? Does she accept that such reinvestment is badly needed and would be a positive contribution to businesses that pay corporation tax and so certainly should not pay any other tax at the same time?

**Rhona Brankin:** I am aware of those issues. The Crown Estate understands the importance of fish farming to the rural economy. Rents are kept under regular review and a significant sum is reinvested each year in support of research and development—for example, in improvements to fish welfare management and environmental practices.

**Alex Neil (Central Scotland) (SNP):** Given the record of the Crown Estate in recent years in facilitating rural development, is it time to make representations to the Westminster Government to bring the Crown Estate, in Scotland at least, into public ownership and under proper democratic control?

**Rhona Brankin:** Matters that relate to the Crown Estate are reserved. I repeat that significant reinvestment is being made in fish farming from the money that is taken in rents. We accept that the Crown Estate commissioners are acting correctly in that respect.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** Will the minister assure us that moving responsibility for fish farm leases from the Crown Estate to local councils will not simply result in a heaven-sent opportunity for those bodies to levy excessive rents on the fish farm industry?

**Rhona Brankin:** The intention is that planning controls will provide greater accountability and transparency under the remit of local authorities. We strongly believe that decision making will be brought closer to communities and that more attention will be given to potential conflicts of use and to the environmental impacts of fish farming.

**The Presiding Officer:** Question 9 has been withdrawn.

### Young Offenders

**10. Bill Aitken (Glasgow) (Con):** To ask the Scottish Executive whether the present children's hearing system is effective in respect of young offenders. (S1O-3735)

**The Deputy Minister for Education, Europe and External Affairs (Nicol Stephen):** The children's hearing system has been effective and well regarded since it was introduced in Scotland in April 1971.

**Bill Aitken:** Does the minister agree that his perception is not shared by the police, the public or members of the Scottish Parliament? If the

system is to retain any credibility, does he agree that it is essential that changes be introduced to make it much more robust?

**Nicol Stephen:** I do not agree with Bill Aitken. It is interesting that the Conservatives were in Government for 18 years and that during that time, the issue was such a high priority for them that they did nothing about changing the system. There was nothing on the topic in the 1999 Conservative manifesto for this Parliament. As I said, the system is well regarded and is one of the best aspects of the justice system in Scotland.

**Christine Grahame (South of Scotland) (SNP):** I refer the minister to a reply to my colleague, Richard Lochhead, about secure places for young offenders, which disclosed that for the whole of Scotland, there were 87 secure places in 1998 and only 95 in 2000. Indeed, there have been only 12 for the whole of Lothian in those three years, and there are no places in Mid Scotland and Fife. My information from senior police officers is that the lack of secure places is of great concern and leads to inappropriate placements for young offenders. Does the minister share that concern? If so, what will he do about it?

**Nicol Stephen:** I appreciate the fact that Christine Grahame's question is couched in a more constructive manner than Bill Aitken's. The matter to which she refers is under review. A report on the issue was submitted recently to ministers and we will consider it in detail before reporting on it to Parliament and others in due course.

**Scott Barrie (Dunfermline West) (Lab):** Does the minister agree that the children's hearing system has worked well for children who offend and for those who are offended against? Does he welcome the Auditor General's current report into youth justice, which covers eight to 21-year-olds, and the Justice 2 Committee's interest in the report?

**Nicol Stephen:** Yes, indeed. The report underlines the point that I made earlier, which is that the success of the system has been such that we are considering the lessons that can be learned for older young people—those in the 18-to-21 age bracket.

### Local Authority Boundaries

**11. Janis Hughes (Glasgow Rutherglen) (Lab):** To ask the Scottish Executive whether, as part of its review of cities, it intends to redraw local authority boundaries. (S10-3765)

**The Minister for Finance and Local Government (Angus MacKay):** The review's remit is deliberately broad. It is too early to rule any issue in or out of the review and the particular areas in which it might draw conclusions.

**Janis Hughes:** Is the minister aware of the strength of feeling among my constituents in Rutherglen and Cambuslang regarding recent speculation that they might be brought out of the control of South Lanarkshire Council? As my constituents are happy with the service that they receive from the council, and given that the leader of Glasgow City Council has stated that he believes the issue to be dead in the water, can the minister reassure my constituents that such a change will not happen against their will?

**Angus MacKay:** The important thing about the review is that the Executive seeks to give all the people who will input to it the opportunity to raise the issues that they believe are important to cities in general and to their own cities in particular. Some people might wish to raise the issue of boundaries and that is for them to decide. We will listen to all the representations before reaching a balanced conclusion based on the interests of the cities and the regions in which those cities sit.

**Mr Andrew Welsh (Angus) (SNP):** Does the minister agree that any major boundary changes must take place for good reasons and with the consent of the people? Does he accept that the real problem for cities such as Glasgow and Dundee is gaining adequate central Government funding for their services? That is the problem that must be solved and it cannot be done by simply redrawing boundaries against the wishes of local communities.

**Angus MacKay:** We have no plans to redraw boundaries against the wishes of local communities or of other interested parties. We are trying to establish a review process that will enable us to take the experience and wisdom of a range of individuals and agencies and pull together a cities policy that will ensure the future economic, environmental and cultural well-being of our cities so that they continue to be places where people want to live, thrive and do business.

In the course of the review, people from different sectors and with different experiences might wish to raise a host of issues that they think are germane to the future success of our cities. We will not stop people raising with us issues that they think are important. Equally, we will not jump to conclusions about how we should proceed with policy before we have reflected on the issues that have been raised.

**Robert Brown (Glasgow) (LD):** Does the minister accept that Scotland needs another local government boundary review like it needs a hole in the head? To follow up Andrew Welsh's point, I ask the minister whether he accepts that the finances of cities such as Glasgow would be assisted considerably if cities had access to the proceeds of the business rate, which come from the investment that is made in cities.

**Angus MacKay:** The cities have access to the proceeds of the business rate through the grant distribution system, which is organised in such a way that it benefits every part of Scotland and every local authority equitably. My party supports that system and I hope that every other party supports it.

In answer to Robert Brown's other question, we are not having a boundaries review; we are having a review of cities policy.

**Mr Kenneth Macintosh (Eastwood) (Lab):** Does the minister agree that the review of cities should benefit and target resources at communities with greater needs and that, for local authorities such as East Renfrewshire Council, talk of local boundary review is an unhelpful distraction from delivering good quality services to residents?

**Angus MacKay:** Members who have asked questions on this subject might have noticed that individual members, newspapers and others occasionally talk of boundary reviews, but ministers are not talking about such reviews—we are talking about a review of cities policy. We want to ensure that we develop more co-ordinated ways of developing policies and of joining up policy delivery. That could mean, for example, examining the ways in which local enterprise companies, health boards, local authorities and others deliver the kind of services that require them to act in concert rather than in silos. That type of action can benefit our communities, irrespective of the level of funding, the boundaries or other issues. We have not ruled anything out. We want to hear what can be done better or differently.

**The Presiding Officer:** Questions 12 and 13 have been withdrawn.

#### **Foot-and-Mouth Disease (South of Scotland)**

**14. David Mundell (South of Scotland) (Con):** To ask the Scottish Executive what steps it is taking to measure the continuing economic impact of the foot-and-mouth disease outbreak in the south of Scotland. (S10-3760)

**The Minister for Environment and Rural Development (Ross Finnie):** The economic impact assessment group, which I set up in March, continues to meet and provides a valuable contribution to the ministerial committee for rural development sub-group in informing the actions that we take to provide assistance. The group has already commissioned two impact surveys and I look forward to seeing its third report early this autumn.

**David Mundell:** Although everyone welcomes the fact that we now have disease-free status in Scotland, will the minister assure the chamber that there will be no complacency in dealing with the

economic impact of the crisis? Many businesses that have traded through a very difficult time have done so on their reserves, so may look for support as they go into what will be a difficult autumn and winter.

**Ross Finnie:** I assure the member that we are not standing down the economic impact assessment group. We will continue to receive reports, not only this autumn but for a considerable time, so that we can keep on top of the impact as it develops.

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** Does not the minister agree that we need more precise quantification of how effective the resources that have been put in so far have been? Do not we need to quantify the number of businesses that are still—or will be—in serious difficulties, so that remaining resources can be targeted more effectively? Surely we need something more than an assessment group.

**Ross Finnie:** I should perhaps explain that the economic impact assessment group is a group of individuals who also conduct surveys among and take soundings from businesses throughout Scotland. That information is collated to provide an indication of the number of businesses involved and the extent to which they are affected. In the most recent assessment there has been a very interesting movement: it is not uniform and we have seen changes as some areas have recovered. It is important that we continue that work. The economics division in my department guides the group on the methodology that is applied.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Will the minister indicate how he thinks the Borders recovery plan, which was presented to ministers earlier this year, is progressing? Will he assure us that meetings will continue between officials in the Scottish Executive and the Borders economic development forum to take the plan forward?

**Ross Finnie:** I assure Ian Jenkins that members of my department are in touch with Scottish Borders Council and Dumfries and Galloway Council on the implementation of the plans that they presented to ministers. We are working in close collaboration with the councils. As far as I know from our recent meetings with them, both councils and the economic groups are satisfied with the progress that has been made.

**John Scott (Ayr) (Con):** Will the minister also recognise and monitor the economic impact of foot-and-mouth disease on areas adjoining the previously infected areas, especially areas such as South Ayrshire?

**Ross Finnie:** I assure the member that we are not confining the economic impact assessment



surveys to the infected areas. We are taking surveys throughout Scotland so that we have a complete picture of how the disease impacts on the economy.

### Local Authority Boundaries

**15. Mr Kenneth Gibson (Glasgow) (SNP):** To ask the Scottish Executive what discussions it plans to have with local authorities regarding possible changes to local authority boundaries. (S10-3733)

**The Presiding Officer:** We have been here before.

**The Minister for Finance and Local Government (Angus MacKay):** While boundary issues arise from time to time in the course of our discussions with local authorities, any specific changes will be a matter for the independent Local Government Boundary Commission for Scotland, when it undertakes the next statutory review.

**Mr Gibson:** I thank the minister for his reply. Ken Macintosh has said in his local paper that he will accept the incorporation of Eastwood into Glasgow "over his dead body". The leaders of Glasgow City Council and South Lanarkshire Council have responded in similar fashion. Given those comments and the comments we have heard from members across the party divide today, will the minister exclude the possibility of boundary changes from the cities review? Will he further acknowledge that the real issue is, as Andrew Welsh said, the level of funding? According to the finance director of Glasgow City Council, George Black, in evidence to the Local Government Committee, funding for Glasgow has fallen by £50 million since new Labour came to power.

**Angus MacKay:** This is a bit like "Groundhog Day" and I am afraid that Kenneth Gibson is the groundhog. I explored the matter earlier. I am happy to give the assurance that we are conducting a review of cities policy, not a boundary review.

Kenneth Macintosh should not fear for his health as far as the conclusions of the cities review are concerned. We will not rule out allowing each individual, organisation and body that submits evidence and recommendations to the review to raise any subject it wishes. Those subjects could include funding for Glasgow, how policy is joined up and delivered, funding for other cities and the well-being of the businesses and individuals who work in those cities. We are more than happy to hear other people's views on the best way to sustain and nurture our cities for the future.

**Mr John McAllion (Dundee East) (Lab):** Will the minister try to keep in mind that the current local government boundaries were not created by

independent commissioners acting impartially, but were established by gerrymandering Tory politicians determined to carve out a political advantage for themselves? The fact that the Tories were as pathetic at gerrymandering as they were at everything else should not blind us to the fact that current local government boundaries are unsustainable. Does the minister accept that any review of the cities that does not restore to Dundee its natural boundaries and a viable economic tax base should not and will not be taken seriously?

**Angus MacKay:** I did not hear most of John McAllion's first question, but I heard the words "gerrymandering" and "Tory politicians" and I am more than happy to agree with that part.

As for Mr McAllion's second question, I am very much looking forward to discussions in Dundee with representatives of Dundee City Council and other organisations in the city. I know that they will all make a strong case. In fact, quite apart from the cities review, I already plan to meet representatives of Dundee City Council to hear their concerns about the future of the city council and its service delivery. I am sure that Dundee will make a strong case. Any proposals that we introduce will have to focus clearly on opportunities for the city to grow and thrive in the future.

### Public Transport (Clydesdale)

**16. Karen Gillon (Clydesdale) (Lab):** To ask the Scottish Executive what steps it is taking to improve public transport provision in Clydesdale. (S10-3764)

**The Minister for Transport and Planning (Sarah Boyack):** The Executive will allocate £16 million to Strathclyde Passenger Transport as part of a joint £23 million package for the Larkhall to Milngavie rail project. We have also announced funding totalling £880,000 from our rural transport fund for the improvement of rural public transport services in South Lanarkshire between 1998-99 and March 2004. Furthermore, three community organisations in Clydesdale have received almost £112,000 for local rural transport initiatives.

**Karen Gillon:** I very much welcome the investment in public transport in my constituency, in particular for the Larkhall extension. I congratulate the minister and the Executive on their bravery in publicly funding the first rail link in Scotland in more than a generation. The move has also been welcomed by my constituents, who recognise that, without the Scottish Executive's support, the rail link would have been dead in the water and the economic and social regeneration of the area could not take place.

Two technical issues still have to be resolved—

**The Presiding Officer:** We probably have time for only one.

**Karen Gillon:** What progress has been made in resolving those technical issues?

**Sarah Boyack:** Now that the money is on the table, two key issues have to be resolved. First, there must be negotiations involving the Executive, SPT, Railtrack, Scotrail and the Strategic Rail Authority to ensure that the performance regime is in place for approval by the rail regulator. Secondly, we must secure a contractual deal on signalling timing, which must be agreed between SPT and Railtrack. We are actively pursuing those matters.

**Mr Adam Ingram (South of Scotland) (SNP):** Given the inordinate delays in reaching decisions on the Larkhall rail link, will the minister tell us when the project will start? Furthermore, does she approve of proposals from SPT to establish local services on the west coast main line, including the reopening of passenger stations at Law and Symington in Clydesdale?

**Sarah Boyack:** According to the contract that Railtrack currently has on its books—which, as I told Karen Gillon, is the key matter for discussion—the Larkhall line will be reopened by 2003. We must find out about Railtrack's resources as far as signalling is concerned, and hope that putting money on the table will make our discussions more fruitful.

Mr Ingram did not mention the fact that we are reopening a 4.7km railway line from Larkhall to Hamilton Central and the Dawsholm section of the Anniesland to Maryhill line. We are opening new railway stations across Scotland and are dealing with an historic underinvestment in rail infrastructure. More railway stations will open as a result of the public transport fund in future. The most important point is that today we have given the go-ahead to ensuring that the rail companies will examine the Larkhall line. The SNP would do well to congratulate us on that instead of trying to ignore the fact.

