

# **MEETING OF THE PARLIAMENT**

Wednesday 24 October 2001  
(*Afternoon*)

Session 1

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## Scottish Parliament

*Wednesday 24 October 2001*

*(Afternoon)*

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

### Time for Reflection

**The Presiding Officer (Sir David Steel):** To lead our time for reflection, we welcome Rev Fiona Mathieson, minister of Carrick Knowe Parish Church, here in Edinburgh.

**Rev Fiona Mathieson (Minister of Carrick Knowe Parish Church, Edinburgh):** I first started working as a minister 13 years ago. I worked in a parish in Edinburgh, in Morningside, where part of my job was to visit the elderly. One visit is etched in my memory. A lady asked me which school I had gone to. "What school?" I thought, as my west coast of Scotland upbringing kicked into play. I was a Church of Scotland minister; obviously I had attended a Protestant school. Was she stupid?

I smiled. "I went to Mearns Castle High School," I said proudly. It was brand new at that point and was recognised then, as it is now, as a good school.

"Oh," she said. "You mean you didn't go to Hutchy or Park?"—two of Glasgow's established private schools.

"Eh, no," I replied.

"And you've got a degree?"

"Two," I said.

"Well, haven't you done well!"

Prejudices are part of all of our histories and upbringings—some conscious, some subliminal.

Jesus always challenged people to examine their motives and to challenge the narrow-mindedness insidious in their culture. He said, "Everyone is my sister, my brother, my mother." He challenges us to do the same, to treat people with the same kind of love and understanding that the majority of people expect from their families. All people, especially those with the privilege of shaping and leading a country, have a duty to constantly examine their preconceptions. It is all too easy to judge others.

Jesus also said, "Take the plank out of your own eye before taking the speck out of another's."

May God make us aware of the planks of prejudice in our lives and help us to remove them, before we shout about the specks that we see in other people's lifestyles and opinions.

Amen.

## Business Motion

14:33

**The Presiding Officer (Sir David Steel):** The next item of business is consideration of business motion S1M-2352, on the future business programme. I ask any member who wants to speak against the motion to press their button now. I call Euan Robson to move the motion.

*Motion moved,*

That the Parliament agrees—

(a) as a revision to the Business Programme agreed on 4 October 2001—

Wednesday 24 October 2001

after the first Parliamentary Bureau Motions, delete all and insert:

*followed by* Motion on the publication of the reports into the investigation, legal proceedings and family liaison arrangements in the case of the murder of Surjit Singh Chhokar

*followed by* Ministerial Statement on the publication of the reports into the investigation, legal proceedings and family liaison arrangements in the case of the murder of Surjit Singh Chhokar

*followed by, no later than 3.30 pm* Executive Debate on the Proceeds of Crime Bill - UK Legislation

*followed by, no later than 4.10 pm* Executive Debate on the Adoption and Children Bill - UK Legislation

*followed by, no later than 4.30 pm* Executive Debate on Membership of the Committee of the Regions

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business—debate on the subject of S1M-2113 David Mundell: Disabled Access to Railway Station Platforms

(b) the following programme of business:

Wednesday 31 October 2001

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Executive Debate on Asylum Seekers and Refugee Integration

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business – debate on the subject of S1M-2187 Cathie Craigie: World Alzheimer's Day

Thursday 1 November 2001

9.30 am Enterprise and Lifelong Learning Committee Debate on the Review of Higher Education Teaching and Funding

*followed by* Business Motion

2.30 pm Question Time

3.10 pm First Minister's Question Time

3.30 pm Committee of the Whole Parliament: Stage 2 Debate on the Police and Fire Services (Finance) (Scotland) Bill

*followed by* Stage 3 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-2142 Mrs Margaret Ewing: Inverness Airport and Links with Hub Airports

Wednesday 7 November 2001

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Executive Business

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 8 November 2001

9.30 am Scottish Conservative and Unionist Party Business

*followed by* Business Motion

2.30 pm Question Time

3.10 pm First Minister's Question Time

3.30 pm Stage 1 of the School Education (Amendment) (Scotland) Bill

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

(c) that the Rural Development Committee reports to the Health and Community Care Committee by 9 November 2001 on the Feeding Stuffs and the Feeding Stuffs (Enforcement) Amendment (Scotland) Regulations 2001 (SSI 2001/334).

and (d) that Stage 1 of the School Education (Amendment) (Scotland) Bill be completed by 9 November 2001; that Stage 1 of the Sexual Offences (Procedure and Evidence) (Scotland) Bill and Stage 1 of the Scottish Local Government (Elections) Bill be completed by 23 November 2001 and that Stage 1 of the Water Industry (Scotland) Bill be completed by 7 December 2001.—[Euan Robson.]

**The Presiding Officer:** I have had a request from Phil Gallie to speak against the motion.

14:33

**Phil Gallie (South of Scotland) (Con):** I look at the proposed motion and I see that there are several important issues on this afternoon's agenda. There are debates on the Proceeds of Crime Bill and the Adoption and Children Bill—issues that are of great concern to the Parliament. I also note that there is a debate on membership of the Committee of the Regions. I believe that to try to fit those debates into an hour and a half, after the important Chhokar debate, is totally wrong. Would it be possible to extend the afternoon's proceedings with decision time at 7 pm perhaps?

**The Presiding Officer:** Are you asking me or the minister?

**Phil Gallie:** The minister.

14:35

**The Deputy Minister for Parliament (Euan Robson):** I regret that I cannot accede to Mr Gallie's request. The matter was discussed in detail at the Parliamentary Bureau and party managers agreed that the timetable would be as set out. In fact, to facilitate debate on key issues, it was altered by the Executive to take into account a number of points that were made.

**The Presiding Officer:** The question is, that business motion S1M-2352, in the name of Mr Tom McCabe, be agreed to. Are we all agreed?

*Motion agreed to.*

## Chhokar Inquiries (Publication of Reports)

**The Presiding Officer (Sir David Steel):** We come to the debate on motion S1M-2343, in the name of Mr Jim Wallace, on the publication of reports into the investigation, legal proceedings and family liaison arrangements in the case of the murder of Surjit Singh Chhokar. Members who wish to speak against the motion should press their request-to-speak buttons.

*Motion moved,*

That the Parliament notes that the Scottish Ministers intend to lay in English and other languages the *Report of the Inquiry into the Liaison Arrangements Between the Police, the Procurator Fiscal Service and the Crown Office and the Family of the Deceased Surjit Singh Chhokar in Connection with the Murder of Surjit Singh Chhokar and the Related Prosecutions* by Dr Raj Jandoo and the *Report of the Inquiry into Crown Decision-Making in the Case of the Murder of Surjit Singh Chhokar* by the Rt. Hon. Sir Anthony Campbell before the Parliament and orders the Clerk to publish the Reports and their translations.—[Mr Jim Wallace.]

**The Presiding Officer:** Two members have requested to speak. Because of the business motion that has been passed, any time will take time out of the questions on the statement so it is in all members' interests to move quickly.

Lord James Douglas-Hamilton is the first member to request to speak.

**Lord James Douglas-Hamilton (Lothians) (Con):** I thought that Roseanna Cunningham—

**The Presiding Officer:** I am sorry—I took the first name on the screen. Do you want to ask the first question, Roseanna Cunningham? Lord James Douglas-Hamilton is very courteous.

14:37

**Roseanna Cunningham (Perth) (SNP):** I thank Lord James Douglas-Hamilton for his extreme courtesy.

Would the minister confirm that the purport of the motion is in effect to extend the protection of privilege to the reports when they are published? That procedure is rare and is not applied to hundreds of Executive reports. I think that on only three occasions in the history of the Parliament has that procedure been used. As a result of that, can we be clear that neither Darshan Chhokar nor Aamer Anwar will have any recourse to legal action, given the allegations of a defamatory nature that are in the reports about them? Will he clarify whether that privilege applies only when the reports are published—at least from today onwards—and not to what has happened in the press since Saturday's *The Daily Telegraph* was published?

14:38

**Lord James Douglas-Hamilton (Lothians) (Con):** The motion confers privilege, for which there are precedents. The Ruddle case report and the Health and Community Care Committee reports were dealt with similarly and the procedure is adopted in the House of Commons regularly, as in the report on Orkney child abuse. Would it not be more appropriate for the motion to be moved at the outset, when the reports are instructed? Perhaps the matter can be remitted to the Procedures Committee in due course.

We support the motion.

14:39

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** On the final point, I do not want to make an instant judgment. Perhaps the matter could appropriately be referred to the Procedures Committee. On Roseanna Cunningham's point, I can confirm that a similar motion—as Lord James Douglas-Hamilton has indicated—was also used for the mental welfare commission report on the Noel Ruddle case. The motion grants protection to the authors of the report against legal proceedings—I therefore confirm Roseanna Cunningham's point. It allows the full facts to be laid before Parliament without any fear of legal action. Parliament wished that the reports should be thorough and it would be regrettable if a signal were given to people who are instructed to undertake important reports that Parliament was not able to grant them this privilege. That would lead to less than thorough reports and would not be in the public interest. That does not in any way indicate that the material is defamatory, but the approach ensures that the authors can be as open and complete as possible.

I also hear what Ms Cunningham says about press reports at the weekend. I share her concerns and deprecate the leaks in the press. It is unfortunate that the Chhokar family has had further cause for grievance by the appearance of those stories. I assure the family and the Parliament that any communication with any journalist on the matter was not authorised or approved by any member of the Scottish Executive. The First Minister has asked for a full report into the background and the first steps in the inquiry process are already under way.

**The Presiding Officer:** The question is, that motion S1M-2343, in the name of Mr Jim Wallace, on the publication of the reports, be agreed to.

*Motion agreed to.*

## Chhokar Inquiries

**The Presiding Officer (Sir David Steel):** I call on the Lord Advocate to give his statement.

14:40

**The Lord Advocate (Colin Boyd):** I would like to make a statement about the reports of two inquiries into the case concerning the murder of Surjit Singh Chhokar. I laid those reports before the Parliament today. The inquiries, which were announced in my statement of 29 November 2000, were led by Sir Anthony Campbell and Dr Raj Jandoo. I asked Sir Anthony Campbell to consider how prosecution decisions were made in the case, to inquire in particular into the initial decision to indict Ronnie Coulter alone and to bring out any evidence of racism—individual or institutional—that he found in the course of his investigation.

Jim Wallace and I commissioned Dr Jandoo to inquire into the liaison between the authorities—including the police, the Crown Office and the Procurator Fiscal Service at Hamilton—and the bereaved relatives and partner of Mr Chhokar.

I want to make it clear that such inquiries are unprecedented in Scotland. I welcome to the Parliament the mother, father and sister of Mr Chhokar. I know that today will be another difficult day for them and that inquiries and reports will never assuage their grief, but from the two reports will follow reforms that will aim to ensure that such a case never happens again. I hope that they take some comfort from that.

The Deputy First Minister and I thank Sir Anthony Campbell and Dr Raj Jandoo for their comprehensive and robust reports into those distressing matters. Both reports express their thanks for the co-operation that they received from all who gave evidence, including members of the Crown Office and Procurator Fiscal Service and the police, the Faculty of Advocates and the Commission for Racial Equality and Victim Support Scotland and other voluntary organisations.

I emphasise that both Sir Anthony and Dr Jandoo had unrestricted access to papers and staff at all levels in the Crown Office and Procurator Fiscal Service and the police. Sir Anthony Campbell's report has been published with a full Punjabi translation and a full Punjabi translation of Dr Jandoo's report is in preparation. The Executive summary of Dr Jandoo's report has been translated into Punjabi and five other ethnic minority languages. Both reports have been made available in advance to Mr Chhokar's bereaved family and partner. Mr Chhokar's parents and sister travelled to Edinburgh this morning with their



representative, Mr Aamer Anwar, and had access to the reports from 9.15 am.

It was always our intention to ensure that the bereaved relatives and partner of Mr Chhokar were the first to see the reports. Therefore, I was horrified to see the press reports at the weekend. The leaks that have taken place are grossly offensive to the Chhokar family and to the Parliament. I assure the Chhokar family and the Parliament that, whoever might have spoken or otherwise communicated with any journalist on the matter, it was with neither the agreement nor the authorisation of any Scottish Executive minister. To re-echo what the Deputy First Minister said, following the press reports the first steps in the leak inquiry process are under way.

The reports by Sir Anthony Campbell and Dr Jandoo are of great significance for all involved in the criminal justice system and, indeed, for all Scotland's communities. The issues raised and identified are wide-ranging. Once members have had an opportunity to consider the terms of the reports in detail, it is our intention to ensure that a debate is fixed at which all relevant matters can be focused on and addressed.

Briefly, the main findings of the reports are as follows. Dr Jandoo confirms serious failures in liaison with the bereaved relatives and partner by the police and the Crown Office and Procurator Fiscal Service. Sir Anthony identifies clear defects in the way the prosecution made decisions in the case. Both reports show that the prosecution service made mistakes in preparing the case before the first trial and in liaison with the family.

Dr Jandoo finds evidence of institutional racism in the handling of the case by the police and the Crown Office and Procurator Fiscal Service.

Sir Anthony Campbell was asked to examine the way prosecution decisions were made and to consider, in particular, whether the decision to proceed initially against Ronnie Coulter was the right one. Sir Anthony was also asked to determine whether individual or institutional racism had affected how decisions were made.

As members will be aware, the police originally charged three accused with murder. The Crown decided to proceed initially against Ronnie Coulter alone with a view to reconsidering the case against the other two at the conclusion of the first trial—when it would have been possible to use Ronnie Coulter as a witness in subsequent proceedings.

Sir Anthony Campbell concludes that that was wrong and that Ronnie Coulter and Andrew Coulter should have been indicted together on a charge of murder, using David Montgomery as a witness. This is Sir Anthony's professional assessment based on his consideration of the

sufficiency of the evidence available, but he makes it clear that—had that course been pursued—it would have been impossible to say what the outcome of the trial would have been because significant problems remained concerning the quality of the evidence.

Difficulties in this case were both evidential and legal. Sir Anthony Campbell correctly distinguishes between sufficiency and quality of evidence. The case involved the application of the complex Scots law of concert to a difficult set of facts in a case with limited eye-witness evidence. I accept Sir Anthony's findings, including his point that proceeding differently would not necessarily have resulted in a conviction.

Sir Anthony Campbell concludes that internal systems failed, but found no evidence to suggest that racist behaviour or attitudes influenced decisions. Nor did he find any evidence that the fact that Mr Chhokar belonged to a different ethnic group to his attackers contributed to the systemic failure involved.

Sir Anthony also concludes that the internal systems of the Crown Office and Procurator Fiscal Service failed before the decision was made to indict Ronnie Coulter alone. He states:

"It is difficult to know what the decision would have been if there had not been defects in the decision-making process. It is sufficient to say that the possibility of reaching a correct decision would have been increased had they not been present."

I fully accept that assessment.

Sir Anthony Campbell makes nine recommendations, all of which I accept and welcome. His main recommendation is for a review of internal prosecution systems for High Court matters. A broad review of the internal systems of the Crown Office and Procurator Fiscal Service in relation to the processing, preparation and prosecution of High Court cases will be undertaken as a result. It will build on work already done in our future office project and will be taken forward by our quality and practice review unit. This work will be overseen by a reference group, to be chaired by the Solicitor General for Scotland, with participation by experts independent of the Crown Office and Procurator Fiscal Service.

But a wider review—going beyond the internal systems of the Crown Office—is needed to ensure the efficient and effective processing of High Court business, which depends not only on the Crown, but on the efficiency of other parts of the criminal justice system. We need to consider all the factors that impinge on the management and processing of High Court business in Scotland, with a view to improving and modernising them. Jim Wallace will commission such a review.

Sir Anthony Campbell also recommends setting

up, near the High Court in Glasgow, a satellite Crown Office High Court unit to service cases there. We are already proceeding with that.

More needs to be done to ensure continuity of responsibility for prosecution from the earliest stages of a case through to the trial. Complex and sensitive cases are already allocated in this way and it has proved beneficial, for example in the recent successful prosecution of William Beggs, but such arrangements need to apply to more cases in future.

