

MEETING OF THE PARLIAMENT

Thursday 5 December 2002

Session 1

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Scottish Parliament

Thursday 5 December 2002

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 09:30*]

Building (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Mr Murray Tosh): Good morning. The first item of business is a debate on motion S1M-3410, in the name of Margaret Curran, on the general principles of the Building (Scotland) Bill.

09:30

The Minister for Social Justice (Ms Margaret Curran): I am pleased to open the debate on the Building (Scotland) Bill. The bill is an important piece of legislation that will establish the new building standards system that will be our means of protecting the health, safety, welfare and convenience of anyone in Scotland who uses a building—that is quite a few of us. As an indication of building standards' pervasiveness, new building in Scotland is estimated to be worth about £5 billion each year. As a whole, the built environment in Scotland is valued at approximately £600 billion. All of us who use buildings have an interest in ensuring that a robust building standards system is in place for the future.

The bill's purpose is to bring up to date the building control system that has done a good job of delivering the requirements of the Building (Scotland) Act 1959. The bill will replace the 1959 act and it will also facilitate the implementation of the construction products directive, which is a European single market provision.

Much of the bill and the administrative systems and processes that will flow from it are technical. I repeat our thanks to all those involved in the construction sector who contributed to our various consultations in the past three years. Their advice was invaluable in ensuring that we were able present to the Parliament proposals that have broad support throughout the sector. I am grateful to the Transport and the Environment Committee for commending the inclusive approach that the Executive took during the development of the proposals. I am pleased to welcome Des McNulty, who will close the debate. As a former member of that committee, he is very knowledgeable about the bill.

The bill establishes the framework for a reformed building standards system. Many of its features, such as the core process of building

warrants and completion certificates, are similar to the features of the existing structure. We seek evolution rather than revolution. We are building on what works and making changes to meet existing and future needs.

Part 1 establishes a framework for ministers to make building regulations. It will include for the first time a power for ministers to make building regulations to further the achievement of sustainable development. It will continue to ensure that building regulations will be able to cover the usability of buildings and their accessibility by all.

The system that part 1 will introduce will be more flexible than the existing system and will allow owners to adopt more innovative approaches to building. However, it will ensure that current standards are maintained and that, as regulations are updated, standards are improved. Part 1 will introduce the building standards assessment, which will be a useful tool in identifying whether a building complies with regulations and the extent of any unauthorised works.

Part 2 describes the warrant and completion certificate process and introduces the concept of a verifier. Verifiers will work in the public interest to scrutinise work that has been done. As people know, that is a local authority function, but the bill provides that ministers may appoint other organisations, including those from the private sector, to undertake that role.

That matter was of particular concern to the Transport and the Environment Committee and was the subject of detailed discussions with many stakeholders. We agree with the position that the Convention of Scottish Local Authorities and the Scottish Association of Chief Building Control Officers took when they gave evidence to the committee. Like them, we want any organisation that may undertake the verification role to satisfy the criteria of impartiality, transparency, accountability and consistency.

The Scottish Association of Chief Building Control Officers accepted that there was no reason why private sector verifiers should not be introduced at some stage, provided that there was a level playing field and that the private sector was required to meet the same criteria as local authorities were. The association said that the difficulty would lie in making guidelines and monitoring rigid enough. The Transport and the Environment Committee recommended that the Executive make a firm commitment not to introduce private sector verifiers until a full study had been undertaken into their potential impact. I am happy to give the committee that undertaking and to agree that the study will involve consultation with local authorities.

In its evidence to the Transport and the Environment Committee, the association accepted that, subject to those safeguards, the introduction of private sector verifiers might offer advantages for the public, in particular in turnaround times for applications and the flexibility of service delivery to the applicant.

The committee made a significant point about the accessibility of information on building standards registers. We are happy to undertake to make all reasonable efforts to ensure that building standards registers are accessible to all users, which includes having relevant parts of the register translated on request within a reasonable time scale. However, as the committee said in its report, we are keen that the requirements imposed on local authorities should not be overly burdensome.

Part 3 deals with enforcement powers. In particular, it introduces a provision on building regulations compliance, which offers ministers the power to require the compliance of existing buildings with building regulations. That provision is made in expectation of the need to meet another European directive on the use of energy in buildings. The directive will insist that the energy efficiency of large existing buildings is upgraded whenever other substantial works are planned.

Part 4 deals with defective and dangerous buildings and is similar to existing legislation on those matters. However, it provides that a local authority will be able to enter and inspect a building to see whether it is dangerous. That is an extension of the existing power that allows a local authority to enter a building only if it has reasonable cause to believe that the building is dangerous. That policy was developed following the outcome of the fatal accident inquiry into the tragic death of Christine Foster at Ryan's Bar in Edinburgh.

Part 5 deals with general issues. Of note is the provision that gives ministers the power to undertake any of the functions of a local authority. Ministers may direct local authorities on how they exercise their functions; a similar power in relation to verifiers will be introduced by part 2. Those powers will assist the Executive to ensure consistency of application throughout Scotland, meeting one of the wishes of many key stakeholders from the public and the private sectors. The bill will also bind the Crown.

The bill is important. It will help to underpin cross-cutting issues, such as sustainable development and the reduction of fuel poverty, and will be an important tool in ensuring the continuing health and safety of the people of Scotland. We look forward to detailed consideration at stage 2.

I move,

That the Parliament agrees to the general principles of the Building (Scotland) Bill.

The Deputy Presiding Officer: I call Linda Fabiani.

09:37

Linda Fabiani (Central Scotland) (SNP): You caught me on the hop, Presiding Officer. The minister's speech was incredibly short; she did not even speak quickly.

The SNP welcomes the bill's general policy objectives, many of which are long overdue, such as the objectives of providing greater reassurance for people who use tradespeople and of providing more information to house buyers. The consensus is that local authority powers to identify dangerous buildings should be strengthened, that designers thrive on flexibility and innovation and that the system should be more responsive to the needs of the public and industry. The SNP is always up for providing excellence in public services, encouraging sustainable development and being constructive in helping the Executive to meet its obligations under European directives.

The main purpose of the bill is to modernise Scotland's building control system. That modernisation must have a robust base, with credible enforcement powers to reflect a basic need for accountability and competence. I am concerned that the policy objectives to which I referred, as outlined in the policy memorandum, have not been reflected in the bill's long title, which is

"to make further provision with respect to buildings, building standards, work in relation to buildings and related matters; and for connected purposes."

Many others share those concerns and I ask the minister to consider them further as the bill progresses, so that it can be strengthened to ensure that it is objective driven rather than process driven.

I do not have time to dissect every element of the bill, but I will raise some particular points. As I said, the provisions on dangerous buildings are welcome, but we should note the evidence of the Fire Protection Association, whose representative said that the bill would not give fire authorities a statutory right to be consulted. Their expertise would be brought into play only if there were variations from technical standards. That is a potential amendment for the Executive to consider.

I am reminded of the licensing scheme for houses in multiple occupation, on which the Social Justice Committee has taken much evidence. I suspect that that scheme was introduced under

the Civic Government (Scotland) Act 1982 almost as a panic measure after the tragic death of young men in a fire in accommodation in Glasgow that had bars on the window. However, the scheme does not give local authorities further powers to prevent such an incident from happening again. That situation needs to be addressed. I ask the minister to consider lodging an appropriate amendment at stage 2.

One of my colleagues will concentrate on the functional standards versus technical standards aspect of the bill. I want to register my concern that, if technical standards are no longer to be mandatory, we could be in danger of reducing our standards to a lower common denominator. In light of the European directive, the Executive might feel that it has devised the best way to proceed, but how will the Parliament scrutinise and influence if the enabling legislation allows ministers a free hand with guidance and regulation? The accountability to ministers of the new, or reformed, central building standards body is noted in the policy memorandum but, again, that issue is not addressed in the bill.

A number of the provisions might have significant cost implications; evidence was taken about the potential costs to local authorities. The City of Edinburgh Council highlighted the potential for an "enormous burden" and the Scottish Association of Chief Building Control Officers warned that the aims could not be achieved without "adequate funding". Paragraph 148 of the financial memorandum would seem to suggest that fee income and savings gained will result in cost neutrality. I am not convinced, and I ask the Deputy Minister for Social Justice to expand on that when he sums up the debate.

A particularly contentious issue is that of independent verifiers. It is understandable that strong views were expressed for and against by the private and public sectors. I was a bit puzzled by the evidence that was given by the former Deputy Minister for Social Justice, Hugh Henry. He contended that the Executive had no plans to extend the verification role to the private sector but that the possibility of doing so should not be excluded. I thank the minister for expanding on that point today, but did the former Deputy Minister for Social Justice's evidence indicate that the Executive does not yet know what the additional costs to local authorities are likely to be and that, rather than fund local authorities to do the work, the work will be privatised?

I was particularly impressed by the Disability Rights Commission's evidence on behalf of the country's 800,000 disabled people. The commission also raised the question of replacing mandatory standards with guidance as a cause for concern. Requests for relaxations have long been contentious for disabled people.

The duties in part III of the Disability Discrimination Act 1995 come into force in October 2004. Bearing that in mind, no building currently in use by the public should be granted relaxations for any aspect of any regulation that would have a direct or indirect negative impact on the accessibility or usability of the building by disabled people. I say to the minister that I assume that no relaxations whatever will be allowed in the case of new buildings.

The explicit inclusion of access and usability in the functional standards would ensure clarity in determinations after a breach is reported. It is also vital that accredited verifiers include professionals who are competent and qualified to certify that a design is accessible and usable by disabled people.

The Disability Rights Commission asked that the definition on convenience be expanded to include explicit reference to accessibility and usability for the disabled, rather than the implicit references in the policy memorandum and the explanatory notes. The word convenience does not adequately cover, or might not be understood to cover, the requirements of disabled people. A building that is not accessible or usable is considerably more than an inconvenience; it is discriminatory, exclusive and may hinder someone from accessing services and facilities. I am sure that a solution to that issue is not beyond the scope of the many resources that the Executive has to hand. I ask the minister to consider the matter further.

I also ask for an assurance that the bill is only one part of the continuing modernisation of building construction and repair. Are issues such as tenement law and rethinking construction practices to incorporate the Eagan principles still on the agenda? Who is driving the agenda?

I could say much more. Fine intentions have been laid before the chamber today and stage 2 will be interesting. I reiterate that the Scottish National Party supports the general principles of the bill.

09:44

John Scott (Ayr) (Con): I declare an interest: at one time, I was a student member of the Institution of Civil Engineers, but that does not appear in my entry in the register of members' interests. I welcome Des McNulty to the front bench. This is the first time that he has appeared in his ministerial role in a debate in which I have been involved.

The Building (Scotland) Bill, which was introduced on 18 September 2002, is welcome legislation. It updates the 1959 act and, in addition to making our legislation EU compliant, should simplify and modernise existing legislation.

However, some issues need to be addressed in the debate, including verification, certification, costs to local authorities, functional design, building warrants and late applications.

The Conservatives welcome the Executive's proposal that verification should continue to be carried out by local authorities. We also welcome the opportunity for private sector verification to be introduced at a later date if required. I am content for us to wait to see how private sector verification works in England and Wales.

We heard conflicting evidence about whether private sector verification could deliver impartial, accountable and accessible enforcement powers. In my view, the jury is still out on the matter in England and Wales. However, if the private sector model works in the long term, there is no reason why we should not welcome it in Scotland.

I quote the ultra-cautious Institution of Civil Engineers:

"The approved inspector system in England has offered the opportunity to provide tailored services on a commercial basis. Competition has delivered service improvements in both the public and the private sector in line with best-value policies."

If that view is still held in another three or five years, I can see no reason why our Government in Scotland should not introduce similar private sector verification. Indeed, to an extent, that is happening already in small local authorities that buy in verification services from larger and better equipped neighbouring authorities.

Certification is a vital part of the process. There is a need for certifiers to take a narrow role but to be aware of the overall design concept. Contracts above a certain size, which would be defined by ministers, should not be subject only to self-certification. Although I accept totally that a verifier must take the overview, it would also be important to encourage certifiers to be aware of and to think holistically about the design concept. As buildings become more sophisticated and complex, there is a greater risk that fragmentation of design could lead to structural failure. Quite simply, the greater the number of people involved in considering the potential risks of a design concept, the more likely we are to avoid structural failures such as the Ronan Point disaster and accidents such as the Summerland fire.

In practice, a dialogue might take place between verifiers and certifiers, but the minister might wish to consider asking certifiers to consider during the certification process whether, in their view, the part of the design that they are certifying creates any risk to the design concept as a whole.

I welcome the minister's conclusions that fees must be set to recover costs. It is worth noting that those costs could be significant for the property

sector if local authorities are to be obliged to inspect existing buildings regularly to ensure that they are not dangerous.

The Executive must be aware that the financial cost to local authorities, as well as lack of funding, could delay the introduction of the new building standards system. It must ensure that adequate funding is provided. It would be unacceptable if delays in the verification process caused contractors and clients time and money as a result of deficiencies in and underfunding of local authority departments.

It is essential that functional standards be maintained and improved upon. Although I accept the Executive's intention to reduce prescription in functional design, I share the concern of the Disability Rights Commission that

"technical standards may no longer be mandatory."—
[*Official Report, Transport and the Environment Committee*, 6 November 2002; c 3615.]

Linda Fabiani also highlighted that concern.

There is an absolute need for ministers to reassure us that existing standards of accessibility will be built on rather than reduced. After the bill has been passed, I believe that the Scottish ministers will need to keep that matter under review.

I also want to refer in passing to the likelihood that the costs of indemnity insurance will escalate. We must be reassured that appropriate insurance will be available under the new regime. The minister must spell out how such arrangements would work before we proceed. Finally, the definition of "owner of a building" must be clarified, and I look forward to the Executive lodging suitable stage 2 amendments in that respect. The Conservative party welcomes the bill and looks forward to lodging our own stage 2 amendments.

09:50

Nora Radcliffe (Gordon) (LD): In a previous existence, I had contact with a group of professionals, the leader of which used to shrug off any unnecessary detail with the phrase "That's too technical". As a result, every time I say, "That's too technical", I have a wry smile on my face. That explains why I am smiling when I say that the Building (Scotland) Bill is quite technical.

The bill deals with the framework that ensures that buildings are safe and fit for purpose. Moreover, it moves away from the highly prescriptive nature of the current building control system by recognising that there can be more than one solution to a problem—an approach that has been widely welcomed. I tried years ago to secure official acceptance for construction of an innovative reed-bed system to deal with domestic

sewage in a private dwelling. The bill's proposed system's flexibility and ability to deal with matters that are outside the box is therefore very welcome and will lead to good things. Furthermore, from the evidence that the Transport and the Environment Committee took, the industry seems to feel that the bill will accomplish its aim of facilitating innovation.

At this point, I should express my appreciation to the experts who submitted evidence to the committee and helped us to get our lay minds around concepts such as functional standards, technical standards and so on.