## First Minister's Question Time

### SCOTTISH EXECUTIVE

#### Secretary of State for Scotland (Meetings)

**1. Mr John Swinney (North Tayside) (SNP):** To ask the First Minister when he next plans to meet the Secretary of State for Scotland and what issues he intends to discuss. (S1F-1221)

**The First Minister (Henry McLeish):** I intend to meet the secretary of state next week, when we will discuss issues of common interest.

**Mr Swinney:** Earlier today, we heard from the UK Secretary of State for Foreign and Commonwealth Affairs that there would be a sizeable number of British casualties following Tuesday's atrocity in the United States. I know that these are difficult issues and difficult times in which to gather information, but is the First Minister in a position to give us any update on that information and to provide any impression of the number of families in Scotland who might be affected by the tragedy?

**The First Minister:** I thank John Swinney and David McLetchie for their courtesy in contacting my office to inform us that they would want to discuss issues related to the terrorist attack in America. I thank them also for their speeches yesterday.

This is a difficult and delicate subject, as John Swinney has said, and I shall first give the details of what has been announced at UK level. A hundred British persons who were there at the time are unaccounted for, although the number of casualties is likely to run into several hundreds, given the number of inquiries that have been made to the Metropolitan police's casualty bureau. Although we do not have any precise figures for Scotland, I fear that there will be Scots among the casualties.

In Scotland, we have established the Scottish police information co-ordinating centre to co-ordinate the security and intelligence response. Part of the group's work will be to liaise with forces throughout the UK, including direct liaison with the Metropolitan police's casualty bureau, which is responsible for the identification of UK victims.

**Mr Swinney:** I thank the First Minister for his reply. Can he say a bit more about the measures that the Scottish Executive may put in place to assist those families in Scotland who may be bereaved as a result of the tragedy? Will he also give us an impression of what support has been sought from the Scottish Executive by the estimated 20,000 Americans who live in Scotland?

**The First Minister:** When I met the American consular official yesterday, we discussed what help we could provide. The consulate is dealing with a significant number of inquiries and telephone calls. I therefore put at the disposal of the American consulate our help in administration, in terms of people and telecommunications, should that be required. The justice department is dealing with a range of issues relating to the terrorist atrocity. Jim Wallace, Tom McCabe, Angus MacKay and I are in permanent contact with the department to find out what is happening and what responses are required.

The bureau at Scotland Yard has so far received more than 12,000 calls from concerned families. It will deal with international calls from the United States, the United Kingdom and Europe. In addition, it was announced this morning that if any casualties or victims in the United States have difficulties in relation to personal insurance in bringing their loved ones back to this country, the UK Government has agreed to consider those cases for Government help. We would want to do the same for families in similar circumstances in Scotland. Through our emergency operations and contingency planning, we are seeking to ensure that facilities are available throughout Scotland to help families directly, if necessary, and to assist in the general security alert of which the country is part.

Forgive me, Sir David—this is like a statement, but I am trying to respond to John Swinney's questions.

We also know that there is a heightened security at Scottish airports from the Highlands to the central belt—although it would be wrong for me to go into detail—and emergency planning networks are in place. Everything possible is being done. However, I say to colleagues, including David McLetchie and John Swinney, that if they can suggest anything further that we could do, we would be delighted to consider it.

**Mr Swinney:** I am sure that the First Minister's announcement on personal insurance will be warmly welcomed by those who are affected by this tragedy.

It is a matter of regret and sadness that our community has been touched by these issues already, in the form of the Lockerbie bombing in the late 1980s. Is the First Minister able to tell Parliament whether any of the lessons that were learned then, in terms of the treatment and support of the local community and individuals, have been offered to the United States authorities as a contribution from Scotland to help the US come to terms with this awful tragedy?

**The First Minister:** Today I spoke to Baroness Amos at the Foreign Office and I have just finished

a telephone conversation with the Prime Minister, in which I acknowledged the Scottish Parliament's solidarity with him on behalf of Scotland. I have every reason to think that the lessons that were learned from Lockerbie and the expertise of our intelligence network and our armed forces will be made available to the United States if that is required. Clearly, these are matters of enormous sensitivity, but suffice it to say that the existence of the Cabinet Office briefing room—COBRA—in Whitehall and the involvement of the Prime Minister, who has shown his solidarity with the United States, mean that the answer to John Swinney's question is that everything possible will be done.

### Prime Minister (Meetings)

**2. David McLetchie (Lothians) (Con):** To ask the First Minister when he will next meet the Prime Minister and what issues he will raise. (S1F-1223)

**The First Minister (Henry McLeish):** I last met the Prime Minister on 1 September.

**David McLetchie:** At their next meeting, will the First Minister convey to the Prime Minister how much we welcome his resolute and unequivocal support for President Bush and the American people in response to Tuesday's appalling terrorist attacks and that that support extends across Scotland's communities, including Scotland's Muslim community, which is appalled that its faith has been hijacked and abused by the terrorists who are suspected of these atrocities?

**The First Minister:** I am pleased to acknowledge David McLetchie's support for the resolute action that has been detailed by our Prime Minister.

It is encouraging that members of the North Atlantic Treaty Organisation have also responded positively. Clearly, these matters are for NATO and for the United Kingdom Government. That point is well made.

I will touch sensitively on the point that David McLetchie makes. Unusually, I will quote from a national tabloid that addressed that issue. It is right that there should be solidarity between the Muslim community and the other communities in Scotland in relation to the terrorist activity. The editorial said that Islam is a religion of peace and discipline and continued:

"The fanatics distort the words of their holy book, the Koran, to justify their bloody outrages and their cruel, oppressive regimes ... the Muslims in Britain"—

and I will add to that the Muslims in Scotland—

"love this country and they respect democracy."

I am sure that all of us in the chamber echo that view. All of us—Muslim Scots, Scots of other religions and Scots who, although they profess no

established religion, feel for other human beings—should unite in our condemnation of this barbarous act.

We must renew our collective pledge, which was clear from the dignity of the proceedings in the chamber yesterday, that democrats across the world are united in their refusal to bow to the evil men of terror.

**David McLetchie:** I am sure that the First Minister's words will be of great encouragement to people throughout Scotland's communities.

Does the First Minister agree that the national unity of purpose that he and the Prime Minister have exemplified in recent days needs to be matched by an international unity of purpose? When he meets the Prime Minister, will he convey to him our support for NATO's welcome decision to treat the attacks on the United States as attacks on all of us? That is an important step towards achieving that international unity of purpose and resolve.

**The First Minister:** The action that has been taken by NATO to invoke article 5 of the north Atlantic treaty to construe the act against America as an act against all NATO members speaks volumes about the deep concern that people in NATO countries have about what has happened. The Parliament has shown its concern about what is happening internationally. We await with apprehension the finding of victims in the ruins of the Pentagon and the World Trade Centre.

Suffice it to say that, with the support of the Parliament, we will provide all the help that we can in the hope that we can eventually erase some of the bad memories of Tuesday's traumatic event. Scotland will not be found wanting in the areas in which we are involved. I hope that the consensus in the Parliament will continue.

**Tommy Sheridan (Glasgow) (SSP):** Does the First Minister agree that there is unreserved condemnation from all democrats in the world for the terrorist atrocity that was visited on America on Tuesday, but that the murder in retaliation of any other innocent human beings will not be a solution to the war on terrorism?

**The First Minister:** The comments that were made in the chamber yesterday, the comments that have been made today and the comments that have been made internationally show that there is deep outrage at what has happened. The world wants to be united against terrorism. Everyone is of a mind in saying that we must focus on the terrorists and those who harbour them. That is the collective view of people who love democracy and freedom. That is the way in which we should proceed.

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** Does the First Minister agree that, among all the horrific reports that we have received from America over the past couple of days, there is at least one heartwarming story? It is about Dr Hannay from Scotland, who was on holiday in America and who immediately made himself available to treat the injured. Does the First Minister also agree that that simple act of humanity is in complete contrast to the murderous actions of the terrorists?

**The First Minister:** I am pleased to be associated with the efforts of Dr Hannay in the United States. We have always had an international reputation for excellence. We have always exported the very best to the world. We applaud the efforts that have been made in the circumstances.

As an act of solidarity, I say that it is chilling to see so many ordinary people killed, but it is equally chilling to see so many emergency workers—medics, firemen, police—killed in the outrage. Our thoughts are with all the emergency services in the USA. We are pleased to associate ourselves with them.

On Duncan McNeil's last comments, tomorrow at 11 o'clock there will be a chance for us to pay our respects. There are to be three minutes of silence so that we can continue to pay our respects to the victims of the tragedy. That applies mainly to Government buildings, Government agencies and public buildings, but I like to think that the message from the Parliament is for every Scot, no matter what they are doing, to pay their respects in the most time-honoured way—silence and solidarity.

**The Presiding Officer (Sir David Steel):** I add that that will apply at the Equal Opportunities Committee event that is being held in the chamber tomorrow.

### Housing (Scotland) Act 2001

**3. Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** It feels deeply inappropriate to continue with my question after the seriousness of the subject that we have just been discussing, but the question has been called, so I will go on.

To ask the First Minister what progress is being made in implementing the provisions of the Housing (Scotland) Act 2001. (S1F-1231)

**The First Minister (Henry McLeish):** I say to Cathie Craigie that housing is a serious subject for the future of Scotland.

The Housing (Scotland) Act 2001 will be implemented progressively over the next two years, starting within the next month or so. We are making good progress with preparations for

implementation. For example, we expect the new executive agency—communities Scotland—to be up and running from 1 November.

However, implementation is not just for the Executive. Local authorities, registered social landlords, tenants and voluntary organisations all have an important role to play in ensuring that we deliver real improvements to Scotland's housing.

**Cathie Craigie:** I appreciate the volume of work that is being undertaken by housing providers, the voluntary sector and others involved in implementing the act. Will the First Minister ensure that adequate funding is available for landlords to implement properly the parts of the act that relate to tenant participation? Can he ensure that there is enough funding to be able to implement all those provisions?

**The First Minister:** I reassure Cathie Craigie on two points. First, the Parliament and the Executive have a huge commitment to tenant participation. That will not diminish. Secondly, for that to work effectively, appropriate resources have to be made available. That will happen.

**Linda Fabiani (Central Scotland) (SNP):** Is the First Minister aware of parliamentary answer S1W-16469, which confirms that the Scottish Executive is currently considering secondary legislation to correct anomalies in the Housing (Scotland) Act 2001? Does he agree that a reliance on secondary legislation to rush through primary legislation creates bad practice and bad law?

**The First Minister:** With my usual courtesy and honesty, I have to say no. I will be happy to consider the matters raised by Linda Fabiani.

#### **Asylum Seekers (Minister for Social Justice)**

**4. Mr Kenneth Gibson (Glasgow) (SNP):** To ask the First Minister what the remit of the Minister for Social Justice will be in relation to asylum seekers. (S1F-1228)

**The First Minister (Henry McLeish):** The Minister for Social Justice will deal with the co-ordination of all devolved matters arising from the arrival of asylum seekers in Scotland. Those relate particularly to health, education, social work and the police. She will also deal with refugee integration, where the issues are fully devolved, and will chair the proposed new Scottish refugee integration forum.

**Mr Gibson:** The SNP welcomes the decision to give responsibility for asylum seekers to the Minister for Social Justice, even if the remit is constrained by the limited powers that have been devolved. Does the First Minister agree that asylum seekers could be dealt with more humanely and with greater sensitivity if the Executive had full responsibility for their plight?

Will the First Minister inform the chamber of the Executive's views on the demeaning voucher system, incarceration of asylum seekers in the detention centre at Dungavel and the flawed dispersal scheme?

**The First Minister:** I hope that everyone who deals with asylum seekers will be humane and sensitive. It is not a matter of extending powers and expecting that to solve all those problems. We must acknowledge that 72 members go from Scotland to the UK Parliament. They deal with reserved matters. That is right and appropriate. However, there are also substantial devolved responsibilities in which Jackie Baillie and members of other departments will be heavily involved. That is an effective and proper balance.

As I said a week ago, we are reviewing the impact of asylum legislation on Scotland, 18 months after its implementation. We are preparing a Cabinet report on devolved services and innovations. We are looking closely at contributing to the dispersal and reviewing its effectiveness. We are also considering the voucher system with a view to making representations on it.

We are doing a great deal, but I should disabuse people of the notion that having more powers in Edinburgh will solve all the problems in Sighthill or any other place in Scotland.

**Johann Lamont (Glasgow Pollok) (Lab):** Will the First Minister join me in welcoming the opportunity the measure provides for real partnership between Westminster, the Scottish Parliament and local authorities in supporting the asylum seekers and refugees within our communities? Will he acknowledge the excellent work that is being done within our communities, despite some of the problems that have been faced by the local communities across Glasgow in which there are asylum seekers and refugees?

When the First Minister and his ministerial colleagues visit Glasgow, as part of their work in the area, will they take the opportunity to meet groups such as the one that has been established in my constituency of Glasgow Pollok? That would enable them to find out how positive work can be done inside local communities to make those communities welcoming and friendly places for our new visitors to come to.

**The First Minister:** I am happy to agree that partnership is the key. There is a strong partnership between the Executive, the Parliament and Westminster. A lot of excellent work is being done—that is often lost in the general debate that ensues around such a sensitive issue. The visit that we had planned for this week is being rescheduled for next week. We intend to do what Johann Lamont suggests—to meet people from all parts of the communities involved, to identify how

best we can listen to them and to use that to improve our services.

**Donald Gorrie (Central Scotland) (LD):** Will the First Minister tell us whether the minister in charge of the affairs of asylum seekers will have the powers and the authority to help local authorities to provide facilities that are needed not just by the asylum seekers, but by the whole community, including its longer-standing residents, some of whom have problems that they feel are not being addressed? Will Jackie Baillie be able to address those problems as well as those of the asylum seekers?

**The First Minister:** The answer is yes. One of the reasons for allocating the responsibilities to the Minister for Social Justice is to cope with that point. We need a balance in every community between the hosts and people who are coming in as asylum seekers. Jackie Baillie's role is pivotal, because Westminster has substantial reserved powers, local councils have substantial local responsibilities and the Executive not only can provide help, but can make sure that the system works.

**The Presiding Officer:** That concludes First Minister's question time. I extend my usual apology to those whom I was unable to call.

## Children (Physical Chastisement)

**The Presiding Officer (Sir David Steel):** The next item of business is a debate on motion S1M-2206, in the name of Iain Gray, on the physical chastisement of children, and an amendment to that motion.

We have lost a lot of time today, so I will be grateful if members who are not staying to take part in the debate leave quietly.

15:45

**The Deputy Minister for Justice (Iain Gray):** Last week, we announced the results of our consultation on the physical punishment of children. That announcement generated a good deal of comment, reinforcing the importance of the subject and justifying the devotion of parliamentary time to it today.