Sir Anthony Campbell notes:

"If the preparation of cases by fiscals and advocate deputes is to be as careful as the interests of justice requires there must be a sufficient number of experienced staff at all levels to do the work and to supervise."

I entirely agree. As the number of High Court cases continues to grow steadily, the number of advocate deputes and legal staff must grow accordingly. While we have already increased the number of advocate deputes and legal staff, it is clear that further strengthening will be required. The reviews commissioned will help us to inform this decision-making process. I have already announced a separate review of the planning, allocation and management of resources in the Crown Office and Procurator Fiscal Service.

Dr Jandoo was asked to review and report on the liaison arrangements between the police, the Crown Office and Procurator Fiscal Service and the relatives and partner of Mr Chhokar; to consider the internal report I had previously commissioned and published; to determine whether liaison arrangements were affected in any way by institutional racism; and to consider and comment on racism and the police investigation of any racist motive for the crime.

Dr Jandoo interviewed more than 50 witnesses and reviewed many documents, including media reporting and family justice campaign material detailing the family's complaints. He makes 40 recommendations, including five key recommendations that are directed at the police and the Crown Office and Procurator Fiscal Service. Others are directed at the Law Society of Scotland and the Scottish Executive justice department.

Dr Jandoo concludes that the police investigation was effective and efficient in tracing and arresting suspects and gathering evidence. However, it did not pursue adequately the question of racist motivation in the crime, despite a direct request from the family.

Dr Jandoo also criticises the way police released information about racial motivation both to the press and to a local councillor. He reports failure of liaison by the police with the family during the investigation. There was ignorance about Sikh

funeral customs, and confusion and delays between the police and the procurator fiscal's office over the release of the body for cremation.

Dr Jandoo is also critical of police efforts at liaison between the end of the investigation and the first trial, and of police withdrawal from liaison following a meeting with the family and the newly formed justice campaign after the trial. Dr Jandoo also highlights a lack of communication between the police and the fiscal's office about family liaison.

There was no effective liaison between the procurator fiscal at Hamilton and the bereaved family and partner of Mr Chhokar before and during the trial of Ronnie Coulter. When Andrew Coulter and David Montgomery were to be indicted in July 1999, liaison by the Crown Office and the procurator fiscal's office was again poor. Dr Jandoo concludes that those failures did not arise from individual negligence or, primarily, from institutional racism. Rather, they reflected organisational and system failure.

Dr Jandoo found evidence of institutional racism, which is defined as occurring

"wherever the service provided by an organisation fails—whether deliberately or not—to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural background".

Such institutional racism was reflected in the way the police and the procurator fiscal went about their liaison with the bereaved relatives and partner. In particular, the police failed to appreciate the impact that a major crime has on members of a vulnerable minority community, the police and the procurator fiscal were not sufficiently prepared to respond readily to the need for cremation in Sikh funeral customs, and the procurator fiscal's office failed to realise that Mr Darshan Singh Chhokar would need the help of an interpreter, and might find difficulty in coping with correspondence in English.

The Deputy First Minister and I accept these findings. We failed the Chhokar family. They did not receive adequate assurance from the police about a racist motive for the crime, religious requirements and funeral customs were not sufficiently recognised and liaison arrangements by the police and the procurator fiscal's office were wholly inadequate prior to the first trial.

However, members of the Parliament will know that both my predecessor and I have approached this issue with the assumption that institutional racism existed within our organisation. That assumption, combined with a clear need to avoid even the possibility of complacency, has led to significant progress since 1998. We have changed, and are continuing to change.

Dr Jandoo recognises and welcomes that. He

notes the real progress made by the police and the prosecution service. He explicitly states that, under ministerial leadership, the Crown Office and Procurator Fiscal Service has taken

“systemic action to eradicate institutional racism”.

Furthermore, he concludes that there is real commitment, with leadership from ministers and senior officials, to deal with anti-racism matters.

Racism is an affront to justice and the finding of institutional racism within our justice system is clearly a matter of the gravest concern. As I have made clear, we have already made some progress in dealing with it and our commitment to its eradication should now be clear to all members. Dr Jandoo indicates that, although the Crown Office cannot be cleared of the charge of institutional racism, the same charge could probably be levelled at almost any organisation in the country. The staff in the Crown Office and Procurator Fiscal Service are committed to the prosecution of racism wherever it occurs as a crime.

The Deputy First Minister and I also note that Dr Jandoo makes no finding of individual racism on the part of anyone in the police or any member of staff of the Crown Office and Procurator Fiscal Service. He also praises the meticulous and conscientious approach taken to liaison during the Privy Council hearings and the second trial in the case. Nevertheless, it is clear that the institutional racism described by Dr Jandoo merits continuing and urgent action.

Dr Jandoo notes the key role of our departmental race strategy group, which is chaired by the Solicitor General, in driving through our anti-racist agenda and in mainstreaming racial equality throughout the policies and practices of the Crown Office and Procurator Fiscal Service. Significant progress has been made in relation to victim liaison and anti-racism. Many of those initiatives are referred to with approval by Dr Jandoo. They include anti-racist training for all staff; the mainstreaming of racial equality in all training programmes; working with the police in the investigation and reporting of racist crime, on which I have issued guidelines to chief constables; the issuing of cultural awareness guidance and guidance highlighting translation requirements to all staff; and the monitoring of racist crime and our policies and practices.

Our systems for instructing and engaging interpreters have been reviewed, providing a professional and structured approach. We must identify needs and not assume what is required. In all our initiatives, we are committed to consultation with the Commission for Racial Equality, racial equality councils and local community groups to ensure that. We are working towards the goal of

having victim liaison offices in all regions by spring or summer 2002. I believe that is a significant step for the Crown Office and Procurator Fiscal Service, which will ensure that we approach victim liaison in a professional, systemic and structured way throughout Scotland.

I have already accepted all of Dr Jandoo's recommendations; now I will ensure that they are implemented as soon as possible. Several will require collaborative approaches between agencies—particularly between the Crown Office and Procurator Fiscal Service and the police. I will ensure that that happens. We have changed and we are committed to further change. We fully recognise the need for increased accountability. Dr Jandoo's principal recommendation, that the Crown Office quality and practice review unit should be reinforced and reconstituted as a formal inspectorate, is accepted and welcomed. That will be taken forward as a priority and resources will be found. We will ensure the necessary independence within it and that its reports are made public.

I also accept the recommendation that the inspectorate conduct a thematic review of the service's response on race matters within two to three years and thereafter a scrutiny of our response to victims' and witnesses' issues, including the operation of the victim liaison office, within four to five years. All reports from the inspectorate will be made public. All this is unprecedented. It will significantly increase the accountability of the prosecution service in Scotland and will, in time, greatly strengthen the confidence of our ethnic minority communities in the Crown Office and Procurator Fiscal Service.

Dr Jandoo stresses throughout his report the need for a more structured system of communication and liaison between the procurator fiscal and the police. He highlights the role of the police family liaison officer and the importance of good communication and liaison from the earliest stages of any investigation right through to the trial. He calls for more systemic communication and for co-operation and an exchange of ideas between the Crown Office and the police at the most senior levels. Jim Wallace and I wholeheartedly support those recommendations and work has already begun to implement them.

We now have a joint Crown Office/Association of Chief Police Officers in Scotland working group to deal specifically with the investigation and reporting of racist crime. We will ensure that such liaison and communication becomes systemic at all levels, building on the good communication and co-operation that already exist between the Crown Office and Procurator Fiscal Service and the police at the most senior levels.

Dr Jandoo also makes three specific

recommendations in respect of the police. He notes the need to close the gap between high-level policy and strategy and practical guidance for officers on the ground. He quotes the policy-practice gap that was a theme of HM inspectorate of constabulary's report on the police and race in Scotland, which was published earlier this year. Practical measures to address the problem are identified in that report and a follow-up inspection is planned for next year.

Another of Dr Jandoo's key recommendations—that of improvements in family liaison—will be included in that inspection, with a view to preliminary reporting as soon as possible and a full report by the end of 2002.

Dr Jandoo also recommends greater police use of local multi-agency partnerships, as the importance of multi-agency racial incident monitoring groups and other such schemes has been recognised in the work of the Stephen Lawrence inquiry steering group and in the inspectorate of constabulary report.

I have apologised to the bereaved relatives, the widow and the partner of Surjit Singh Chhokar for our failure as a prosecution service to liaise appropriately with them and have no hesitation in doing so again. I am sorry, too, that, despite the fact that three people have stood trial for the murder of Surjit Singh Chhokar, the family has a genuine sense of grievance that justice has not been done. Of course, no prosecution service can ever guarantee a conviction and as a society we must never expect particular results in individual cases. Such expectations would undermine not just the jury system, but justice itself. It is also true that Sir Anthony Campbell finds that it is impossible to say whether the result might have been different had different decisions been made. Nevertheless, the fact is that we did not give ourselves the best shot at the prosecution. To that extent, the family's grievance that justice was not done by the prosecution is well founded. Again I apologise for that.

In March 2000, shortly after I became Lord Advocate, I attended Fife Racial Equality Council to speak on racism. Mr Chhokar was also there and was asked to speak. He spoke in Punjabi and although I did not understand his language I certainly understood his anguish.

Mr and Mrs Chhokar have conducted themselves with dignity and passion in pursuing justice for their son. I want to pay tribute to them for the perseverance that they have shown. I also want to recognise the part played by Mr Anwar. He is criticised in Dr Jandoo's report but I appreciate that Mr and Mrs Chhokar see him as a friend and counsellor. More importantly, he has played a significant role in the campaign, which has highlighted the issues of institutional racism and

the way in which we deal with bereaved relatives of whatever background and colour in the criminal justice system. I hope that they find some satisfaction in the progress that is now being made.

The reports are more than just a contribution to a debate. They mark a significant turning point in the justice system in Scotland. They will stand for many years to come not only as a signpost to the future but in memory of Surjit Singh Chhokar.

**The Presiding Officer:** I am bound by the timetable that the chamber agreed to earlier and we have to conclude the proceedings by half-past 3. I propose to use the degree of flexibility that I used on a previous occasion and, while questions will be directed to the Lord Advocate, I will call on the Minister for Justice just before the half hour to allow him to deal with any questions that relate to his department or responsibilities.

**Roseanna Cunningham (Perth) (SNP):** I thank the Lord Advocate and the Minister for Justice for their remarks about the leaks that have taken place. I am sure that all members will agree that those leaks were appalling and that they simply added insult to injury for the Chhokar family. I hope that the matter will be met with the utmost seriousness and that there will be an internal investigation to establish what happened. Given that the leaks took place and that extensive information ended up in the public domain, does the Lord Advocate think that consideration should have been given to allowing the Chhokars to see the reports earlier than this morning?

I regard the Campbell report as an objective piece of work and I have great confidence in its findings. It highlights mistakes that were made in the decision-making process and the existence of serious problems in the system. It amounts to a damning indictment of the system's failure to change over decades, despite the changing pressures during those decades. I am glad that the recommendations are being accepted, but does the Lord Advocate agree that a serious question about resourcing of the Crown Office is raised? Whenever that question has been asked of the Executive it has been rebuffed as being irrelevant, because the Executive has believed that the Crown Office has had sufficient resources to do its job. The Campbell report makes it quite clear that the Crown Office does not have sufficient resources.

There is a discrepancy between the two reports in respect of institutional racism. Campbell's report does not find evidence of institutional racism in the Crown Office, whereas the Jandoo report implies that it exists. How will the Lord Advocate and the Minister for Justice resolve that apparent discrepancy?

I will deal in slightly more detail with the Jandoo report. I find it far less satisfactory than the Campbell report. The Jandoo report is highly subjective and I am afraid that I cannot find great satisfaction in much of what is in it, given the brief chance that I have had to see it. Why—despite guarantees to the family—are personal details, including all family addresses, contained in the report? Can anything be done about that before the report is provided to the wider public, including the press?

Why did the Jandoo report proceed on the basis of what is in effect character assassination of individuals—Surjit Chhokar, Darshan Chhokar and Aamer Anwar? Does that character assassination not effectively justify the concerns that the family had about the conduct of the inquiry in the first place?

What—given Dr Jandoo's dismissal of Macpherson's definition of institutional racism and his substitution of it with something called institutional sensitivity—is our understanding now of institutional racism? Do the Lord Advocate and the Minister for Justice accept that redefinition?

I am concerned that we could get into easy scapegoating of the police. Although some deficiencies in police actions have been identified in the Jandoo report, it is clear that the family had a good experience of the police and it is agreed in general that the real problems began when the case was no longer in police hands. If any institution comes out of the report well, it is the police, but certainly not the Crown Office and Procurator Fiscal Service. I ask the Lord Advocate and the Minister for Justice to comment on that. I am concerned that, in such circumstances, the police are an easier scapegoat to have in our sights than the more entrenched establishment attitudes that exist in the Crown Office and Procurator Fiscal Service. I would be concerned if that were the lesson that was learnt from the reports.

I have asked a number of specific questions. Members will have other questions. The reports are highly detailed and I hope that we will have a chance to return to the issue in much more detail, but I want the Lord Advocate and the Minister for Justice to give some specific answers to my questions about the nature of some of what has appeared in the Jandoo report.

**The Lord Advocate:** I reiterate my horror at what happened over the weekend. Whoever was responsible for any leaks showed, in my estimation, complete lack of sensitivity for the family and complete lack of judgment. If anybody thought that they were doing Jim Wallace or me a favour, their actions were completely contrary to any instructions that we gave, which were explicit about how the reports were to be handled. We are

both horrified by what happened.

On consideration of whether to give the family the reports earlier, that was not done for three reasons. First, we were not asked to give them the reports earlier. Secondly, we were only three days away from the debate in Parliament. Thirdly, we had already given a commitment that we would make a parliamentary statement and that the reports would be published under parliamentary privilege. For those reasons, the reports were not issued to the family early.

On the Campbell inquiry and resources, I clarify that we have in the past few years steadily increased the resources for the Crown Office and Procurator Fiscal Service. In 1996-97, the budget was about £47 million. It is now more than £60 million. The number of legal staff that the Crown Office and Procurator Fiscal Service employs has gone up by 60 between 1998 and November 2001, an increase of about 22 per cent. We have been putting resources in, but I recognise that there might still be a problem with resources. For that reason, I announced earlier the establishment of a review of management and the allocation of resources, because I am determined that we should get best value for money.

In turning—if I may—to comments on the Raj Jandoo report, I say that Roseanna Cunningham and I will have to differ on the quality of that report. I found it as I read it to be well structured, well argued and well reasoned. Although we might all argue about the recommendations, my view is that we should now see to implementing those recommendations and moving on. I do not intend to comment on Dr Jandoo's or Sir Anthony Campbell's comments about individuals in their reports. Those reports stand as the results of investigation by respected authors and it is not for me to comment. I accept the reports as they stand and my view is that we should now concentrate on the recommendations.

On scapegoating the police, I have a high regard and respect for the police. We work closely together. I am not aware that I, Jim Wallace or anyone else has attempted at any stage to scapegoat the police through the way in which we have conducted ourselves or instructed the reports. I hope that the police will find the recommendations constructive, as I find the recommendations about the Crown Office and Procurator Fiscal Service constructive. I give the commitment that I will work closely with the police in ensuring that the recommendations are implemented.

**Lord James Douglas-Hamilton (Lothians) (Con):** Will the Lord Advocate accept that we all wish to be associated with his expressions of sympathy to the family of Mr Chhokar and will he also support a full debate in the Parliament at the

first available opportunity in view of the important concerns that have been raised?

Will the Lord Advocate agree with the major conclusion that two of the accused should have been tried in the first instance and that Lord McCluskey's remarks as trial judge in the first trial have now been vindicated? Is he aware that Sir Anthony Campbell states on page 87 of his report:

"I have gained the firm impression ... that the prosecution system is currently under stress. One witness described it as a system in perpetual crisis."

Having been an interim fiscal, I ask the Lord Advocate please to ensure that the Crown Office and Procurator Fiscal Service receives the necessary resources from the Administration and that no part of the service is under disproportionate stress. When the Lord Advocate implements the recommendations to have a broad review and to create an inspectorate for the Crown Office, will he bear it in mind that our justice system should be as good as any in the world and that prosecutions should never be adversely affected by lack of resources or too few staff?