The bill will create two new kinds of officer—certifiers and verifiers—whose complementary roles will help safely to deliver the desired flexibility and innovation. However, there is a question about whether verification should be available from private sector providers. Although that happens south of the border, the benefits of such a system have not been universally agreed and, as private verification will not be immediately introduced in Scotland, there is still time to evaluate more fully the experience in England and Wales.

The committee also discussed the financial implications of such a system for local authorities, and it was suggested that the introduction of private verification might affect the recovery of costs through fees. Furthermore, concerns were expressed about erosion of the public sector skills base if much of the work is moved to the private sector. Although such questions will require consideration in future, they should be borne in mind now.

Although I welcome the measures that will strengthen local authorities' ability to identify dangerous buildings, I feel that they will not be effective if authorities cannot afford to implement them.

For many years, it has seemed that building standards are the obvious way of attaining proper energy efficiency and accessibility to buildings. However, the bill will establish only the mechanisms; the regulations that follow will actually deliver those objectives. As a result, the regulations will be more exciting than the bill itself. However, the bill is the necessary prerequisite and it is important that we get it right.

The witnesses who gave evidence to the committee clearly appreciated the lengthy pre-legislative consultation that fed into the bill and they felt strongly that such an approach has paid dividends and that the bill now meets its objectives. When we deal with such technical measures, it is important that we listen to professionals and make the best use of their expertise. I am happy to say that that has

happened with this bill. Perhaps in our stage 2 consideration we will now be able to clear up some of the problems that have been highlighted during stage 1.

The Liberal Democrats are very happy to support the bill's principles and look forward to stage 2.

09:54

Bristow Muldoon (Livingston) (Lab): Before I address the bill, I want to welcome the new Deputy Minister for Social Justice, Des McNulty, and to wish him well in his new role. Des comes to his position with some advantages and disadvantages. As a member of the Transport and the Environment Committee, he was part of the bill's stage 1 consideration. However, that might well prove to be a disadvantage, because he might now have to accept many of his own recommendations. *[Interruption.]* I see that Margaret Curran has overruled that.

We must recognise that, although the bill is very technical, its provisions will be important to people in Scotland because they will affect so many aspects of their lives. The bill has real practical benefits; for example, it proposes to give to ministers powers to make regulations for a range of different purposes, including health, safety, welfare and convenience. As Linda Fabiani pointed out, the issue of convenience is important because it can improve the accessibility of buildings for many people. My colleague Ken Macintosh will discuss such issues later.

The bill also gives powers to ministers to make regulations about the conservation of power and the promotion of sustainable development. I hope that Mr McNulty will, when he sums up, expand on the way in which such powers might be used. For example, on health and safety, I ask him to say how the powers could be used to promote safer designs. When he was a member of the Transport and the Environment Committee, he asked whether the legislation could be used to reduce the incidence of injuries suffered by children who crush their fingers in doors.

As for the conservation of power and sustainable development, the Social Justice Committee invited the Executive to explain how it intends to use the powers in the bill as a tool to meet its overall policy aims of reducing fuel poverty and promoting sustainable development. Again, I ask the minister to provide further explanation of how such powers will be used.

I will now, having identified some of the bill's positive aspects, raise some areas of concern that the Executive should take on board. I will not be able to mention all the concerns this morning, so I ask the Executive to consider in detail the

Transport and the Environment Committee's report. I want to focus on verifiers and certifiers, which other members have mentioned. Public sector organisations in particular have expressed concerns about the introduction of private verifiers, although I note that at the moment the Executive has no intention to use that power. In its written evidence, the City of Edinburgh Council stated:

"No private verifier could ever meet the criteria of being independent and accountable to the local electorate when they are appointed and paid for by a client directly. The DETR in England has as a result created a private building control system ... the essential elements of which are no refusals, no problem and no enforcement!"

I acknowledge the minister's commitment that, before any such system is introduced, there will be full consultation with local government and a full analysis made of the impact of any such changes. Although I welcome that response to one of the committee's recommendations, I ask ministers to consider whether there is any need at all to include the power in the bill.

I will touch briefly on certifiers, because I realise that I am at the end of my time.

The Deputy Presiding Officer: We can be a bit more relaxed—I do not mind if you go a bit beyond five minutes.

Bristow Muldoon: So we have loads of time this morning.

Concerns were raised about certifiers; in particular, the Institute of Civil Engineers in Scotland was concerned about having an overall holistic approach to verification of safe design. I know that the Deputy Minister for Social Justice was himself concerned about the issue when he was a member of the Transport and the Environment Committee, and I hope that the Executive will examine the matter closely before the bill is passed. The committee recommended that the Executive should consider giving a single individual responsibility for managing the certification process, and I ask it to take that suggestion on board.

In conclusion, the bill is an important measure that introduces new powers that can be used to promote better and safer buildings in Scotland. I ask the Executive to consider carefully the role of verifiers and certifiers. It recognises that local government has performed the role well in the past, so I ask that we do not throw the baby out with the bath water when reviewing the building control system. I welcome the powers on dangerous buildings and recommend that the Parliament support the bill at stage 1.

10:00

Fiona McLeod (West of Scotland) (SNP): Nora Radcliffe began by saying that the bill is technical

and by implying that it is boring. The bill is not exciting, but it is important, and it will be instructive to watch how a former committee member who knows the Transport and the Environment Committee's concerns translates them into amendments to the bill.

A stage 1 debate is about a committee's being able to highlight its areas of concern and, on reading the Transport and the Environment Committee's report, we see five areas of concern. One of those concerns stems from the Social Justice Committee's report, which I commend to the ministers, on fuel poverty and sustainable development. Members of that committee were also concerned about costs to local authorities, the role of private verifiers and, more important, the introduction of monitoring and auditing of those private verifiers. We also had concerns about the definition of an owner.

In my few minutes, I want to concentrate on the potential problem of the mandatory status of our new standards. The problem relates to the functional standards that we are about to introduce versus the technical standards that we have at the moment. Why is there a problem? For example, new functional standards for fire safety might say that building materials "shall not spread fire", which is a wonderful intention. However, the old technical standard would have set, for example, minimum times for fire doors to hold back fire and a minimum width for corridors, fire exits and stairways. That is the difference. The functional standard says, "shall not spread fire" but the technical standard ensures that fire cannot be spread. Similarly, the new functional standard will say that access to buildings should be convenient, but the previous technical standard would have set, for example, a maximum gradient for ramps. It is clear that there are issues that we must consider.

I am particularly concerned by the transfer from technical to functional standards. That transfer has happened in England and Wales and the Transport and the Environment Committee heard from people who experienced the transfer that they have reservations about it and how it is working in practice. In particular, the committee heard from the Disability Rights Commission and the Fire Protection Association about their concerns on the transfer and the mandatory level of the standards.

Before I go on to that, I return to the word "convenient", which the minister used and to which Linda Fabiani referred in her speech. The DRC said that using the term "convenient" to describe access to a building is outmoded. In evidence to the committee, the then minister Hugh Henry said that it was okay to continue to use that term in the new standards because it was used in the Building

(Scotland) Act 1959 and was understood as a technical term. I refer ministers to the DRC's evidence that said that if we are updating the standards, we should update the language as well in order to ensure that the terms that we use show fully what they are meant to achieve.

I want confirmation that the technical standards that we have at the moment will not be reduced when they become functional standards and that the mandatory nature of the standards will be enforceable in law. One of the minister's civil servants said in committee:

"The expanded functional standards will still set a minimum that must be met and that the courts will be able to enforce. That minimum will be no lower than that which we set at present through regulation."—[*Official Report, Transport and the Environment Committee*, 13 November 2002; c 3690.]

I want, as do many others, to hear on record from the ministers that that will be the case, because it is important. As both the Disability Rights Commission and Fire Protection Association pointed out, it is much more difficult to remedy accessibility or fire-proofing defects once a building is built than it is to ensure that it is built appropriately by meeting standards as it is built.

Mention has been made of standards that buildings have to meet in other legislation. That includes part III of the Disability Discrimination Act 1995, which will come into force in October 2004 and, in relation to fire safety, the European directive on construction products. If the functional standards in the bill do not meet those minimum standards, the buildings will not meet other legislation.

I also want assurance that the Building Standards Advisory Committee will include representation from fire authorities and disability groups to ensure that such organisations' concerns are considered.

In conclusion, I am concerned that much of the legislation's substance will come through regulation and guidance rather than be included in the bill. That presents Parliament with a difficulty in scrutinising and influencing legislation. Again, will the minister assure us that Parliament will be involved in the production of the regulations and guidance? Hugh Henry said that there would be many issues for ministers to deal with, including the appointment of verifiers. Will the minister assure us that Parliament will be part of that process to ensure that when the bill is passed, it works for everybody?

10:07

John Farquhar Munro (Ross, Skye and Inverness West) (LD): The Building (Scotland) Bill is a welcome bill that I am pleased to see has

to date attracted cross-party support. More important, it has gained the general support of public agencies that are currently responsible for, and have the remit to approve and oversee, building standards for all buildings and structures in Scotland.

Members will no doubt be aware that responsibility for building warrants for new and renovated buildings rests with local authorities. Under their control, the system has been regulated consistently and has been applied professionally and fairly. The system has generally been accepted and, which is important, complied with by all sections of the building trade. I question some of the bill's proposals in that I do not consider it to be practical or appropriate to remove that function from local authorities, as some suggest should happen. It would be a foolish and retrograde step to appoint private sector inspectors or verifiers to manage the building control system and we should resist any such move with the utmost vigour.

The bill goes a long way towards addressing the problems of substandard housing in Scotland—we all know how much of that exists in the private and public sectors. Much has been achieved, but much more is required. Our citizens have a justifiable right and expectation to occupy warm, dry and affordable homes. I do not agree entirely with everything in the bill and would like to see an amendment lodged to include insistence that all commercial buildings to which the public have access will be required to secure and display an electrical compliance certificate. That certificate could be renewed annually in the same way as with the existing requirement to display a current insurance or fire certificate. Such a change would ensure that all electrical appliances and, more important, the main power supply were installed and maintained to an approved and safe standard. The sort of inspection and testing that is required is quick and easily undertaken and would not impose a new burden on the property owners or occupiers.

There is much merit in the bill and it deserves the unanimous support of the Scottish Parliament. Accordingly, I am pleased to indicate my support for the Building (Scotland) Bill, with minor amendments.

The Deputy Presiding Officer: It might help if I say to the remaining speakers that there is scope for them to have up to six minutes each.

10:10

Mr Kenny MacAskill (Lothians) (SNP): I want to deal with one matter that does not appear to be referred to in the bill but which I believe is touched on in the policy memorandum, which says that the bill should

“make the system more responsive to the needs of the general public and industry ... create more flexibility for designers to promote new and innovative design”

and

“support Scottish Executive aims of providing excellence in public services and encouraging sustainable development”.

I believe that the matter that is missing in relation to those aims is broadband roll-out. If we do not address that in the Building (Scotland) Bill, we will miss an opportunity. If the Executive says that we will address the matter in future years, it will be merely postponing work that should be done now.

Members of the Scottish Parliament and the Scottish Executive recognise the importance of rolling out broadband. However, it can be argued that, in the 21st century, broadband is as important a public utility as sanitation, electricity, lighting and so on were in previous centuries. I appreciate that the Minister for Enterprise, Transport and Lifelong Learning has recently made pronouncements on and provided cash for supporting broadband roll-out, and I recognise that the Deputy Minister for Social Justice—whom I congratulate on his promotion—has a family interest in the matter, but it seems to me that we have an opportunity not only to address the minutiae that are clearly important, but to take a new step forward and consider how we can take the initiative in rolling out broadband rather than dealing with it from behind.

At present, there is public support for rolling out broadband and BT has embarked on a major advertising campaign, but all of us will be aware of difficulties that friends or constituents have had in getting broadband. Those difficulties happen not only in rural Scotland but in cities and major conurbations in central Scotland. Throughout the country, people either cannot obtain broadband or can obtain it only at an unaffordable price. The bill gives us an opportunity to say to building companies that, if they are building a housing or business estate, the provision of fibre optic cables—or an appropriate alternative—is as important a requirement as are provision of power cables, water and sanitation.

We must acknowledge, however, that that cannot be done in all areas. It might be unreasonable to compel someone who is building two new houses in Achiltibuie to provide fibre optic cabling. There must be made available an opt-out on the basis of cost. That flexibility could be provided for in regulations, which are dealt with early in the bill. However, there should be a standard for any construction project that involves, say, more than 25 houses or whatever we decide on. At present, the Executive is trying to aggregate resources for industrial estates that are already in commission. Why do not we ensure that any new

industrial or housing estate is required to provide broadband access?

We should not require builders to pipe broadband directly into every house, but we should require that there be a fibre optic cable or an ADSL connection within a reasonable distance. The difficulty that we face is that anyone who wants to get broadband in their new house can be quoted ridiculous prices—for example £3,000—to get it. If all that a telecommunications company had to do was connect the house to the pipe at the end of the road, the cost would be much less. It would perhaps be as little as £250 or less, which would be an insignificant amount, given the sorts of prices that people pay for houses today.

We have a golden opportunity for the Executive and the Scottish Parliament to put Scotland at the forefront of the roll-out of broadband. It is important that we continue the efforts that are being made by the Scottish Executive, Scottish Enterprise and Highlands and Islands Enterprise, but we have an opportunity to make the situation better at the outset. Of course, it is not within the sphere of responsibility of a building company to ensure that broadband is rolled out to the area in which it is building houses, but it can work in partnership with telecommunications companies to do so. The only caveat that should be added is that, if only one telecommunications company is involved in the provision of the fibre optic cables and so on, it must ensure that there is enough capacity to allow its competitors also to provide the service. That is not beyond the capabilities of modern technology and would allow, for example, people in an estate in which BT had provided broadband connections to choose instead to subscribe to Telewest Broadband.

I do not know whether the Executive is already considering what I propose, but if we do not do what I propose, we will miss a golden opportunity to put Scotland at the forefront of broadband provision. I see many heads nodding in agreement and I assume that everyone is aware of the importance of the issue. I have discussed matters with the telecommunications companies and I know that they are prepared to support the Executive in relation to the proposal. If the Executive has not considered the matter, I urge it to do so. I know that the minister is interested in the matter.

I repeat that we have an opportunity to ensure that a utility that is essential in the 21st century is given the same priority that was given in previous centuries to other important public utilities. We forsake this golden opportunity at our peril.

10:16

Mr Kenneth Macintosh (Eastwood) (Lab): I am sure that members will not mind if I keep my

contribution short. Perhaps I should speak extremely slowly.

The Deputy Presiding Officer: There is no compulsion to occupy all the time that you have been allowed.