On the basis of the incorporation of the European convention on human rights into our domestic law, any punishment that constitutes "inhuman or degrading treatment" can never now be acceptable under Scots law. Our proposals seek to clarify what that means in practice.

Let me begin with a crucial piece of clarification that has, I fear, been missed by some commentators. We are not proposing to ban smacking. Our consultation paper did not propose a ban, the responses did not show a majority opinion in favour of a ban and our announcement confirmed that position. Our intention is to clarify the law and to set clearer guidelines for the courts and parents. In particular, we do not think that parents should have a right to hit very young children, to hit children with implements, to shake them or to strike them on the head.

The right to administer reasonable physical punishment to children who are old enough to understand what is happening will remain. Parents who use physical punishment as part of a principled and caring system of family discipline have nothing to fear from our proposals. That right will extend to anybody who has control of a child in the child's own home. Parents will be free to set the ground rules for discipline in the home, just as they are at present.

Most of us face difficult, daunting and even scary times in our lives. For those of us who have children, parenting often seems to be the single most scary and difficult role that we undertake. The decisions that we have to take from day to day, particularly in respect of very young children, can have far-reaching effects.

We are often told that children need role models. They need to learn from their role models that

violence is not the right way to get other people to do what they want. A balance must be struck between acceptable intervention by the state for the welfare of children, and the freedom of parents to use their own good judgement. That balance is not new in this country. It was established in the Children and Young Persons (Scotland) Act 1937. That act has stood the test of time and it makes it quite clear that cruelty towards or neglect of a child is an offence, but it does not interfere with a parent's right to administer reasonable chastisement. We are not proposing to change that. The only area in which we propose a complete ban is in respect of children up to and including the age of two. The reaction to that in some quarters has been extraordinary.

I ask members to reflect for a moment on what is meant by punishment. Punishment is designed to signal disapproval of wrong actions by inflicting retribution on the person who has done wrong. It might, incidentally, also be designed to rehabilitate and deter, but its primary purpose is retribution. It is quite wrong to punish someone who can understand neither that they have done wrong, nor the relationship between the punishment and the wrongdoing.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Will the minister give way?

**Ms Margo MacDonald (Lothians) (SNP):** Will the minister give way?

**Iain Gray:** I will give way.

**The Deputy Presiding Officer (Mr George Reid):** Margo MacDonald.

**Iain Gray:** I was actually giving way to—

**Ms MacDonald:** Can the minister clarify whether physical chastisement would only be about punishment for something that a child might have done wrong? In the case of a young child, that might be the physical encouragement not to do that thing again. Such chastisement would not be to punish, but to warn.

**The Deputy Presiding Officer:** I call on the minister to respond, but I believe that the minister was in fact giving way to Mike Rumbles.

**Iain Gray:** Yes, I was giving way to Mr Rumbles.

**Mr Rumbles:** I was going to make the same point.

**Iain Gray:** I acknowledge that chastisement might be about rehabilitation or deterrence, and I will say more about chastisement in relation to danger in a moment.

We are dealing with chastisement, the primary purpose of which is punishment. We do not punish adults who are incapable of understanding the connection between punishment and their

wrongdoing. The courts are able instead to make orders to ensure that the offender and society can be protected.

There has been much talk of danger in relation to our proposals. However, if a two-year-old runs on to the road, or picks up a hot drink or opens a bottle of chemicals, their parent may take physical action to protect the child from the immediate danger—that is not punishment. The law is perfectly capable of making that distinction in exactly the same way as it makes that distinction with regard to a person of any age who needs to be saved from immediate danger. There is no question of our proposals endangering the safety of any child.

**Hugh Henry (Paisley South) (Lab):** It is suggested that the right to shake a child would be removed. We would all join the Executive and others in ensuring that children are protected and we know that shaking can damage a child. However, one of the examples that the minister mentioned was that of a child crossing the road. I have seen children attempting to run out into the road—it has happened in my family—and instead of smacking, the parent shakes the child gently. Will the minister ensure that the regulations are framed sensitively so that those who wish to avoid physical chastisement are not punished for actions such as gentle shaking?

**Iain Gray:** The primary reassurance that can be given is that any legislation following our proposals would require evil intent to be demonstrated. In the circumstances that Mr Henry describes that would clearly not be the case.

**Ms MacDonald:** Will the minister give way?

**Iain Gray:** I must move on.

The reason for banning the physical punishment of children under three is to signal that a line must be drawn somewhere. No one would want to hit a small baby. Everybody knows that babies can sometimes be incredibly difficult, but smacking them achieves nothing. Children reach an age at which they understand that some behaviour is acceptable to their parents, while other behaviour is not. Smacking as a last resort might be an effective sanction. We must accept that that age will vary, but the law must draw a line somewhere. We have opted for the age of three, but that could be debated further.

Our remaining proposals will provide guidance to the courts as to how to decide whether punishment was reasonable, and clarity for parents and others who will administer punishment.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Does the minister accept that the Executive's proposals constitute a major

change in social policy, that they have not been put to the people of Scotland in any manifesto—Labour, Liberal or any other—and that such a policy should not be pursued in the absence of a mandate that was sought and obtained at a general election?

**Iain Gray:** No. I do not accept the premise of Mr Ewing's question. The consultation on the proposals goes back to 1998 and was drawn very broadly. If the proposals are to become law, they will be subject to the full scrutiny of the legislative process.

As proposed in that consultation paper, the courts would be required to take the following factors into account: the nature and context of the treatment; its duration and frequency; its physical and mental effects; and the sex, age and state of health of the child. Legislation would contain a list of punishments that would never be permitted. It would prohibit absolutely blows to the head, shaking and the use of implements.

The response to our consultation paper showed majority support for banning the use of implements. The use of implements carries the clear risk of injury to a child—indeed that was the occasion of the case of *A v the United Kingdom*. Banning the use of all implements will create a clear guideline for parents and is in line with the recommendations of the Scottish Law Commission and the public opinion surveys that were quoted in our consultation paper.

Finally, in accordance with an overwhelming response by people who are involved in child care, we will extend the ban on corporal punishment to all regulated child care. However, the ban will not cover baby-sitters or nannies who work in the family home, where parents will be able to agree with the carer what forms of discipline can be used.

In the debate on the subject last year, members asked that special efforts be made to obtain the views of children. I am glad to reassure the Parliament that we have asked bodies such as local authorities to seek the views of children. We are especially grateful to bodies such as Clackmannanshire Council, which made great efforts to obtain the views of many hundreds of children and parents. We also commissioned research by Children In Scotland on the views of children. Overall, the weight of children's views was against smacking. That research has been placed in the Scottish Parliament information centre and on the Scottish Executive's internet site.

We will seek to legislate at an early opportunity. Most of our proposals would be suitable for inclusion in the criminal justice bill that was announced by the First Minister on 5 September.

The Children (Scotland) Act 1995 makes it clear that the primary consideration in decisions about children is the welfare of the child. Our legislation will tighten the definition of reasonable chastisement and it will prohibit specific actions. The proposed changes should discourage casual or excessive use of physical punishment, or its use for inappropriate purposes.

The proposed changes reflect the view of the great majority in Scotland, that parents should retain the right to smack their children in certain circumstances.

**Mr Rumbles:** Will the minister give way?

**Iain Gray:** I am winding up.

The proposals will also provide greater clarity for courts and parents as to the intention of the law but—most important—the proposals will send out a signal to Scotland's children that they are valued.

I move,

That the Parliament welcomes the Scottish Executive's proposals, following on from an extensive consultation process, to clarify the law on physical punishment of children.

15:56

**Michael Russell (South of Scotland) (SNP):** The amendment in my name is designed to assist the debate. Having heard Mr Gray's speech, I am more concerned than I was at the outset, because the major problem that we face this afternoon is the lack of information and precision. The more questions that were asked of Mr Gray, the fewer answers we received. That is entirely the wrong context in which to have the debate. I will develop that point.

We start with the premise that no one—that is no one—is in favour of abuse of or cruelty to children. Indeed, the use of implements to punish children is something that we would all agree has no place in a modern society.

However, there are legitimate concerns from a variety of stances about the motion that is before us today. Those concerns can be defined in two ways. There are those who are worried that there is a proposal to interfere unduly with the rights of parents. As a parent I understand that concern. There are also those who are in favour of abolishing any physical punishment—a legitimate position—and who are worried that the proposals do not help, but hinder, the process.

Everybody is in favour of a less violent society and no one needs to make that point in this week of all weeks, but how do we achieve that in terms of parents setting an example to children? Do the proposals that are being made, as we understand



them, achieve that aim? We could start by asking what others have done in similar circumstances. If this is a problem that needs to be addressed, what legislation exists in other places? The examples that exist in other places appear to encourage educating, rather than punishing, parents.

One of the worries about the proposed legislation is that it seems—the Deputy Minister for Justice used this term—that it is designed to draw lines. We should be seeking legislation that changes behaviour. The lines that we heard the minister trying to draw some moments ago will cause enormous difficulties when we come to the details. However, an attempt to change behaviour in Scotland is something that we all might be able to coalesce around.

We also must address why this is being done at this time. Many of us know that there are obligations under the European convention on human rights and the United Nations Convention on the Rights of the Child that Scots law may not—although this is open to question—fulfil. In such circumstances, it would be helpful to know what the obligations are and what cases and judgements we are responding to, so that we can measure for ourselves—in so far as we know what the proposals are, and I stress that point—how far the proposals measure up to that difficulty.

We should ask what type of debate we can have without knowing what the proposals are, what others have done and what obligations remain unfulfilled. I say with great regret that I do not regard it as helpful that we debate the subject on the basis of a consultation report on the Executive intranet and a three-line motion. We are not debating the nature of the legislative proposals. I would have thought that, after two years and many rough rides in the Parliament, one of the lessons that might have been learned is that it is best to debate specific proposals rather than general statements.

**Iain Gray:** Will the member give way?

**Michael Russell:** I will give way in a moment. Those of us who would be and are sympathetic to change feel that debating general statements causes difficulty. It opens up the possibility of the misinterpretation to which the minister referred at the start of his speech.

**Iain Gray:** My point is simple. All the proposals will require legislation. An indication of the legislative vehicle that we intend to use has been given. We will debate the full legislative proposals when they are introduced. Is Mr Russell saying that he would have preferred not to have any opportunity to discuss the proposals today, and that he would prefer to have waited for the legislative vehicle? That seems quite contradictory to the argument that he is making.

**Michael Russell:** It is not contradictory in the slightest. We would all have preferred to have seen the specific proposals that will be made and to have had the time to debate them, rather than to debate the generalities, which are even open to misinterpretation by those who are sympathetic, because they do not understand the detail. The more the questions come, the less the answers come.

We should also ask ourselves—this is a central point—in what context we can achieve change in Scotland. Is the context education of parents, who need help? We do little to help parents to face the challenges of parenthood. As a parent, I know how difficult being one is. Lyndsay McIntosh is agreeing with me and I think that every parent in the chamber will agree with me. Parenting is difficult and we do not do much to help people with it.

We should ask ourselves a genuine question. Is legislation of this nature going to help to educate parents? It could; there are examples—to which my friend Irene McGugan will refer—from Sweden and elsewhere. The legislation could help to educate parents, but there seems to be no indication that it will do so. We will have legislation that simply sets penalties, and that might be unhelpful.

I will address my final question differently from my friend Mr Ewing. In having the debate and trying to achieve the results that many of us want, do we say enough to satisfy public expectation of Government? Do people believe that this is what we should be doing? If we are going to make these changes, are we persuading people that we must make them and that that is the right thing to do? I am uncertain, from what the minister has said today about the measures, whether we are moving in the right direction.

The evidence that we gave as a party to the minister's consultation process was broadly supportive, but it raised questions. I am being genuine in raising more questions with the minister and the Executive. We could move forward better on the matter if we had firm proposals, if we understood the international obligations and how we fall short of them, and if we also understood that there was a desire to help and assist parents. That is what I am asking for today and that is what my amendment asks for. If we could have that information, many of us would feel much happier about the situation in which we find ourselves. Three-line general statements, no matter how worthy they are, do not assist parliamentary debate and scrutiny. Parliamentary scrutiny is about firm proposals that can be changed through the Parliament's committee system to provide the best possible legislation. So far, the jury is out on whether that will happen.

I move amendment S1M-2206.1, to insert at end:

"but calls upon the Scottish Executive to publish full details of its proposed legislation without delay and to explain in detail to the people of Scotland why such legislation is necessary in terms of the European Convention on Human Rights and the UN Convention on the Rights of the Child and to ensure that the emphasis in any such legislation is on helping parents by means of educative change rather than applying punitive sanctions.

16:04

**Lord James Douglas-Hamilton (Lothians) (Con):** I preface my remarks by making it clear that I had the honour and privilege to pilot through the House of Commons the Children (Scotland) Act 1995, which brought in protection for children and improved procedures. I am proud that that opportunity came my way and that the 1995 act went through with all-party support.

Sadly, the Deputy First Minister's proposals will not command all-party support, as we believe them to be wholly unnecessary and, indeed, an affront to Scotland's parents. The key point is that there is no single case of unreasonable treatment meted out by a parent to a child that cannot be dealt with by the courts. Already, as it is, the courts are in a position to determine what is reasonable and what is unreasonable when it comes to disciplining children. The proposed legislation will introduce no protections that do not already exist.

**Scott Barrie (Dunfermline West) (Lab):** Will the member give way?

**Lord James Douglas-Hamilton:** I will continue.

The proposals reek of the nanny state, by notifying all Scotland's parents that they are potential criminals.

Let us suppose that some young Hercules aged two years and 11 months dislikes his mother's best efforts to give him a tasty supper, which he hurls in her face. If she dares to remonstrate with her young hero, her actions could be criminalised. Similarly, if a very young child assaulted another very young child, would it be unreasonable for an adult to restore some discipline? If the new policy is set out in statute, it will be an example of the Deputy First Minister's seeking to control every aspect of our lives.

**Iain Gray:** Will the member give way?

**Dr Richard Simpson (Ochil) (Lab) rose—**

**Lord James Douglas-Hamilton:** I will give way to the minister in a moment.

Surely it is significant that the Prime Minister is not rushing to give the Liberal Democrats undying support on the issue. He appears to support the

Liberal Democrats with about as much enthusiasm as a rope supports a hanging man. The Prime Minister is not willing to support the Executive on the matter either. In an interview with *Parents* magazine in 1996, the Prime Minister said that there was a

"clear dividing line between administering discipline on the one hand and violence on the other which most parents understand perfectly well."

Furthermore, on 18 January 2000, the Government said on BBC News Online that it

"should not, and does not want to interfere in the private relationship between parents and their children, and that most people know the difference between a 'mild rebuke' and assault."