Is the Lord Advocate aware that Sir Anthony Campbell wrote on page 84 of his report:

"I have not found any evidence to suggest that racist behaviour or attitude influenced the decisions that were made"?

Does he endorse that view?

Does the Lord Advocate accept that the substantial shortcomings in the conduct of the investigation and prosecution do not mean that our police force as a whole is institutionally racist? Any attempt to label Scotland's police officers and prosecutors in that fashion would be a slur on dedicated men and women who do a difficult job without fear or favour and on the basis that we are all equal under the law. Will the Lord Advocate recognise that we must learn from this sorry and sad chapter in our legal history?

**The Lord Advocate:** I confirm that the Executive will initiate a full debate on an appropriate occasion, when members have had time to study the reports.

I accept—as I have already stated—that the better judgment at the time would have been to indict both Ronnie Coulter and Andrew Coulter for murder and to use David Montgomery as a witness. I note from Sir Anthony Campbell's report the comments that relate to resources, but I pause only to observe that things have changed in relation to the amount of resources that are available, at least since November 1998. I have accepted that resources remain an issue that we must address.

The recommendations relating to the new inspectorate are important. I accept that the justice

system as a whole must be adequately resourced and that it must deal with the modern pressures that arise from the serious nature of crimes that are now committed in our society.

On institutional racism and its definition, both reports' authors make it clear that they found no evidence of racist behaviour by individuals, either in the police or the Crown Office and Procurator Fiscal Service, and I welcome that. It is incumbent on all of us within organisations to ensure that the processes that we operate do not operate in such a way as to be discriminatory against individuals of any colour or creed. I am sure that we all agree with that.

**George Lyon (Argyll and Bute) (LD):** On behalf of the Scottish Liberal Democrats, I record our deep concern and disgust over the leaking of the reports to the press. I hope that the inquiry finds those who are responsible and deals with them properly.

I ask the Lord Advocate to reconfirm that the crime was not racially motivated.

On the criticisms that are contained in Dr Jandoo's report, it is clear that the police and prosecuting authorities failed time after time in their liaison and communication with the Chhokar family. Will the Lord Advocate expand on the lessons that have been learned from this sorry affair? Will he detail the actions that are being taken to tackle the criticism that is being levelled at the Crown Office? Will he detail the action that is being taken within the police force on the point that was highlighted in the Jandoo report, to the effect that there is a need to close the gap between high-level policy and strategy and the practical guidance for officers on the ground?

**The Lord Advocate:** I ask Jim Wallace to make a comment at the end of questions about the point regarding the police.

It does not appear that there was any evidence that the murder was racially motivated. As for the lessons to be learned and the actions of the Crown Office, members will be aware that we have already set up the victim liaison office for victims and next of kin in general. It is currently being piloted only in Aberdeen and Hamilton, but it will be rolled out to all regions of Scotland by the middle of next year. That is an important initiative because it will provide a structured approach to the way in which we deal with victims of serious crime and, in particular, with bereaved relatives. It is my wish that that mainstreams racial awareness within the system.

It is also important that victims of crime have access to basic information about the way in which the system works and about the basic details of the case in which they have an interest. That will be an important part of the work of the victim

liaison office.

The race strategy group, which has been meeting every fortnight under the chairmanship of the Solicitor General, has been addressing a wide range of issues that come under the broad heading of race. We are learning fast how to deal appropriately with people from ethnic minorities. We are ensuring that there are adequate translation and interpreting facilities, for example. That means that people must be aware of the need for those facilities. I have issued guidelines to fiscal staff about awareness of the need for interpreting and translation facilities, and about cultural awareness generally.

Those are some of the steps that are being taken in the Crown Office and Procurator Fiscal Service.

**Pauline McNeill (Glasgow Kelvin) (Lab):** Does the Lord Advocate agree that it is a failure of our justice system that guilty men have walked free and that there has been no conviction for the brutal murder of Surjit Singh Chhokar? Was the lack of experience that Anthony Campbell identified responsible for the failings in the preparation of the prosecution's case? Does the Lord Advocate recognise that the Justice 2 Committee has embarked on an inquiry into the Crown Office and Procurator Fiscal Service because it has believed all along that the service has been under-resourced and has suffered from lack of experience?

Can the Lord Advocate say today that he will take urgent action to address the problem of low pay and low morale in the prosecution service, so that the public can rest assured that we in Scotland have the highest quality prosecution service?

**The Lord Advocate:** The member will appreciate that I do not want to comment on the guilt or innocence of individuals and on verdicts that have been reached by a jury. In my statement I made it clear that we did not give ourselves the best shot at securing convictions in this case because of the way in which we prosecuted it. However, juries' verdicts can appear strange to people who do not sit on them and who observe them from outside. It is important that, as Lord Advocate and as a prosecutor, I should not be drawn into commenting on verdicts and I will not do so in this case.

Pauline McNeill referred to the levels of experience of prosecutors. In this case, somebody who did not have the right level of training was assigned to undertake the precognition. There were also difficulties with supervision.

I acknowledge what the member said about the Justice 2 Committee. On several occasions I have welcomed the Justice 2 Committee's inquiry into

the Crown Office and Procurator Fiscal Service, as it will provide us with a forum to consider more broadly the issues that confront us.

I am aware that pay and morale are issues in the service. A pay comparability study is being undertaken and I have already made certain public commitments in relation to that, as well as commitments to the unions. I want to ensure that the morale of the service is as high as it can be. The people at all levels who make up the Crown Office and Procurator Fiscal Service work extremely hard, sometimes in extremely difficult circumstances. They also face the challenge of the increased scrutiny that the Parliament has brought to bear on the service. The staff of the Crown Office and Procurator Fiscal Service work very professionally; the Parliament should recognise the debt that it owes them.

**Tommy Sheridan (Glasgow) (SSP):** I will ask four quick questions.

Does the Lord Advocate have information on how many members of the ethnic minority community and how many organisations that represent the ethnic minority community contributed to the reports?

When the Minister for Justice speaks, will he join the Lord Advocate in condemning the press leaks? Will he also state in the strongest possible terms his support for the integrity of both the Chhokar family and their chosen representative, Aamer Anwar, given the way in which he has conducted affairs throughout this sorry episode?

Will the Lord Advocate explain whether the definition of institutional racism that was used by Dr Jandoo will replace that which was used in the Macpherson report? Alternatively, will Dr Jandoo's definition supplement that of the Macpherson report or will it be fitted into the overall system in some other way? When we discuss such a serious subject, it is important that we have proper definitions, so that our discussions do not become meaningless.

Finally, does the Minister for Justice accept that throughout Scotland there will be a lot of dissatisfaction with this sorry affair? Does he also accept that that will be based largely on the unwillingness of the Executive to accept the heartfelt pleas and wishes of the family for a proper, transparent and accountable public inquiry, which should have been held in the first place?

**The Presiding Officer:** That must be the final question. I call the Lord Advocate and the Minister for Justice. There are eight members whom I cannot call but, given that there is to be a debate, I shall note their names.

**The Lord Advocate:** I do not have the figures on how many members of the ethnic minority community or ethnic minority organisations contributed to the reports, but lists of people who contributed are contained in the report. I will pass the question on the definition of institutional racism to Jim Wallace.

**Fiona Hyslop (Lothians) (SNP):** On a point of order, Presiding Officer. Bearing in mind the interest in and importance of the subject, would it be possible to suspend standing orders for 10 minutes and to move other business and decision time back by 10 minutes to allow further questioning?

**The Presiding Officer:** Although I am sympathetic to that request, I honestly do not think that I could do that. Fiona Hyslop will recall that we held a short debate on the business motion in the Parliamentary Bureau. We should revisit this issue in the bureau and I intend to do so next week. However, I am afraid that I am bound by the business motion that the Parliament agreed to.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I will try to pick up on some of the points that have been made.

I emphasise that the leaks that happened were not authorised by Scottish ministers. Both Roseanna Cunningham and James Douglas-Hamilton sought reassurances that the inquiry into the leaks will be thorough. I can assure them that I want that inquiry to be thorough and that it will be.

It was unfortunate that Roseanna Cunningham seemed to dismiss so lightly the definition of institutional racism that Raj Jandoo uses in his report—I think that she referred to “institutional sensitivity”. In fact, if one examines paragraph 24 and paragraph 32 onwards, it becomes quite clear that Raj Jandoo builds on and clarifies the definition that was used in the Macpherson report. I chair the working group that is implementing the recommendations of Sir William Macpherson’s report, and I found his definition of institutional racism helpful. However, Raj Jandoo’s report reflects the concerns that have been expressed to him by the Commission for Racial Equality that the Macpherson definition focuses too much on unwitting actions. When people read Raj Jandoo’s recommendation, they will find that it is a useful tool for assessing whether institutional racism exists within their own organisations. That applies not only to the public sector, but to all organisations. People ought to be very alert to the existence of institutional racism. It is important to remind the Parliament that no finding was made to the effect that any individual in the Crown Office and Procurator Fiscal Service or in the police was guilty of a racist approach or attitude. Nevertheless, Raj Jandoo found examples of institutional racism.

There is no intention on my part, or on the parts of the Lord Advocate or anybody else in the Executive, to scapegoat the police—far from it. However, it is important that we are not complacent. As the chair of the working group that is implementing the Macpherson inquiry report’s recommendations, I have been impressed by what I have learned about the commitment of the police to taking tackling racism seriously. The police’s racial diversity strategy is an example of that commitment.

George Lyon mentioned the policy-practice gap, which was identified in the HM inspectorate of constabulary report “Without Prejudice?”, which was published earlier this year. Through training and through a general commitment, that policy-practice gap is being addressed. For example, Lothian and Borders police have issued officers with a small card that is—although it was derided in some sections of the press when it was issued—an ever-present reminder to the police always to be vigilant, because any incident could be a racial incident. Next year, the inspectorate will make a follow-up inspection of Scotland’s police forces to view how far they have come in trying to minimise that policy-practice gap. I will be profoundly disappointed if that inspection does not show that the gap has closed considerably.

As the Lord Advocate said, Raj Jandoo’s recommendation on family liaison will also be taken forward. I and officials in my department will discuss with the chief police officers how to take forward the recommendations that are addressed specifically to the police.

I assure Tommy Sheridan that I wish to associate myself with the remarks that the Lord Advocate made about the Chhokar family and their representative. The Chhokar family have been badly let down as a result of the failures in the Scottish justice system. The two exhaustive reports make clear the failings in the prosecution of the murder and how liaison with the family could have been much better. As Scotland’s justice minister, I consider that those failures added considerably to the family’s suffering following the death of their son. The failures are utterly unacceptable. I want to associate myself with the profound apology that the Lord Advocate has already made.

There will, of course, be an opportunity for a full debate in Executive time, when I am sure that we will want to address the issues with the seriousness that they clearly merit.

**The Presiding Officer:** That concludes business on the statement.

**Dennis Canavan (Falkirk West):** On a point of order, Presiding Officer. It would appear that some members who are not members of the Executive



had access to the reports before the Parliament met this afternoon, whereas the rest of us had to wait until the appropriate motion was approved at half-past 2. Can you try to ensure that we are all treated equally, so that there is equal opportunity to put informed questions to the Lord Advocate or the responsible minister?

**The Presiding Officer:** I speak only for myself when I say that I had no access to the reports before the meeting. The question of how and when the Executive pre-issues copies of documents to other members is a matter for informal arrangement between the parties; it does not involve the chair at all.

**Dennis Canavan:** The report says that it is "Laid before the Scottish Parliament".

Surely, as equal members of the Parliament, we are entitled to see it at the same time?

**The Presiding Officer:** The answer is that it was published when the motion was agreed to.

**Dennis Canavan:** People had access to it before the motion was passed.

**The Presiding Officer:** I hear what you say, Mr Canavan, but I have no knowledge of that. The matter is not for the chair but for agreement between the parties.

## Proceeds of Crime Bill

**The Presiding Officer (Sir David Steel):** The next item of business is a debate on motion S1M-2341, in the name of Jim Wallace, on the Proceeds of Crime Bill, which is a piece of UK legislation. This procedural motion is known as a Sewel motion. I hope that the debate will be short to allow time for the debate to follow.

15:34

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** At the outset, I will explain why we are recommending a Sewel motion on the Proceeds of Crime Bill, which has been introduced in the Westminster Parliament. I will explain why we have given the UK Government our full support on the bill and why we have collaborated extensively on it.

The law has clearly failed to keep pace with the increasingly sophisticated ways of hiding and laundering criminal assets. Confiscation orders in Scotland amount to about £1 million each year, but criminal profits probably amount to several hundred millions of pounds each year. Criminals are enjoying the proceeds of their crimes, investing their profits in further crime and creating harmful role models, especially in many communities that are scarred by drugs.

The Proceeds of Crime Bill is designed to recover ill-gotten gains, undermine crime and criminal finances and destroy the myth that crime pays. It will make the law more effective in recovering the proceeds of crime.

First, the bill will bring more cases to court. New powers of investigation and enforcement will help us trace assets better. Other powers will help us to secure those assets. For example, the police and HM Customs and Excise will be able to seize suspect cash anywhere, not just on import or export. Restraint orders will be available from the start of an investigation. Suspect assets must be traced and frozen quickly, given that the press of a button or the click of a mouse could take them out of our jurisdiction.

Secondly, in court, the bill will facilitate criminal confiscation by putting the schemes for drug trafficking and other crimes on to a new all-crimes basis. Separate schemes are ineffective against versatile criminals who traffic not just in drugs but in tobacco, alcohol and—most deplorably—people, and who may also be running outwardly legal businesses.

Thirdly, the bill will introduce a new civil recovery scheme. Where criminals distance themselves successfully from prosecution, there is no reason

why we should not question the source of their assets under proceedings familiar to the civil courts. Fourthly, it will introduce new taxation arrangements. Undeclared or otherwise inexplicable income should be taxable. Fifthly, it will strengthen the existing money laundering arrangements.

Clearly, there is more in the bill, but I cannot go into all the details in the time allowed. Full details are set out in the explanatory notes.

Before I turn to arguments for the Sewel motion, it is important that I make clear the principles that will govern the operation of the powers in Scotland. Those principles are set out in the draft guidance that is attached to the memorandum.

First, priority will always be given to criminal investigations and proceedings by the law enforcement agencies and the Crown against those who commit criminal offences. In deciding whether to initiate or continue a criminal investigation or criminal proceedings, the Crown will apply its normal evidential and public interest tests and will have no regard to whether civil recovery or taxation proceedings might be available under the act.

Whenever an accused is convicted of an offence, confiscation will be the route to the recovery of his proceeds of crime as a result of that conviction. Subject to two limited exceptions that are explained in the guidance, the Scottish ministers will consider pursuing civil recovery only where a successful criminal prosecution has not proved possible, but where nonetheless there is sufficient evidence to pursue a civil action for the recovery of property that represents the proceeds of crime. The burden of proof is on the Crown and the Scottish ministers.

**Phil Gallie (South of Scotland) (Con):** How does the minister's comment that it is important to act quickly to freeze assets tie up with what he has just said about action being taken only after determination that no criminal proceedings can be progressed?

**Mr Wallace:** It is a question as to when assets are recovered. After a conviction, assets will be recovered through confiscation. In a civil action, the onus will be on Scottish ministers to prove the illicit nature of the assets. A successful prosecution and confiscation or a successful action for civil recovery will allow the transfer of the assets. What we are saying about freezing assets and restraint orders is that at the outset of an investigation a bank account can be frozen. The assets will not be transferred at that point, but will be frozen and the owner will be unable to do anything with them.

I should add that the director of the criminal assets recovery agency may consider using his

taxation powers only where the Scottish ministers have decided not to pursue civil recovery. In short, prosecution of criminals must always take priority and will continue to do so. Civil recovery and taxation will not be soft options. They will only be used where prosecution and civil recovery respectively are not viable.

Let me address the reasons for asking the Parliament to approve the Sewel motion. Legislation dealing with drug trafficking, money laundering and taxation is reserved, while other criminal and civil matters are within the legislative competence of this Parliament. A key principle of the bill is to put drug trafficking and other crimes on to an all-crimes basis. The principle applies to confiscation, civil recovery, money laundering and other provisions in the bill. It is the Executive's view that to attempt to legislate at Westminster for the reserved matters in the bill and at the same time to legislate in the Scottish Parliament for devolved matters would be highly complex and might lead to loopholes and inconsistencies between the two systems. Comprehensive UK legislation will therefore prove more effective and avoid the risk of inadvertent safe havens on either side of the border.