Mr Macintosh: I welcome the Building (Scotland) Bill. It is not a headline grabber, but it is nonetheless necessary. It will improve the regulation of building in Scotland and make the system more responsive to owners and the public. I hope in particular that the system in practice will be simpler, fairer and more transparent. There is no doubt that the approved certifiers of construction and the public building standards register are steps in the right direction towards access to information and the availability of a list of suitable and approved installers and tradespeople. That will clarify the system for all of us and give us more confidence in the decisions that are made.

However, I am concerned that some issues will not be fully addressed. I know of one case involving a constituent who was worried that the original work that had been done on his building was not done to a high enough standard. In particular, his roof tiles were not nailed down, despite that being in the manufacturer's specification. Not only is there a danger of the tiles' being blown off in high winds despite their weight, but they leak and have damaged my constituent's flat as a result. As usual, the matter is not clear-cut. Although my constituent has had a surveyor confirm his opinion, the local authority and the property factor have made a different judgment. One of the difficulties could lie in asking the local authority to question its own judgment in approving a building warrant and completion certificate, despite the safety risk that might exist. The other difficulty lies in the grey area between what is a matter of quality and consumer protection and what should be treated as a building standards and safety issue. I am not sure that I have any solutions to that problem, but I urge the Executive to keep an eye on any on-going difficulties that might arise.

Concerns about disabled access and usability will be familiar to everyone in the chamber and I welcome the work that the Executive has done in consulting disabled people and addressing their worries. However, there is no doubt that there is anxiety, which Linda Fabiani highlighted, that moving away from prescribed technical standards might remove the protections that disabled people have fought for long and hard. I welcome the opportunity for builders, architects and designers to come up with more innovative solutions to problems of access and usability, but I want the minister to give us further assurance that the bill will not mark a step backward rather than a step forward.

There is a problem with currently prescriptive technical standards, which is that they are inadequate and do not reflect actual need. For example, I believe that the technical standard for doors in respect of wheelchair access to disabled toilets is 800mm, but that is barely enough to get a wheelchair through a door. Some of my constituents have called 800mm "a knuckle scraper"—that is not a reference to any neanderthal constituents I have. The existing standards do not, for example, allow for the practicalities of motorised wheelchairs, which require a slightly larger turning circle. Many examples have been reported to me of toilets where wheelchair users can hardly get in and, when they do, have great difficulty in turning round or even closing the door behind them. The most embarrassing such toilet is located in the building at the Southern general hospital from which wheelchairs are prescribed in south Glasgow. The toilets, rather than the users, are disabled in such cases.

If the bill allows and encourages builders and designers properly to take the views of disabled people into account, it will mark an improvement. If we can move to an approach in which facilities for disabled people are made to work, rather than being considered a problem to be worked around, the bill will be very welcome. I look forward to hearing more reassurance from the ministers on that point, but I welcome the bill.

10:21

Colin Campbell (West of Scotland) (SNP): I am glad that Ken Macintosh got into specifics anecdotally, because I am going to rely on that.

I purchased a building in 1970 and spent a large amount of my spare time renewing and repairing parts of it. Because I was a teacher, much of that was do-it-yourself work. My experience has encompassed amateur efforts in every trade except plumbing and electricity, both of which I regard as potentially far more hazardous than the dangers that are inherent in falling off the roof.

I assisted a friend in the conversion of an old beaming shed in Kilbarchan into a home. At the time, I could speak authoritatively about dwangs and noggings—and knew what they were. I still know, and if the minister can tell me what they are in his closing speech, I will be impressed. I have also worked on flats that belong to my sons, because two of them are teachers too and cannot afford tradesmen.

I have no problem with the principle that Scottish building standards must comply with the European Community's construction products Council directive 90/106/EEC. I assume—because I have not read that document at all, let alone in detail—

that the directive introduces sensible and safe standards that will be universal in Europe and that the standards are uniform only on those basics. I assume that there is ample scope for Scotland to have different and higher standards. I would not want tiles to be laid on laths as a norm in Scotland when they are currently laid on sarking. I presume that diversity to reflect climatic peculiarities will be permitted.

I welcome the commitment to sustainable development. Anyone who passes houses or shops that are in the course of alteration invariably finds skips filled with walls that are not necessarily old but have recently been torn out and are being replaced because somebody wants the building altered or wants a different style. Kenny MacAskill's suggestion of installing broadband in advance would be a way of preventing the tearing up of roads and landscape at some future date. Advance design, advance planning and better town planning are all part of that. Equally, I welcome the bill's commitment to further the conservation of fuel and power.

Cowboy builders exist. I can think of an example where developers refurbished and developed an historic building, sold it off as flats and refused to take any responsibility for subsequent failures in the building that were caused by defective workmanship. In that context, the suggested register of approved certifiers of design is to be welcomed. Obviously, in new build, that is particularly important, because such people can design buildings that are flexible for future use and alteration, without the need for extensive use of building materials in making the alterations.

I welcome the idea of certifiers of construction. They will have a vital role in supervising the kind of jobs for which we all call in tradespeople. Recently, I considered installing a gas stove at home. One firm that I phoned said, "No we don't install them, but we know a gas fitter." I gave that firm a distinct body swerve and moved to the firm that said "Yes, we are registered by all the following organisations and can guarantee"—as far as such things can be guaranteed—"that we will do a good job."

The rapid and well-monitored identification of a well-qualified body of certifiers of construction is essential to provide citizens with the necessary safeguards against cowboy builders and cowboy installers. Apart from the big builders, who are obviously more aware and more conscious of the demands of regulations, the certifiers of construction will have an important role to play among ordinary people who often get caught out by the cowboys.

The Scottish National Party supports the bill.

10:25

Rhona Brankin (Midlothian) (Lab): Like other members, I welcome the bill, which seeks to modernise the Scottish building control system, which is currently based on an act that dates way back to 1959—the Building (Scotland) Act 1959. In the relatively brief time that I have, I will cover some of the issues that architects have raised through the Royal Incorporation of Architects in Scotland. First, I declare that I am an honorary fellow of the Royal Institute of British Architects.

Overall, architects have welcomed the proposals in the bill, because there are clear inadequacies in the existing building control system. There are inconsistencies in interpretation between local authorities and inconsistencies in performance. Sometimes, clients are naturally reluctant to challenge the building control departments in cases of dispute over interpretation, because that would require referral to the sheriff, which is time consuming and costly.

On the other hand, architects believe that the existing system is well managed in many parts of the country. The system requires a warrant approval prior to commencement of works. That is important: it is vital to prevent rash and potentially abortive actions. The new arrangements in the bill will address the main problems and provide enabling powers that will make the new system more efficient and more effective.

Architects support the distinction in the bill between functional standards and performance requirements, because they believe that that will allow for innovation, which is increasingly important in a fast-changing world and will recognise the undoubted talent of Scotland's creative architects. The distinction should also assist in addressing sustainable development objectives and allow maximum architectural value with minimum environmental harm.

I draw the minister's attention to two areas on which I ask for reassurance. Under the new system, the owner will issue a certificate of completion. Although that should bring clarity to the system, some arrangements will require to be put in place to ensure that it does not slow down the process. Absentee or overseas owners might be difficult to contact, and tenants and leaseholders who wish to make internal alterations should not be inhibited from doing so.

I welcome the proposed arrangements for strengthening local authority powers to inspect buildings regularly and prevent danger and accidents. Those powers are particularly important in multi-owned older stock—the minister made reference to Christine Foster's tragic death at Ryan's Bar. However, for those powers to be most effective, property owners and lessees should

have their buildings regularly surveyed and assessed by approved certifiers who have a duty to register defects with the local authority. The Royal Incorporation of Architects in Scotland assisted in the publication of "The Tenement Handbook" more than a decade ago because it wanted to ensure that proper maintenance of older stock took place. Such maintenance is a continuing concern.

Overall, the bill's provisions are to be welcomed. The bill shows that our agenda is to encourage enterprise and innovation, to empower and protect consumers and to create sustainable developments. The bill will provide a modernised building standards system in Scotland and will create a more flexible system for business and encourage innovation in building. It will provide more information for the general public on buildings, which will assist in improving the house-buying process and encourage greater consistency of standards throughout Scotland.

I urge members to support the bill.

The Deputy Presiding Officer: Rhona Brankin did not quite manage to fill the 13 minutes that were available. I make that point for the sake of the next debate, in order to advise whoever keeps an eye on these things that we are running slightly ahead of schedule.

We come now to closing speeches. Robert Brown, for the Liberal Democrats, officially has four minutes, but I will allow latitude for up to six minutes for closing speakers.

10:30

Robert Brown (Glasgow) (LD): I apologise for arriving at the chamber late. The train that I was taking this morning was cancelled, and I have not had the advantage of hearing the Minister for Social Justice or Linda Fabiani.

That said, this has been a good and interesting debate, particularly for members who, like me, fall into the non-technical category, to which Nora Radcliffe alluded. I listened with considerable awe to the experiences of hands-on, technical, practical people such as Colin Campbell. I do not fall into that category in any shape or form.

In common with the other parties, the Liberal Democrats generally welcome the bill. Members will forgive me if I am slightly more remote from the bill than some speakers have been. The Social Justice Committee, of which I am a member, has had some involvement on the fringes of the bill, but we have not, of course, taken the same amount of evidence as the Transport and the Environment Committee has.

Section 21 provides for building standards registers. I am not a conveyancing solicitor, but I

recall, from deep in the bowels of my memory, things called letters of comfort. Letters of comfort arise when people are buying and selling houses and there is some deficiency from a while back relating to the question whether completion certificates exist. I wonder whether letters of comfort are still part of the system and, if they are, whether there might be any merit in allowing them to be included among the things that are registered. As I said, letters of comfort relate to situations involving some deficiency but in which it is not necessary to go back to square 1; rather, they are issued when there is satisfaction on the part of the local authority that standards have been kept to.

The Transport and the Environment Committee's report raises the important subject of indemnity insurance. I am reminded of an old case in which comparison was made between the standards of care that apply to a solicitor and those that apply to a building engineer. The main point was that solicitors are not expected to guarantee the result of the case—although they do their best to achieve success—whereas a different standard applies to engineers and to builders of bridges and houses, because people do not expect the bridges or houses to fall down. There is an important element of guarantee in that, and indemnity insurance operates against that background.

I endorse what Kenny MacAskill said about broadband. People who live in the Cambuslang area of my constituency have made representations on broadband because it is currently not provided there. It is important to make that facility available at the start of developments.

The Social Justice Committee touched on fuel poverty in connection with energy efficiency. In thinking about the provision of renewable energy, particularly from solar power, I wondered whether there might be the facility under the regulations that will be introduced through the bill, and under codes of guidance, to deal with the issue in more depth. It seems that we are roughly at the point that Germany, Japan and other countries have now gone through. Solar energy and wind energy—I am referring not to big windmills, but to little windmills, for example in cities such as Rotterdam—have reached the stage at which there is the potential to include in new developments a more dynamic public-policy driver to make available those contributions to the available energy basket, as it were. The bill offers a good opportunity to include such provision with the building of new properties.

In that context, I note that section 1(2) deals with consultation on codes of guidance and with regulations, and I wonder whether it would be

appropriate to think specifically about Energy Action Scotland with regard to such consultation and to codes of guidance or regulations. Such groups, as well as builders and architects, have relevant expertise.

In conclusion—I have been speaking for just over four minutes, and am now using a little bit of the leeway that the Presiding Officer allowed—I revert to the idea that I have mooted once or twice before about a homeowner's log, or MOT register, as it were, of the things that have taken place in a house. The proposals for building standards might present an opportunity to encourage house owners to keep official records of the things that happen to their houses. That might cover, for example, building warrants, completion certificates and electrical certificates. It is important that the history of a house is known. If that idea were implemented properly and if the long-term maintenance matters were covered, it could enhance houses' values. I hope that that idea might be considered.

I hope that I have made some helpful suggestions and comments on what is generally a very good bill, which is supported throughout the chamber. I finish by adding my thanks to those that have already been expressed to ministers for having introduced the bill. I look forward to its passing into legislation.

10:35

Murdo Fraser (Mid Scotland and Fife) (Con):

It is my pleasure to wind up the debate for the Conservatives. As my colleague John Scott said at the beginning of the debate, we support the general principles of the bill.

I have three points to make in relation both to the bill and to wider aspects of building control. A number of members referred to my first point, which is verification, particularly the opportunity to have private sector verifiers, which the Conservatives welcome. I can speak from personal experience on this. In a previous life, as a commercial lawyer practising in Edinburgh, much of my day-to-day work was taken up with building projects. Many developers experienced frustration at delays in the various stages of building contracts because of the time that it took to get the appropriate official from the relevant building control department out to visit the development in question.

If we are to provide other avenues for that exercise, which do not depend on a local government monopoly in verification, that will be very much welcomed by the construction industry, especially in a fast-moving commercial environment such as that of property development in Edinburgh, where buildings are going up all over

the place, and where it can sometimes be difficult for the building control department to keep up. If building control departments had the opportunity to contract out some of the services that they provide, that would be very useful. I note that the proposals on verifiers were welcomed by the Institution of Civil Engineers in Scotland, as well as by other bodies, including the Scottish Consumer Council, a representative of which said:

"It does not matter whether the verifiers are from the private or the public sector as long as they are transparent and accountable."—[*Official Report, Transport and the Environment Committee*, 6 November 2002; c 3620.]

Of course there must be adequate safeguards for the protection of the public, but I think that that issue can be overcome, and I welcome the consultation that the Executive will undertake on that point.

My second point was mentioned by Robert Brown: letters of comfort. Conveyancing solicitor colleagues of mine came up against the issue time and again. A letter of comfort is produced by a local authority building inspector to say that works that have been carried out, although they have not been properly certified, nevertheless meet the appropriate regulations. We would like to think that we live in an ideal world in which, when people get work done to their house, they always get a building warrant first or a completion certificate, but many people do not bother. They might not even realise that, if they are taking down a wall here and there or installing an en suite bathroom, they need to get those certificates.

It might only be when the house is surveyed and an offer to purchase is received that the poor solicitor—[*Interruption*]—I realise that "poor solicitor" is something of a paradox—who is acting for the seller realises that there is a problem, and that the work has been done without authorisation. Although there is a mechanism to apply retrospectively for a building warrant and completion certificate, there is usually no time practically to make that application, because the date of entry tends to be set at between four and eight weeks from purchase.

In that situation, people approach their local authority and ask for what is called a letter of comfort. The local authority will send out an inspector to examine the work and, if the work is all right, issue a letter to say that, although no certification is available, the works will pass regulations. Letters of comfort are therefore extremely useful, but the problem is that there is a patchwork approach to them throughout Scotland, with no uniformity. It would have been useful if the bill had introduced a uniform approach for letters of comfort, so that local authorities throughout Scotland would adopt a similar approach. Perhaps the Executive could address that matter, under either the Building (Scotland) Bill or a future bill.

My third point relates to historic buildings; I have raised this issue in the chamber before. Balthayock House, which is just outside Perth, is an historic listed building that has fallen into disrepair. Scotland is littered with historic buildings—most of which date from the late 19th century—that are now of little practical use. They are far too large to be used as family homes and it would cost too much to modernise them. Although they could be used as hotels or institutions, that market is limited. There are far too many such buildings.