It seems that the Prime Minister, Mr Tony Blair, is far more concerned with retaining the good will of parents than with political correctness on this occasion. I agree with him.

**Iain Gray:** If I understand Lord James's point, I think that he feels that the matter should be left alone. That puzzles me, because when the Parliament debated the matter previously, the Tories moved an amendment that called

"upon the Scottish Executive to clarify the definition of reasonable chastisement so that both parents and children are sure of their rights within the law."

What has happened in the meantime to ensure that parents and children are sure of their rights within the law?

**Lord James Douglas-Hamilton:** The courts are well able to interpret reasonableness. I quote to the minister the statement of Judith Gillespie from the Scottish Parent Teacher Council. In a recent letter she said:

"There is no consensus ... people fall into two distinct camps over smacking - the 'never ever smack' and the 'it's a legitimate part of parenting' ... This matters because, ultimately, laws depend either on general acceptance or effective penalties."

**Michael Russell:** Will the member give way?

**Dr Simpson rose—**

**Lord James Douglas-Hamilton:** I want to continue. I have one or two points to make. If I have time, I will give way to Mr Russell.

Norman Wells from Families First said that the proposed legislation would

"criminalise loving parents ... this will cause no end of trouble for parents in a normal, happy, family environment."

Colin Hart of the Christian Institute think-tank said that

"instead of chasing abusers police will waste their time looking into allegations against perfectly respectable and decent parents."

Enforcement is a further problem. Without

closed-circuit television as a spy within the hearth and home, it is highly unlikely that the proposed legislation will make any difference.

**Michael Russell:** I do not think that evidence of bogeys lurking in the background, of which Lord James is afraid, exists, but I have a specific point for Lord James. If the ECHR and the UN Convention on the Rights of the Child require legislative change, will he accept that that is legitimate? I accept that the minister has not said whether that is the case, but if it was, would he accept that that was an international obligation?

**Lord James Douglas-Hamilton:** If any such obligation existed, I have no doubt that the Prime Minister would deal with it in the House of Commons.

The member was right to say that definition is a major problem. The Administration has not even produced a draft bill, so we cannot argue over the detail. We are dealing with generalised concepts and that is wrong.

Family rights campaigner Victoria Gillick has been reported as saying that the Scottish Executive is

“confusing hitting and abusing a child with disciplining. This is a question of intention and there should be nothing wrong with a father or mother disciplining a child as he or she sees fit.”

A powerful comment is to be found in the *Daily Mail* of 7 September.

“the most notoriously difficult developmental year in a child’s life has been targeted by politically correct fanatics ... This proposal literally creates a nanny state.”

The comment writer went on to say that

“the State is interposing itself between parents and children, a sure sign of an incipiently totalitarian society.”

**Iain Gray** *rose*—

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)** *rose*—

**Lord James Douglas-Hamilton:** I have no idea whether the—

**The Deputy Presiding Officer:** Lord James should begin to close his speech.

**Lord James Douglas-Hamilton:** I will sum up, as many other members wish to speak.

I have no idea whether the Deputy First Minister will be remembered for that role, but it is only fair to give him a cautionary warning of that possibility when he has time to read the report of the debate, as he does not have time to attend it. If he proceeds with the legislative proposals, he will be remembered as the nation’s nanny. Even at this late stage, I ask him to reconsider. Can he not see that the issue distracts from far more important matters such as child abuse, perversion, serious

assault and drug pushing? We will oppose the measure, as it is unnecessary, unworkable, unenforceable and misconceived. It is a somewhat tiresome and pernicky interference with Scotland’s parents. Frankly, I have to say that Scotland deserves better.

16:11

**Nora Radcliffe (Gordon) (LD):** The Liberal Democrats are happy to support the proposals. In many ways, we would have been happy also to support Mike Russell’s amendment. However, Mike Russell calls for the publication without delay of the full details of the proposed legislation. That is not practical to deliver because of pressure on parliamentary draftsmen. The tenor and content of Mike Russell’s amendment are a valuable addition to the debate. If he had added “without undue delay” or “as soon as possible” to the amendment, it would have been easier for the Liberal Democrats to support it.

**Michael Russell:** On a point of order. Would the Deputy Presiding Officer accept a manuscript amendment to add the word “undue” between the words “without” and “delay”?

**The Deputy Presiding Officer:** No provision exists for that.

**Nora Radcliffe:** We are, in any case, all heading in the same direction.

The amendment calls for detailed explanation of how the proposals relate to the UN Convention on the Rights of the Child or to the ECHR. The consultation document explained fully those proposals. It is right that people should be aware of the distinctions and how those impact on legislation in Scotland. The proposals have been introduced not because of the UN Convention on the Rights of the Child or of the ECHR but because we want to introduce them. They are, however, underpinned by those conventions.

There is wide agreement that it is time to update and clarify the way that the law deals with the physical punishment of children. Strong arguments have been advanced that corporal punishment of children is absolutely wrong and that it should be prohibited completely. As a parent, the force of those arguments can be reinforced by the absurdity of the things that parents find themselves saying, such as “Don’t hit your little brother or I will smack you.”

In some ways I find it difficult to refute the logic of the argument for a total ban on corporal punishment. On the other hand, my own experience of the difficult role of bringing up children is that, in some circumstances—it is a rare experience—a smack can be a swift and effective way of getting a child’s attention and emphasising that something serious is involved.

It is entirely reasonable, however, to ban physical punishment of a child who is too young to understand why it is being punished. A two-year-old is small enough to be picked up and removed from danger. At that age, a child should be supervised closely enough for that to happen. In the child's mind a smack is not associated with danger. The smack therefore does nothing apart from relieving parental stress. That is not a good enough reason to administer a smack.

When laying down the law, consideration must be given to whether the law will be endorsed by those to whom it applies and also to whether it is enforceable. I believe that there is a responsibility on us to lead, but we can do so from only so far in front. The current set of proposals is pitched at about the appropriate level for where we are at the moment. Public opinion is changing about what is or is not acceptable; looking back even a few years demonstrates how far it has moved. However, I feel that a total ban is still too far for where we are at the moment.

There is pressure for more clarity about what society is prepared to accept as reasonable. Most parents will welcome a set of parameters that are clear, while not being totally prescriptive about how they discharge their parental responsibilities. The limitations that are being set can be justified, for example, in terms of increased understanding of the dangers inherent in hitting anyone—particularly a child on the head—or in shaking them.

The guidance on what it is appropriate for courts to take into account in assessing reasonableness is to be welcomed. The proposals will mean consistency between publicly and privately funded pre-school child care—that is good, because the law applies differently at the moment in different situations.

I totally agree with Mike Russell that much more needs to be done to give parenting the status it merits and to give parents the support that will help them with the most important job in society.

**The Deputy Presiding Officer:** Members will recall that we lost debate time earlier. We have to be out by 4.38, so I ask that speeches be no longer than four minutes.

16:16

**Dr Richard Simpson (Ochil) (Lab):** I acknowledge that many of those who oppose the measures do so with good intentions. They firmly believe that smacking children is a good method of imposing discipline, that no child has ever been harmed by smacking and that smacking a child is altogether different from hitting a child.

However, let us be clear about the language we are using. The word smack seems to be a softer

word than hit, but the intention is the same for both: to cause pain, whether physical, psychological or both. If an adult smacks another adult, we call it an assault. If an adult—for example, a teacher or a foster parent—smacks someone else's child, we call it an assault. However, the critics of the measures claim that it is all right for people to smack their own children. That suggests that the issue at stake here is one of ownership—that is, that a child is in fact a possession and the parent has the right to treat the child as he or she sees fit. That is according to Lord James Douglas-Hamilton. No one, least of all the state, should have the right to interfere.

That belief in the right of ownership of one person by another also underlies the abhorrent practice of domestic abuse, which the Parliament has debated at length and is trying to eradicate from Scottish society.

**Lord James Douglas-Hamilton:** The courts have the right to interfere in any case of unreasonable conduct or chastisement.

**Dr Simpson:** The thing about domestic abuse that interests me is the Zero Tolerance Trust survey that showed that 20 per cent of young men believe that violence against women is appropriate in certain circumstances. I wonder where they get the idea that violence is appropriate as a means of developing a relationship. Could it be that it is because we allow corporal punishment of our children?

Our most recent children's legislation in Scotland—the Children (Scotland) Act 1995—is underpinned by the principle derived from the UN convention that a child has rights. One of those rights is the right to protection. I see the proposals as a modest but logical extension of those rights.

The legislation will ban the use of implements. Apparently, Lord James is not in favour of that either.

**Lord James Douglas-Hamilton:** Will the member give way?

**Dr Simpson:** Not at the moment.

Childline has provided us with some distressing insights into the types of implements used by adults to "discipline" their children. Children who have used the helpline have talked about being smacked—although they call it hit—by adults, no doubt, in many instances, in the belief that it was for the child's own good, with sticks, slippers, bats, pool cues, belts, straps, electric cables, spades and tools. People talk about the use of implements—let us just call them weapons. Why do we use these euphemisms? They are weapons. They risk serious injury to the child. It is a blessing that there are not more serious injuries as a result.

The consultation proposes to ban the shaking of small children and blows to the head. The first experience that I had in Perth royal infirmary was of someone who had shaken a small child. They stated clearly to me, and I remember it to this day, that they had no intention of damaging that child, but only of controlling it. We must ban the shaking of small children. That is absolutely imperative. There are sound medical reasons for banning the shaking of children. Shaking a child can cause internal haemorrhaging in the head, leading to brain damage.

The intention of the proposals is not to lead to increased interference in family life, to increased prosecution of parents or to the bogeys that Lord James Douglas-Hamilton referred to. Experience in Sweden, where all smacking of children is outlawed, has shown that no increase in prosecution of parents has occurred since the ban came into force. Mike Russell referred to attitudes in Sweden, where only 6 per cent of people now believe that corporal punishment is appropriate. We need a change of opinion, and this Parliament must lead with its legislation. This is a modest proposal to improve things. I would prefer a total ban, but at least all children under three in Scotland will in future be definitively protected by law, which is important.

16:21

**Colin Campbell (West of Scotland) (SNP):** I am probably one of the few people in this chamber who have formally administered physical chastisement in schools. I resorted to it very infrequently, and I was happy to see it go.

I was in charge of a secondary school when it was made clear that corporal punishment had to go. We had pre-empted the start date by a complete term, had set up a system of reporting and alternative punishments, and lived in a fool's paradise for a term. After the holidays, the new intake took full advantage of the disappearance of the tawse, and the rest of the school wakened up to the possibilities. My staff and I spent hours every week interviewing pupils and parents. Strathclyde region was so ill-prepared for the subsequent disorder that, after a few months, head teachers protested in the press. The system sat up and took notice, and attempts were then made to find workable alternatives.

It was felt that the transition from the formal availability of corporal punishment, or the status quo, in schools at that time to the ban was arbitrary, too rapid and not accompanied by anything other than publication of a change to the law. Thereafter, people were left to their own devices. Teachers were resentful and unconvinced. The alternatives did not have the deterrent effect of corporal punishment, and the

parents, staff and pupils were not prepared for the change.

I therefore support Mike Russell's amendment to publish full details of the planned legislation without delay. In particular, I support his proposal to emphasise that there must be great stress on education to teach potential parents and existing parents how to control situations that could start the kind of parent-child confrontation that might lead to the parent feeling that physical punishment was the only option. I think that most of us who are parents have been there.

That will involve a change in the it-didn't-do-me-any-harm point of view, which, in the hands of an individual whose own childhood was blighted by severe physical chastisement or corporal punishment, can mean that his or her child is severely chastised by what we might all agree are normal standards. I recall a parent to whom I suggested that grounding his child all weekend was inappropriate for the offence committed. His response was that he used to be tied naked to a chair in his bedroom when he misbehaved at home, so his treatment of his child was reasonable by comparison. Another parent once told me, "Just take him in your cupboard, Mr Campbell, and give him a doing." I demurred, naturally. That parent also said that his older son was cured of thieving by the parent spreading his hand on the table, taking a hammer and threatening to break his fingers one by one if he ever thieved again. Those men's children are in all probability parents themselves now. I wonder how reasonable they are when they chastise their children. That is why we need the legislation.

Along with a more detailed definition of how much physical chastisement is enough, or the situations in which it can be legitimately applied, we also need an accompanying plan to educate parents in family crisis avoidance, family crisis management and family conflict resolution.

16:24

**Hugh Henry (Paisley South) (Lab):** It is interesting that Lord James Douglas-Hamilton has chosen to take the Tories back to the old certainties. I do not know whether that is in anticipation of the announcement at 5 o'clock. The tone of his speech was discouraging and dispiriting. I might not agree with what Mike Russell said, but at least he made a genuine attempt to take the debate forward in a constructive manner and recognised that there is a problem. Unfortunately, the Tories rest on prejudice and bigotry in the widest sense of those words.

Over the years, there have been too many horror stories of physical, psychological and

emotional damage inflicted on children. We need a system that protects them. Lord James Douglas-Hamilton said that it is easy to highlight the most obvious criminal cases that are clearly beyond the law. However, there are many recorded instances of people doing things that are not outwith the law but that left a terrible mark on individuals.

Famous Scots stars have talked about their upbringing after the break-up of their parents' marriage when they were put out to live with other members of the family. They have spoken movingly about the problems that they faced as children and the mark that was left on them throughout their lives by what relatives did to them—possibly with the best of reasons and intentions. Unfortunately, in many instances society is predicated on and accepts violence. We must introduce a system that starts to move us away from the use of violence and from talk that violence is acceptable.

Unlike Mike Russell, I welcome the Executive's motion. It is an opportunity for people to express concerns, doubts and worries. We need to ensure that we get things right. We need a system that supports and protects children, but that also supports parents. As Iain Gray said, we recognise the difficulties that parents face in bringing up their children and we do not want to do anything that would undermine or weaken them. Definitions must be precise. If we are to change the law, we cannot afford to introduce more confusion and dubiety. We need not only to ca' canny, but to ensure that we get things right. A credible system is needed. If we introduce legislation that clearly does not have parents' support, makes the law difficult to enforce and leads to nothing but legal wrangles and squabbles, we will have failed children and parents.

However, it is right to try to take the debate forward. Dubiety must be removed and definitions clarified. Anything that can be done must be welcome. For too long, too many children have suffered, not at the extremes, but near the margins. That has left a terrible mark on those children.

16:29

**Phil Gallie (South of Scotland) (Con):** I have listened to the minister. It could be said that the path to hell is paved with good intentions. I do not doubt his sincerity, but I believe that he is making a grave mistake in supporting the Deputy First Minister's proposals. I welcome the fact that he has not listened to the call from many of his back benchers to go for an all-out ban on smacking—that would have been a grave mistake—but I regret that he has pandered to them by proposing the ban that he intends to impose. There is no need to clutter up our legislation in such a way.