Finally, I draw attention to two temporary discrepancies between the memorandum and the bill as it has been introduced in the House of Commons. The intention is to bring the bill into line with the memorandum. First, paragraph 19 of the memorandum mentions an order being made by Scottish ministers subject to the draft affirmative resolution procedure in the Scottish Parliament. However, the bill mentions the negative resolution procedure and will be amended at the committee stage to refer to the affirmative resolution procedure.

Secondly, paragraph 27 of the memorandum mentions a similar order-making power in relation to information disclosure. That provision will be added to the bill at committee stage in the House of Commons.

Finally, a significant proportion of the receipts that are generated will be used in Scotland to improve performance in asset recovery and to fund schemes in support of crime prevention and our drugs strategy.

In conclusion, the bill is innovative, fair and proportionate to the scale of the crimes that we face. It will strengthen the law substantially. For the reasons that are set out in the memorandum, the Executive believes that it is therefore appropriate to legislate on a United Kingdom basis in the United Kingdom Parliament.

I move,

That the Parliament endorses the principles of the Proceeds of Crime Bill and agrees that the provisions in the

Bill that relate to devolved matters should be considered by the UK Parliament.

15:41

**Michael Matheson (Central Scotland) (SNP):**

As I have done before in Sewel motion debates on the International Criminal Court Bill, the Regulation of Investigatory Powers Bill, the Sexual Offences (Amendment) Bill and the Criminal Justice and Court Services Bill, I preface my remarks by placing on record my distaste for the process. I am concerned at the frequency with which the mechanism of Sewel motions is being employed. It is not appropriate for the Parliament to allow legislation over which it has competence to bypass the chamber.

Notwithstanding the Minister for Justice's remarks, I remind members—as I have done previously—that the late Donald Dewar reassured us in January 1998 that, although Westminster would continue to have the power to legislate on devolved matters, that power would be used only in very rare circumstances. The Scottish Parliament is far and away a better forum than Westminster for dealing with law specific to Scotland. Much of the Proceeds of Crime Bill—particularly regarding civil recovery of criminal assets—specifically relates to Scotland. Indeed, of the 444 clauses in the bill, 111—a full quarter of the bill—specifically relate to Scotland.

With that caveat on record, the SNP will support the motion because we support the principles of the bill and welcome the development that means that the Scottish Executive will become the enforcing agency for civil recovery in Scotland. Money recovered by civil recovery and criminal confiscation in Scotland will go into the Scottish budget.

However, I am concerned that civil recovery orders could fall foul of article 6.2 of the European convention on human rights. We know that criminal confiscation orders are lawful because they are part of the punishment for a crime. However, that cannot be said of civil recovery orders as they apply to civil recovery cases. A person who is the subject of such an order could be regarded as having put themselves in a position of self-incrimination because of the disclosure provisions in clause 379 of the bill. How would that fit in with the right to a fair trial, which is protected under article 6.1 of the ECHR?

The cynic in me cannot help but wonder whether one of the reasons why the Executive has lodged a Sewel motion rather than introducing a separate piece of legislation is that the Scottish Parliament has a higher standard of human rights protection than Westminster, as Westminster can pass laws that breach the ECHR. That is why I want the Executive to guarantee that the bill complies with

human rights protections.

However, the bill will enable the justice system to deal with drugs barons, who until now have regarded themselves as above the law. Over a year and a half ago, Roseanna Cunningham and I visited Ireland to see what Scotland could learn from the various aspects of its justice system, such as drugs courts, which the Executive at that point was decrying, but has now adopted. While we were there, we visited the Criminal Assets Bureau and were extremely impressed. I know that the previous Deputy Minister for Justice, Angus MacKay, paid a similar visit and returned extolling the virtues of the Irish system.

The Proceeds of Crime Bill will send a message to those who seek to make their fortunes from a life of crime. If they cannot prove that their gains are not ill-gotten, those gains will be confiscated. They will no longer be untouchable. However, the new legislation will have to be properly resourced. Only last year, James Hamill, who was convicted of heroin dealing and was reputed to be worth £4 million, was sentenced to 18 years in prison and under a confiscation order was ordered to hand over the profits from his crimes. He was reported to have

“punched the air in delight”

when a 60-second court hearing ordered him to pay up just £32,000. The explanation that was given at the time was that the Crown Office had just two full-time staff dealing with the seizure of criminal assets and they had neither the time nor the resources to get to the bottom of his finances. The financial stress on our Crown Office is a different debate, but that report highlights the fact that the system is not sufficiently well resourced for the provisions that are in place. If that problem is not addressed, no matter how strongly I support the principles of the Proceeds of Crime Bill and the motion, there will be little point in passing the bill.

15:46

**Lord James Douglas-Hamilton (Lothians)**

**(Con):** We welcome the bill as an extension of the policy of the previous Conservative Government. We introduced measures to seize the assets of criminals some years ago. In the House of Commons, the Conservative Opposition will consider the Proceeds of Crime Bill in the light of the responses to the consultation on the draft bill.

On 5 March, the Minister for Justice announced the decision to pursue a bill targeted at seizing criminally gained assets. First, in connection with that, we warmly welcome the move to unify powers of criminal confiscation and to strengthen investigatory and enforcement powers, including the power to restrain property at the start of a criminal investigation to prevent it being hidden or

dissipated. That will ensure that action can be taken speedily.

Secondly, we welcome the creation of powers of civil recovery to recover proceeds of criminal activity in cases where it is not possible to secure a criminal conviction. That is a safeguard for the public, and is consistent with policies on the prevention of crime.

Thirdly, we support strengthening existing powers against money laundering following a conviction, and the imposition of tougher disclosure requirements on third parties, such as financial institutions. In the light of the events of 11 September, that is a necessary measure.

Fourthly, we back enabling tax to be levied on income that is believed to be derived from criminal activity, but we wish to study the drafting closely.

The minister was correct to say that the legislation must be on a UK basis so that we do not create any safe havens for criminals, but it is appropriate that the bill will contain specific Scottish provisions to ensure that the new powers are fully aligned with Scots law and procedures.

Although I give general support, I wish to ask the Minister for Justice two questions. First, in combating and preventing drug misuse, how much of the law is devolved? The minister will appreciate that schedule 5 to the Scotland Act 1998 indicates that the Proceeds of Crime (Scotland) Act 1995 is reserved in so far as it relates to drug trafficking, but it does not mention the Drug Trafficking Act 1994. With the greatest respect, Scottish police forces need to know where their powers of enforcement begin and end in this area, so that the policy will be fully effective.

Secondly, I ask the minister whether he is satisfied that article 6.2 of the European convention on human rights, which is contained in schedule 1 to the Human Rights Act 1998, will not prevent the implementation of the Proceeds of Crime Bill and will not be used as a tool for obstructing the seizure of drug barons' assets.

I remind the minister of the 1999 Scottish Conservative manifesto pledge, which stated that we would strengthen the law in relation to the seizure and confiscation of assets suspected of being derived from drug dealing. I warmly welcome the recognition of that important policy by the Executive and the United Kingdom Government. I hope that that is a sign of encouraging things to come. Subject to appropriate ministerial reassurances, we will support the motion.

15:50

**Paul Martin (Glasgow Springburn) (Lab):** Although this is a short debate, it is an important

one, whose subject touches the lives of many people in our constituencies. People in Springburn have been greatly concerned to see the local criminal fraternity flaunting their wealth to give the impression that crime pays and have raised the matter on many occasions.

It is important that swift legal action is taken. As Michael Matheson said, human rights must be taken into consideration. However, our constituents also have human rights, and we must consider the fact that they have had to live in the shadow of criminals who have flaunted the proceeds of their criminal activities. We should ensure that our constituents' human rights are also taken into consideration.

We are aware that the legislation is in line with international policy. I ask the minister to consider the model of the assets forfeiture fund that was introduced by the Department of Justice in America. The intention is to punish and deter criminal activity by depriving criminals of property that is acquired through illegal activities. Will the minister consider ensuring that the criminals themselves—

I am not feeling that great, Presiding Officer. I would like to suspend my contribution for the moment.

15:52

**Donald Gorrie (Central Scotland) (LD):** One of the reasons why Liberal Democrats are here is to safeguard the civil liberties corner of the argument in instances such as this. My colleagues and I approach this sort of bill with distinct suspicion and we need a good deal of persuasion that it is necessary. I think that that persuasion has taken effect because the fight against organised crime is such an unequal contest. The masters of crime are probably highly intelligent, they are totally unscrupulous, they can afford the best possible lawyers and they always tend to be a few steps ahead of the law. The situation has to be equalised, so a measure to capture the possessions illegally acquired by people is a reasonable one to pursue. We are therefore persuaded to support the motion.

I am sure that other members have spoken to the police, who will say that they know perfectly well who some of the criminals are. They live in posh houses, belong to posh clubs and associate with posh people. They are pillars of society, but the whole thing is founded on crime. Although the police know who they are, they cannot pin anything on them because of the large number of links in the chain between them and the poor suckers doing the dirty work down on the ground. I have no compunction about trying to go after those people if we can.

This measure should be just part of a campaign. I hope that the minister will co-operate with United Kingdom colleagues to pursue those involved in money-laundering activities of all sorts. Through my enthusiasm for pursuing issues relating to licensing and alcohol, it has become clear to me that the bottom end of the security industry is a big way of washing dirty money. A great deal of importation of cigarettes and other tobacco products is done illegally as a huge combine; it is not just a case of one or two people owning a van.

The whole of the City of London is not corrupt, but it is so huge and complex that many dubious things go on and I hope that the Government in London will pursue such matters vigorously. We will ensure that financial activities in Scotland are kept as clean as possible.

The Liberal Democrats are happy to support the bill as part of a series of measures to make serious war on crime. We do not want to continue to lose the battle against crime, which Governments of all kinds have done hitherto.

15:56

**George Lyon (Argyll and Bute) (LD):** I welcome the motion in Jim Wallace's name on the UK Proceeds of Crime Bill.

My colleague Donald Gorrie pointed out that the Liberal Democrats believe that a new law to track and recover proceeds of serious crime is justified. However, it is important to stress that attempts should always be made to obtain a conviction first. Where there is a good reason why a conviction is not possible but, on the balance of proof, there is strong evidence that particular assets are derived from particular crimes, it must be justified for the authorities to freeze or take the profits in question.

With the increased sophistication of organised crime, the criminals behind organisations have too often been able to hold on to their ill-gotten gains. The bill should help to put the justice system on an equal footing with the criminals. That is important and is the reason for the introduction of the bill.

The bill should also strengthen public confidence in the authorities' ability to tackle the criminals head on and deprive them of their ill-gotten gains. Perhaps most important, it should cripple their ability to continue financing further criminal activity.

I offer the Liberal Democrats' support for the motion.

15:57

**Phil Gallie (South of Scotland) (Con):** It would be strange indeed if the Conservatives did not give full support to the bill, given that it fulfils one of our

long-made pleas.

On Michael Matheson's comments on Sewel motions, such a motion is the only approach in this instance. It is right that we proceed on a UK basis. Not to have done so would have been folly.

The fact that the UK Government seems to have picked up on the issue on the back of the terrible atrocities of 11 September is sad. To a degree, the bill was needed long before this. In the early days of the parliamentary session, we addressed the confiscation of assets and there were press reservations. I recall Angus MacKay, who was then Deputy Minister for Justice, going off to Ireland to look at its system of confiscation and freezing of assets, given the implications of the European convention on human rights.

**Mr Jim Wallace:** I do not usually rush to the defence of the Westminster Government but, to be fair, a draft bill was published, I think, in February this year. The bill was announced in the Queen's speech so it is unfair to say that it was prompted entirely by the events of 11 September.

**Phil Gallie:** Introduction of the bill has been speeded up and I welcome that. I recognise the sad implications of 11 September.

One aspect that I feel strongly about is the fact that, at last, the Government will consider not just criminal matters, but civil matters and will examine the Inland Revenue model of confiscation. That is all-important. Donald Gorrie spoke about the fact that our communities know the pushers and the sellers, yet they cannot be touched. It is right that we should be able to get at those individuals and the bill will allow that.

On the cases that have been mentioned—such as the Hamill case—and the comments that have been made about the ECHR, it is a disadvantage that Scotland has seemed to go in fear of the ECHR and that, in its interpretation of it, Scotland has in many ways put the interests of the criminals ahead of those of wider society. The fact that England has slightly more flexibility is an asset rather than something to bemoan.

Swiftness in dealing with confiscation is all-important. As the minister suggested when he responded to my query on the freezing of assets, we should ensure that assets are frozen as soon as a suspicion is laid and before intensive investigation proceeds. By freezing assets at that time, it is my hope that the figures on confiscation will at long last improve. The minister referred to the figures in Scotland—only £1 million has been seized out of a multimillion pound industry. That has got to stop and the bill shows the way.

My colleague Lord James Douglas-Hamilton laid the ground for the Conservatives and I give my full support to everything he said. I also give full

support to the United Kingdom Government, at the discretion of the Westminster Parliament, to analyse the detail and to proceed with the bill expeditiously.

16:01

**Christine Grahame (South of Scotland) (SNP):** Ireland has been referred to in the debate as it has had similar legislation for five years. It is interesting that, in the three years between 1998 and now, the Irish Criminal Assets Bureau confiscated £6.5 million of goods. The bureau also seized a bar called the Paradise Bar—perhaps it was aptly named—that had been used to launder hundreds of thousands of pounds of drug money. Through civil proceedings, the bar was put into receivership and sold, as a result of which the bureau received £215,000.

The bill has merits. The Scottish National Party supports in principle the thrust of the bill. It is obviously just and satisfactory that those who appear to benefit from crime should cease to do so through proceedings in either the criminal or the civil courts.

The Scottish National Party also welcomes restraint orders. The minister is quite right—one must be able to act quickly, especially in these days of selling goods by electronic means.

In this instance, it is our view that there should have been a Scottish bill—there could have been Scottish consolidating legislation. The current legislation is the Proceeds of Crime (Scotland) Act 1995 and the Criminal Law (Consolidation) (Scotland) Act 1995, which is to do with money laundering. In our view, those acts could have been dealt with under consolidating legislation in Scotland, which could have been in parallel with any existing legislation down south. After all, the purpose is not to erode the demarcation lines around Scots law, but to strengthen and buttress them against an invasion from the south.

**Mr Jim Wallace:** As convener of the Justice 1 Committee, Christine Grahame has given the green light to more legislation being introduced to her committee.

**Christine Grahame:** Now that there is the Freedom of Information (Scotland) Bill—which, as the minister knows, I was resistant to—I can be a bit choosy about what comes in my direction next.

I want to raise matters of civil recovery. Interestingly, the minister said that civil recovery was not a soft option. I thought that there were already difficulties and I will give examples. As members will realise, the evidential test in civil actions is the balance of probability, which is a substantially lower standard of proof than that required in criminal proceedings—beyond

reasonable doubt.

I want to raise an issue on the European convention on human rights, a copy of which I have with me—how we have come to love that document. I will refer to article 6.2, which states:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

I thought that perhaps we were heading for difficulties. A rather uninteresting example—it is the best that I could come up with at this time of day—would be if Joe Bloggs was suspected of unlawful conduct and was using the proceeds of crime to purchase, let us say, a string of fish and chip shops—I told members the example was not interesting. The Crown Office might be suspicious, but might not have enough evidence to charge him, let alone secure a conviction. It could serve a disclosure order and would be able to obtain enough information to bring not a criminal prosecution, but a civil action for recovery at the Court of Session.

During civil proceedings of proof, evidence might come out that established that there was sufficient evidence for criminal prosecution, which there was not at the beginning. If a decision at the end of that was made in favour of the Lord Advocate, who is the pursuer in the action, as I understand it—I would like an explanation of this—there would be great difficulty in bringing a criminal prosecution against the defender, as they would no longer have the right to the presumption of innocence. It is the opposite of the Duffy case, when a criminal prosecution produced a not proven verdict and civil proceedings were then brought.