Earlier this year there was a desperate tragedy at Baldovie House, just outside Dundee—a young lad who had broken into the house was killed. Large, derelict, empty houses are magnets for young children. Regardless of whether the owners erect fences or signs that state “Dangerous building—do not enter”, kids will enter such houses to play inside them.

We need to strike a balance on this issue. Of course we must protect our historic buildings and built heritage. However, it is time to take a more reasoned approach to the future of listed buildings that are of limited historical or architectural merit, are falling into disrepair and have no practical use in the modern world. The cost of repairing such a building might far exceed the economic value of the house if repaired. The estimated cost of repairing Balthayock House is £2.3 million. It has also been estimated that, once the house had been fully restored, its market value would be about £750,000. Given those figures, only an ignoramus would spend money to repair the house and restore it to modern standards.

We must examine the way in which Historic Scotland approaches the question of listing and of giving consent to the demolition of listed buildings. I understand that the Education, Culture and Sport Committee proposes to conduct an inquiry into Historic Scotland and the way in which it operates. I hope that the committee will cover the issue that I have raised.

I conclude by welcoming the bill—as other members have done—and reaffirming that the Scottish Conservatives are pleased to support its general principles.

10:42

Mr Kenneth Gibson (Glasgow) (SNP): The SNP warmly welcomes the bill. This unsung piece of legislation shows the Parliament working at its best, both in committee and in the chamber, on a constructive and cross-party basis. I doubt that the outside world will ever hear about that, but we should commend the work that the Transport and the Environment Committee and the ministerial team have done on the bill.

The SNP believes that any new system must have a robust basis and credible enforcement powers, and reflect the need for basic accountability and competence—from both the design professional and those who are charged with verifying compliance. The new system must be reactive to the needs of developers and proactive in addressing innovation and sustainability. It must build on the experiences of practising building standards professionals.

We believe that the bill will both promote the aim of establishing a safe, efficient and sustainable built environment and protect local government's ability to ensure the delivery of such an environment. However, change or clarification will be required in some parts of the bill.

The SNP's own Bob the Builder, Colin Campbell, talked about cowboy builders. The bill presents us with an opportunity to eliminate the problem of cowboy builders and to increase consumer protection through a national approach to the regulation of building standards and the accreditation of builders. If the minister does not know what dwangs and noggings are, he should not feel bad about that—I do not know what they are either.

As Linda Fabiani said, the bill must be strengthened to ensure that it is objective driven, rather than process driven. We can do that by amending the preamble to reflect the bill's objectives more clearly. Section 7 must also be strengthened to require the Scottish ministers not only to make lists available, but to ensure that they are accessible, widely publicised and effectively promoted. Ministers should be required to issue guidance on how those functions are carried out and to consult widely on the content of that guidance.

As Linda Fabiani and Ken Macintosh indicated, because of the changes that it makes to the hierarchy and the new roles and responsibilities that it introduces to advance building standards in Scotland, the bill has implications for access for disabled people to the built environment. Most concern has arisen from the resetting of the mandatory status of technical standards to guidance level. It would be helpful if access for and usability by disabled people were covered explicitly in the functional standards. The standards should be clear enough for the courts to determine whether the design and construction of a building perform that function.

Technical standards for disabled people, which will form the basis for the early versions of the forthcoming guidance, have often been criticised for setting minimal requirements. Ken Macintosh dealt with that issue in detail. Building control has failed to deliver those standards, such as they were, consistently and satisfactorily. Murdo Fraser

expressed concerns about that. We are disappointed that the response to the criticisms that have been levelled at the building control system has been to issue guidance documents to replace mandatory technical standards. We need guidance that is clear, articulate, accessible and written in plain English. That will benefit all involved, including designers, building owners, builders and verifiers. It will also help to engage disabled building owners and users in the process.

The language of the bill mirrors that of the Building (Scotland) Act 1959. Both the policy memorandum and the explanatory notes imply that it covers the issues of access and usability.

My colleague Linda Fabiani raised the issue of relaxations. Class relaxations and relaxations that are granted on application have long been contentious issues for disabled people. The Disability Rights Commission recommended strongly that no building in public use should be granted relaxation of a regulation if that would have a direct or indirect negative impact on accessibility and usability. The commission also recommended that consideration of all applications for relaxation should take full account of potential and prospective users of buildings, as well as current users. Potential users of a building could include disabled people who wish to buy it or to use the services that it contains, or who are required to work in it.

Ministers could take account of the fact that buildings that are built for a specific purpose may in future be subject to a change of use. In such cases, the relaxation that allowed for the original use may no longer apply. Achieving accessibility and usability in a building that is complete and occupied is more expensive and time consuming than doing so at the design stage.

The Transport and the Environment Committee noted that a number of the bill's provisions could have significant cost implications for local authorities. Written evidence from the City of Edinburgh Council highlighted the "enormous burden" that regular use of the expanded powers to inspect buildings to ascertain whether they are dangerous could place on local authorities. More general concerns relating to local authority resources were expressed in written evidence from the Scottish Association of Chief Building Control Officers, which stated:

"The Association is concerned that in the short term at least a reduction in resource potentially available to local authorities will seriously affect the roll out and implementation of the building standards system. Much is made in the explanatory notes and policy memorandum of the need for local authorities to be more professional and reactive to those seeking building standards approval. The Association agrees wholeheartedly with this but would warn that such aims cannot be achieved without adequate funding."

The policy memorandum states that the current system for setting standards for buildings is very prescriptive. At present, complying with building regulations involves complying with technical standards that have full statutory force. According to the Executive, that creates a barrier to the use of innovative approaches to design and makes it more difficult to comply with harmonised European construction product standards, the first of which have already been produced. Many more such standards will be rolled out over the next few years.

The Disability Rights Commission raised concerns about the revised status of the technical standards. It stated:

"Our main bone of contention is the fact that the technical standards may no longer be mandatory. We feel that the impact of that could be negative, unless, through other facets of the bill, we can strengthen the application and observance of equalities and so strengthen accessibility and usability."—[*Official Report, Transport and the Environment Committee*, 6 November 2002; c 3615.]

The aspect of the bill that has attracted most comment, and some criticism—although not from the Conservatives—is the provision to allow the appointment of private sector verifiers, who would operate alongside the current system of local authority verifiers. This morning, the minister pointed out that the Executive has said that it has no plans to introduce such verifiers at present. In evidence to the Transport and the Environment Committee, the City of Edinburgh Council stated:

"No private verifier could ever meet the criteria of being independent and accountable to the local electorate when they are appointed and paid for by a client directly. The DETR in England has as a result created a private building control system which exists at present, therefore, the essential elements of which are no refusals, no problems and no enforcement!"

Nora Radcliffe was right to say that, before moving forward on this issue, we should wait to see how the English legislation beds down. The SNP has an open mind on the subject. Providing that the system is well monitored and regulated, it may be a possibility for the future.

I wanted to mention other issues, but because I am running out of time I will finish there.

The Deputy Presiding Officer (Mr George Reid): I call Des McNulty to wind up the debate. You have eight minutes on paper, minister, but you can have 10 minutes if you wish.

10:50

The Deputy Minister for Social Justice (Des McNulty): It is a paradox that in my maiden speech as a minister I end up talking about buildings, because not only am I Rhona Brankin's predecessor as convener of the cross-party

architecture and the built environment group of the Scottish Parliament, but I spent much of my childhood on building sites. My father was a bricklayer and was obsessively interested in different kinds of buildings. My early years were spent looking at buildings and my teenage years were spent often holding the bottom of ladders or mixing mortar, so I have a particular interest in building issues. I can reveal, in response to Colin Campbell's point—this might be a point of interest to members, given that we were all invited to adopt a Scottish word a couple of weeks ago—that a dwang is the same as a nogging. Dwang is the Scots word and nogging is the English word for the cross-pieces in a stud partition wall. If members want the information, that is the background—sad, is it not?

Having sat on the Transport and the Environment Committee and taken evidence from my predecessor Hugh Henry, I hope that my erstwhile colleagues on the committee do not see me too much as poacher turned gamekeeper. One of the great things about our Parliament is that we can engage constructively in developing legislation that is in the best interests of the people of Scotland. The bill is an example of a technical piece of work that the Parliament can carry out in a non-party-political way. We are engaging with a wide variety of interests and the extensive consultation in the parliamentary process in the lead up to stage 1 has thrown up a number of new ideas.

I have my first intervention as a minister.

Sarah Boyack (Edinburgh Central) (Lab): I welcome the minister to his new post. I am conscious that the Presiding Officer has already invited the minister to take an extra two minutes, so I offer an intervention to assist in the process. The minister just talked about the technical nature of the bill, which several members in the chamber also mentioned. Although the bill is essential and desperately needed, I ask the minister to focus, in stage 2 and thereafter, on the core issue of informing members of the public how the bill will affect them as owners, tenants and residents. That key issue forms the backdrop to many of the comments that members have made.

Will the minister, either today or at stage 2, talk about the relationship between the bill, the forthcoming bill on the law of the tenement and other legislation that looks technical and boring but is critical to constituents such as mine? Margaret Curran mentioned in her opening remarks a tragic incident in my constituency. We have such problems, particularly in city-centre areas where there are issues with multiple ownership and we cannot find out who the owners are.

The Deputy Presiding Officer: That was helpful.

Sarah Boyack: I ask the minister to think about strengthening the local authority powers in the bill, how discretion might be exercised and how we can have best practice that creates good standards throughout Scotland.

Des McNulty: I thank Sarah Boyack for that intervention.

It is very important that we should have a process that seeks to identify good practice. We have a system that is less prescriptive than it has been in the past, which allows greater innovation. Rhona Brankin made that point. People in the building industry welcome the increased flexibility that the bill will allow, because it will encourage a developing process that will allow us to adapt to higher standards more quickly than was possible under the previous system. Sarah Boyack is right to say that we have to take the public with us. The bill is perhaps seen as technical, but it affects people's lives directly and we have to take that point on board.

A number of excellent points were made throughout the debate and I know that we will return to a lot of them at stage 2. I will address a few issues that members have raised today and which the Transport and the Environment Committee raised. Members might wish to be aware of our thinking.

Margaret Curran gave an undertaking that we would not introduce private verifiers without proper study and consultation. It is only sensible to proceed in that way. There might be opportunities for private verifiers to add something to the system that is not there at present. There are situations in which local authorities might not have relevant expertise, for example in building new stadiums or other complex, innovative or different kinds of buildings. A private verifier system might add to competence in that way.

Bristow Muldoon: An alternative way of dealing with situations in which a small local authority does not have the relevant expertise is for larger neighbouring authorities with larger building control departments to provide the expertise. Does the minister see that as an option?

Des McNulty: That is an option. We want expertise to be shared and pooled, which is why we have set up the new building standards authority as we have.

Another issue regarding private verifiers is worth noting here. Questions have been raised about the performance monitoring of private verifiers and verifiers in general. The Executive has already commissioned research into the performance monitoring of verifiers. Members will be interested to know that the Scottish Association of Chief Building Control Officers was involved at the specification stage and we will continue to consult

the professional bodies as the work develops. The work that comes out of the research will form the basis for any subsequent system of monitoring and auditing of verifiers, whether private sector or public sector. We do not believe that there is a need to establish in the bill a commitment to introducing such a system. Work is already in progress and we have given an undertaking, which I am happy to repeat now, that the Executive will establish such a system and fully consult local authorities before doing so.

Linda Fabiani and John Scott raised the issue of fees and charges. We have taken note of the concerns that local authorities have expressed regarding the level of costs that they believe will arise from the proposals. A particular concern of the Scottish Association of Chief Building Control Officers is that the Executive must keep to its intention of setting fees to cover costs. The Transport and the Environment Committee recommended that our research into fees and charges fully take into account local authorities' concerns. Members will be pleased to hear that as part of the current research into fees, the researchers and officials had a valuable meeting with seven chief building control officers on 21 November. That is just one illustration of the continuing dialogue that we want to maintain with stakeholders.

Robert Brown and Murdo Fraser raised points about letters of comfort. It is likely that the building standards assessment will be used where a letter of comfort is sought. It is possible that the assessment will include a form of words that is similar to those contained in some letters of comfort, but that is a matter of detail that will need to be considered in consultation with stakeholders.

The move to expanded functional standards is constructed in a way that will not lead to any reduction in minimum standards. That point needs to be reinforced, because it is important. We want to provide detailed guidance on how building standards can be met. The guidance will be based on existing mandatory technical standards. It is anticipated that the vast majority of owners will rely on the guidance. Where owners choose to use alternative methods, local authorities will remain responsible for ensuring that building standards are met. Where local authorities fail to enforce appropriate standards, the Scottish ministers can direct them to do so.

Concerns were raised about disability. I want to make it clear that the Executive's intention is that accessibility to buildings will be mandatory in the building regulations that are established in the new system. Indeed, the new hierarchy of standards and guidance will give designers the freedom to produce innovative solutions to issues of disabled access. The new system will continue to provide

the basis for ensuring that existing high standards are maintained and we will have the power to direct authorities to ensure that the current standards are enforced appropriately.

The Deputy Presiding Officer: The minister is in his last minute and a half.

Linda Fabiani: Does the minister have a view on how the guidance will set out how local authorities deal with relaxations of buildings standards when they relate to access for disabled people?

Des McNulty: Our expectation is that there will be far fewer relaxations. We are moving the power to relax regulations from local authorities to the central body. That will lead to fewer relaxations.

I have not had time to address a number of other points, such as the issue of how we can improve safety standards in the way in which we develop the regulations, which Bristow Muldoon mentioned. The fact that the bill allows us to do interesting and innovative things is an important attribute. I will consider Kenny MacAskill's suggestion about broadband, because that is part of the range of issues that we should examine. We will need to explore whether it will be possible to achieve that within the framework of the bill or whether other mechanisms will be needed. The new, more flexible framework will give us opportunities to consider how we might proceed with the development of standards, with the aim of getting better-quality buildings and a better system of regulation.

In conclusion, I am grateful that there is complete consensus that the bill is a good thing. I ask members to support its general principles.

Building (Scotland) Bill: Financial Resolution

11:01

The Deputy Presiding Officer (Mr George Reid): The next item of business is consideration of motion S1M-3456, on the financial resolution in respect of the Building (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Parliament resulting from the Building (Scotland) Bill, agrees to—

(a) any increase in expenditure payable out of the Scottish Consolidated Fund in consequence of the Act, and

(b) any charge imposed, and any payment required to be made, by or under the Act.—[*Peter Peacock.*]

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

Criminal Justice Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-3671, in the name of Mr Jim Wallace, on the Criminal Justice Bill, which is proposed United Kingdom legislation. I invite those members who wish to contribute to the debate to press their request-to-speak buttons now. It would be helpful if members who are leaving the chamber would do so quickly and quietly.