The proposal is an insult to the great majority of loving and caring parents, who are responsible and whose disciplined approach of choice is much needed in our society. Those parents ensure that their offspring attend school, keep reasonable hours, behave well in public and respect other people's property. That majority is best placed to judge how they will discipline their children—in a reasonable manner—and how to draw their child's attention to a misdemeanour or to a hidden danger on the spur of the moment. They are in a position of trust and they should not be turned into criminals for carrying out an action that they consider to be in the best interests of their child.

**Alasdair Morgan:** Will the member give way?

**Phil Gallie:** I do not have time.

On another aspect, perhaps the minister will reflect on problems in the Crown Prosecution and Procurator Fiscal Service. The system is under pressure and, just a few weeks ago, had to abandon the case of a 14-year-old rape victim because it could not proceed with the case. The service is experiencing resources difficulties and a lack of experience because of failures in recruitment and retention. If we proceed with the proposal, we will overwhelm the service and lose out on more important issues.

I acknowledge that, unfortunately, there will be the few who abuse their children in an unreasonable manner. However, I point out to the minister that that physical abuse is catered for under the 1937 and 1995 acts. The minister should reflect on that once again.

I also ask the minister to reflect again on other pressures that are put on children—for example, mental pressures from someone who might not smack their child. It could be said that restrictions of movement, suppression of friendship and undermining a child's confidence all end up damaging a child immeasurably. We must put our trust in parents on such issues. The same is true for the physical dimension.

I know that compliance with the European convention on human rights is an issue that will come into the debate. On this occasion, I choose to answer such arguments not in my words, but in those of a mother and grandmother—Mrs Allen of Peebles. Many members might have received the letter from her, in which she says:

"They talk of human rights of the child, but by taking away the rights of parents to discipline on an individual basis they cause harm to the child's future."

I believe that Mrs Allen's view is that of the silent majority. She has never heard of the consultation paper, but she has firm views. I believe that she understands, knows and loves the children who have been under her care for many years.

16:33

**Kay Ullrich (West of Scotland) (SNP):** I am sure that members agree that good parenting is about using common sense. Therefore, I intend to put the proposals to the test of common sense. Let us see how they stand up.

One of the proposals is a ban on shaking. As Dr Richard Simpson put it, anyone who has seen the damage that is done to a child who has been violently shaken knows that the ban is common sense. Even my old grandmother knew that. Granny used to say, "Never shake a wean—their wee brains will rattle about." Dr Simpson will agree that those are not exactly medical terms, but Granny was spot-on for common sense.

Another proposal is a ban on blows to the head. Again, Granny had words for that, but she used the words of her time. She would say, "Never hit a wean on the head—you'll knock it daft." Those were not medical terms and they were not politically correct, but they were common sense.

A ban on the use of implements to hit children is also proposed. Members will be glad to hear that I cannot remember Granny's words on that subject. However, I know that she never used a weapon on a child. I think that Granny would have found strange the idea that someone could not smack a little hand that was reaching for the bar of an electric fire or about to take a drink from a bottle of bleach.

Think about this. I could at any time charge over to Labour benches and start skelping one of their number—and heaven knows I have been tempted—but if I did I would get lifted and charged with assault. If I did it to my child, however, I could claim that I was exercising reasonable chastisement. Legal clarification of what constitutes reasonable chastisement is urgently required. I cannot hit my husband as that would be domestic violence and I cannot take a stick to a dog as that would be animal cruelty but, as matters stand, children are fair game.

As members will have gathered, there is much in the Executive's proposals with which I agree. The problem is that, although they are well intentioned, they are confusing—in their present form, they appear to be unworkable. We need detail. The SNP amendment calls for detailed proposals to be produced at the earliest opportunity, so that we can have an instructive and informed debate on the subject. Legislation must be effective but, more important, it must be capable of effect—it is essential that any change should not simply be a matter of introducing legislation.

We should consider what has been achieved on the issue of domestic violence. Our laws rightly demand zero tolerance but, alongside that, we have continued to educate men and women in

order to effect a change in attitude towards violence in the home. If the law is our defence, education is our protection. That is how it should be with violence towards children. The law is the defence for those who cannot protect themselves. Education for parents is the means by which we will make life better for all Scotland's children.

**The Deputy Presiding Officer:** We must now move to closing speeches. I apologise to the two members whom it has not been possible to call.

16:37

**Scott Barrie (Dunfermline West) (Lab):** The Scottish Executive announced its consultation on the physical punishment of children in February 2000. Parliament debated the subject on 24 February 2000. In that debate, Nicola Sturgeon, then the nationalist education spokesperson, stated that it was important that the Executive did not prejudice the outcome of the consultation. She went on:

"We must be clear about the principles that inform the debate ... Children's interests are paramount. They have a right to be protected from physical assault in the same way as any other member of society."—[*Official Report*, 24 February 2000; Vol 5, c 115.]

As the Deputy Minister for Justice stated, the importance of consulting children and seeking ways of ascertaining their views was also stressed. We have had the consultation and the Minister for Justice has announced his intention to legislate in certain areas. I whole-heartedly support last week's announcement and look forward to the introduction of the proposals in a forthcoming criminal justice bill.

We have heard that the main legislation governing the protection of children still lies in the Children and Young Persons (Scotland) Act 1937. As I stated in the debate 18 months ago—in total contrast with what we have heard from Tory members today—I feel that the use of the phrase "beyond reasonable chastisement" in that act has not served to provide good case law. It is too vague and can be interpreted widely and differently by parents, by the police and especially by the courts. Maria Fyfe, the former MP for Glasgow Maryhill, proposed a sensible amendment during the passage of the Children (Scotland) Act 1995. Unfortunately the then Tory Government would not accept it. The amendment would have outlawed the use of implements on a child. The fact that that is to be outlawed in forthcoming legislation is to be welcomed, as is the proposal to outlaw the shaking of a child, which, as we heard, can have devastating consequences.

Most members will be well aware of my personal view on physical chastisement—we should be considering the introduction of a ban. In summing

up last year's debate, the then Deputy Minister for Children and Education, Peter Peacock, said that he had no difficulty in accepting my view as a matter of principle. However, he acknowledged—and I agree with him—that that view does not seem to be shared by the majority of parents in Scotland.

Today, we have heard that 10 European states—led by Sweden in 1979—have totally outlawed the physical chastisement of children. I accept that that occurred against a backdrop of a fair degree of public consensus. When those countries—particularly the Scandinavian ones—moved to that position, the public were significantly behind it. The change came with relative ease instead of great controversy and parents did not feel that big government was intruding unnecessarily into their daily lives.

However, I fully accept that any initiative, including those proposed by the Executive, cannot happen in a vacuum. There must be an on-going educative process for parents, young people and others in society on why the current proposals are right and on why far more effective means of discipline than physical punishment are available.

**Alasdair Morgan:** Will Scott Barrie admit that some of the measures that the minister announced will make things more complex instead of simpler and more effective? We heard the example of childminders, who would be committing an offence if they slapped a child at the childminder's home but not if they slapped the same child at the parents' home. Do we really need such complexity?

**Scott Barrie:** As the minister indicated in his responses to interventions, we have not seen the actual proposals. Such issues should be debated at committee stage when the bill is introduced.

We have read and heard in some quarters of the media—indeed, we have heard it in the chamber today—that the Executive's proposals smack of the nanny state or are simply a politically correct response. I am a bit sick of people who, when they have a weak argument or none at all, resort to the statement, "It's only PC." The proposals are not just politically correct, but morally right. They do not seek to criminalise a whole section of caring parents; instead, they will afford children the same protection that is enjoyed by every member of the Parliament. It seems that the Tories do not wish to confer that protection on our children. The proposals will not result in the prosecution of trivial offences, just as trivial assaults between adults are not the subject of prosecution. That has been the experience in Sweden, where the number of child abuse cases has fallen in the past 20 years. Sadly, during the same period, the number of cases of child neglect and physical and sexual abuse in Scotland has risen dramatically.

16:42

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** I find myself in something of a rush now that the debate has been curtailed.

I will reply very briefly to some of the issues that have been raised today. In particular, I agree with Hugh Henry's comments on the difficulty that he foresees with, for example, shaking a little child when they are about to run out on to the road. That said, I understand Dr Simpson's concerns about shaking a child unreasonably; indeed, a case in America that has come to light only today concerns a nanny who shook a child until it was deaf. There is a distinct difference between that and the example that Hugh Henry highlighted. It is easy to take a wee child by the arm and tell them, "You're not supposed to run into the road."

On Sunday, I saw a three-year-old toddler about to run into the road on one of those estates where you go and buy things. I wanted to shake the parent for not taking a child of such tender years by the hand. More often than not, the problem is poor parenting.

**Alasdair Morgan:** Will the member clarify the Conservative position? I have to say that it was not clear from Lord James Douglas-Hamilton's speech. Are Conservatives against all the proposals in the Executive's press release, such as the total ban on blows to the head and the use of implements, or are they against some of the inconsistencies?

**Mrs McIntosh:** We do not yet have the full detail of the proposals; what we want—and what we should be considering—is a bill. I welcome the moves that the Executive has made. The previous time we debated this issue, I lodged an amendment that asked for further clarification of the Executive's proposals. This is a welcome step towards that aim, but we do not want a rush to legislate.

I am interested in pursuing the Swedish example that Scott Barrie mentioned. I do not doubt that, in the Swedes' view, their experiment was successful; however, we must remember that it had a long lead-in time. Most of the public supported the idea before the legislation programme was even started. The minister is nodding, but we seem to be trying to put the cart before the horse.

**Iain Gray:** Lyndsay McIntosh makes a fair point. In Sweden, public opinion was with the Government when it moved towards a complete ban on smacking. The consultation that we have undertaken shows that 77 per cent of those who responded are completely behind us in moving towards the partial ban that we have outlined in the proposals. I would therefore expect Lyndsay McIntosh to welcome them.



**Mrs McIntosh:** We are not comparing eggs and eggs; we are comparing apples and oranges. We are talking about a complete ban and moves towards it. We are not comparing like with like. However, I appreciate the point that the minister makes.

The point at issue is whether we should legislate. There is a case for clarification in the law and I am glad that the Executive has responded to it. We are getting ourselves tied up in the notion that the only thing that we should be talking about is smacking or skelping, when we should be examining parenting skills and changing the way in which we view them.

There are much better ways of disciplining children than physical punishment. The choice should be left to parents, but there are much more subtle—and better—forms of child chastisement and disciplining. The last time we debated this issue, I gave examples of such methods from my experience of child rearing—in which, as Mike Russell has suggested, I have considerable experience. Even as they grow older, children need to be encouraged to behave in one way rather than another—and I speak as the mother of someone who is almost 17. For a parent, the most potent weapon, one might say—although I prefer to call it a tool for persuasion—is access to the family car when a child wants to have driving lessons. The suggestion that the parent might not allow their child to have driving lessons or give them access to the car is far more powerful as a bargaining tool than the threat of a smack.

In summary, we are glad to have received the clarifications that the Executive has proposed, but we doubt whether now is the time to impose regulation. We needed the long lead-in time. The courts are already in existence. We are concerned that the Executive has chosen to consider an ill-conceived and unnecessary piece of legislation now. Nevertheless, we look forward to seeing the detail in the bill when it is introduced.

16:48

**Irene McGugan (North-East Scotland) (SNP):** This has been a good debate which has made it clear that all members are genuinely concerned about the welfare of children. There are differences of opinion, of course, but they are not necessarily of a party-political nature. It is no secret that my views are similar to those of members of other parties, as I reflect the views of children's organisations on the issue.

I firmly and sincerely believe that it is wrong to hit children, just as it is wrong to hit adults, and I would like to see a fundamental change in our society that would protect children from harm and provide absolute clarity to parents on forms of

punishment that are permitted by law. Only a complete ban on all forms of physical punishment would meet both those aims.

As Dr Simpson said, in Scotland the law on assault protects everybody except children. There is no problem with public confidence in a law that already prohibits all assaults on adults, including those that take place in the home. Similarly, there is no problem in implementing a law that prohibits all assaults on children in the care of teachers, foster carers, residential carers and others. So why stop there?

Parents are permitted to chastise their children reasonably, but the imprecise nature of that permission has given rise to subjective and variable interpretations. I would prefer that concept to be abandoned; the Executive prefers it to be clarified and restricted. Perhaps it is right to ask whether the solutions that have been outlined in the Executive's proposals are either enforceable or effective. They try to suggest where a child can or cannot be hit; with what a child can or cannot be hit; and in what circumstances a child can or cannot be hit. No other European country has ever sought to establish those kinds of definitions, and nor should we.

Far from sharpening the focus of the law to protect our youngest children, the new precision merely introduces uncertainty for all. The proposed solution is confusing and could be ambiguous for children and adults alike. Ideally, we should be aiming to alter public attitudes towards corporal punishment and establish a clear framework for parent education and support, which several members have mentioned today. The Executive proposals lack a planned public education programme that would provide support for parents in moving away from smacking to positive discipline. Most parents would welcome such advice and guidance. That is an essential component because legislation is not the only way—nor is it the best way—to achieve an ideological shift in society's values.

The Children are Unbeatable! alliance has closely examined developments in many other European countries—there are now nine in which smacking is illegal—and knows that such reforms, which were invariably implemented ahead of public opinion, quickly come to command public confidence and support. That is because, coupled with public education campaigns, they are effective in changing attitudes and practice. In those nine countries, parents do not get prosecuted for trivial assaults on children and state intervention in families does not increase. The reforms are about education, not punishment. They are about changing attitudes and moving society towards positive discipline. The intention is not to criminalise parents but to protect children.

The views of children have not been sufficiently heard yet on this issue but I suggest that their opinions should be what influences our policy decision most. The research that was carried out by Save the Children, and which was referred to by the minister, was informative. Some 93 per cent of the 400 children across Scotland aged between eight and 16 who were asked said that they would prefer adults to use alternatives to smacking. Indeed, the children who were aged between five and seven did not use the word "smacking" but "hitting".

Children need to be protected from violence in all its forms and they should have the opportunity to learn right from wrong through positive and non-violent forms of discipline. In the meantime, if the measures before us are to be successfully implemented, the Executive must provide extensive information on the new law, the reasons behind it and, crucially, alternative methods of disciplining children. Children deserve no less from this Parliament.

16:52

**The Deputy Minister for Education, Europe and External Affairs (Nicol Stephen):** I have some sympathy with the spirit behind the amendment in the name of Michael Russell and, as Nora Radcliffe said, we could perhaps have accepted it, with a few relatively minor changes.

In the consultation paper on the physical punishment of children that the Executive published, we made clear the position under the European convention on human rights and the UN convention on the rights of the child. Neither expressly prohibits the physical punishment of children. What is all important to the interpretation of the conventions is the intention, the nature and the scale of the punishment.