We support the bill, especially the fact that the funds recovered will be used for drugs strategies and so on. I would also like the funds to be used to reduce recidivism.

16:06

**The Deputy Minister for Justice (Iain Gray):** This has been a short but useful debate. I welcome the agreement that criminals and their associates should not enjoy the proceeds of crime. That is the purpose of the bill. It will hit drug dealers and other criminals where it hurts—in their pockets. It will hit them across the range of crimes which fill those pockets—very few criminals limit themselves to one type of crime. It will hit them even if they escape conviction, as Christine Grahame discussed. It will hit their ill-gotten gains whether they are held in cash or property.

The provisions relate to a complex mix of devolved and reserved issues. That is the basis for taking the Sewel motion approach and asking the UK Parliament to legislate on Scotland's behalf. It is incumbent on us to say that there are protections for Scotland, Scotland's people and

this Parliament. The bill is fully aligned to Scots law and procedure. It has separate clauses where necessary and takes fully into account the different institutional arrangements in Scotland. The Lord Advocate will remain responsible for criminal confiscation in Scotland, while responsibility for civil recovery will rest with Scottish ministers and will be pursued to the civil standards familiar in the Court of Session, with the burden of proof on the Scottish ministers.

The First Minister is likely to delegate day-to-day administrative responsibility for civil recovery to the Lord Advocate, but there will be a clear demarcation between the Lord Advocate's civil recovery and prosecution functions. The bill will confer a number of powers to make subordinate legislation on Scottish ministers, subject to procedure before this Parliament. In other cases, the secretary of state will be required to consult Scottish ministers.

I will address some of the points that have been raised. The matter of ECHR compliance was a consistent theme. We are confident that the legislation is compliant with the ECHR. The position is laid out in section 19 of the Human Rights Act 1998. It requires the minister in charge of a bill in either House of Parliament to make a statement about the compatibility of the provisions of the bill with convention rights.

The right hon David Blunkett, Secretary of State for the Home Department, has made the following statement:

"In my view the provisions of the Proceeds of Crime Bill are compatible with the Convention rights."

**David McLetchie (Lothians) (Con):** Does the minister accept that there is a difference, in that if legislation passed by this Parliament was deemed by the courts to be contrary to the ECHR it would be struck down, whereas if legislation passed by the United Kingdom Parliament was deemed by a court to be contrary to the ECHR it would not be immediately struck down, but would be the subject of a further process involving the discretion of Her Majesty's Government as to whether any corrective action should take place?

**Iain Gray:** I appreciate and understand that point, but the question that was raised was whether we believe that the legislation is ECHR-compliant and the answer to that is that we do. That includes compliance with article 6.2, which Christine Grahame read out.

The point is that article 6.2, which is the right to presumption of innocence, refers to criminal proceedings so, as civil recovery is a civil process, article 6.2 would not apply. As the civil recovery process carries no presumption of crime, the presumption of innocence would remain if it were decided later to pursue criminal proceedings

against the individual. I think that that was Christine Grahame's point.

**Christine Grahame:** Will the minister give way?

**The Deputy Presiding Officer (Mr George Reid):** No. We are very tight for time.

**Iain Gray:** Perhaps we can return to the issue at another time.

I take Mr Matheson's well-made point on the issue of resources. Crown Office resources are under scrutiny on a number of fronts, even today. As far as civil recovery is concerned, we intend to create a civil recovery unit and have earmarked resources for such a purpose.

Before he had to desist, Mr Martin raised the possibility of using seized proceeds of crime. I can confirm that we plan to invest a significant proportion of recovered assets in a fund that will be used to repair some of the damage done in communities that have been blighted by crime. As for Lord James Douglas-Hamilton's point, we feel that the Drug Trafficking Act 1994 would indeed be caught by the reservation on drug trafficking, even though that is not specifically mentioned in the Scotland Act 1998.

We are clear that UK legislation will be more workable and effective than complex complementary legislation by both Parliaments. For that reason, we seek Parliament's support for today's motion.

## Adoption and Children Bill

**The Deputy Presiding Officer (Mr George Reid):** The next item of business is a debate on motion S1M-2342, in the name of Jack McConnell, on the Adoption and Children Bill—UK legislation.

16:12

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** We have had a number of excellent debates in this chamber with positive cross-party exchanges on how to improve the position of children and young people in the public care system. In particular, members will remember that there was strong cross-party consensus earlier this year when, on 4 April, I announced the setting up of an adoption review and asked the chamber to support a Sewel motion endorsing the principles contained in the Westminster Adoption and Children Bill. Our aim was to tighten up various aspects of intercountry adoption procedures in the wake of the internet adoption of the twins from the United States of America earlier this year. I know that Parliament shared my dismay over that matter.

I am delighted to say that the first phase of the adoption review that was announced in April is well under way and, as I previously announced, I fully expect a report from that review at the end of November.

Simultaneously, we have been implementing reforms of intercountry adoption procedures. New regulations ensure that the approval process for those who wish to adopt from overseas is the same as the process for prospective domestic adopters. The regulations also provide that any child who enters this country for the purposes of adoption will be supervised by the relevant local authority.

The Adoption and Children Bill, which fell because of the general election, was republished last week. I welcome this opportunity to update the chamber on the provisions that will take forward the original Sewel motion. I will also set out the further measures in the bill to protect vulnerable children, and explain why a further Sewel motion was necessary.

Members will remember that the bill follows the Prime Minister's review of adoption south of the border and the subsequent white paper last year. The bill strengthens existing restrictions on advertising relating to adoption. In essence, only an adoption agency can advertise that it will take steps to arrange an adoption. Importantly, the bill makes it clear that the offence that would be committed by breaching those restrictions would be committed by advertising over the internet. As

adoption policy is a devolved matter, the Sewel motion was agreed in April to ensure that the new strengthened restrictions could apply on the same basis north and south of the border, thus avoiding any potential loopholes.

The bill also provides that it will be an offence to bring a child into the country for the purposes of adoption if the potential adopter has not already undergone the required checks to establish their suitability. Those provisions also act on issues that were covered by the Sewel motion that was agreed to in April.

UK ministers' plans for the legislation have developed since the original bill was introduced. Those measures aim mainly to reform the adoption process in England and Wales, and will involve the creation of new types of orders on guardianship and placement in that process. I shall ask the review group to follow developments, to determine whether we can learn anything from the new arrangements.

Meanwhile, we would like the bill to retain the mutual recognition of orders associated with adoption properly made by English, Welsh and Scottish jurisdictions. The bill already recognises Scottish procedures. Members will agree that it makes sense for the bill to be amended to continue recognition in Scotland of the new adoption procedures that are to be introduced in England and Wales, through amendment to Scottish legislation. That would mean that the position would be clear for children or families who were subject to the new orders and who moved to Scotland during the adoption process. The purpose of the Sewel motion is to permit the necessary consequential changes to Scottish legislation to be made in the UK bill.

The bill makes provision relating to the list of designated countries whose adoption orders are recognised throughout the UK without further scrutiny when the child arrives. That list of designated countries—broadly the members of the Commonwealth and the European Union—has not been reviewed for a considerable time. We aim to ensure that, at review, the countries on the list have controls over adoption that are compatible with our own.

Agreeing the list of designated countries for Scotland is a devolved responsibility and we intend to work with UK ministers when the list is reviewed. Ministers from both Parliaments would prefer to achieve an agreed UK list. The bill provides for England and Wales to make a list and to set out in regulations the criteria that govern which countries appear on it. The bill will roll forward the existing parallel power for Scotland to make a list, and the Sewel motion will allow Scottish ministers, alongside UK ministers, to achieve our aims.



I commend the Sewel motion to Parliament and move,

That the Parliament accepts the need to provide for continued mutual cross-border recognition of orders properly made by the separate GB jurisdictions in respect of adoption procedures; supports proposals for reform of recognition of overseas adoption orders, and agrees that the relevant provisions to achieve these ends in the Adoption and Children Bill should be considered by the UK Parliament.

16:16

**Irene McGugan (North-East Scotland) (SNP):** This is a very short debate on a very important matter. Adoption law is reformed so infrequently that it is vital that we get it right. The impact that it has on the lives of so many children and their families is immense and deserves our closest scrutiny and most urgent attention.

The first issue facing us today is straightforward. Current legislation provides for the mutual recognition of adoption placements, special guardianship and freeing orders properly made according to legislation pertaining in England, Wales and Scotland. It would seem only sensible to amend Scottish legislation so that we can continue to recognise the new orders associated with the adoption process.

With regard to the second issue, some would argue that, ideally, every child who is brought into the UK following the issue of an adoption order abroad should also be adopted under the law here. Even where there are, and have been, bilateral agreements, the practices in some of the countries from which the children have come are so poor that their welfare and safety cannot always be guaranteed. The United States provides a good example. There are 52 states, each with its own laws ranging from the extremely rigorous to the rather shoddy. In the case that was referred to by the minister, it is no accident that the couple who adopted the twins over the internet went to a state where the laws were especially poor to have the adoption order made. Theoretically, they had a valid adoption order and that made it difficult for the UK authorities to take action. It is therefore more than appropriate that there should now be a revised list of countries in respect of overseas adoption orders and that clear and specific criteria should be met.

I note that the bill is to be remitted to a special committee, which will take evidence from key stakeholders as part of its detailed consideration. I very much endorse the suggestion that that committee should take soundings from Scottish organisations to inform its views. Such involvement is probably the best way in which to ensure ownership of, and commitment to, the new legislation. Given that the new clauses will be implemented in Scotland and will inform the work

of our adoption agencies, as well as impacting on the lives of children, it is important that any aspects that relate to our experience in Scotland should be understood and acknowledged. We support the motion.

16:19

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** I reaffirm the Conservative party's position, which was stated during the debate on 4 April. The proposed bill aims to increase the annual rate of adoption of children in care by 40 per cent over four years. We welcome that goal in the light of the fact that the number of adoption applications in Scotland had almost halved, from 836 in 1988 to 469 in 1998.

The adoption process can be a particularly intrusive and invasive routine for applicants. We have a duty to get the balance right to ensure that the system assesses safety issues and provides stable and loving family environments for children as quickly as possible. Adoption and child care managers seem to come under the spotlight of intense media scrutiny only when something goes wrong. The minister and Irene McGugan have mentioned the case of the babies for sale on the internet and I will mention the case of the young woman who was asked, and expected, to abort one of the twins that she was proved to be carrying for a childless couple. Those examples are unedifying indeed—the interests of the child should always come first and should always be our prime concern.

I am confident that colleagues south of the border will strive to improve the bill during its passage and will outline their concerns regarding the adequacy of funding. However, they will support the bill and we wish it a fair hearing. We support today's Sewel motion.

16:21

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** The Liberal Democrats welcome the proposals in the motion, which are sensible and will lead to a unified approach to our relationships with European, Commonwealth and other countries on adoption procedures and make easier the relationships between the UK jurisdictions. It is important in this sensitive area that there be mutual recognition of adoption decisions when we can be sure that, as far as possible, the interests of the child are at the heart of the procedures.

One of the first cases that I dealt with as an MSP concerned paternity rights. The wife and the children of my constituent were in England and the differences between the regulations in the two jurisdictions caused pain and distress that should

be avoided if at all possible. We will be able to do that if we recognise adoption procedures across the local borders and international borders.

The motion before us today recognises that it is in everyone's best interests for the child to be put at the heart of the thinking as far as possible.

On the issue of overseas adoption, it is important that safeguards be established across the UK to ensure that no case like the Kilshaw case can happen again. None of us likes laws that are made immediately in reaction to individual cases, but, in this case, the potential for further damage was so obvious that it was right that we should try to address the problem. Perhaps it was good that the general election caused consideration of the bill to be postponed as that has given us more time in which to get the legislation right.

It is right that the Scottish Parliament should allow Scottish ministers to act in the best interests of adopted children. We endorse the proposal to allow our ministers to work alongside the UK ministers to put in place the proper international regulations.

I look forward to a full review. As Irene McGugan says, the UK review should take cognisance of Scottish interests.

16:23

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I pay tribute to the minister for the work that he has done to ensure that this work is taken seriously and to Irene McGugan for her constructive speech, which focused on the needs of children rather than on any constitutional issues that might have arisen over the Sewel motion.

It is important that we recognise that the interests of children must be put first in all adoption legislation. Adoption is not necessarily a service for people who want to have children; it is about what is best for the children. Lyndsay McIntosh mentioned the adoption figures, but I stress that raising the number of adoptions is not an end in itself. We should be more concerned with appropriately assessing the needs of children in our care and those who may be brought from abroad to ensure that the decisions that are made are the best ones for them in the long term.

We have all raised concerns about so-called internet adoptions and the need to tighten up the legislation that covers them. I have certainly been concerned during my many years working in child care that, at times, there has been an inappropriate push to bring children and young people from abroad into this country rather than ensure that the resources for them to be looked

after appropriately were available in their own countries. We must bear that in mind when we consider adoption.

The motion is constructive and the debate has been constructive. I hope that we will all take the opportunity to contribute as the process continues in Westminster.

**The Deputy Presiding Officer:** I call Jack McConnell to respond to the debate for the Executive. If you wish, you can have four and a half minutes, minister.

16:25

**Mr McConnell:** I relish the possibility. I will not be talking about the game last night. That would not be appropriate.

I welcome the all-party support for the motion. It is vital that, in all discussions that take place, we put first the needs of the most vulnerable children and the families who go through the difficult process of adoption. It is vital that we have a system that is easy to understand, through which it is easy to see a route and which works seamlessly north and south of the border where appropriate. That is our aim in the motion. I know that colleagues in the Department of Health in England and Wales share that aim. I believe that we can now achieve that aim.

I confirm to Parliament that we will send to those responsible a list of organisations that could be invited to submit evidence to the special committee that will be established at Westminster. For the Westminster Parliament, it is a great innovation to establish a special committee to consider the bill. That committee will take evidence for 28 days before considering amendments at the appropriate stage. We will at least suggest that Scottish organisations be part and parcel of that evidence. We hope that the special committee will take up that suggestion.

I welcome the support of members throughout the chamber. The bill is a set of important measures. I look forward to the day when we can discuss in this Parliament the initial report of the adoption policy review group that has been established. I also look forward to the second stage of that review, in which we will consider fostering and other legal matters.

## Committee of the Regions

**The Deputy Presiding Officer (Mr George Reid):** We move on a little early to the next item, which is a debate on motion S1M-2340, in the name of Mr Tom McCabe, on membership of the Committee of the Regions, and one amendment to that motion.

16:27

**The Minister for Parliament (Mr Tom McCabe):** As members know, the Committee of the Regions was established by the Maastricht treaty. It complements the three European Community institutions of the European Council, the European Commission and the European Parliament. It has come to be regarded as an important body and, in the Executive's view, will grow in importance in the years to come.

Through representation on the Committee of the Regions, local authorities and regional Governments throughout Europe have been able to put their views into the European Community's decision-making processes. Through that process, they will play an important part in the debate on the future of Europe.

Members may be aware that the committee has 222 members and an equal number of alternates, all of whom serve four-year terms. The committee's responsibilities cover a wide range of areas. That allows it to monitor the implementation of Community law closely.

Previously, Scotland's representatives were drawn from its local authorities. However, as we know, we now have a new Parliament in Scotland and, importantly, a determined commitment to share power between our national and local authorities.

To underline and enhance that commitment to the principles of power sharing, we propose in the motion a Scottish representation that is split equally between members of the Parliament and members of local government. The Executive believes that Scotland's interests would best be served by selecting those parliamentary representatives whose existing remits give them substantial involvement in European Union business. Accordingly, we propose that Nicol Stephen, as a member of the Executive, and Hugh Henry, the convener of the European Committee, be our full members and that Jack McConnell be Nicol Stephen's alternate member. We are also happy to accept the Scottish National Party's nomination of Irene McGugan as Hugh Henry's alternate.

**Dennis Canavan (Falkirk West):** Why was the European Committee not consulted or even informed in advance of the contents of the motion? Is that not contrary to the protocol, which has been agreed between the Executive and the committees of the Parliament, on giving relevant information to committees? Is it yet another example of the so-called Minister for Parliament treating the principles of openness and inclusiveness with absolute contempt?