11:02

The Deputy Minister for Justice (Hugh Henry): The Criminal Justice Bill, which was introduced at Westminster on 21 November, represents the UK Government's proposals to bring about change across a range of provision in the criminal justice system in England and Wales. It is inevitable that such a bill raises many issues.

However, in the context of today's debate and the motion before the Parliament, most of those matters need not concern us. The motion seeks to permit the UK Parliament to legislate on matters in the bill that are within devolved competence and which it is proposed to extend to Scotland. The fact that those matters are limited to a few areas is not surprising, given that the bill is essentially about proposed changes in England and Wales rather than in Scotland. At this stage, it would be useful to highlight those areas, for the sake of clarity.

Part 1 of the bill makes provision to amend section 2 of the Criminal Justice Act 1987, so that an appropriate person who carries out a search where serious criminal activity related to fraud is suspected, and who is accompanied by police officers, has the same powers as the police in relation to executing the warrant and seizing anything to which the warrant relates. Although the provision relates to fraud investigations that have a locus in England and Wales, section 2 already applies to Scotland. That is to enable effective action to be taken quickly in a situation in which it becomes clear that there might be valuable information in Scotland that is relevant to the case.

The purpose of the amendment of the 1987 act is to enable someone who might have a particular expertise—in computing or finance, for example—to contribute effectively to the search. A police officer might not have the specialist expertise that is required to identify criminal material that might be held on a computer hard drive. A financial expert would be much more able than a police officer to assess the significance of financial documents. It is therefore proposed that the amended provisions should apply in Scotland. I should point out that fraud investigations that have

a locus in Scotland are carried out under Scottish legislation—the Criminal Law (Consolidation) (Scotland) Act 1995—and that there are reciprocal arrangements that allow our authorities to initiate searches south of the border.

In parts 9, 10 and 13, the bill makes provision in relation to reporting restrictions. The proposed provision relates to proposals in England and Wales for a prosecution right of appeal against judicial rulings that terminate a case early and for the ability to bring fresh prosecutions in serious cases, where there is new evidence that might cast doubt on an acquittal. There is also provision in connection with the holding of preparatory hearings in certain fraud cases. That provision already extends to Scotland. The purpose of the re-enactment of those provisions in the bill is to extend them to Northern Ireland. The aim of the provisions is to ensure that fair judicial process takes place, for example, by ensuring that potential juries will not be influenced by the media and that the provisions will be time limited.

Part 12 makes extensive provision on sentencing. I must mention two matters in that regard, although the amendments and re-enactments concerned maintain the status quo as far as Scotland is concerned. The first relates to situations in which a suspended sentence that has been given out in England or Wales is breached in Scotland. The bill seeks to re-enact provisions that impose a duty on the court in Scotland to intimate the breach to the court in England or Wales that gave out the original sentence, provided that the court in Scotland is aware of the suspended sentence. The second relates to situations in which it is proposed that a sentencing provision within the European Communities Act 1972, which applies to Scotland, is to be changed, but only with regard to England and Wales.

The Executive believes that it makes good sense for the provisions in the bill that are within devolved competence, and which it is proposed should extend to Scotland, to be legislated for in the UK Parliament.

In relation to some of the bill's provisions, although there is what might be described as a rearrangement of the furniture within existing statutory provision in England and Wales, arrangements in Scotland are left unchanged. That is the case with the provisions that relate to sentencing and reporting restrictions in certain preparatory hearings. The Executive believes that it makes sense for those provisions within devolved competence to be re-included in the bill, where no change in relation to Scotland is proposed and where there are no other issues at hand.

In the interests of combating serious financial crime, it makes sense for the proposed changes

for search operations in connection with serious fraud to extend to Scotland.

Although the provisions on reporting restrictions in relation to prosecution appeals and the proposal to allow fresh trials in England and Wales are new proposals, it is already accepted that—in the overall interests of justice—it is correct, in certain circumstances, that the media should not report certain things at certain times. Such matters are dealt with generally under the Contempt of Court Act 1981, but there are other specific provisions that relate to criminal proceedings in which children are involved, for example.

Members will have personal views on the merits or demerits of the proposals on prosecution appeals and fresh trials.

Christine Grahame (South of Scotland) (SNP): I seek clarification on part 9. I am reading the Executive's memorandum on the bill, which says:

“Both the trial judge and the Court of Appeal will have power to vary the restriction”—

on reporting—

“after taking into account any objections from the defendant.”

Is it the Court of Appeal in England that is being referred to?

Hugh Henry: I will clarify that point in my summing up.

I doubt that anyone could argue with the proposition that, if such reporting restrictions are agreed to in England and Wales, in the interests of justice, they should apply throughout the UK, according to the same timetable. If that is agreed, the only realistic means of achieving that goal is by including the provisions in relation to Scotland in the bill.

It can fairly be said that the matters that fall within devolved competence in the bill are straightforward and limited and do not have any significant implications for Scots law. They are a good example of why the Sewel convention exists. Therefore, I hope that the Parliament will support the motion.

I move,

That the Parliament agrees that the provisions in the Criminal Justice Bill that relate to devolved matters should be considered by the UK Parliament.

11:09

Michael Matheson (Central Scotland) (SNP): The minister will be well aware of the Scottish National Party's concerns about the use of Sewel motions. Although it was intended that the mechanism would be used on the odd occasion,

the Executive now appears to use it frequently. Four Sewel motions have been moved in three weeks.

Today's Sewel motion seeks to obtain the Parliament's agreement that Westminster should legislate on devolved matters. It is interesting to note that the second reading of the Criminal Justice Bill has already taken place in Westminster—it was voted on last night. Before the Scottish Parliament has had an opportunity to debate the issue, Westminster is proceeding with its consideration of the bill.

Another matter for concern is that the issues pertaining to the Criminal Justice Bill have never been discussed in the four meetings that Scottish Executive ministers have had with Home Office ministers over the past couple of years. I wonder why that is the case.

Phil Gallie (South of Scotland) (Con): As the bill has received only its second reading south of the border, is it not the case that there will be plenty of time for ministers and members to table amendments at the committee stage, which means that there is no insult to the Scottish Parliament?

Michael Matheson: It may be true that there is still an opportunity to amend the bill, but this Parliament should at least be allowed the courtesy of coming to an agreement on the issue before Westminster decides to move ahead with it. Ministers seem to have decided to leave the matter to Westminster.

The Executive's memorandum on the bill states:

"The Bill itself is concerned with changes to the criminal justice system in England and Wales, and there are no substantive changes to Scots law."

That may be true, but that is not to say that the bill will not have a substantial impact on Scots law. I will pick up on a couple of the issues, which I hope that the minister will be able to clarify.

Schedule 20 to the bill contains provisions to increase the sentence for a number of offences in connection with category C drugs from five years to 14 years. All members would recognise the need to take a tough stance in tackling drug dealing within our communities, but will the minister clarify how section 1(3)(d) is to be applied? The bill will make it an offence for property owners knowingly to permit or suffer the use of controlled drugs within their properties. Does that mean that someone who runs a hostel for the homeless and suffers the use of cannabis on their premises could face a 14-year jail sentence? Might parents face a similar jail term if they suffer the use of cannabis by their 19-year-old in their room upstairs? Some prison governors have said to me off the record that drugs are a necessary evil within our prison system. Will the

bill mean that some prison governors could face a jail sentence? I hope that the minister will clarify exactly how that provision will be implemented.

The bill will also introduce reporting restrictions that have drawn considerable concern from a number of parties. The restrictions that the bill proposes are draconian and go well beyond those that have previously been imposed in Scotland. The National Union of Journalists in Scotland has expressed concern that the proposals lack clarity and could cause uncertainty. The bill suggests that the procedure for the reporting restrictions on prosecution appeals and retrials will apply to England and Wales but not to Scotland, although the reporting restrictions for a case in England and Wales would also apply in Scotland. How will that work? A national Scottish paper that has an office in England will be under the jurisdiction of the English courts. However, if a Scottish paper or magazine that does not have a base anywhere in England were to choose to report the case, it would be outwith the jurisdiction of the English courts. Would it therefore be for the Scottish courts to implement such an order if it were granted by an English court? I hope that the minister will take the opportunity to explain exactly how that provision will apply.

The provisions on reporting restrictions need to be read in conjunction with section 60(10), which states that the proceedings can be instituted, in England and Wales, only by or with the consent of the Attorney General or, in Northern Ireland, by or with the consent of the Attorney General for Northern Ireland. What provision is there for the Solicitor General for Scotland or the Lord Advocate to be involved in deciding whether a case should be instituted? There appears to be no suggestion that any such safeguard will be provided for in Scotland.

The minister will be aware that the Contempt of Court Act 1981 already provides a number of measures that provide restrictions on reporting where that is necessary. We should listen to Scotland's leading judge, Lord Rodger, who is the Lord Justice General and Lord President of the Court of Session. He has stated that such orders under the 1981 act should be "no wider than necessary". However, the bill appears to intend that a blanket ban will be applied through the reporting restrictions that it will introduce. I hope that the minister will clarify how the restrictions on the media are to be applied.

In conclusion, if ministers or other members are under any illusion that Scots MPs in Westminster are dealing with the issue effectively, they should know that, during the bill's second reading yesterday, only two such Labour MPs attended the debate for half an hour. No Scots Lib Dem MPs bothered to turn up for the debate, nor did the

Scots Tory MP. The only Scots MP to contribute to the debate on the Criminal Justice Bill was an SNP member, Annabel Ewing. As we know, the only people who are interested in protecting the interests of the Scottish justice system are SNP members.

11:15

Bill Aitken (Glasgow) (Con): As the minister rather humorously—and not without a touch of irony—conceded yesterday, the Conservatives will always back proposals that ensure that the voice of the victim is heard above that of the criminal. As such, we will certainly support today's motion on the Criminal Justice Bill. It is significant that our colleagues south of the border have generally welcomed the bill, although they have flagged up the difficulties that will potentially arise from the proposals on trial by jury, double jeopardy and the provision of information relating to previous convictions prior to a determination of guilt.

Some of the proposals, such as those relating to double jeopardy, are contentious, but the minister has correctly pointed out that those will not apply to Scotland. We welcome the Sewel motion for the very reason that the bill will not impinge greatly on Scots law. Scots law may have its little imperfections but, for all that, it is probably the best legal system in the world. It does not require much adjustment from other jurisdictions.

In the main, the bill's provisions do not relate to the jurisdiction of the Scottish Parliament, but a number of the measures that the bill will introduce are sensible and should be implemented here. The one spectacular omission is the bill's proposals on dealing with the collection of fines south of the border. I seem to recall that, when I suggested similar proposals in this Parliament, they received scant respect or agreement from the Labour-Liberal coalition. Perhaps for once, the coalition should listen to what is being said down south and learn from it.

The minister mentioned the Criminal Justice Act 1987, which already applies in Scotland, and how the proposed amendment to section 2 of that act will provide an enabling power. When the minister sums up, will he confirm that the term "document" in that section of that act includes computer records? The wording of the section is currently rather open, so I suggest that it would be advantageous if that could be looked at, as it was previously necessary to do so after yet another problem at the now infamous Linlithgow sheriff court, which heard a case that went to appeal.

I do not share Michael Matheson's foreboding about the operation of part 9 of the bill, which includes provisions on media restrictions. It is probably better that the Criminal Justice Bill deal

with the issue rather than the Contempt of Court Act 1981 because the terms of the 1981 act are vague and have been open to varying interpretations. The bill undoubtedly tightens up those provisions.

We have heard Mr Matheson and his colleagues before on the subject of Sewel motions. On this side of the house, we have no difficulty with them and we believe that there is no dramatic requirement to revisit the operation of the Scotland Act 1998. However, in this instance, I concede to Mr Matheson that the timing of the debate down south was perhaps rather unfortunate.

In general, we welcome the bill and believe that it should be imposed. I point out to Mr Matheson that all prosecutions in Scotland are required to be carried out in the name of the Lord Advocate, so there would be a Scottish input into a prosecution that was carried out due to a breach of the media restrictions. Basically, there is no particular problem on that issue. The legislation, such as it is, is to be generally welcomed. It will impinge in a very limited manner on Scots law.

11:20

George Lyon (Argyll and Bute) (LD): The Liberal Democrats, too, support the Sewel motion in Jim Wallace's name on the UK Criminal Justice Bill. I do not doubt that my colleague Simon Hughes would have been at the Westminster debate—the Liberal Democrats at Westminster support many of the proposals in the bill. In particular, they support custody-plus orders, which offer an opportunity for more effective sentencing, provided that the probation service is properly funded and that sentencers make better use of probation-based alternatives to custody.

However, my Westminster colleagues will be disputing the Government's basic assertion that the criminal justice system is skewed in favour of the offender. They believe that the Government is undermining essential judicial safeguards for populist reasons, as Bill Aitken suggested. My colleagues will accept the arguments in favour of non-retrospective abolition of double jeopardy but they will strongly oppose the proposals for the disclosure of previous convictions and the abolition of juries for complex cases.

Michael Matheson: Will the Liberal Democrat spokesperson be following his Westminster colleagues who voted against the bill last night?

George Lyon: No. That was Westminster; this is the Scottish Parliament. Mr Matheson does not seem to be able to distinguish between the two. The motion before the chamber is a Sewel motion that will allow my Westminster colleagues to have input into the bill. Westminster is the right place to argue the points that I mentioned; we will make

sure that we are judicious in arguing the points that we believe should be changed. My Westminster colleagues are likely to argue that the public's main concern is not trial procedure but local crime rates and effective policing.

With regard to matters of devolved competence, the proposals all appear to be sensible and should be implemented UK-wide. They deserve the Parliament's support. I restate the Liberal Democrats' support for the Sewel motion.

11:22

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): In supporting the motion, I remind the chamber of some of the reforms of the criminal justice system that are making progress in the rest of the country. Labour members and, I suspect, others in the chamber will be looking for similar progress in Scotland, because those matters are of equal concern in Scotland, not least in relation to part 10 of the Criminal Justice Bill, which seeks to make provision for the retrial of serious offences where there is compelling new evidence and a fair trial can be secured.

It is important that reporting restrictions can be properly imposed in the rest of the United Kingdom. That should not be subverted by what takes place in Scotland. Those provisions relate to the securing of justice throughout the United Kingdom and we should be pleased to support them.

On the provisions for retrials, we should not just tut and move on. We should not just extend sympathy to the Lawrence family and others in similar situations and then do nothing. We have a highly adversarial criminal justice system, but it must not be reduced to a mere game. It is a justice system and justice has failed when the guilty walk free as well as when the innocent are wrongly convicted. I understand from a written answer that we will be keeping the proposals for the rest of the UK under consideration. I suggest to the minister that early consideration would be welcomed.

I also urge ministers to consider the proposals for the rest of the UK on presumption against bail for people who have tested positive for class A drugs and who refuse treatment.