The ECHR judgment of *A v the UK* concerns a case in England and Wales. In that case, a child was caned by the future stepfather. The ECHR found that to be inhuman and degrading treatment. There has been no Scottish ECHR case concerning parental chastisement, although it was an ECHR case that resulted in corporal punishment being abolished in schools. However, in a recent Scottish case, our courts found that it was unreasonable for a father to smack his eight-year-old daughter on her bare bottom to punish her for refusing to submit to dental treatment. Our legislation will deal with the issue of caning. On the issue of smacking an eight-year-old, the courts will continue to decide, taking into account the statutory factors that we are proposing.

**Mr Rumbles:** I was reasonably relaxed about the Executive's proposals until I heard the Deputy Minister for Justice's opening speech today. I do

not understand how he is certain that retribution is the primary purpose of physical chastisement. Will the minister please clarify that that is not the Executive's view and that it is not the *raison d'être* of the motion?

**Nicol Stephen:** I clarify that the proposals are about what is reasonable, not about retribution. Our proposals are designed to set out statutory factors for the guidance of the courts and to clarify the boundaries for the parents.

Jim Wallace's answer to a parliamentary question from Duncan McNeil on 6 September made it clear in considerable detail what we propose to put in legislation. We will include in statute guidance to the courts as to what factors they should take into account in determining whether punishment was reasonable. As proposed in the consultation paper, the courts would be required to take the following factors into account: the nature and context of the treatment; its duration and frequency; its physical and mental effects; and the sex, age and state of health of the child. The list not will be exhaustive, so that other factors can be taken into account depending on the circumstances of the case.

In addition, we propose that legislation should contain a list of types of punishment that would never be permitted. Those have been covered already. They are blows to the head, shaking and the use of implements.

**Michael Russell:** I was slightly hopeful when the minister rose to speak because I thought that he was going to discuss the matter in terms of the education, rather than the punishment, of parents, but we have just heard that there will be a list to which courts can refer.

We have already heard, in the Deputy Minister for Justice's opening speech, of the difficulties of interpretation on matters that came from sympathetic back benchers. He talked about drawing lines rather than changing behaviour. Is the minister telling us that we will have a table of acceptable behaviour? It strikes me that the confusion that that will cause will be almost impossible to deal with. It will not clarify matters; it will make them more difficult.

**Nicol Stephen:** I am not saying that. I have made that clear. The legislation will contain factors that should be taken into account—exactly the factors that I have just described.

**Phil Gallie:** Will the minister give way?

**Nicol Stephen:** I am sorry; I must make some progress because of time.

**Phil Gallie:** Will the minister give way?

**Nicol Stephen:** I will give way briefly.

**Phil Gallie:** The minister referred to the individual who smacked his eight-year-old daughter. Is he aware that the court admonished that individual and that as a consequence he lost his job? The effects on the child must have been horrendous. Is that not a warning on the danger of criminalisation?

**The Deputy Presiding Officer:** We must make up time, minister.

**Nicol Stephen:** I am sorry.

I am fully aware of what Phil Gallie says. My point was that, under the present law, the individual was found guilty and the behaviour was found to be unreasonable. Phil Gallie correctly described the consequences that followed.

We propose to ban physical punishment of children under a certain age. Our current intention is that the cut-off point should be two years old or under. I have no doubt that there will be further debate on that. We will extend the ban on corporal punishment to all regulated child care.

It would be hard to publish fuller details of the proposed legislation without publishing the legislation itself. Most of the proposals would be suitable for introduction in the criminal justice bill that the First Minister announced in the legislative programme, but those that concern regulated child care will be covered in regulations that are provided for in the Regulation of Care (Scotland) Act 2001. We will, of course, consult on the detail of those regulations.

Further details will be published as we proceed with the preparation of the necessary legislation. We intend that any change in the law will receive widespread publicity. The first stage in that process has already begun. The media coverage already indicates a high degree of public awareness, although some of the press coverage has unfortunately been misleading.

A key element—I refer to Mike Russell's intervention—is to help parents through education. Advice on different methods of discipline is already widely available from a number of children's charities, including Barnardos. I believe that more needs to be done to help parents and to help improve parenting skills. We want to help children and parents by clarifying the law and letting everyone know where the line is being drawn, but we must go further than that. The Executive has been giving careful consideration to the development of parenting support in Scotland.

We recognise that being a parent is often the most challenging and rewarding task that anyone will ever undertake. Children do not come with instruction manuals. Many parents—in my view, all parents—experience difficulties in parenting. It is important to recognise that parents sometimes

need advice or support. Too often in Scotland, parents are asked whether they wish to go to antenatal classes but, after that, support stops altogether.

We do not want the legislation to be prescriptive or compulsory, as some have suggested. Nor do we want to interfere in family life or parents' religious beliefs. We simply want to ensure that there is a correct framework, that children in Scotland are safe and secure and that support is available if it is requested.

By stopping blows to the head, shaking and the use of implements, we will help to protect children. Our approach will provide the balance sought by most parents in Scotland. They will have the freedom to decide for themselves how to bring up their children, including whether their children should, in due course, be subjected to physical punishment. Parents will have clear limits on what is and is not permitted in the way of reasonable chastisement. Their children will be protected from the kind of punishment that creates the greatest risk of injury.

We are responding to the attitude of parents in Scottish society today. A society's attitude changes and I am sure that Parliament will want to return to the issue in future. Our proposals are measured and reasonable. We will seek to include our measures in the forthcoming criminal justice bill. We shall also bear in mind the many valuable points made in today's debate.

The Conservatives—and particularly Lord James Douglas-Hamilton—have used strong words today. I will use their own words from last February's debate on the physical punishment of children. They called on the Scottish Executive

“to clarify the definition of reasonable chastisement so that both parents and children are sure of their rights within the law.”—[*Official Report*, 24 February 2000; Vol 5, c 120.]

Lyndsay McIntosh made that proposal and it was supported by all the Conservatives, including Lord James Douglas-Hamilton. We are doing precisely what they suggested.

The judgment of what is reasonable punishment is not, and never should be, left to the individual parent. Clearly there are strong views on the issue. We simply seek balance and clarity in terms of what is reasonable. That is why we intend to introduce legislation in the first part of 2002.

## Scottish Parliamentary Corporate Body Motion

**The Deputy Presiding Officer (Mr George Reid):** The next item of business is consideration of a Scottish Parliamentary Corporate Body motion. I ask Robert Brown to move motion S1M-2191, on the Scottish Commission for Public Audit.

*Motion moved,*

That the Parliament agrees to the Scottish Parliamentary Corporate Body's proposal to appoint Margaret Jamieson to be a member of the Scottish Commission for Public Audit.—[*Robert Brown.*]

## Parliamentary Bureau Motions

**The Deputy Presiding Officer (Mr George Reid):** The next item of business is consideration of Parliamentary Bureau motions. I advise members that motion S1M-2204, on lead committees, has been withdrawn to allow further consideration by the bureau. I ask Euan Robson to move motion S1M-2203 on committee membership.

*Motion moved,*

That the Parliament agrees that David Davidson be appointed to the Audit Committee.—[*Euan Robson.*]

**The Deputy Presiding Officer:** The question on that motion will be put at decision time.

## Decision Time

17:03

**The Deputy Presiding Officer (Mr George Reid):** There are six questions to be put as a result of today's business. The first question is, that motion S1M-2044, in the name of Mr Jim Wallace, on the International Criminal Court (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the International Criminal Court (Scotland) Bill be passed.

**The Deputy Presiding Officer:** The second question is, that motion S1M-2202, in the name of Mr Tom McCabe, on meetings of the Parliament in May 2002, be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Adam, Brian (North-East Scotland) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Campbell, Colin (West of Scotland) (SNP)  
 Canavan, Dennis (Falkirk West)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)

McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McLeish, Henry (Central Fife) (Lab)  
 McLeod, Fiona (West of Scotland) (SNP)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Neil, Alex (Central Scotland) (SNP)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (North-East Scotland) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Russell, Michael (South of Scotland) (SNP)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Wallace, Ben (North-East Scotland) (Con)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (South of Scotland) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North-East Scotland) (Con)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Young, John (West of Scotland) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 84, Against 19, Abstentions 0.

*Motion agreed to.*

That the Parliament agrees to meet in the King's College Conference Centre in Aberdeen in May 2002 on dates to be confirmed in the Business Bulletin.

**The Deputy Presiding Officer:** The next question is, that amendment S1M-2206.1, in the name of Michael Russell, which seeks to amend motion S1M-2206, in the name of Iain Gray, on the physical chastisement of children, be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (North-East Scotland) (SNP)  
 Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Gorrie, Donald (Central Scotland) (LD)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McLeod, Fiona (West of Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Canavan, Dennis (Falkirk West)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fergusson, Alex (South of Scotland) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Johnstone, Alex (North-East Scotland) (Con)

Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McLeish, Henry (Central Fife) (Lab)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Ben (North-East Scotland) (Con)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)  
 Young, John (West of Scotland) (Con)

#### ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 24, Against 80, Abstentions 1.

*Amendment disagreed to.*

**The Deputy Presiding Officer:** The fourth question is, that motion S1M-2206, in the name of Iain Gray, on the physical chastisement of children, be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Baillie, Jackie (Dumbarton) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)

Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Canavan, Dennis (Falkirk West)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAllion, Mr John (Dundee East) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McLeish, Henry (Central Fife) (Lab)  
 McLeod, Fiona (West of Scotland) (SNP)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Smith, Mrs Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Adam, Brian (North-East Scotland) (SNP)  
 Aitken, Bill (Glasgow) (Con)

Davidson, Mr David (North-East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fergusson, Alex (South of Scotland) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Johnstone, Alex (North-East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Ben (North-East Scotland) (Con)  
 Young, John (West of Scotland) (Con)

#### ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Robison, Shona (North-East Scotland) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 68, Against 20, Abstentions 17.

#### *Motion agreed to.*

That the Parliament welcomes the Scottish Executive's proposals, following on from an extensive consultation process, to clarify the law on physical punishment of children.

**The Deputy Presiding Officer:** The fifth question is, that motion S1M-2191, in the name of Robert Brown, on the Scottish Commission for Public Audit, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees to the Scottish Parliamentary Corporate Body's proposal to appoint Margaret Jamieson to be a member of the Scottish Commission for Public Audit.

**The Deputy Presiding Officer:** The sixth question is, that motion S1M-2203, in the name of Tom McCabe, on committee membership, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees that David Davidson be appointed to the Audit Committee.

## Men's Health Week

**The Deputy Presiding Officer (Mr George Reid):** The final item of business today is a members' business debate on motion S1M-2066, in the name of Mary Scanlon, on men's health week in Scotland, from 7 to 14 September 2001.

#### *Motion debated,*

That the Parliament pledges its support for Men's Health Week, Scotland, from 7 to 14 September 2001; acknowledges the collaboration between Men's Health Forum Scotland, health boards, the business sector, community health initiatives and the voluntary sector to publicise Men's Health Week, Scotland; recognises that the majority of factors which impact negatively on men's health are preventable; notes that 75% of suicides are male and almost 60% of premature male deaths are from coronary heart disease and cancer, yet men attend their GPs less than half as often as women; further notes that co-ordinated efforts are necessary to ensure that men take responsibility for their health and that services commit themselves to the challenge of working with men, and believes that MSPs should support the collaboration by promoting positive messages about men's health and Men's Health Week, Scotland, thereby encouraging more men to take responsibility for their own health and well-being.

17:08

**Mary Scanlon (Highlands and Islands) (Con):** I am very pleased that the debate is being held in men's health week, and thank the business managers for rescheduling it for today. I hope that those who are not in the chamber and those who are watching the debate via the webcast will have their say in the internet chatroom, as this is undoubtedly an enormously complex issue.

There is no doubt that the women's movement has accomplished much in recent years. Women have succeeded in the battle for scarce resources, partly due to sheer power, and partly thanks to biology. Women visit their doctors regularly to talk about periods, family planning, pregnancy, birth and the menopause, alongside other medical problems.

It has been said that

"the whole system from birth to the grave does not allow men to be vulnerable or weak".

We need to overcome that laddish culture, where it is seen to be "vulnerable or weak" to talk about physical and mental problems, and we need to encourage more open dialogue between men and their health professionals.

This debate is unlikely to solve such complex issues, but I hope that it will help to raise awareness during men's health week. I would like to commend Kenny Gibson on the excellent work that he has done in highlighting male suicides. I also commend Maureen Macmillan's work on

prostate cancer. Both issues are hugely important to men's health.

I hope members will bear with me while I mention some statistics. The life expectancy for men is 74, but for women it is 79. Even in 2021, men will be able to expect to live, on average, five years fewer than women. An important statistic that I noted is that even the most affluent man has a shorter life expectancy than the least affluent woman. More men die from cancer, cardiovascular disease and HIV than women. In education, the percentage of boys who achieve three highers or more is 8 percentage points lower than the percentage of girls.

A 1998 national health service survey found that 20 per cent more young women than young men visited their doctor. Men tend to access their doctor when a crisis point has been reached. Often, men spend more time worrying about a problem than gaining medical advice for it. Men tend to ignore symptoms of illness or delay seeking medical attention—the largest percentage prefer to treat themselves. One in four men tolerate symptoms, hoping that they will go away. When men do go to the doctor, the average consultation time is much shorter than it is for women. Visiting the dentist takes a similar pattern: 14 per cent more women than men regularly attend the dentist.

The most horrifying statistic relates to suicide. Men are three times more likely to commit suicide than women. Last year in the Highlands, out of 39 suicides, 36 were by men. I commend the work of the 1997 Scottish needs assessment programme—SNAP—report on suicidal behaviour among young adults. I hope that the minister will refer to acceptance of the report and undertaking its recommendations. A *British Medical Journal* report points out that men use more lethal and violent suicide methods than do women. That is thought to contribute to the higher rate of suicide among men.

Prisons are more than 90 per cent male. Homeless hostels are predominantly male. The only places that I have visited—as a member of the Health and Community Care Committee—where women outnumber men are care homes for the elderly, where it is often a case of spot the male. I visited two care homes in Shetland during the recess. One was a home for 36 people that had only one male resident and the other had no male residents at all.

In the best traditions of the Executive, I undertook my own consultation exercise and visited Inverness prison, where prisoners were offered a health check. At first there was much apprehension, but after the first group visited the nurse and reported back to the other prisoners, there was greater demand for the service. Some

of the prisoners' responses were interesting. One said, "Men think they can deal with problems themselves." Another said, "If I am thinking of doing myself in I'll go to the doctor." Even then the same prisoner told us that he would be put in an observation cell, which would only make him feel worse. He compared that treatment to the treatment given to female prisoners at Cornton Vale. I do not mean to take anything away from the female prisoners at Cornton Vale, but we should perhaps consider giving the same compassionate treatment to men as we do to women.