**Mr McCabe:** I accept Mr Canavan's warm words with all the good intent with which they were offered.

The motion is an example of an objective and sensible proposal from the Executive. I think that most members—even Mr Canavan in his darker moments—recognise that, in a Parliament with an important committee system, it is right and proper that consideration for nominations to a European delegation should include the individual who chairs the Parliament's European Committee. It is against that background that the nomination was formulated.

The Convention of Scottish Local Authorities submitted five names for consideration and we are grateful for the opportunity that that gave to consider a greater balance. After Parliament takes a decision on the names, the Executive will forward the proposals to the Foreign Office. Assurances have been given that the Foreign Office will ensure that the overall United Kingdom delegation will be as representative as possible in terms of gender, ethnic origin, political affiliation and disability.

We believe that the delegation provides a good balance of the interests between the various layers of government. It reflects a determination to share power and will serve Scotland well in its contribution to the Committee of the Regions.

I move,

That the Parliament endorses the Executive's proposal to nominate as representatives of the Parliament Nicol Stephen MSP and Hugh Henry MSP as full members and Jack McConnell MSP and Irene McGugan MSP as alternate members on the UK delegation to the Committee of the Regions for the forthcoming session from 2002 to 2006 and notes that the representation from local government will be Councillor Christine May and Councillor Keith Brown as full members and Councillor Corrie McChord and Councillor Hugh Halcro-Johnston as alternate members.

16:31

**Fiona Hyslop (Lothians) (SNP):** Our amendment is clearly intended to define how we see the Parliament and its role within the European Community. Do we see ourselves and, more important, do we expect others to view us as a nation or as a region? Is this institution a

national Parliament or a regional assembly? Do we see ourselves as the equivalent of Brighton and Hove City Council, home to UK delegation leader Kenneth Bodfish? Is the Committee of the Regions the summit of our aspirations or is the Council of Ministers our platform?

The amendment gives the Executive the opportunity to think twice about the bodies from which the nominees are taken. The issue is not with the individuals nominated. Should the Parliament reject the amendment, to further Scotland's interests—one of the SNP's aims—we would be more than happy to nominate Irene McGugan. Of course, if Scotland were independent, we would decide on double the number of representatives that is proposed in the motion.

When Romano Prodi, the President of the European Commission, addressed the Committee of the Regions on 20 September, he said:

"What we want today is a Europe built from the bottom up which takes full account of the various political levels. You, working 'in the field', at the level closest to the citizens, are a direct link between Europe and the diverse realities of different areas."

I will make some points on that in our limited time.

I recall that, several years ago, during the preparations for the Parliament, Councillor Jean McFadden delivered a conference speech on Calton hill in which she warned that the Parliament could become a Trojan horse that would suck up local government's powers. In proposing members of the Parliament rather than councillors for the Committee of the Regions, we are removing the role that councillors hitherto had on that committee.

**Ian Jenkins (Tweeddale, Etrick and Lauderdale) (LD):** Will the member give way?

**Fiona Hyslop:** My time is limited; I have only three minutes.

Article 203 of the Treaty of Rome allows Scottish ministers to attend the Council of Ministers. The Committee of the Regions is consulted by the Council of Ministers, so by attending both—if ministers did that, as we would expect them to—Scottish ministers would consult themselves. It is clear from the proposals that the Executive prefers attending the Committee of the Regions to the Council of Ministers, but that is part of its attitude of not taking attendance at the Council of Ministers as seriously as it could.

The heads of the delegations to the 222-member COR from Denmark, Finland, Ireland and Sweden—many countries that compare with Scotland, apart from the fact that they are independent—are all members of local authorities.

I am a list MSP for the Lothians. Paragraph 2 of

schedule 1 to the Scotland Act 1998 defines eight regions of Scotland. We would be well served if we considered that reflecting the diversity of Scotland's regions is not necessarily best done by the Parliament's usurping what could be a useful role played by councils.

I move amendment S1M-2340.1, to leave out from "endorses" to end and insert:

"supports the Committee of the Regions as an institution of European co-operation based on the role of regional government and in promoting the regions of Scotland in that role proposes that the full and alternate members representing Scotland are elected members of Scotland's local authorities including Councillor Christine May and Councillor Keith Brown as full members and Councillor Corrie McChord and Councillor Hugh Halcro-Johnston as alternate members and instructs the Executive to return to the Parliament with four additional names of councillors as nominees."

16:34

**Alex Johnstone (North-East Scotland) (Con):** It is a function of opposition occasionally to have to live with the crumbs that fall from the Executive table. It is unfortunate that the motion proposes a total of eight nominees to the Committee of the Regions, none of whom is a Conservative.

This is an opportunity for us to reflect on democratic representation, which the Liberal Democrat members often bring to our attention.

**Mr McCabe:** It is appropriate to offer our colleague some reassurance. In this Parliament, we have to take a wider view on nominations to European bodies. We are currently discussing the Committee of the Regions, but there are other instances in which further nominations will be made and I am sure that at some point in that process Mr Johnstone may feel that his position is better attended to.

**Alex Johnstone:** I hope that that will be the case. It will seem ironic to many that, despite the fact that Scotland elected eight representatives in the European elections two years ago, two of whom were Conservatives, the motion contains eight names, none of whom is a member of the Conservative party.

**Michael Russell (South of Scotland) (SNP):** But the Conservatives are against Europe.

**Alex Johnstone:** We are of course very supportive of the concept of the European Union—I hope that Mr Russell realises that. In any event, we would wish the balance of numbers to be considered in future.

I will turn to the nationalist amendment. It is obvious from the manner in which it was proposed that it is an attempt to play the nationalist card yet again.

**Richard Lochhead (North-East Scotland) (SNP):** Will Alex Johnstone tell the chamber whether he believes that Scotland is a nation or a region?

**Alex Johnstone:** I believe that Scotland is a proud region of the United Kingdom. I believe that most members of the Parliament would be proud to express their allegiance to that theory. [MEMBERS: "Let us hear it."] I must finish quickly.

When we talk about the Parliament and its representation, we should realise that we are part of the United Kingdom and that devices such as the SNP amendment aim to drive yet another wedge into the relationship between Scotland and England. The Conservative party will not support such proposals and will not do so in future.

It is often difficult to accept decisions that have been made in smoke-filled rooms, even in the Scottish parliamentary context, where the rooms are not smoke-filled. In this case, the Conservatives will vote against the SNP amendment and abstain on the Executive motion.

16:38

**Iain Smith (North-East Fife) (LD):** Before I address the motion, it would be wrong of me not to pay tribute to those who have served on the Committee of the Regions representing Scotland's interests for the past four years. I mention in particular the alternate member, Councillor Dr Joan Mitchell, who represented the Liberal Democrats during that period. I know that people from all parties have done their best to ensure that Scotland's interests on that committee are fully heard.

I do not agree at all with the principle behind the SNP amendment.

**Michael Russell:** There is a surprise.

**Iain Smith:** It should not come as a surprise to anyone. The issue at stake concerns the Committee of the Regions as it is currently constituted and Scotland's place in it. Whether the SNP likes it or not, in the context of the Committee of the Regions, the nation of Scotland is a European region. It is only right that the national Parliament of Scotland should be represented on the Committee of the Regions. It would seem rather strange for it not to be. If SNP members consider other examples of devolved Parliaments representing nations within other European states, they will find that those nations are represented on the Committee of the Regions at a parliamentary level.

The Executive's proposal offers an ingenious solution, which ensures that local government is fully represented. A shared membership is proposed, with two members each from the

Parliament and local government and with full members and alternates at both levels. That is right and will result in Scotland making a good, balanced contribution to the Committee of the Regions.

It would be wrong of me to participate in this debate without indicating the Liberal Democrats' concern about how the motion has come forward for debate today. We feel that consideration needs to be given to the way in which such issues are dealt with in the Parliament. It is rather strange that the Executive should simply come forward with a proposal. There was certainly no discussion with the Liberal Democrat group about who the Liberal Democrat nominees should be. I have no doubt that Nicol Stephen will be an excellent full member of the Committee of the Regions and that he will put the case for Scotland there very well. However, it would have been nice to be asked before the decision was made that he should represent the Liberal Democrats.

Wider issues to do with Scotland's representation on the Committee of the Regions should perhaps have been discussed with the European Committee. It has been asked whether ministers should serve as a member of the Committee of the Regions. It can be argued that they should not and that the Parliament's representatives should be drawn from the back benches.

I do not question the merits of any of the people who are proposed as candidates for membership of the Committee of the Regions and the Liberal Democrats will support the motion. However, I urge the Parliament, the Executive and the parliamentary authorities to examine how we deal with nominations to such bodies in future. The Parliamentary Bureau and the Procedures Committee may want to consider that matter fully in due course.

**The Deputy Presiding Officer:** We now move to the open part of the debate. There will be three speeches of three minutes each.

16:41

**Hugh Henry (Paisley South) (Lab):** I do not disagree with the principle that Iain Smith advanced about the need for discussion with the European Committee. A wide range of European issues needs to be discussed with the committee, such as the Executive's strategy and the direction that it is taking. Indeed, the committee has asked the Executive to present its proposals to members for consideration. In the fullness of time we can discuss how the Committee of the Regions and the other bodies that have been mentioned fit into the wider picture.

It was strange to listen to the criticisms that SNP

members have advanced. I am sure that, had the minister proposed today that all the nominations to the Committee of the Regions should come from Scotland's local authorities, they would have been on their feet shouting about the slight that been given to the Parliament and the Executive's hypocrisy in ignoring it.

**Fiona Hyslop** *rose*—

**Hugh Henry:** I will not take an intervention from Fiona Hyslop. I have only three minutes.

I also find the philosophy that underpins the SNP's arguments bizarre, as it runs contrary to the line taken by the SNP's nationalist counterparts in places such as Flanders, where nationalists who are Government ministers play a full role in the Committee of the Regions. The same is true of other parts of Europe. The Executive's proposals are consistent with the practice in countries such as Belgium, Austria, Portugal, Germany and Spain. There is no reason why this Parliament should not be represented in the Committee of the Regions.

Fiona Hyslop asked whether Scotland was a nation or a region. The United Kingdom, of which Scotland is still part—even though the SNP may not like that—is doing the same thing that other countries in Europe are doing. It is nominating representatives to the Committee of the Regions from an appropriate level of regional government. Scotland has a regional Government that represents the nation of Scotland.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Will the member give way?

**Hugh Henry:** No.

Fiona Hyslop said that we are acting against the advice of Jean McFadden and reducing the role of councillors. Historically, there was recognition of the different layers of government in Scotland. When we had regions and districts, both were represented on the Committee of the Regions. In recent times, we have had only unitary authorities. The Executive is now recognising the new constitutional settlement in Scotland and it is to be congratulated on that.

I finish by making a couple of points for the future. We have an opportunity to make our influence felt in the work of the Committee of the Regions. I am glad that that opportunity will be available to the Scottish Parliament. The stature of the Committee of the Regions is growing, but the committee must reflect on its effectiveness. It must examine what it has achieved and what it is capable of achieving, instead of merely doing more of the same.

In Scotland we must continue to work as a team. Local government and Scottish Parliament representatives must work together on the

Committee of the Regions. I hope that the Scottish delegation to the Committee of the Regions will have the full support of the machinery of government and that it will have access to the resources of both the Executive and the United Kingdom Government. I also hope that this Parliament will create the time to allow our representatives to play a full role in the Committee of the Regions, rather than just taking up places.

16:45

**Tricia Marwick (Mid Scotland and Fife) (SNP):**

The SNP position on membership of the Committee of the Regions has been clear and consistent and is reflected in our amendment. We believe that members of the Committee of the Regions should be elected members of Scotland's local authorities, because we believe that that is the appropriate level for membership.

Alex Johnstone and Iain Smith should note that the present Scottish membership of the Committee of the Regions is entirely made up of councillors—Hugh Henry was appointed to membership of that committee as a councillor. With that in mind, SNP councillors have been involved in a democratic process to elect one of their own as the SNP nominee on the Committee of the Regions. We are confident that Councillor Keith Brown will be a credit to the nation of Scotland.

Tom McCabe said that the Parliament shares power with local government in Scotland. It is not the role of the Parliament to suck up powers and responsibilities from Scottish local authorities, yet that is what the Executive motion proposes.

The Committee of the Regions has a vital role as a protector of the principle of subsidiarity. Policies should be developed and implemented as close to the citizen as possible. The Executive's motion to remove local councillors from the Committee of the Regions runs counter to the committee's legitimacy and to its role as a defender of local democracy.

My final point addresses the proposal that two Executive ministers should represent Scotland on the Committee of the Regions—one as a full member and one as an alternate. We are led to believe that occasionally Scottish ministers will be allowed to lead UK delegations. Given that that is the case, it is a constitutional nonsense for Scottish Executive ministers to attend both the Council of Ministers and the Committee of the Regions, as that would mean that they were consulting themselves.

Even at this late stage, I urge the Executive to put aside personal interests and to ensure that the level of representation for Scotland is appropriate—that is, at the local councillor level.

16:47

**Brian Fitzpatrick (Strathkelvin and Bearsden)**

**(Lab):** I suspect that all members are obliged to Tricia Marwick for that speech and the evidence that it showed of a fall through the gap in the time fence into pre-devolution Scotland. However, I will bring us back to 2001 and speak to the motion. I recognise that the nationalists' amendment has nothing to do with the Committee of the Regions or with the membership of that committee. There are members who want to ensure that the interests of Scotland are represented, but every debate in the chamber must be distorted by the only thing that obsesses the SNP.

Vicente Alvarez Areces, the President of the principality of Asturias, Bert Anciaux, the Flemish minister for culture and youth, Carlo Andreotti, the President of the autonomous province of Trento, Francesc Antich i Olivier, the President of the Government of the Balearic islands and Werner Ballhausen, the state secretary of the Land of Sachsen-Anhalt, are all full members of, and participate in, the Committee of the Regions. Those who do not understand the trends in the development of the institutions—

**Bruce Crawford:** Will the member give way?

**Brian Fitzpatrick:** I am happy to give way.

**Bruce Crawford:** Perhaps Brian Fitzpatrick will answer my question: are we a region, or are we a nation?

**Brian Fitzpatrick:** That is not a hard one. I am a Scot, and I am happy to be a citizen of the United Kingdom.

SNP members, who fail to understand the developing and evolving nature of the regions, nations and member states of the European Union are, for once, on my left. There is a curious symmetry between them and their Conservative friends, who sit on my right and who also do not understand Europe. We are told by one of the Conservative spokesmen that they may understand the concept of Europe, but they really do not like the reality of Europe. Therefore, the "Can we go back to 1972?" brigade sits on the Conservative benches, while the "Can we join in 3002?" brigade sits on the SNP benches.

Those who believe that the Parliament must have a wide discussion on European structures, as evidenced in the debate in the Enterprise and Lifelong Learning Committee this morning, will welcome the valuable insights that we will get from membership of the Committee of the Regions. We hear today another echo of the debate about the political declaration, but we do not hear much about ensuring that Scotland's interests are represented at every appropriate level of European affairs. I have no hesitation in

commending the motion and urging members to reject what is yet another spurious nationalist amendment.

16:51

**Michael Russell (South of Scotland) (SNP):** What a dreary whinge we have heard from Alex Johnstone, Iain Smith, Hugh Henry and Brian Fitzpatrick. What dreary whingers they are. Their lack of ambition for Scotland is conterminally confused by the fact that they are always doffing the cap to the union.

**Mr Brian Monteith (Mid Scotland and Fife) (Con)** rose—

**Michael Russell:** I will count in Mr Monteith if he so wishes. He, too, is a dreary whinger on this matter.

What terminal confusion and lack of ambition. The reality is that the members of this Parliament, except those who sit on the SNP benches, have no ambition. Only the SNP members talk about Scotland as a nation. How revealing it was that each time one of the dreary whingers was asked a question—

**Ben Wallace (North-East Scotland) (Con):** Will the member give way?

**Michael Russell:** No. Ben Wallace should sit down. He can whinge, too, when he wants.

Each time that those members were asked whether Scotland is a region or a nation, they would not answer—except for Mr Johnstone who blundered with a memorable phrase that we will use time and again.