Ministers should also consider part 9 of the bill, which provides for circumstances in which a criminal trial has been halted and a ruling is made that the trial should be terminated. Ministers will be aware of my concerns about the impact of the majority decision in *R v (1) Her Majesty's Advocate and (2) the Advocate General for Scotland*, a judgment that was delivered by the Judicial Committee of the Privy Council on 28 November. Aside from the somewhat unusual comments by Lord Rodger—incidentally, he

ceased being the Lord Justice General for Scotland some considerable time ago—and Lord Hope, Lord Steyn's comments made clear the potentially draconian effects of that decision for prosecutors. I hope that ministers will respond to that in early course.

All those matters might have been appropriate for discussion about the Criminal Justice Bill and what we are doing about it. When we come to the chamber, however, we know that all we will hear is an argument about Sewel motions—it is groundhog day again. The SNP does not want to talk about the substance or the principle—

Christine Grahame: Oh God.

Brian Fitzpatrick: Ms Grahame makes the usual sighing noises from a sedentary position.

Christine Grahame: Only when Brian Fitzpatrick is speaking.

Brian Fitzpatrick: Christine Grahame will not rise to the challenge. We do not hear a word about the SNP's position on the details of the bill. Does the SNP want to duplicate the provisions? Does it want different provisions? We heard from Michael Matheson that the provisions on class C drugs are too severe. Does the SNP want more lenient provisions and a more lenient regime in Scotland? Of course, it will not own up to any of that. All its members will do is come to the chamber, have their usual whinge and bleat and then move on. We are told that whingeing and moaning no longer feature on the nationalist agenda for the Parliament. Sadly, the evidence for that is lacking.

I am grateful to Bill Aitken for giving the view from St Andrew's Square and I am grateful for his pragmatic view that we should consider the efficacy of the provisions. If other members want to exercise their constitutional obsession and navel gaze, we should let them. Those of us who are interested in securing justice and playing our part in the United Kingdom in relation to serious crime, serious fraud and the like should support the motion.

11:26

Phil Gallie (South of Scotland) (Con): My contribution will be brief because I recognise that the effects on Scotland of the Criminal Justice Bill are minimal.

I ask the minister to comment on the interaction between the provisions in the Criminal Justice Bill on search warrants and provisions in the Crime (International Co-operation) Bill, which we will be considering later.

Bill Aitken referred to the fact that my colleagues down south have some reservations about double jeopardy. However, I would have liked more in the

Criminal Justice Bill to be carried over into Scotland in that respect. I have argued strongly over many years about double jeopardy. I will work with my colleagues down south and try to persuade them to change their view, although I realise that they will have the final word on the bill.

I recognise the necessity of reporting restrictions; it would be nonsense not to go along with them. However, although we are talking about the rights of the prosecution, I am led to think about whether the rights of the defence should also be protected. I refer to an abuse case in Ayrshire, in which the judge determined that he would end the trial early. That meant that the accused did not get the chance to prove their innocence. There was still a stain on their names because they had not gone through the whole judicial process.

However, I recognise that, in that case, the application of reporting restrictions might have worked to the disadvantage of the defendants. At the time, the Lord Advocate stated that all was well with the prosecution. I have since found out that the two individuals who made the allegations have been paid something in the region of £22,000 for the failure of the judicial system to give them justice. In my view, the situation should have been reversed. I suspect that that is not relevant to today's debate, Presiding Officer, but I thank you for allowing me to raise the issue.

The Deputy Presiding Officer: We move to some brief final comments. I call George Lyon for the Liberal Democrats.

George Lyon: I pass.

The Deputy Presiding Officer: I call Lord James Douglas-Hamilton for the Conservatives

11:29

Lord James Douglas-Hamilton (Lothians) (Con): First, I apologise to the minister for not being present at the beginning of the debate—I was in Glasgow at the launch by the First Minister and the Deputy First Minister of the report by the cross-party working group on religious hatred, of which I was a member.

I am glad to speak in support of the Sewel motion on the Criminal Justice Bill. On 14 November, I assured the then Deputy Minister for Justice that we would give a fair wind to measures that are designed to give greater protection to the public and to make the voices of victims louder than those of criminals. Some of the proposals, such as the one on double jeopardy, are contentious. I note that at this stage they do not relate to Scotland. If it is proposed to relate them to Scotland, it would be appropriate to put them forward in the context of Scottish Parliament legislation.

Part 10 of the Criminal Justice Bill relates to double jeopardy. Those provisions are not being applied to Scotland, but the proposal to introduce reporting restrictions, such that the media cannot report an application for a retrial or the details, will extend to Scotland. The aim of the Government is to avoid prejudicing future trials. I would be grateful if the minister could reassure me that such restrictions will be applied only before the application has been dismissed or before the retrial has been brought to an end.

If the minister has time, he might like to explain to us the technical difference between a deferred sentence in Scotland and a suspended sentence in England and Wales. It seems that in practice there is relatively little to choose between them. However, I understand that the relevant measure is a sensible one: it is a re-enactment and an enabling measure that will allow criminal measures to be kept up to date throughout Britain.

There are a number of drafting amendments—such as the one to take into account the new definition of community orders in England and Wales—to ensure that sentences will apply and be implemented effectively north and south of the border.

The key to the Sewel motion is that there are no fundamental changes to Scottish law. We will be content to let the Sewel motion go through.

11:32

Christine Grahame (South of Scotland) (SNP): Well, here we are again. We missed a birthday last week: it was happy 40th birthday to Sewel motions. I have a list of Sewel motions from the Scottish Parliament information centre website; it comprises sheets and sheets. What Donald Dewar thought would be a trickle has become a veritable flood. The SPICe website says that a Sewel convention is

“A colloquial term sometimes used”.

Well, it is used very frequently in this chamber.

There are problems with Sewel motions. First, I will tackle the jurisdictional and constitutional issues that arise. One issue arose from a question that I asked ministers about which court would deal with the appeal process. I was told that it would be the Court of Appeal. If that court is the final court of appeal for anything, that will be in breach of the treaty of union, because the final court of appeal in Scotland on criminal matters is the High Court, sitting as the court of appeal. That is the first issue that arises from the Criminal Justice Bill. The unionists say that the bill does not impact on Scots law, but it goes to the heart of the treaty of union. I would like some answers.

Secondly, on reporting restrictions, it seems that the law of the—I always forget the English word for it.

Brian Fitzpatrick: Thingummy.

Christine Grahame: Brian Fitzpatrick can call it that if he likes; my mum was English, and she was not my enemy.

The bill encroaches on the Scots law of the interdict by the back door. At the moment, injunctions—that is the word—in England do not apply to Scotland. That has been a problem for English jurisdiction in relation to Scottish newspapers based in Scotland. By extending the law to Scotland, the bill will encroach on the interdict procedure in Scotland. That is another jurisdictional issue.

Brian Fitzpatrick: Will the member give way?

Christine Grahame: No, I have no time for Mr Fitzpatrick at any time. I do not want to hear from him.

We have problems with the scrutiny of the Criminal Justice Bill. I have hardly had an opportunity to look at the bill, because it has been rushed to this Parliament. It is being put through in England in a rush. There is no chance to look at it. Legislation in Scotland goes to a committee; it has a stage 1 procedure, a stage 2 procedure and a stage 3 procedure. There is also the opportunity to take written and oral evidence. What evidence have we had in this chamber about how our courts feel about the Criminal Justice Bill, how our sheriffs feel about it and how the Faculty of Advocates feels about it? We do not know how they feel. There are huge problems with scrutinising the bill.

We should not just sit here rubber-stamping Sewel motion after Sewel motion. Of course, I expect nothing else from Bill Aitken, who does not want us to do anything here. He wants us to pack up and go back to his home, which is Westminster. As for George Lyon, he speaks for the Janus-like Liberal Democrats, who have two faces: a face for Westminster and a face for here. They are in opposition down the road but they are going to get married up here. They can face both ways, but neither way is worth listening to. As for the Executive, it is letting the little independence that we have with devolution trickle through our fingers because of the flood of Sewel motions back to Westminster. Before the end of the debate, I want an answer to the question about the treaty of union.

11:36

Hugh Henry: I doubt that I will be the source of definitive arguments on the treaty of union. At least, I could not give an answer that Christine Grahame and others would accept. I will return to that matter shortly.

Lord James Douglas-Hamilton asked about, among other things, the difference between a deferred sentence in Scotland and a suspended sentence in England. Far be it from me to give a legal tutorial or legal revision to someone of Lord James's expertise and experience, but I believe that, in Scotland, a deferred sentence means that no sentence is passed and the accused returns to court later for the court to determine whether they have been of good behaviour. In England, with a suspended sentence, the court imposes a sentence, which will bite if the accused behaves badly. If there is anything else that we can help with at a later stage, we surely will.

Phil Gallie and others referred to measures that they would like to see introduced in Scotland. It is interesting that the Conservatives had 18 years in which to enact some of the measures that he desperately wishes to be introduced. The Labour Government at Westminster is to be commended for moving on some of the measures that the Conservatives chose to ignore over the years.

Bill Aitken: Does the minister agree that there is some inconsistency with regard to the collection of fines? The Westminster Government is prepared to take the steps that I have proposed in this Parliament, yet the minister and his colleagues have steadfastly opposed doing so. Can he explain that inconsistency?

Hugh Henry: It is easily explained: we have a different legal system and a different set of political responsibilities. The Westminster Government is doing what is appropriate for England and Wales. We are doing what is appropriate for Scotland. The Westminster Government will learn from some of the things that we do here and, equally, there will be times when we learn from what it does in England. If anything comes from the English experience that is of benefit to Scotland, we will reflect on that.

Bill Aitken probably misquoted me when he said that I gave him some faint praise for supporting the victim ahead of the criminal. I was probably referring more to his enthusiasm for draconian sentencing in all cases and at all times. However, I confirm for him that the Home Office proposes that the word "document" should include computer material; it covers anything that is listed in the warrant. If there are any other issues, I will investigate them.

I confirm for Christine Grahame—to whom I passed a note, but I will confirm it for the record—that the Court of Appeal that is referred to in the Criminal Justice Bill is the Court of Appeal in England, as she said.

There have been some useful, specific and technical comments from SNP members. Inevitably, however, some of their comments were

predictable political posturing—SNP members have not welcomed the opportunity to improve legislative operations in Scotland.

I was intrigued by Michael Matheson's conclusion that, because Annabel Ewing was the only Scottish member who spoke in the debate and because she is an SNP member, that means that the SNP is the only party interested in criminal justice. If we accept that, we must draw the conclusion that, because no SNP member participated in the debates on the minimum wage, the SNP has no interest in the minimum wage.

Michael Matheson raised a number of issues, which I will try to address. On reporting restrictions and clarity, the question is not about the jurisdiction of the court. The bill provides for reporting restrictions throughout the United Kingdom—for example, the Edinburgh and London editions of any newspaper would be affected.

In relation to comments on hostel owners and parents, it has been said that the provision in the bill increases the maximum penalty available to courts. However, the sentence passed in any specific case is a matter for the court, which will take into account the particular circumstances of the case.

Christine Grahame talked about the Court of Appeal. The equivalent reporting restrictions made, for example, by a Scottish court under section 47 of the Criminal Procedure (Scotland) Act 1995 will apply in England.

Generally, although there might be particular issues of concern—

Christine Grahame: Will the minister take an intervention?

Hugh Henry: I am just finishing.

What has been proposed has not only been largely welcomed, but is of benefit to us, despite the SNP's concerns about Sewel motions.

Crime (International Co-operation) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-3670, in the name of Jim Wallace, on the Crime (International Co-operation) Bill, which is UK legislation. Members who wish to contribute to the debate should press their request-to-speak buttons now.

11:42

The Deputy Minister for Justice (Hugh Henry): The Crime (International Co-operation) Bill, introduced in the House of Lords on 19 November, represents an important new step in the fight against international crime.

The measures in the bill will lead to better cross-party—I hope so, yes—I meant to say cross-border anti-crime co-operation. They will speed up the process of tackling international organised crime and, by improving the methods of co-operation that are in place to get the evidence needed to conduct cross-border investigations and prosecutions, they will enhance the ability of law enforcement agencies to deal effectively with some of the most serious of criminal activity.

In particular, as far as Scotland is concerned, both outgoing and incoming requests for assistance will now be dealt with here, rather than having to be routed through London, thus speeding up and making more effective mutual co-operation as far as we are concerned.

The bill, in four parts, is a comprehensive package of measures that will improve and modernise international co-operation between law enforcement and other agencies.

Part 1 provides for a range of mutual assistance measures in criminal matters, including assistance in obtaining evidence and freezing it where there is a danger that it might disappear. New measures will help in the fight against financial crime—and money laundering in particular—by enhancing co-operation with European Union partners with regard to providing information about banking transactions where criminal activity is suspected.

Part 2 makes provision so that extra-territorial jurisdiction is taken over certain offences against British citizens and the premises and staff of UK diplomatic missions abroad in relation to terrorist acts and threats.

Part 3 reforms the law so that drivers who are banned in a country other than their own cannot continue to drive in another country.

Part 4 makes a variety of provisions. For example, it makes provision for the authorisation

of urgent cross-border surveillance operations by overseas officers in tightly controlled circumstances, and it brings in new measures to combat fraud.

The bill consists of a mix of reserved and devolved provisions across a range of international obligations. The matters in the bill that would be within devolved competence have been detailed in the memorandum published by the Executive. However, at this point, it might be useful to summarise those as follows, in relation to the various international obligations.

Many of the provisions in chapter 2 of the Schengen agreement, the 2000 mutual legal assistance convention and its protocol, and the framework decision on the freezing of evidence, would be within the competence of the Scottish Parliament, relating as they do to the practical details of giving mutual assistance between different jurisdictions. The legislative provisions necessary to meet these obligations are in part 1 of the bill.

Parts 2 and 3 of the bill deal with matters that are reserved to the UK Parliament, but part 4 contains two measures within devolved competence. They are the provisions needed to counter fraud, as required by the framework decision on non-cash means of payment, and the obligations of Schengen article 40 with respect to urgent cross-border surveillance by the police, where serious criminal activity is suspected.

The bill is a complicated mix of reserved and devolved provisions reaching across a multiplicity of agreements and the Executive believes that there are good reasons why those should be implemented in the UK in one piece of legislation. First, it is crucial that there is consistency of approach throughout the UK when dealing with organised crime. Big-time criminals are adept at operating across borders and seeking thus to escape detection. That is a highly significant consideration, for instance, in effective police surveillance operations. It is not difficult to imagine that an international criminal might seek to exploit different arrangements between Scotland and England to further his activities and escape detection. That is why it is necessary to ensure that the conditions attaching to urgent cross-border surveillance operations in the UK are the same north and south of the border. In practical and operational terms that position also recognises the potential that, although a foreign surveillance operation might start south of the border, it could feasibly end up in Scotland, and vice versa.