A recent conference on men's health in the Highlands highlighted the many barriers to health care, such as tough guy images, a lack of political will to target men's health, inadequate services and general practitioners being too busy. Many men spoke of their fear, embarrassment and low self-esteem, their reluctance to admit fallibility, the difficulty in admitting that there is a problem, the fear of having a serious disease and the fear of discussing personal issues with strangers.

How can we alleviate or eliminate those problems? There are no easy answers. I hope that we can improve education in men's health and I hope that we can make doctors' waiting rooms and surgeries more male-friendly. Should we, for example, consider walk-in MOTs for men, especially in relation to chlamydia?

I read that men tend to take more care of their cars than their own health. We must encourage men to seek medical advice when they are healthy. Sixteen per cent more women than men attend doctors for preventive care. We must overcome the macho culture towards illness and we need to understand and address the embarrassment and stigma that are associated with seeking advice and help. We need more understanding of and education about health issues, symptoms and problems.

It is obvious from reading about men's health issues that the health care system has to target men, encourage them to attend doctors, and provide a more male-friendly environment. Perhaps we should consider taking health care to men, for example to job centres, workplaces, sports clubs, pubs, football clubs and even men's toilets. Undoubtedly, there is a need for a multi-agency approach, especially in relation to integrating mental health services.

In conclusion, too many men die early, too many die when it could have been prevented, and too many die at their own hand. There has to be a culture change, so that there is an improvement in preventive care, and so that there are moves to ensure that the health care system is best fitted to cope. Do we expect too much of men, or do men expect too much of themselves?



17:17

**Dr Richard Simpson (Ochil) (Lab):** I congratulate Mary Scanlon on securing this debate and welcome the fact that a woman is promoting men's health week, which is an important issue for men.

All the data that have been collected in the UK testify to poorer access, uptake and outcomes in men's health. The most striking gap is, as Mary Scanlon suggested, in longevity, or premature death, because women have a greater life expectancy than men. Professor Ferguson Anderson, who was one of the most eminent geriatricians in Glasgow, used to say that the main role of geriatrics was to ensure that more men were kept alive to partner women in old age. I am not sure about that as an approach, but I understand what he was saying. The gap is closing, but regrettably it is closing for the wrong reason, because the numbers of men and women who smoke are equalising. One of the problems that we had until now was that more men than women smoked, so there were more premature deaths among males.

I must declare, not only as a man but as a doctor and a member of the early prostate cancer working party of the British Association of Urological Surgeons, that I have particular interests in this area, and one of them is prostatic disease. I have been involved in research in that area over the past 10 years, initially in the field of benign prostatic hyperplasia. We asked men why they did not come forward when they had symptoms of prostatic disease and it was interesting that they did not do so for a number of reasons. One is because they said there was no bleeding and no pain, which were the two main symptoms that would lead them to come forward. The other reason was that they simply accepted as part of normal aging the changes that were occurring in their urinary flow.

Of course, that is not appropriate. In our research, we estimated that more than a quarter of a million men had their activities of daily living affected and did not, in the vast majority of cases, consult a doctor. There is a profound need to educate people at all stages about what is normal and what is not normal. We need support at all levels of society.

Prostate cancer is a growing cause of death in men. I know that patient groups are pressing for prostate-specific antigen screening, but that is a particularly imprecise test. It tells us something, but a negative test result does not mean that one does not have cancer, and a positive test result does not mean that one has cancer. Because it is an imprecise test, it can lead to a lot of stress and strain for individuals if they have it without fully understanding its implications.

The current view is that mass screening is inappropriate. Alan Milburn in England said that any man who wants a test may have one. I have found, as a general practitioner, that it is extremely difficult to say no to a patient who wants the test to be done. I am not sure whether we need to make a statement about the test.

We need to understand that 80 per cent of men aged 80 have prostatic cancer, but the overwhelming majority of men with cancer will not die from it; they will die from some other cause.

At present, we cannot tell which microcancers will flare into symptomatic cancer, causing significant problems. If we knew that, a screening programme would be appropriate, but we do not.

I confess that, although I am approaching the age of 60, I have not had the test and I do not intend to. If a man has the test and finds that he might have cancer, he has to have a biopsy, with the risk of death. If he then finds that he has a microcancer, he has to decide whether he will take the risk of living with it or have a major operation, with the likelihood of a number of effects, including impotence and incontinence. Men have to consider whether they will have the quality of their life impaired. That decision is not easy.

We need to play a major education role and I entirely agree with Mary Scanlon's points about access in a variety of settings.

17:21

**Mr Kenneth Gibson (Glasgow) (SNP):** I congratulate Mary Scanlon on securing the debate and on her excellent contribution and I thank her for the compliment that she paid me in her presentation.

For every 100 girls born in the United Kingdom, 106 boys are born. The reason for that is that through the ages men have always been physiologically much weaker than women. It is regrettable that we develop much more slowly and suffer higher levels of mortality and morbidity. Men have lower life expectancies not just in this country, but across the world.

Of course matters would be much improved if males just occasionally took greater responsibility for their health. That is why this debate—and Mary Scanlon's raising of the issues related to it—is so important. The issue must be not only highlighted, but directly addressed. Lifestyle is key, but so are having regular check-ups and overcoming the frank embarrassment of seeing a health professional and discussing often intimate matters. Women manage to do it and if men were as brave as they like to think they are, they would have the courage to do it too.

As Dr Richard Simpson pointed out, one of the

concerns about prostate cancer is that men often do not want to know and leave it far too late. Many of us males have an ostrich mentality when it comes to our health. I am one of the worst people in that respect. Despite the fact that I was once a medical representative, I suffer from a phobia about people in white coats. Luckily, Richard Simpson rarely wears his in the chamber, so I do not feel too intimidated by him.

**Dr Simpson:** For you, Kenny, I will wear it.

**Mr Gibson:** Only when we are together in private, Dr Simpson.

Mary Scanlon touched on the important issue of suicide. One in four men under the age of 35 who die in Scotland, die by their own hand. That is an astonishing figure, given the fact that many people who die under the age of 35 die from causes such as road accidents and cot deaths. The figure for females under 35 is still high, but it is lower than that for men: one in nine. The issue of suicide has to be addressed. We should think about mental health as well as physical health.

We must examine our culture and the macho ethos in which many of us were brought up. My father, for example, had a wonderful set of teeth. He was famous for his set of teeth when he was young. No doubt, my mother married him partly because of his beautiful, shiny, gleaming white teeth. However, he did not take care of them and by the time he reached his late 30s his teeth had started to deteriorate. When he was in his 40s, his teeth fell out, but he did not care, because in the group that he socialised with it was not an issue. Perhaps he took the attitude that he was married and did not have to look nice for the girls.

A fatalistic attitude has been taken towards health, particularly in the west of Scotland among men who care deeply for the health of their children, parents, spouses and partners. If anything, the debate must highlight to men how fragile they are and how important it is to take off the macho mask that many of them wear and have the courage to have a check-up and look after themselves.

Men do not have to change their lifestyles absolutely. They do not have to take up a macrobiotic diet suddenly, as Alex Johnstone has been thinking of doing, but they must alter their lifestyles and, as has been suggested, have an MOT at least occasionally. If men do not take responsibility for their health, little progress will be made, despite the best intentions of the Executive and the Parliament.

17:25

**Helen Eadie (Dunfermline East) (Lab):** I will be brief. I stayed this evening to congratulate Mary

Scanlon, as she told me that the debate was her first members' business debate. I also congratulate her on raising a vital issue. We all whole-heartedly support her. Well done. We are pleased to be here to support Mary.

I endorse the view that too many men do not have the same support mechanisms as women have. I support Mary Scanlon's view that men need to organise themselves in the same way as women have organised themselves. Women's lobbying has resulted in women being referred by their general practitioners to special clinics for same-day diagnosis of suspected breast cancer. I hope that we can achieve such a level of service for men.

As Richard Simpson rightly said, men need to access such services for complaints such as prostate cancer. I pay tribute to my colleague Maureen Macmillan's work on that.

I am not a member of the Health and Community Care Committee, but many of us are wives, mothers, sisters or aunts, for example, and care and worry about our men, because we are aware of their lack of similar collective action to that of women.

I am pleased about the development in the past year or two of men's health magazines. I congratulate the initiators of such magazines.

As Mary Scanlon said, a strategy needs to be developed that encourages society to pick up the gauntlet that this issue presents to us all. As Richard Simpson said, we need education and to raise awareness about what is normal and not normal, and about what to do when a problem has been identified.

In spring, my husband had a health scare. Of course, my family was upset. I learned many lessons from that experience. My husband and I vowed then that we would work together to help to tackle all the issues to do with improving men's health and welfare. I will honour that pledge, for I know the heartache that those anxious months gave us. I will work willingly with all who seek to change the culture that Kenneth Gibson describes as ostriches hiding their heads in the sand.

17:28

**Mr David Davidson (North-East Scotland) (Con):** I congratulate Mary Scanlon on her first members' business debate, especially as it raises an important and often-underdeveloped topic. This is men's health week 2001, and I came across a document from the Men's Health Forum Scotland. I am amazed that we have got so far into the debate before the first mention of the forum because of its work and the stimulus that it provides to an essential issue.

The document states:

“Men don’t make best use of health services in a number of different ways, and for a number of different reasons. Men often don’t use screening or check up services, they may ignore symptoms until they become particularly acute, and they may be particularly wary of accessing sexual or mental health services.

Men often feel that services are not meant or designed for them, feel that there is a stigma involved in, or embarrassment about using some services, or simply lack familiarity with what is on offer to them.”

That is a terrible indictment of the approach to a serious problem in our society.

What I will say might not sound caring and might be a little conservative. We must remember that men tend to be the breadwinners and that that puts tremendous pressure on them. It is important that their health is managed so that they can continue that economic activity, which provides for the wealth and care of their families, and particularly their youngsters.

An inability to perform at work is another issue that causes men stress and worry. The effect is cumulative. Another role that has to be mentioned is the leadership role that the man plays in his family. If the father does not look after his health, an example is not given to the next generation.

Many members have talked about education. It is not just education, but the style that education takes that grabs people’s attention and makes them want to buy into doing something for themselves. Kenny Gibson wisely mentioned personal responsibility—which was not meant as a put-down. If people become more educated, they will become more responsible. We are not talking about people being lectured or about the state being a nanny state, telling people what to do. That said, I have some concerns about people who, although they have had support from the health service, continue to abuse themselves in over-use of alcohol and so on.

We are not in the chamber to lecture. We are trying to capture the public imagination as to what should be done. One example that I picked up in a document from Australia describes

“Australian MOT checks, oil plugs and exhaust—of men.”

In Australia, a “pit stop” is done

“at motor races, agricultural shows and other haunts of the rural Australian male.”

We have all seen the XXXX lager adverts that are set in the outback.

The document refers to testing blood pressure as similar to checking oil levels. Someone with “rust” may have a skin melanoma, while “dirty spark plugs” means that someone might have a potential problem with their testicles. That last word is one that we do not talk about. The three

ailments that Richard Simpson touched on earlier include erectile dysfunction, which is caused by many things including heart problems and diabetes. Erectile dysfunction is a contributory factor in the breakdown of many relationships. That is one of the many issues which we need to get a hold of in Scotland.

Malcolm Chisholm, the minister who is present with us tonight, listens regularly to what goes on in members’ business debates—he is a regular attendee. I would like him to take on board one or two points and to respond to them later in the debate. We have an Executive that is keen on initiatives, but not many initiatives are getting across the message that men have to start to look after themselves for the good of our nation.

As a population, we are aging and we are losing breadwinners. Mary Scanlon rightly said that difficulties exist in companionship later in life. The issue of why men are losing out is a national one. We have issues for children, pensioners and women—we have issues for this and that. However, not enough is done to get the message across to men. If this promotional week on men’s health does anything, and if the Scottish Parliament does anything, it should be to try to reinforce that message. I hope that others will pay attention.

17:33

**Shona Robison (North-East Scotland) (SNP):**

I welcome the opportunity to take part in raising awareness of men’s health problems. I congratulate Mary Scanlon on securing the members’ business debate today.

David Davidson pipped me to the post in applauding the work of the Men’s Health Forum Scotland. The forum seeks to work in partnership with others to improve the health of men in Scotland. That work is important. As members have said, men have a disturbingly low uptake of primary health care services—the annual number of general practitioner consultations by men is less than half that by women. We have heard some of the reasons for men’s reluctance to seek help when they are not coping or when they feel unwell. We should remember that men’s health is not always about physical health; it can sometimes be about depression—men are reluctant to seek help with that. Further research would be in order, to find out more of the reasons for that reluctance.

Men’s health problems start at an early age. A recent report indicated that there is a huge increase in the number of young men who are excluded from school, a steady increase in drug-related deaths among young men and a 75 per cent increase in the involvement of young men in crime. In addition, the report indicated where some

of the solutions lie: young men could be educated in school about the need to look after themselves, and they should seek the advice and help that they require when things go wrong for them.

Our young men do not do very well in comparison with the young men in other European countries. They have lower learning achievements at age eight; they are less skilled and qualified when they leave school; and more of them grow up in poverty. We should look to our European neighbours for the reasons for that and act accordingly.

Accidents account for 42 per cent of all deaths of 15 to 24-year-old males, road traffic accidents being the largest single cause. The majority of fatal accidents at work or leisure also involve males. Research may indicate that that is linked to the likelihood of males indulging in risky behaviours, of which alcohol abuse is the main one.

Kenny Gibson has done a lot of work around the suicide rates among young men. I congratulate him on that work, which he has highlighted well. It is of concern that suicides are more than four times more likely to occur in men than in women. Clearly, work should be done in that area. It is of particular concern that, while the suicide rate appears to be flattening out in England and Wales, in Scotland it continues to increase. What makes Scotland different? We do not have enough information about why that is the case. Coronary heart disease is a major cause of death among young men, accounting for 29 per cent of all male deaths. Cancer deaths among males are significantly higher than in females. We have a lot of information, but we must start considering what lies behind it.

What do we do? For too long, men's health work has been neglected. We cannot afford to ignore it any longer. We require urgent action. There are some good examples throughout the country; however, I am wary of what I would describe as pilotitis. We embark on pilot initiatives and schemes, but what happens to them afterwards? Where such initiatives work, do we extend them across the country? I would like to know why, where something is working, we are not rolling it out. Perhaps we could have a little less pilotitis.

I end on a note about smoking. I do not want to make a party-political point, but there is something that the Parliament can do to address the issue of smoking: ban tobacco advertising. I make a plea for people to sign up to that.

17:37

**Donald Gorrie (Central Scotland) (LD):** It might improve or depress members' health to know—if they do not already—that Iain Duncan

Smith won the Conservative leadership, with 60 per cent of the votes.