**Ben Wallace:** Will the member give way?

**Michael Russell:** No, I will not.

Today's question is simple: what is the best representation for Scotland within a consultative Committee of the Regions?

**Mr Monteith:** The Tory party.

**Michael Russell:** We already know that that is not the answer.

The Committee of the Regions is a consultative body, not a decision-making body. This Parliament is a decision-making body. The ministers are meant to be a decision-making body. I know that that seems unlikely, but that is what they are supposed to be. In such circumstances, Scottish ministers should be represented on the Council of Ministers and Scottish local authorities should be represented on the Committee of the Regions. The issue is very simple. There should be no difficulty with that whatever.

We have heard excuses today because that reality cannot be accepted by any of the unionist

parties, which must go on doffing the cap to the union and pretending that Scotland is a region and not a nation. That is what today's debate has been about.

**Ben Wallace:** Will the member take an intervention?

**Michael Russell:** No. I am sorry but I have only three minutes.

**Ben Wallace:** He might learn something.

**Michael Russell:** Not from Ben Wallace, I am sure.

In such circumstances, the proper representation on the Committee of the Regions should come from the councillors in Scotland. The SNP has democratically chosen the councillor that will take part—I am sure that the new Labour party has forgotten democracy, but it would be quite good for it—and each party should do the same.

If our amendment is not successful today, I warmly welcome the fact that Irene McGugan will be in the delegation. She will keep the delegation honest. In her new role as depute spokesperson on Europe and external affairs—I am proud to say that I will be shadowing Mr McConnell—she and I will keep the minister honest on this matter. We will do that because we believe what is a fact: Scotland is a nation.

**Mary Scanlon (Highlands and Islands) (Con):** On a point of order, Presiding Officer. I feel quite angry at Mike Russell's speech. Given that he suggests that Irene McGugan is isolated in bringing honesty to the committee, is he implying that the others are not honest? He should withdraw that comment—[*Interruption.*]

**The Deputy Presiding Officer:** Order. That is not a point of order. What the member says does not necessarily follow.

16:54

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** I presumed that Michael Russell was making the point that Irene McGugan would be a more honest member of the committee than any of the alternatives that might come from the nationalists.

Even though I have been relishing the thought of this debate all day, I am astonished by the fact that the Scottish National Party does not want the Scottish Parliament to be represented in Europe.

I want it to be clear that I believe that Scotland is a nation and that, in the European sense, Scotland has a regional tier of government. Therefore, we should be represented in the Committee of the Regions. The white paper gave us that responsibility and today we carry it out. I object

strongly to any suggestion that the Parliament has taken away powers from local government. The Scottish Parliament has done more in providing finance, new powers and flexibility for local government than any of the recent Westminster Governments have done for Scottish local government.

I pay tribute to all eight councillors who served in the previous Committee of the Regions, not least Irene Oldfather, who continued in that role as a member of the Scottish Parliament and served Scotland well. I hope that the new representation from local government—all four of them—will work together to represent Scotland as a whole. It would be wholly wrong if one of them were to represent a particular party-political interest in the way that Tricia Marwick and Mike Russell suggested. I hope that Keith Brown will serve as a collective member of the delegation, not as an individual representative of a political party.

**Tricia Marwick:** Will the minister give way?

**Mr McConnell:** I conclude the debate by saying that I believe that Scotland has a voice in Europe. We have that voice in several ways: through the United Kingdom Government and Parliament; through the Council of Ministers, which we attend when that is necessary and right for Scotland; through bilateral relations; and, yes, through bodies such as the Committee of the Regions.

There is no regional tier of government in Europe that is not represented in the Committee of the Regions. In Germany, Spain and Belgium, the regional tiers of government take more than 50 per cent of the delegation; in Italy, the regional tier of government takes 50 per cent. The proud historic nations of Bavaria, Flanders and Catalonia have their own Parliaments and sit in the Committee of the Regions. Scotland's Parliament should sit in the Committee of the Regions, too.

The nationalists' argument is that, as they do not like the name of the body, we should run away and hide from it and the Scottish Parliament should not be represented. That shows their lack of ambition for the Parliament and for Scotland. They are wrong. The Scottish Parliament will be well represented, as will Scotland, by the delegation proposed in the motion.

**Tricia Marwick:** On a point of order, Presiding Officer. Is it in order for a minister to misrepresent what another member has said and then refuse to give way to allow a correction to be made?

**The Deputy Presiding Officer:** I do not regard that as a point of order.

We have concluded the debate two minutes early and I have no alternative but to suspend the meeting until 5 pm.



16:58

*Meeting suspended.*

17:00

*On resuming—*

## Decision Time

**The Presiding Officer (Sir David Steel):** We now come to decision time. There are four questions to be put as a result of today's business.

The first question is, that motion S1M-2341, in the name of Jim Wallace, on the Proceeds of Crime Bill—UK legislation, be agreed to.

*Motion agreed to.*

That the Parliament endorses the principles of the Proceeds of Crime Bill and agrees that the provisions in the Bill that relate to devolved matters should be considered by the UK Parliament.

**The Presiding Officer:** The second question is, that motion S1M-2342, in the name of Jack McConnell, on the Adoption and Children Bill—UK legislation, be agreed to.

*Motion agreed to.*

That the Parliament accepts the need to provide for continued mutual cross-border recognition of orders properly made by the separate GB jurisdictions in respect of adoption procedures; supports proposals for reform of recognition of overseas adoption orders, and agrees that the relevant provisions to achieve these ends in the Adoption and Children Bill should be considered by the UK Parliament.

**The Presiding Officer:** The third question is, that amendment S1M-2340.1, in the name of Fiona Hyslop, which seeks to amend motion S1M-2340, in the name of Tom McCabe, on membership of the Committee of the Regions, be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Adam, Brian (North-East Scotland) (SNP)  
 Campbell, Colin (West of Scotland) (SNP)  
 Canavan, Denis (Falkirk West)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Lochhead, Richard (North-East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)

Paterson, Mr Gil (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)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Wilson, Andrew (Central Scotland) (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)  
 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)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 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)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (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)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (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)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 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)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (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)

**ABSTENTIONS**

Harper, Robin (Lothians) (Green)

**The Presiding Officer:** The result of the division is: For 31, Against 73, Abstentions 1.

*Amendment disagreed to.*

**The Presiding Officer:** The final question is, that motion S1M-2340, in the name of Tom McCabe, on membership of the Committee of the Regions, be agreed to. Are we agreed?

**Members:** No.

**The 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)  
 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)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 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)  
 Grahame, Christine (South of Scotland) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (North-East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Ms Margo (Lothians) (SNP)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (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)  
 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)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Paterson, Mr Gil (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)  
 Reid, Mr George (Mid Scotland and Fife) (SNP)  
 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)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Ullrich, Kay (West of Scotland) (SNP)  
 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)  
 Wilson, Andrew (Central Scotland) (SNP)

#### ABSTENTIONS

Aitken, Bill (Glasgow) (Con)  
 Canavan, Dennis (Falkirk West)  
 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)  
 Goldie, Miss Annabel (West of Scotland) (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)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Ben (North-East Scotland) (Con)

**The Presiding Officer:** The result of the division is: For 90, Against 0, Abstentions 18.

#### *Motion agreed to.*

That the Parliament endorses the Executive's proposal to nominate as representatives of the Parliament Nicol Stephen MSP and Hugh Henry MSP as full members and Jack McConnell MSP and Irene McGugan MSP as alternate members on the UK delegation to the Committee of the Regions for the forthcoming session from 2002 to 2006 and notes that the representation from local government will be Councillor Christine May and Councillor Keith Brown as full members and Councillor Corrie McChord and Councillor Hugh Halcro-Johnston as alternate members.

## Railway Station Platforms (Disabled Access)

**The Presiding Officer (Sir David Steel):** The final business of the day is the members' business debate on motion S1M-2113, in the name of David Mundell, on disabled access to railway station platforms. The debate, as usual, will be concluded without any question being put. I ask members who want to speak to press their request-to-speak buttons and ask those who are not staying for the debate to leave quickly and quietly.

### *Motion debated,*

That the Parliament notes with concern the continuing difficulties disabled citizens experience in accessing railway station platforms and the adverse impact this has on their freedom to travel; notes in particular the difficulties with access to and from the southbound platform of Lockerbie station, the only mainline station in south-west Scotland, which means disabled passengers have to travel south to Carlisle and return north on another train in order to be able to leave the station premises, and believes that the Scottish Executive should do all it can to work with Railtrack, train operating companies and any other relevant bodies to ensure that the necessary funding is available and priority given to providing appropriate disabled access to railway station platforms in Scotland and Lockerbie in particular.

17:04

**David Mundell (South of Scotland) (Con):** I welcome the opportunity to have the motion debated. It makes specific reference to Lockerbie station in Dumfriesshire, but the matter affects more than 120 stations in Scotland and is therefore of wide importance. Indeed, at the time when the motion was scheduled for debate, we did not know what was about to happen to Railtrack, and most certainly its shareholders did not know, so the debate also provides an opportunity for the Deputy Minister for Transport and Planning to give us a better understanding of what a post-Railtrack railway world will look like.

My motion refers specifically to Lockerbie station and the long-running problem there with disabled access to the southbound platform. Lockerbie is a particularly important station because it does not just serve a town or an individual parliamentary constituency, but is a railhead for the south-west of Scotland, in particular for travel to Edinburgh. Over the years, many people have battled to secure the future of the station; in recent years, people have sought to ensure that there is access to the southbound platform for all passengers who want to use it.

I pay particular tribute to the work of the Coalition of Disabled People Annandale and Eskdale, which has campaigned relentlessly on the issue, but whose chairman and secretary, John and Wyn Deamer, cannot be in the gallery

tonight because of a family bereavement. We should also recognise the work of Lockerbie's local councillors, Marjorie McQueen and Lavinia Vaughan, and of Dumfries and Galloway Council, which I am pleased is represented, and which continues to pursue the issue. Dumfries constituency MP Russell Brown and MSP Elaine Murray have worked with local people to keep the issue at the forefront of the attention of Railtrack, the train-operating companies and anybody else who would listen. However, the difficulty that we have all encountered is finding somebody who will accept responsibility for disabled access to our station platforms. Disabled access to our stations in itself is not good enough if access cannot be had to the station platforms and on to the trains themselves.

I have questioned Sarah Boyack on the matter. In her most recent letter to me on 4 September, she said that

"disability discrimination is a reserved matter and therefore the responsibility of the UK Parliament".

Having received a similar letter from Sarah Boyack, John and Wyn Deamer wrote to Tony Blair on the same matter. You can imagine, Presiding Officer, how surprised they were to receive a letter from Mr Blair's office that read as follows:

"The Prime Minister has asked me to thank you for your recent letter.

Mr Blair receives many thousands of letters each week and hopes you will understand that as the matters you raise are the responsibility of the devolved administrations, your letter has therefore been forwarded to the Welsh Assembly for them to reply to you direct on the points you have raised."

To date, there has been no response from the National Assembly for Wales, but Mrs Deamer and all the other disabled users of Lockerbie station say that they would be perfectly happy for it to take the issue on board if it meant that at least someone was willing to take responsibility for the issue. That is what I hope will come out of the debate this evening.

The logic of the case for access is without question. Those who are most likely to benefit from the opportunity to travel by rail, in particular on new and, we hope, improved services from stations such as Lockerbie, are disabled passengers, the elderly, the infirm, mothers with young children, and even just those with copious amounts of luggage.

Train companies such as Virgin have gone to great lengths and expense to adapt their trains for access by disabled users, so surely we must complete the last piece of the jigsaw and ensure that all our citizens find it easy and convenient to use our railway stations.

As the Deputy Minister for Transport and Planning will be aware, until recently, anyone travelling north from Lockerbie station and returning to the southbound platform who was unable to use the bridge over the track was required to travel to Carlisle 25 miles away to the south and wait for a train to come back to Lockerbie station, which could on occasion be for several hours. Until recently, when Virgin waived the charge, disabled passengers had to pay for the privilege of going to Carlisle and coming back to the northbound Lockerbie platform.

That does not paint a picture of an inclusive or integrated rail transport system. It certainly does not strike a chord with the white paper, "Travel Choices for Scotland", produced as far back as 1998 by the then Scottish Office. That document set out a strong commitment to implementing the Disability Discrimination Act 1995, and stated that all stations in Scotland must have disabled access by October 2004. It is difficult to imagine how that aim is to be turned into reality without concerted action, and not simply by drawing on individual funds or schemes.

Sarah Boyack has previously suggested that Dumfries and Galloway Council should apply to the public transport fund on the Lockerbie station access issue, but that would mean that the council would be unable to put forward any other public transport proposal for the area.

In August 2000, Sarah Boyack set up the transport advisory group, following the publication of research findings entitled, "Transport Provision for Disabled People in Scotland". That research showed that an estimated 12 per cent of Scots have some kind of disability and that 250,000 are likely to have significant difficulty in using public transport. Also in August 2000, the Lockerbie rail liaison group met and heard that the cost of providing disabled access at Lockerbie station would total £160,000. At the time, the shortfall was some £50,000, which it was hoped could be provided by the shadow strategic rail authority. Although Sarah Boyack says in her letter of 4 September that she does not think that funding has been a factor in holding up the project, it is likely to be a very significant obstacle indeed, especially as the cost of providing a new overbridge is now estimated at £750,000.

I do not share Sarah Boyack's previously expressed hope that short-term measures can be implemented to improve access at Lockerbie or at the 122 other stations with access problems. Only specific funding earmarked for providing disabled access, and having a body with clear responsibility for delivering it within a defined time scale, will work. Whether it be the successor to Railtrack in Scotland—about which I hope Lewis Macdonald will give us details—the train-operating

companies, the Strategic Rail Authority or ministers, at UK, Scotland or even National Assembly for Wales level, it does not matter. We cannot go on passing people from pillar to post every time the issue is raised. We must have clear responsibility and clear ownership.

We have had enough fine words about what the UK Government and the Scottish Executive want to do to allow everybody to have access to public transport. It is now time for action, otherwise disabled travellers will be travelling not only on a train south to Lockerbie but, regrettably, on a train to nowhere.

17:13

**Dr Elaine Murray (Dumfries) (Lab):** I am grateful to Mr Mundell for securing the debate. I share his frustration that disabled travellers who wish to alight at Lockerbie have to go to Carlisle, wait for another train and come back again. Until a recent intervention by my colleague Russell Brown, they also had to pay for a single journey from Carlisle back up to Lockerbie. Fortunately, that fare has now been waived. I also pay tribute to the Executive for its recent announcements of additional funding for public transport, including extra money for a feasibility study on improved transport in Lockerbie.

Mr Mundell mentioned a number of people who have been involved in the campaign over a number of years. Lavinia Vaughan's predecessor, Councillor Steve Berry, was involved, and it is a matter of great frustration to people in the area that we seem to be getting nowhere. I am indebted to Russell Brown for some information that he has managed to root out from the House of Commons library, which illustrates some of the problems that can arise from passing legislation that is not particularly good.

Many of the difficulties arise from problems with the Disability Discrimination Act 1995. I shall quote selectively from the research by the House of Commons library. One problem seems to be that the 1995 act established a general right of access and then made that subject to a test of reasonableness. It is difficult to interpret what is and what is not reasonable. In addition, the structure of the industry at that time was such that specific responsibilities under the act remained unclear. Let us hope that, whatever happens to Railtrack, things will be improved.

Railtrack owns, or owned, most of the stations in Britain—around 2,500—and was responsible for their maintenance and renewal as well as that of the rail infrastructure. However, it managed only the 14 major stations and leased the remainder to the train-operating companies. Virgin Rail was the train-operating company at Lockerbie station. It

has worked with Railtrack and Dumfries and Galloway Council to find a solution.

Because of problems in legislation, it is not clear who is responsible for costs. Railtrack has some responsibility for costs that the station facility owner, which is the train-operating company, incurs in complying with changes, but it does not bear responsibility for all costs. The station facility owner must provide some finance, too. The landlord—Railtrack—also has some responsibility in ensuring that it enables the work to be done.