Secondly, the UK legislation would be more effective from the point of view of practitioners and the courts. The bill makes provision to implement the necessary measures in some seven mutual

assistance agreements, ranging from the agreed UK participation in Schengen to the convention on driving disqualification. The main issue for practitioners and the courts in dealing with major cross-border criminal activity is having a clear set of implementing provisions across the UK. That is a practical matter essentially, but it is important nonetheless, so that a clear procedure is set out in one piece of legislation should a rapid response be required to international criminal activity that might have a locus in both jurisdictions.

There was extensive discussion of the general use of the Sewel convention during the debate on the Extradition Bill that was held in the chamber on 21 November and there has been further discussion in the preceding debate today on the UK Criminal Justice Bill. There is no need to repeat that general discussion here.

As was observed in those previous debates, it was anticipated from the outset that there would be circumstances where the Executive and the Parliament would want to ask the UK Parliament to legislate for Scotland on devolved matters. The key point is that there must be a UK-wide bill anyway to implement the measures that are reserved, and in my remarks, I hope that I have set out a good case for why it makes sense to include in the bill matters that are within devolved competence.

I move,

That the Parliament recognises the need for the United Kingdom to ensure compliance with the international obligations for which the Crime (International Co-operation) Bill makes provision and agrees that those provisions in the bill that relate to devolved matters should be considered by the UK Parliament.

11:48

Michael Matheson (Central Scotland) (SNP): We have already been asked to pass a Sewel motion on a House of Commons bill, although Westminster is pressing ahead with it. Now we are being asked to pass a Sewel motion for a House of Lords bill. That great democratic institution is dealing with the bill that we debate today. At least the House of Commons, unlike the House of Lords, has democratic legitimacy and accountability to some extent.

The bill is a result of EU legislation and I turn to the issue of EU legislation in the area of justice and home affairs. Scotland's problem is that European legislation on international crime is decided in secret by the Council of Ministers with the European Parliament playing no more than a consultative role. As Scotland is not represented on the Council of Ministers, we have no opportunity to affect the development of the European law that we will subsequently be required to implement.

We would have that opportunity, however, if Scotland were a member of the Council of Ministers as an independent nation. Although we might not be able to affect the development of EU legislation, we have an important role to play in its implementation.

The Executive's memorandum on the bill states

"The purpose of this Bill is to implement binding international obligations. There would therefore be little or no scope for the Scottish Parliament to legislate in a way which was significantly different to the provisions contained in this Bill."

That is not entirely correct. Framework decisions are binding on member states in terms of what they should achieve, but they leave member states or national authorities to choose the means by which they pursue that objective. That is contained in article 34(2)(b) of the Maastricht treaty, which I am sure all members have brought with them today. The Parliament therefore has a role to play in the implementation of such international obligations.

Pauline McNeill (Glasgow Kelvin) (Lab): Michael Matheson said in the earlier debate on the Criminal Justice Bill that his party's position is that an independent Scotland would be an individual member state. If he has his wish—I am sure that he will not—what provisions does he believe would be different from those that are set out in the Crime (International Co-operation) Bill?

Michael Matheson: The important thing is that we are given the opportunity to decide how European decisions are implemented in Scotland. I shall give an example. The Home Office produced a document on the implementation of the protocol to the convention on mutual assistance in criminal matters. Hugh Henry referred to that protocol, and the bill will introduce that protocol. The Home Office document contained three different options as to how the protocol could be implemented. It chose an option that would, according to the Government, reduce the burden on banks, and the minister referred specifically to banking transactions.

We have a choice as to how we pursue EU legislation that has an effect on our jurisdiction and we should exercise that choice. It is an opportunity that we, as a Parliament, should recognise allows us to ensure that Scottish interests are properly served.

I wish that ministers would take a more active role in Europe, and I would like to spend a moment looking at their record on pursuing justice and home affairs matters in Europe. Over the first five months of the Danish presidency, the Scottish Executive has sent officials to seven meetings or working groups on justice and home affairs issues. The Danish presidency's website shows that there

have been 184 such meetings. The Executive has not sent officials to any working party on the Schengen agreement, on substantive criminal law, on criminal civil protection or on terrorism, or to the multi-disciplinary group on organised crime. It has missed most of the working parties on co-operation in criminal matters and on police co-operation.

Given the amount of EU legislation that the bill will introduce, I hope that the minister will explain exactly what role the Executive is playing in the framing of that legislation. He should also tell us whether the Executive is meeting officials and ministers at Westminster, to ensure that whatever decisions are reached at Westminster as to how that legislation is introduced are the best options for Scotland.

I would like the minister to clarify several points in the bill. In clause 7, why is it open to both the prosecuting authority and the judicial authority to request assistance from overseas authorities? What protection is there to ensure that evidence obtained under clause 6 is fairly obtained? Will Scottish courts be able to review the actions of foreign authorities when gathering such evidence?

I would also like him to clarify the role that the information commissioner in Scotland will have in accessing the Schengen information system database. I understand that that system will be used by the information commissioner in London, but it is not clear whether the commissioner here in Scotland will have the same opportunity.

Scotland is disadvantaged as a nation, not only by not being able to be at the top table in developing European legislation, but by the Executive's track record on being represented at meetings relating to justice and home affairs. That record makes it clear that the Executive either chooses to leave it to Westminster or does not even bother turning up to make its voice heard.

11:54

Lord James Douglas-Hamilton (Lothians) (Con): I warmly welcome Hugh Henry's speech. The Sewel motion relating to the Crime (International Co-operation) Bill implements European Union commitments in the area of police and judicial co-operation. The relevant scrutiny committees of both houses of the United Kingdom Parliament have examined the European directive that the bill thoroughly implements. The bill makes legislative changes that will implement those commitments.

We are perfectly happy that the United Kingdom Parliament should deal with the matter, as it is a subject that, in our view, needs to be dealt with on a United Kingdom basis. We must make it clear that the fight against terrorism is being dealt with

effectively. That means that we must put in place arrangements for closer co-operation between police forces, customs and intelligence services throughout the European Union. We believe that it is right to aim for meaningful, effective and helpful co-operation.

Our colleagues at Westminster will no doubt distinguish between such co-operation on the one hand and harmonisation, which they could not support, on the other. They will also want to ensure that civil liberties are not undermined. For example, they will want to consider with the utmost caution the provisions to allow police and customs officers from other countries to carry out surveillance in the United Kingdom for five hours without first having had their activities cleared by British authorities. That provision could be amended at Westminster and is contentious.

The parts of the bill that are relevant to Scotland include the following subjects. First, there is the subject of mutual assistance in criminal matters, which relates to orders freezing property and to providing banking information relating to criminal investigations. Although matters relating to money laundering and financial services are reserved to the United Kingdom Parliament, information on bank accounts is a devolved matter, and it makes sense to have a consistent policy to prevent international crime and fraud.

Secondly, with regard to terrorist acts, provision is made so that there is extra-territorial jurisdiction over certain offences against British citizens and the premises of embassies abroad. Similarly, provision is made for jurisdiction over attacks on premises and staff of European Union institutions that are based in the United Kingdom. That is not a devolved matter, but the provisions apply to Scotland and their implementation could well come under the remit of this Parliament.

Thirdly, with regard to driving disqualifications, it must surely be right that such disqualifications should be recognised throughout the European Union. It must be wrong that drivers who are banned in one country can drive in another, and part 3 sorts that out. Again, the implementation of that reserved subject would be dealt with by Scottish law enforcement agencies.

Fourthly, the bill sets out additional measures relating to police co-operation, data protection and the Schengen convention. For example, the information commissioner can obtain access to the Schengen information system and inspect without a warrant. There is also authorisation of cross-border surveillance, required by article 40 of the Schengen agreement. The minister will note the views of my colleagues at Westminster on that.

Many of those provisions will be the subject of considerable debate in the United Kingdom

Houses of Parliament. We think that that is the appropriate forum for that debate and we are content that that should happen. We recognise that the purpose of approaching international co-operation in tackling crime in the way set out in the bill is to make it harder for criminals and easier for international enforcement agencies. Having a single piece of legislation will assist in the fight against crime, and we support the motion.

11:58

George Lyon (Argyll and Bute) (LD): I pledge the Liberal Democrats' support for the Sewel motion, in Jim Wallace's name, on the Crime (International Co-operation) Bill. The title says it all; it is about co-operation across the EU in tackling crime and terrorism.

As the minister said in his speech, the key provisions are the implementation of the mutual legal assistance provisions of the Schengen convention, the provisions to enable the execution in the EU of orders freezing property and evidence, and the provisions to combat a range of terrorist offences throughout the EU. Those measures reflect the need to tackle crime and terrorism on an EU-wide basis, and they reflect the fact that crime and terrorism neither know nor respect national boundaries. Countries must therefore work together to tackle criminals and terrorists.

The impact of the crimes committed by gangs on a transnational scale is often felt at a local level. That is especially true in the case of drug trafficking. It is therefore essential that there is close co-operation between EU countries to take on international criminal gangs.

Part 4 of the bill implements the Schengen convention in respect of police co-operation, extradition and data protection. As Lord James Douglas-Hamilton rightly highlighted, the bill will give UK police forces access to the Schengen information system, which is a large computer database of criminals and suspected criminals throughout the EU. That is surely a step forward in combating international terrorism and international criminal gangs. Access to such information must strengthen the arm of UK police forces in tackling crime in the UK.

Lord James Douglas-Hamilton raised concerns about hot-pursuit procedures, which would allow officers from a member state to conduct unaccompanied surveillance in another member state for up to five hours. He said that he was concerned about such surveillance on civil liberties grounds, but I think that his concerns were more to do with Euroscepticism. Given the nature of the international terrorism that we are trying to tackle, his concerns are misplaced.

Lord James Douglas-Hamilton: I mentioned concerns that colleagues at Westminster must deal with; they are not necessarily my concerns. In emergencies, it is obvious that police forces must work quickly. I suspect that the issue will be the subject of debate at Westminster.

George Lyon: I was reflecting the views that the member mentioned.

John Wadham, who is the director of the human rights organisation, Liberty, has also expressed concerns. He criticised aspects of the bill and said that

“We have enough problems regulating our own authorities’ use of surveillance in the UK”

without giving those powers to foreign police forces.

Those are genuine concerns, but provided that adequate safeguards are put in place, the measures deserve support.

In conclusion, the Liberal Democrats support the Sewel motion.

12:02

Pauline McNeill (Glasgow Kelvin) (Lab): I welcome visitors in the gallery from Hillhead Primary School in my constituency. I must be on my best behaviour this morning.

I congratulate Hugh Henry on his appointment as Deputy Minister for Justice. He will already know that the justice remit means that within three days, he will have dealt with two stage 2 debates and two Sewel motions without stopping to think. He will know what I, Christine Grahame, Michael Matheson and other members feel about the remit, which I think we have dealt with reasonably in the past three and a half years or so.

The Crime (International Co-operation) Bill implements several of the UK’s outstanding obligations in respect of EU agreements on police and judicial co-operation. The need to tackle serious crime internationally is a crucial aspect of our general approach to criminal justice, because organised crime is conducted across national borders.

The bill was introduced in the House of Lords on 19 November and will implement the UK’s partial participation in the Schengen convention, which, as we have heard, facilitates the free movement of persons. The Sewel motion that we are considering is necessary to ensure that there is international co-operation and that respective obligations are the same in the UK and in each European member state.

The principle behind the bill is essentially to ensure that serious crime throughout Europe can be dealt with speedily as and when it happens and

without there being barriers to tackling it. The intention is to ensure that such crime can be tackled with the urgency that is needed. Of course, that requires a degree of trust between nations, particularly in respect of allowing surveillance of criminals in order to detect acts of terrorism or similar threats to national security. However, the whole of Europe will benefit by signing up to the measures.

Part 1 of the bill concerns mutual assistance in criminal matters and the provision of information—for example on bank accounts and transactions—when a criminal investigation is on-going. That means that assets can be frozen and, crucially, that orders protecting evidence that might be needed to demonstrate criminal activity can be frozen if necessary. That is essential in international fraud or money-laundering cases.

Part 3 of the bill concerns the convention on driving disqualification, which is a reserved issue. A driver who is banned in one EU country will, in effect, be banned in every EU country. That is crucial for public safety. Perhaps the minister will clarify that the ban and the duration of the ban will be imposed by the relevant court and protected by every other member state.

Among other things, part 4 of the bill extends the list of instruments of payment that are covered by section 5 of the Forgery and Counterfeiting Act 1981 to include bills of exchange and credit and debit cards—in other words, non-cash means of payment.

There is a need to scrutinise constantly the effect of Sewel motions such as the motion under consideration. If EU matters are being considered, the Parliament and its committees should make an input where that is appropriate. However, to deny that international crime is best dealt with on a UK basis is to fail to understand the threats to our society and the extent of drug trafficking, human trafficking, terrorism and threats to national security. Many members understand that human trafficking is a real, live issue, particularly in the EU. Last night, there were raids on eight saunas in Glasgow city centre in my constituency. I am pleased to report that no person was being held in the saunas against their will, although 10 foreign nationals were found in them.

Each Sewel motion should be considered on its own merits and the merits of the motion before us are well established. EU co-operation on criminal justice matters is reaching new heights. Where possible, we should encourage treaties and protocols with countries worldwide, because it goes without saying that serious crime is not confined to European borders.

I support motion S1M-3670, in the name of Jim Wallace.

The Presiding Officer (Sir David Steel): We now proceed to winding-up speeches.

12:06

Phil Gallie (South of Scotland) (Con): This is the third time in two days that I have risen to support the Labour-Liberal Government's proposals. I admit that I am beginning to worry, but I will correct things if I am called to speak on another motion this afternoon.

The minister referred to the complications that surround the Sewel motion. Michael Matheson complained about the number of Sewel motions that go through the Parliament, but that simply underlines the intertwining of the national interests of the Welsh, English, Scots and Northern Irish under the union. Such intertwining brings many benefits.

Hugh Henry suggested that the Conservatives had not achieved all that I would have wanted them to achieve in 18 years. I concede that. I would have been happier had the incoming Labour Government in 1997 implemented Michael Forsyth's proposed criminal justice legislation, which would have done much to alleviate some of the recent problems of rising crime.

I want to consider the Sewel motion and some reasons why support for it is necessary. Part 1 of the bill deals with the freezing of bank accounts. I have a little sympathy with what Michael Matheson said about the consultation process. When we foresee Sewel motions and consultation is to take place in England and Wales only, perhaps Scottish ministers could ensure that consultation is extended to Scotland. That would be fair and right and does not undermine the fact that, ultimately, in this case, a Sewel motion is relevant.

On part 2 of the bill and the movement of terrorists, it would be absolutely ridiculous if we went down one line and people south of the border went down another line so that somebody could move from Newcastle to Duns or vice versa and use legal technicalities to escape justice.

Part 3 of the bill covers a situation of which I was unaware, and that the bill addresses that situation is to its credit. Apparently, a person in Northern Ireland can come to the UK mainland and pick up a mainland driving licence. That is nonsense. Good legislation addresses nonsense, and the bill does so.