My colleague Margaret Smith was sorry to miss the debate. She recently visited what is now called Agilent Technologies UK Ltd and used to be called Hewlett Packard, at South Queensferry, and was very impressed by the in-house health service for its employees. It illustrates one of the points that we should be pursuing. If men are too embarrassed to go to the health, the health has to come to them. Workplace health clinics and so on are an important way in which we can pursue that, as is the idea of an MOT, which has been mentioned by others.

We could also use role models, such as footballers, and encourage the bigger football clubs to support health clinics for the men. The clubs could say that their footballers all went through those tests and so on, so the supporters should do so as well. That is one area in which we can try to improve things.

Men have a problem about embarrassment. We are much less tough than women and much more prone to embarrassment. A particular problem is that normal sexual activity makes greater demands on a male than on a female. I hope that that is an acceptable remark—it seems to me to be fairly clear. Many men find difficulty with that, and have even more difficulty admitting the difficulty. That is an area that we have to try to get over.

I first encountered the question of suicides when I was convener of the Edinburgh youth café just round the corner in Victoria Terrace. The premises were used by a counsellor appointed by Lothian Health to help young males, because the health board noticed that an unacceptable number of young males in Lothian were committing suicide. Although there was a big public display, with a lot of advertisements on buses and so on, in reality the whole thing amounted to one lady counsellor giving a few hours a week at the youth café. That is all it was, and it might have done some good, but doing things on a much bigger scale could enable us to do much more good and tackle suicidal tendencies among young men.

The overall problem is the stoical tendency that is bred into us as Britons or as Scots. For example, a manual worker might hurt himself quite badly but carry on to the end of his shift. In more exalted circles, when he was leading the British cavalry at Waterloo, the Earl of Uxbridge was riding along with the Duke of Wellington and said, "By Gad, sir, they've shot off my knee." The Duke of Wellington looked down and said, "By Gad, sir, so they have." That is the stoical, we-don't-cry-about-this approach that affects a lot of us, but it has a malign effect, as we do not take as much care of our health as we should. As other

members have said, a lot of people—not me—take much more care of their motor car than of their own body. We have to educate people to do it the other way round.

17:41

**Maureen Macmillan (Highlands and Islands) (Lab):** I thank Mary Scanlon for securing this debate on men's health week. I have to declare an interest, as I have one husband, two sons and three grandsons, and I want them to live long and fulfilling lives and to stay healthy.

It is important that Parliament highlights issues that often go unmentioned. Talking about men's health is vital because, as the motion points out, men often find it difficult to express the problems that they are suffering from. I feel that that is particularly true of older men, even though getting early medical help can often mean that something can be done to stop diseases advancing or to improve the sufferer's quality of life, which is just as important as curing disease. I am told by my young male researcher that the culture of men not taking an interest in themselves and their health is changing, particularly since the advent of men's health magazines. I am glad that a change is perhaps coming, and I hope that younger men will be more open to seeking medical help and that the culture of silence will eventually end.

As other members have kindly mentioned, I introduced a debate on prostate cancer some time ago, and I want to return to that subject now. However, I shall talk today not so much about curing the disease as about the side effects that can arise and the quality of life for sufferers. In the prostate cancer debate I said that, although incidences of prostate cancer are commonplace, there was little information about the disease.

A year ago I was concerned that not enough was being done to encourage men to go for screening tests, and a year later I am still of that opinion. I understand that, on the recommendation of the United Kingdom National Screening Committee, a national screening programme has not been deemed appropriate. Although that is understandable, I find it difficult to understand why more information cannot be made available. As Richard Simpson has said, men can still receive a prostate-specific antigen test from their GP if they are concerned. Despite what Richard has said about the fact that he would not take one, I still think that men should be given the option and that the test should be better publicised.

I welcome the commitment by the United Kingdom National Screening Committee, in the cancer plan published by the Scottish Executive, to consider the results of screening trials and make recommendations on that basis. However, I

notice from the cancer plan that the number of prostate cancer patients participating in the cancer trials is the lowest of all the types of cancer. I hope that, through better information and early diagnosis, that position might begin to change.

The Highland prostate cancer support group in my constituency is doing a crucial job to increase awareness of that cancer. Because of the nature of the disease, sufferers find it difficult to discuss the side effects. The last time that I attended one of the group's meetings, I was extremely moved by what I heard and saw. The people in the group were discussing the side effects of treatment—such as impotence and erectile dysfunction—and were being advised by a visiting specialist urology nurse on how such side effects might be overcome. I could see that that was deeply important and terribly embarrassing for them and was important for their relationships with their partners, many of whom had come with them. Their relationships and their image of themselves as men had been affected.

Sadly, not too many men turned up at the group meeting. The chairman said that that was because they were too embarrassed to discuss problems, even with others who had the same problems, and that they found it difficult to discuss things with their doctors. Their doctors had never discussed such issues with them. I do not say that to criticise doctors—it is difficult for a doctor to broach a subject if the patient is embarrassed.

In contrast to women, many of those men could barely discuss the matter with each other. Women who have had children are certainly used to discussing the most intimate details with their doctors and with each other, but men are not. We must somehow make it acceptable for men to discuss intimate details with doctors, nurses, their wives and whoever can help them. In particular, that is a problem for older men who are brought up to be private about their bodily functions.

I want to end by quoting from a letter from a man in the Highlands who has undergone treatment for prostate cancer and is campaigning for a full-time specialist nurse to advise on such matters. He said:

"I think that a special clinic run by a fully trained nurse ... should be there for the benefit of all men who suffer from impotence or erectile dysfunction, and this includes men with diabetes, depression, certain heart problems and prostate cancer to name just a few. These people need help, but it has to be in such a way as there is no embarrassment, and a place which is designed solely for this purpose with a nurse that can put a man completely at ease. In addition to this clinic, the specialty nurse should go outwith the area to groups such as ours, and to other groups, as well as to small hospitals in the Highlands where clinics could be arranged."

I do not think that that is too much to ask. The quality of life for older men is important and I hope

that the Executive will encourage the health boards to ensure that such facilities are available in every area of Scotland.

17:47

**Tommy Sheridan (Glasgow) (SSP):** I will be brief. Maureen Macmillan spoke for longer than she should have, but I welcome some of the vital points that she made.

I congratulate Mary Scanlon on securing today's debate on a vital matter of social health policy. I cannot resist the temptation of taking up Donald Gorrie's point about health and relating it to Iain Duncan Smith winning the Tory leadership contest. I am sure that that will not be good for the health of the Tories, although Mary Scanlon and David Davidson will perhaps have different ideas on that matter.

I want to deal with three areas. The first is poverty, which I am sure the minister will refer to in relation to men's health. Two weeks ago, the Office of National Statistics revealed that a man in east Renfrewshire lives on average seven years longer than a man in Glasgow. The main factor that contributes to a shorter life is poverty, and many in Glasgow face grinding poverty. Any social policy that is not designed to tackle poverty will not attack men's health problems and the factors that lead to their early deaths.

The second area is sports medicine.

**Mary Scanlon:** Research confirms that, generally speaking, the most affluent men have a shorter lifespan than the least affluent women. Would Tommy Sheridan comment on that?

**Tommy Sheridan:** I thought that Mary Scanlon had misunderstood my point about poverty, but I understand her point. There is a need to separate discussion of men's health from health as a whole. Mary Scanlon is right. The most affluent men have a shorter lifespan than the least affluent women. Members have spoken about the factors that contribute to that.

The Scottish Executive can take initiatives on, and try to develop, sports medicine and physiotherapy. Quite rightly, we encourage more people to take part in physical exercise. Last night, I had the opportunity to attend a local authority sports centre to take part in physical exercise. The sports centre was mobbed and the swimming pool was packed, which was excellent. However, there is an imbalance that affects those involved in competitive sport in particular. Anyone who is involved in competitive sport sustains injury. The difficulty is that they will go to their doctor with that injury; if it is a bad injury, they might even go to the accident and emergency department at a hospital. They will be x-rayed, told that nothing is broken—

although a few ligaments might be torn here and there—and that what they need is rest. The problem is that there are literally hundreds of thousands of younger men, particularly those in their mid to late 30s, who would still be involved in sport now if they had had access to decent sports medicine such as physiotherapy. If they had received treatment in the first place, they would have had the ability to avoid recurring injuries. I appeal to the minister to cover the idea of expanding access to physiotherapy and sports medicine throughout Scotland.

If we encourage people to get involved in sport, we must ensure that facilities are available to ensure that they can be fixed and patched up properly. Mary Scanlon mentioned the idea of an MOT: we also need to provide the garages to look after those who have unforeseen breakdowns. The fact is that, right now, there are nowhere near enough sports medicine and physiotherapy facilities in sport, in particular in amateur sport.

We are missing the opportunity to tackle health—specifically men's health—by not including health awareness of the functions of the body and of exercise on primary and secondary school core curricula. I have raised that point before and I know that other members support it.

If we can teach our primary school children between the ages of five and 12 about the importance of exercise and physical activity, and about their bones, muscles and the human body, by the time that they are 12 and 13 they will be more aware of the need to be involved in physical exercise and to think about their diet. My worry is that we sometimes wait to do that until boys are 12 or 13, which is often too late because children have a much more sedentary lifestyle than they had in past generations. We must address that problem.

17:52

**The Deputy Minister for Health and Community Care (Malcolm Chisholm):** I congratulate Mary Scanlon on securing the debate and on drawing attention to an important topic. The Scottish Executive is committed to promoting better health for all Scots as a central concern of health policy, but part of that involves recognising the income dimension that Tommy Sheridan referred to and the gender dimension that we are focusing on today.

Mary Scanlon and Shona Robison reminded us that part of the problem is that men are often unwilling to seek medical advice and help, and that they tend to have infrequent contact with health professionals. For example, between the ages of 15 and 64, women consult their general practitioners on average twice as often as men do.

Those figures can be explained partially by the fact that women are more inclined to have regular contact with the health service for reasons of family planning, maternity and child health.

However, there is no doubt that many men believe that health and health services are of no concern to them. Too many men think that ill health cannot happen to them, or that if it is coming, there is nothing that they can do about it. However, ill health does happen to men—several members have reminded us that life expectancy is shorter for males than females and that mortality rates are greater in males of all ages for all the major causes of death. However, men can do something about it—the choices we make about how we live can affect our health.

Health is everyone's business, not just that of the national health service, health departments or Government. Men need to take responsibility for their own health and well-being to a much greater extent than hitherto. However, we must recognise that health and health inequalities are influenced by a range of factors that are not entirely within personal control. Men living in poverty have much worse health than well-off men do.

Tommy Sheridan reminded us of the seven-year gap between men living in the most affluent areas and those living in the poorest areas. The fight against inequality and social injustice is also a fight for good health and better, longer lives. However, recognising the great importance of life circumstances should not lead to the fatalistic attitude to which Kenny Gibson referred. Life circumstances matter, but so does lifestyle.

David Davidson asked about initiatives for men. I am sure that he will welcome the fact that the Executive has provided a grant of £180,000 over three years to the Men's Health Forum Scotland—the organisers of this week's men and health event—to help it raise awareness of some of the issues that affect men's health.

We also support a range of men's health initiatives through NHS Scotland. For example, Grampian health promotions has recently supported a men's health fortnight and a men's health fair, which consisted of mini health checks and advice on healthy eating and alcohol. Highland Health Board has supported a conference aimed at identifying some of the reasons for men's reluctance to seek medical advice, an issue that the Men's Health Forum deals with well on its very informative website.

Men will also benefit from a range of other health improvement measures that the Executive has put in place, such as the award-winning Scottish community diet project, which continues its work with low-income communities; extensive smoking-cessation measures and developments in

relation to alcohol and drugs misuse; and the network of healthy living centres that are now in place around the country, which target the needs of communities that face particularly challenging circumstances.

There are several other initiatives, such as the physical activity task force. That connects with Tommy Sheridan's point. There is also the work on health-promoting schools, which will address Tommy Sheridan's concerns on education.

**Mr Davidson:** The Health Education Board for Scotland has a remit from the Executive's health department. What guidance has the Executive given it on men's health?

**Malcolm Chisholm:** I am dealing with specific issues of men's health. I will go on to the three clinical priorities of cancer, heart disease and mental health. There are specific issues for men, but the big issues such as heart disease and cancer are big issues for men as well. Those issues have been taken on board in the Health Education Board for Scotland's remit.

Several members have mentioned mental health. We recognise that men often keep their feelings to themselves. That machismo, to which Mary Scanlon referred, can exacerbate mental health problems. Statistics show that young males in particular are a high suicide risk. In 2000, there were 878 suicides, 674 of which were males. We are committed to reducing those rates, and a framework for suicide prevention will be issued shortly. The framework will build on the work done by SNAP, to which Mary Scanlon referred. We also plan a telephone helpline for people who are at risk.

The recently launched cancer strategy, which provides a framework for further advance, has been widely welcomed. Moreover, as members know, there have been enormous advances in treatments in recent years. For example, testicular cancer is now curable in all but the most advanced and aggressive cases. It is therefore vital that men should check for lumps and seek medical help at the earliest opportunity. There is also the complex issue of prostate cancer, which Maureen Macmillan and Richard Simpson dealt with in detail. I refer members to what Richard Simpson said on the controversies around prostate-specific antigen screening, which is an imprecise test. As members, we often get letters and queries about it.

The third clinical priority is coronary heart disease, to which Shona Robison referred, which is a major killer of both men and women. However, as Shona Robison reminded us, in many cases it kills men at a younger age. Coronary heart disease can be prevented or delayed by following a healthy lifestyle. Many of the issues that have

been mentioned already, such as smoking, poor diet and lack of physical activity, are highly relevant. I was pleased to visit over the summer the demonstration project, Have a Heart Paisley. I hope that the project is not, to use Shona Robison's words, guilty of pilotitis. The successful health demonstration projects will be rolled out across the country when they have been evaluated.

It is important to identify problems at an early stage, and I look forward to visiting on Monday the Lanarkshire body check bus, which offers blood pressure, cholesterol and other tests.

My time is up. I repeat that this has been an important debate and once again I congratulate Mary Scanlon on securing it. I welcome the opportunity to support initiatives such as men and health week, and I wish the Men's Health Forum Scotland every success as it continues to raise awareness and encourage men to access health services.

**The Deputy Presiding Officer:** That concludes the members' business debate on men's health week.

Before members leave, I should say that this has been our first participatory debate via the Parliament's website. The debate has been webcast worldwide, and there are opportunities for the people of Scotland to consult associated health sites linked directly into our web pages and to post their comments on the debate. There will be many such opportunities in the weeks ahead, and I hope that members will be encouraged to work in partnership with the people of Scotland.

*Meeting closed at 18:01.*



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