Research carried out by the House of Commons library indicates that specific responsibilities in the industry were unclear in the Disability Discrimination Act 1995. The problem seems to be the line of definition between the individual train operator, the station facility owner and Railtrack, as the landlord of the station. The issue is unclear. For possibly four or five years, people have campaigned and they seem to be getting nowhere.

We would like clarity on what is required of Railtrack by 2004. Is it required to make the necessary changes, or does the test of reasonableness mean that it is not? There seems to be a suggestion that the successor might have until 2020 to come up with the goods. Meanwhile, we continue to have a problem. Disabled, elderly and other people are unable to access the southbound platform.

A great deal of suspicion arises from Railtrack's withdrawal from the project, among a number of other projects. The explanation was that, after Hatfield, there was a determination to move away from passengers crossing lines and from level crossings. There is a suspicion that it might have opted out of a number of projects.

I appreciate that the matter is reserved and that funding must be found from Westminster's purse rather than the Executive's. However, if the Executive was able to bring any pressure to bear on the organisations that are involved in trying to solve the problem, I am sure that all concerned would be most grateful. Representations should be made to solve the problem once and for all.

17:18

**Mr Adam Ingram (South of Scotland) (SNP):** I congratulate David Mundell on securing the debate and on the cogency of his argument. Unfortunately, the unsatisfactory situation that he described in respect of Lockerbie is all too familiar throughout the rail network in Scotland. I have received representations from many constituents who have had difficulty in using stations, particularly on the Glasgow to Stranraer line along the Ayrshire coast. Many are unable to use the old bridges that cross the lines to other platforms. More often than not, those bridges involve

climbing steep stairs up and down. That is completely impossible for wheelchair users or young mums with baby carriages.

Many people do not use trains as a consequence of such barriers to access. As at Lockerbie, others must resort to taking a train in the opposite direction to which they want to go until they reach a station where they can alight and cross to the other side. On the Ayrshire coast line, Ayr serves that purpose. The time, trouble and expense involved in that effort are disproportionate to what should be a simple journey. The fact that so many people put up with that says a lot about the stoicism of our fellow citizens who are subjected to that rigmarole, but it is a damning indictment of the underinvestment in our railways over many years.

I made representations to Railtrack on behalf of those constituents and was told, "Yes, we have a programme to improve accessibility and to replace old bridges, but given that each replacement will cost £0.25 million"—which was the figure that I was quoted, so David Mundell was obviously given an inflated amount for Lockerbie—"we cannot afford to complete such a programme in less than 20 years." Where does that leave the 2004 deadline? I am sure that members will agree that the situation is totally unacceptable and flies in the face of the fine intentions of the Disability Discrimination Act 1995 and effectively thwarts its objectives.

Now that the infrastructure of the rail network is back under public control, I hope that the Executive will ensure that disabled people's needs will move up the priority list, as outlined in the document, "Strategic Priorities for Scotland's Passenger Railway: A consultation paper: November 2000". I hope that the Executive will also establish a national advisory committee on transport needs for the disabled and encourage direct consultation with disabled passengers and their carers at the point of use. As well as providing a more accessible physical environment, the rail industry must assess openly and transparently how its staff at stations and on trains can provide a more responsive service to those with disabilities.

As convener of the cross-party group on mental health, I want to highlight the need for further research on the services that are required to make it easier for those suffering from mental health problems and learning difficulties to use public transport. It must be remembered that the Disability Discrimination Act 1995 covers people with physical and mental impairments. Those impairments have a substantial and long-term adverse effect on a person's ability to carry out day-to-day activities. Staff training is vital to improve customer services and to ensure that

customers with disabilities are able to access services as easily as possible. All service providers should look at that, to ensure that staff know how to make it easier for those with disabilities to use their services. That change should be brought about quickly and easily.

Other simple changes that would help disabled customers could be introduced easily by service providers. Those changes include improving announcement systems or introducing induction loop systems to ensure that those with reduced hearing can access services; making timetables more readable and understandable; providing literature in large print, in Braille or on tape for those with visual impairments; and upgrading signs to ensure that they can be understood easily by those with learning difficulties.

None of those modifications would be horrendously expensive or overly ambitious, but they would be appreciated by large sections of the travelling public and would allow many of the non-physical barriers to access, which limit the use of railways by our fellow citizens, to be overcome.

17:23

**Nora Radcliffe (Gordon) (LD):** I congratulate David Mundell on flagging up just how inaccessible our railway network is.

Of the four stations in my constituency, at only two—Keith and Huntly—can both platforms be accessed by a person in a wheelchair. A disabled passenger at the other two, Inverurie and Inverurie, has to be at the right side of the tracks. At Inverurie, wheelchair users could just about wheel themselves down the ramp at the end of the platform and across the level crossing. That is hardly safe or desirable.

All four stations have disabled car parking. Staff assistance is available at certain times—provided that 24 hours' notice is given—at three of them: Inverurie, Huntly and Keith. Those stations have an accessible ticket office with an induction loop and an available ramp. That is all very well as far as it goes, but how many people know what is available and where? If they know what is available locally, can they be confident that they will not find themselves in difficulty at a distant, or even a near, destination, depending on which platform their train is directed to?

On a more positive note, I am looking forward to being at Inverurie station at the end of November to see the launch of the independent travel project. The project director, Mike Harper, is a wheelchair user and an enthusiastic, inspiring and mobile advocate who regularly commutes between Wales and Aberdeenshire. The project has carried out extensive consultation with disabled people in Aberdeenshire. It has progressed to the point at

which it is now in the process of recruiting three travel buddies. They will assist people to make full use of the travel opportunities that are open to them and will campaign for more equitable travel opportunities.

Some progress has been made in tackling barriers to accessibility. Awareness that barriers must be removed is increasing. The Disability Discrimination Act 1995 is helping to concentrate minds, but an enormous amount remains to be done and funded. This debate will have its own small effect on prioritisation. I commend David Mundell for securing it.

17:26

**Michael Matheson (Central Scotland) (SNP):** I, too, congratulate David Mundell on securing the debate. I do not have a specific interest in relation to the situation at Lockerbie; my interest is primarily as convener of the cross-party group on disability.

When one speaks to many disabled people about issues that impact on their lives, they often say that public transport is at the top of their agenda. It should be acknowledged that the Executive has recognised that. In 1999, the Executive undertook a piece of research entitled "Transport Provision for Disabled People in Scotland". It made six key recommendations for improving public transport, including the rail network, for disabled people. The report highlighted that about 5 per cent of the Scottish population has difficulty accessing trains and other forms of public transport.

I will give an example that may not be covered by David Mundell's motion. Apparently, only about 15 per cent of our bus fleet has low-floor access, which is a considerable benefit to many disabled people. Many disabled people must travel by bus to get to a train station.

I will give some examples of where access remains a problem at major train stations in Scotland. At Glasgow Central station, Shopmobility applied to Railtrack—which owns and operates the station—to provide a service for the shopping area in the station. The application was denied because the station manager and Railtrack's disability adviser—who I understand is based in London—witnessed a speeding wheelchair on the concourse. They were concerned about the safety of other travellers in the station.

Edinburgh Haymarket is one of Scotland's busiest railway stations, yet it is inaccessible to disabled people who have mobility problems as they cannot get on or off a train there. They often have to take an extra journey on to Waverley and come out again. If they have to get off at

Haymarket, they require physical assistance, which they sometimes have to pay for, to get out of the station.

Railtrack also owns and operates Edinburgh Waverley station. Although it has made a number of improvements to disabled access there, additional problems have been created. For example, parking was reorganised as part of the disabled access development. It was moved from close to the platform to the rear of the car park. Disabled parking is now further away from the platform, which creates a barrier for disabled people who want to access trains.

On the broader issue of public transport for disabled people, five key areas must be addressed. First, we should have a co-ordinated public transport policy that sensitively meets the needs of disabled people. Secondly, any such policy should provide more physical access and services to disabled people who are using the transport. Thirdly, staff who understand the needs of disabled people using the service must be available. Fourthly, we must have clear information about the services that a company provides to disabled people and that alerts people to places where there are problems with access. Finally, there should be consultation between transport providers and those who are responsible for organising transport infrastructure and policies. Addressing such issues would go some way towards addressing the problems that many disabled people encounter when accessing public transport.

I have referred to a piece of research that the Executive undertook back in 1999. Given the problems that were identified in the report and the six key recommendations that were made in it, I ask the minister to tell the chamber what the Executive has done to improve access for disabled people.

17:31

**Robin Harper (Lothians) (Green):** I congratulate David Mundell on securing this debate. I will make one very important point that Adam Ingram also mentioned.

Many stations in Scotland are staffed only during the day or not at all. There are few more intimidating places than a cold, unlit, rainy and windswept railway platform on a dark Scottish winter evening. Although such places discourage any traveller from using the station at night, they are a particular discouragement for disabled or elderly people, who must feel secure whether they are travelling on a train or whether they are waiting for one.

There is a desperate need—particularly in the evenings—for fully trained staff who are ready to

offer assistance to disabled people and all other travellers. Reducing the staff at Britain's stations was a false economy, and representations should be made to Railtrack and the operating companies to co-operate to get staff back into our stations to make them safer and more pleasant places to use.

17:33

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** Like everyone else, I congratulate David Mundell on raising this matter. Although Lockerbie is not in my constituency, it is the closest of what might be called the former intercity railheads and it might be of some use if it were not so difficult to access for the reasons that have been outlined. There are three stations in my constituency. The southbound platform at Kirkconnell has exactly the same problem of inaccessibility. Even if it were morally acceptable, the alternative of going to Sanquhar is not practical because of the very few trains that run up and down that line.

At the moment, the train-operating companies are investing in new rolling stock with fairly good disabled facilities. Indeed, Virgin Trains is launching its new Voyager trains in Scotland tomorrow. It is ironic that disabled people cannot use them because they cannot access platforms. Because of the franchising arrangements, it would be unfair to expect train-operating companies to improve platforms. As we know from the decision on the Great North Eastern Railway franchise, the extension of franchises is a fairly uncertain matter anyway. Furthermore, at the end of the franchise the companies retain the rolling stock that they lease—but they would not retain stations that they might have improved.

We understand that, even before the collapse of Railtrack, there was increasing reluctance to invest in station infrastructure as the company had to spend so much money on rectifying the many track defects. There is a considerable cost associated with this issue—we should not skip that. The new bridge that was erected at Inverkeithing station to get over the problem of disabled access is a substantial structure and was not erected cheaply.

David Mundell alluded to the former implementation target of 2004, which we will clearly not be able to meet. The Executive must commit itself to a plan that has some dates attached to it. No one can reasonably expect everything to change overnight, but we should be able to expect that the situation will change. Many people now feel that there is no time scale for the changes, no commitment to them and no hope of some of the stations having disabled access in our lifetimes.



17:36

**The Deputy Minister for Transport and Planning (Lewis Macdonald):** I am grateful to David Mundell and other members for the constructive way in which they have addressed this important issue. Elaine Murray, who is the constituency member for Lockerbie, has spoken to me before about the specific problems there, but I am pleased that the debate has been extended to recognise that similar problems exist elsewhere in Scotland. I am especially familiar with some of the stations in Aberdeenshire to which Nora Radcliffe referred.

The Executive is committed to the development of an integrated transport policy to achieve a fairer and more inclusive society. Where we have powers to do so—which is an important factor to bear in mind—we will continue to make the improvement of access to public transport for people with disabilities one of our priorities in the tackling of social exclusion. In the forthcoming transport delivery plan, we will set out and update our prior commitments. I know that members will look forward to that with interest.

It is important to remember that questions of disabled access to public transport go wider than physical infrastructure. Robin Harper and others have pointed out that, as well as those questions, there are issues of customer service that the rail industry will have to address. For the services that are currently provided by ScotRail, some of those issues will be addressed through the directions and guidance that we will issue to the Strategic Rail Authority. In setting out our strategic priorities for Scotland's passenger railways last year, we emphasised, as Adam Ingram said, the importance of the railways' being more affordable, more accessible and more user friendly.

Within the wider agenda, we have taken an important step in setting up the mobility and access committee for Scotland—MACS—which will be a channel through which disabled people will be able to express their views, and an advisory body that will be able to accumulate significant expertise on issues of access. The committee will work alongside the Rail Passengers Committee Scotland and advise ministers on the transport needs of disabled travellers. We want to ensure that MACS influences the development of future transport policy on the priorities that we set. Alasdair Morgan suggested the importance of setting priorities on the range of policies in this area. We are consulting on the regulations to establish MACS and we expect it to be in place early next year.

So far, so good. However, it is essential to recognise that the role of Scottish ministers is limited by the nature of the devolution settlement. That may be a disappointment to David Mundell

and others, but the powers that MACS will have on our behalf, and the advice that it will be able to give us, will benefit the cause of social inclusion in the context of a disability discrimination regime that is set at a UK level—not, I am afraid, by the National Assembly for Wales, but by the UK Government.

I am grateful to Elaine Murray for drawing attention to some of the characteristics of the Disability Discrimination Act 1995—particularly the test of reasonableness and the inhibition and uncertainty that that may bring in the application of the act. As we have heard, the act requires providers of public transport to ensure that their services are accessible to disabled people by October 2004, but only as far as they are reasonably able to do so. I need not remind members that the minister who was responsible for introducing that bill in the House of Commons was William Hague. No doubt he will have reflected on its contents since then.

It is clearly not for this Parliament to debate the strengths and weaknesses of the Disability Discrimination Act 1995—that is a reserved matter—but we will have its provisions in mind during our discussions with the providers of public transport services in Scotland.

As has been said, the problem at Lockerbie is particularly thorny. As many members will know, the bid that was submitted earlier this year had the support of Dumfries and Galloway Council as the local authority, Railtrack as the infrastructure provider, ScotRail as the facilities operator at Lockerbie and Virgin Trains as the main user of the station. The bid involved the construction of a level crossing across the goods loop behind the main southbound line.

Elaine Murray implied that even the bid's supporters recognised its weaknesses. It provided access to the southbound platform from outwith the station premises, but not from one platform to the other or from the southbound platform to the ticket office. Such limitations led to its rejection by the Strategic Rail Authority, the UK body with responsibility for partnership funding. The bid was also rejected on the basis of the view of the railway inspectorate, which is a UK body with responsibility for rail safety. It believed that creating such a level crossing would be contrary to the general trend of its policy.

The great attraction of the solution offered by the bid was its affordability; the other solutions will inevitably cost more. Two figures have been mentioned this evening. Suffice it to say that replacing or upgrading a footbridge anywhere will be an expensive business, but there are particular difficulties in Lockerbie because of the nature of the existing structure.

In spite of the difficulties, there is a recognition that a solution to the Lockerbie problem has to be found. Tackling it was on the list of proposed infrastructure enhancements that were due to be discussed by Scottish ministers and Railtrack before such plans were overtaken by the company's recent financial difficulties. As Elaine Murray mentioned, a couple of months ago, as a result of those difficulties, Railtrack backed out of undertaking infrastructure enhancements in Scotland. Since then, of course, Railtrack has been placed in administration.

I may disappoint David Mundell, but tomorrow's debate on railways will allow some of the issues around the future structure of the infrastructure provider to be brought out. Suffice it to say that we do not expect Railtrack to undertake any new enhancement work while it remains in administration but that we expect the new body that emerges to take on the commitments that were under discussion.

Sarah Boyack met the chairman of Railtrack, John Robinson, last week and has written to the administrators to re-emphasise some of the priorities that were discussed previously. One of those priorities is, of course, disabled rail users at Lockerbie station. I must stress once more that responsibility for many of the decisions on these matters lie with UK bodies such as the Strategic Rail Authority, the railway inspectorate and the Disability Rights Commission.

We will continue to carry out our responsibilities and make the case for our policies of social inclusion. On the Scottish rail franchise, we have produced the paper that has been referred to in the debate. The Strategic Rail Authority will ensure that the franchise includes features that are common to the UK, including measures to ensure compliance with the Disability Discrimination Act 1995.

Much still needs to be done to take full account of disabled people's needs. We recognise that we have a responsibility to work with partners to arrive at solutions to problems in general and the Lockerbie case in particular. The next step must be the resolution of the situation that affects Railtrack. The sooner UK ministers, in partnership with the Executive, can solve those problems, the sooner we will be able to respond to the specific problems that have been raised today.

*Meeting closed at 17:44.*

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