I am happy that Scots will derive benefits from a bill that will also affect England, Wales and Northern Ireland. The commonsense approach of a Sewel motion will progress a number of other issues, but I want to return to the Schengen aspect of the bill.

I would never sign up to any move at Westminster or elsewhere to reduce our border

controls. Through the bill, the Government south of the border is trying to align the law with Schengen to a degree. I acknowledge that the matter is reserved, but I do not want to go beyond some of the Schengen provisions. Overall, I am happy that our elected representatives—the 72 members of Parliament from Scotland who go south of the border to voice Scotland's opinions on such issues—do their job.

Christine Grahame (South of Scotland) (SNP): The Conservatives have only one MP in Scotland.

Phil Gallie: Sadly, we have only one Conservative MP in Scotland, and I concede that that is far too few. He cannot be everywhere all the time, and when he is not in the House of Commons, he has good reasons. Perhaps the situation can be rectified and we will be able to play a greater part in United Kingdom affairs, to Scotland's benefit.

12:10

Christine Grahame (South of Scotland) (SNP): Of course, I share fully Pauline McNeill's sentiments about tackling international crime. The Scottish National Party supports measures to tackle international crime, which knows no boundaries.

The problem with the Sewel motion is that Scotland will not have the opportunity to scrutinise the Crime (International Co-operation) Bill. My colleague Michael Matheson told members that the Minister for Justice has attended seven out of 184 meetings on justice matters in Europe. We do not have the opportunity to scrutinise the proposals, because we are not represented directly at the Council of Ministers. The Minister for Justice cannot give the distinctive Scottish input on criminal matters, because an English minister goes to the Council. That is a huge problem, particularly for criminal law in Scotland.

I say to Pauline McNeill that the Executive says:

"the purpose of this Bill is to implement binding international obligations. There would therefore be little or no scope for the Scottish Parliament to legislate in a way which was significantly different to the provisions"

in the bill. What the Executive says is not the case. As Michael Matheson said, framework decisions are binding on member states as to the results to be achieved, but leave the form and method of implementation to states. I will develop briefly his argument.

The Home Office has issued a document on the protocol that requires European Union member states to locate and provide details of all bank accounts and transactions of a person who is the subject of a serious crime investigation and to

monitor the activity of any account that they hold. The Home Office suggests three options for implementing the protocol. The first option is to rely on existing legislation, which would not allow the protocol to be ratified. The UK would be under no obligation to help foreign investigators and they would not have to help the UK. The second option is to legislate in accordance with a minimalist interpretation of the protocol and to allow judges discretion as to whether to grant a warrant for monitoring bank accounts. The third option is to require automatic implementation of requests from foreign investigators to monitor bank accounts.

The Home Office suggests choosing the second, discretionary, option, because it would have lower compliance costs for banks than the third option, as fewer warrants would be granted. Unlike the first option, the second option would allow the protocol to be ratified, so the UK would have reciprocal investigation by other authorities. The Home Office says that, as far as possible, the UK should go for the low-cost option for reciprocal investigation by other countries.

The choice about implementing the protocol is plainly substantial and moral and falls within devolved areas. Given the chance to examine the proposals, Scotland might want to be more helpful to our European partners than the Home Office intends to be and to go for automatic implementation of requests. By not having input, we have surrendered that moral choice and given our power to England, which has chosen the lesser option.

That is why we oppose the Sewel motion. Of course we support international co-operation on criminal matters, but Scotland had the choice to do even more than England appears to be doing.

12:14

Hugh Henry: It is disappointing and regrettable that, for party-political reasons more than anything else, the Scottish National Party opposes the opportunity to increase international co-operation to deal with crime.

It is sometimes difficult to place the matter in context, because particular legal issues have been raised, but it is important to reflect on what the bill will mean for ordinary people in our communities, many of which are blighted by the horrors of drugs. We know that major drug criminals are reliant on being able to operate across borders. The new measures will make an important contribution to our ability to track down drug criminals and to determine whether money laundering, for instance, has been used to conceal the proceeds of crime.

The bill is important because it will enable the UK to implement several outstanding international commitments. It will also help to deliver practical,

effective action against those who are engaged in serious crime. International inquiries into serious crime face practical difficulties because of the need to operate across different jurisdictions. We want to do all that we can to support cross-border inquiries to ensure that big-time criminals cannot exploit national boundaries in the way that was mentioned earlier.

Christine Grahame: If the Executive had the choice and it wants to do as much as it can, should not we be going for the third option? That would allow automatic implementation of requests from foreign investigators to monitor bank accounts.

Hugh Henry: We have before us today a series of measures that will make an effective difference. If there are measures that we can take ourselves from time to time or measures that we can take as part of UK-wide legislation, that will be the right thing to do. The issue before us today is whether we are prepared to accept the bill. When we are asked whether we believe that it will make a difference, we say that we believe that it will. Those who refuse to accept the opportunities that the bill presents will have to answer for that themselves.

It is also important to remember that we are debating reciprocal arrangements that will benefit our law enforcement agencies if they need to get urgent assistance from a partner country. It will also help to deter overseas elements from coming to the UK to carry out criminal activity.

In addition to the major issues that are before us, some small anomalies are also dealt with, for example the unacceptable anomaly that people with a driving conviction in Northern Ireland are not banned from driving in the rest of the UK, which Pauline McNeill and Phil Gallie mentioned. Pauline McNeill raised other issues and I will try to give further background on them, but if I do not answer all her points, I will do so later.

There will be a right of appeal against the recognition of an overseas disqualification in the UK. Grounds will include the driver not having an adequate opportunity to defend himself or herself abroad or the fact that the offence was not covered by the European convention on human rights. Drivers will have 21 days within which to appeal and the court may, where it sees fit, suspend the disqualification pending the outcome of the appeal. We believe that that provides crucial safeguards. UK drivers must abide by the laws of the member state in which they are driving. If a person breaks a member state's drink-driving law, for example, we believe that they should not escape the consequences when they return home.

Pauline McNeill: It is important to have clarification on how that will operate in practice. If

other countries have different grounds for disqualification in drink-driving cases, it is important to know whether the driving ban will be active in Scotland. I realise that it might not be possible for the minister to confirm that today.

Hugh Henry: The point that we are making is that the rules that led to disqualification in the other country will lead to disqualification in this country. In the case of drink driving, the other country might apply a higher or lower level to a ban on driving, but whatever the application is in the other country, it will lead to a ban in Scotland irrespective of the fact that our levels are different. I can talk to Pauline McNeill later about the other issues she might want to raise.

Time and again, we hear the point that was made about Council of Ministers meetings. The arguments are always the same, so the replies are essentially always the same.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Will the minister confirm whether the officials who are sitting at the back of the chamber have access to e-mails, telephones and fax machines? Will he also confirm that they have the benefit of the documents that are circulated around the devolved Administrations under the various concordats that were agreed with Her Majesty's Government, including those on justice and home affairs? It is not as if the United Kingdom did not take part in meetings on the Laeken summit and the Treaty of Nice. The UK led those discussions in the EU, and was ably represented by a number of prominent Scottish members of the UK cabinet.

Hugh Henry: Brian Fitzpatrick makes his point very well. Our officials are in regular contact with UK Government officials, and we have the opportunity to influence what they take to meetings and to receive the information that they obtain at them. At a political level, we have time and again documented and detailed our influence on European policy and legislation through our participation in the UK. As we have said, being part of a major European nation that is a major player in Europe gives us influence way beyond any influence that we would have if we were simply a member country of 5 million people. Scottish ministers attend EU councils and regularly discuss EU policy on EU matters with UK counterparts. It is not correct to say that we have no influence on EU law.

Phil Gallie mentioned prior consultation on the bill. I should point out that, as soon as a UK bill is published, we publish a detailed memorandum that sets out any devolved elements. However, we will certainly consider any measures that we can take to improve such consultation.

Peers have raised several substantive issues about cross-border surveillance, which the UK Government will consider further at committee stage in the House of Lords in January. There was a second reading of the bill in the House of Lords on 2 December.

As for the operation of the Schengen information system in Scotland, the system's Scottish base is the National Criminal Intelligence Service in Paisley. The NCIS controls access to information, and the information commissioner will be able to inspect data security at any point and without notice.

On the question about requests for assistance under clause 7, the Lord Advocate might need to make any such requests at the investigative stage—in other words, before proceedings come to court. Finally, on Michael Matheson's question on the admissibility of evidence under clause 6 and whether we can be sure that such evidence is obtained fairly, the courts will ultimately adjudicate on the admissibility of evidence in all cases.

The bill is an important piece of legislation that will bring major benefits to our partners in Europe and—significantly—to us. Not only will it enable us to deal with some small anomalies such as driving disqualifications, but it will mean that we will be able to work together to tackle some of the worst aspects of international crime.

I invite Parliament to support the motion.

The Presiding Officer: The decision on that motion will be taken at 5 o'clock.

Business Motion

The Presiding Officer (Sir David Steel): The next item of business is consideration of business motion S1M-3675, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out the business programme that is printed in the business bulletin.

I call Euan Robson to move and—if he wishes—to speak to the motion.

12:24

The Deputy Minister for Parliamentary Business (Euan Robson): I will make a short speech. I am pleased to be able to inform the chamber that the SNP has indicated that the topic for debate on the morning of Thursday 12 December will be children's and young people's services in Scotland.

I move,

That the Parliament agrees—

(a) the following programme of business—

Wednesday 11 December 2002

2:30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Stage 1 Debate on Mental Health (Scotland) Bill

followed by Financial Resolution in respect of the Mental Health (Scotland) Bill

followed by Parliamentary Bureau Motions

5:00 pm Decision Time

followed by Members' Business—debate on the subject of S1M-3589 Karen Gillon: The Sale of The Herald, Sunday Herald and Evening Times by SMG

Thursday 12 December 2002

9:30 am Scottish National Party Business

followed by Business Motion

2:30 pm Question Time

3:10 pm First Minister's Question Time

3:30 pm Executive Debate on Fisheries 2003

followed by Parliamentary Bureau Motions

5:00 pm Decision Time

followed by Members' Business—debate on the subject of S1M-3464 Donald Gorrie: Debt and Lending

Wednesday 18 December 2002

2:30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Stage 1 Debate on Homelessness (Scotland) Bill

followed by Financial Resolution in respect of Homelessness (Scotland) Bill

followed by Parliamentary Bureau Motions

5:00 pm Decision Time

followed by Members' Business

Thursday 19 December 2002

9:30 am Finance Committee Debate on its 7th Report on Stage 2 of the 2003/2004 Budget Process

followed by Business Motion

2:30 pm Question Time

3:10 pm First Minister's Question Time

3:30 pm Stage 1 Debate on Agricultural Holdings (Scotland) Bill

followed by Parliamentary Bureau Motions

5:00 pm Decision Time

followed by Members' Business

(b) that Stage 1 of the Gaelic Language (Scotland) Bill be completed by 27 February 2003

and (c) that the Justice 1 Committee reports to the Justice 2 Committee by 17 December 2002 on the Act of Sederunt (Fees of Sheriff Officers) 2002 and on the draft Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2002.

Motion agreed to.

12:24

Meeting suspended until 14:30.

14:30

On resuming—

Question Time

SCOTTISH EXECUTIVE

Ritalin

1. Mary Scanlon (Highlands and Islands) (Con): To ask the Scottish Executive how many children under the age of six have been prescribed the drug Ritalin. (S1O-6033)

The Minister for Health and Community Care (Malcolm Chisholm): Prescription data collected centrally are not patient-specific. Ritalin is not licensed for children under six years of age. A medicine can be used outside its licence, but that would be a clinical decision for the doctor concerned.

Mary Scanlon: Is the minister concerned about the increasing number of children, including very young children, who are being prescribed Ritalin? Does he have concerns about the long-term effects on those children as they reach adulthood?

Malcolm Chisholm: I have had concerns about the matter over a period of time. Constituents, including one who contacted me this morning, have expressed concerns about the prescription of Ritalin, particularly its prescription for children under the age of six.

That said, in my current position I have to listen to clinical advice. A Scottish intercollegiate guidelines network guideline that came out last year makes it clear that drugs such as Ritalin have a role to play. However, the guideline also states that they should be part of a multidisciplinary approach and that non-pharmacological treatments—including behaviour management—are equally, if not more, important.

Mr Adam Ingram (South of Scotland) (SNP): Why has the Executive not allocated resources to ensure the implementation of the SIGN guideline 52? As the minister says, it advocates the use of psychosocial therapies to reduce dependence on drugs such as Ritalin.

Malcolm Chisholm: In general terms, resources have been allocated, although they are not allocated specifically on the basis of each SIGN guideline that is produced. It should certainly be possible to implement the guideline—which is obviously the guideline to which clinicians should look for advice—within the overall increases in health and local authority budgets.

European Funding (Highlands and Islands)

2. Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): To ask the Scottish Executive whether it will make representations to the European Commission regarding the loss of objective 1 status for the Highlands and Islands as a result of any miscalculation of figures by the Office for National Statistics. (S1O-6037)

The Deputy Minister for Finance and Public Services (Peter Peacock): As always, we will fight to secure the best possible deal for the Highlands and Islands. The deal struck by Tony Blair in Berlin in 1999 means that the Highlands and Islands receives regional aid that is comparable with the funds received by an objective 1 area. We will use the most up-to-date statistics that are available to us in any negotiations on future aid.

Mr Stone: I am grateful to the minister for his reply and for the assurance that the Executive will argue for the best deal for the Highlands and Islands. He will have my full support in doing so.

The minister will be aware of the significant benefits that European funding has brought to my constituency over the years. Can he tell the Parliament what efforts have been made to prepare the ground for the debate in the future? Will he meet representatives of Highlands and Islands Enterprise and the Highland Council to hear their views on the need for continuing regional aid for the Highlands and the best methods of achieving that assistance?

Peter Peacock: As Jamie Stone rightly says, European aid has brought enormous benefits to the Highlands and Islands, not least to his constituency where, for example, the Scrabster harbour project is improving the infrastructure of the area.

We have had a lot of discussions with our UK colleagues about the future. I attended the cohesion forum in Brussels to discuss the second cohesion report and to set out the Scottish position. I also attended the recent Euromontana conference in Inverness on the matter. On three occasions, I have met Commissioner Barnier, who spent some time in the Highlands and Islands earlier in the year talking about these issues. We also recently held a meeting of the structural funds forum in Scotland, which brings together all the key players to consider the future of structural funds. The forum includes the chairman of HIE and the leader of Highland Council. We will continue those discussions and preparations.

Mr Duncan Hamilton (Highlands and Islands) (SNP): In recent days, the minister has made great play of a letter that he has received from the European Commission that rules out any appeal against the loss of European cash for the

Highlands and Islands. Will he publish that letter? Does it explicitly and incontrovertibly rule out the possibility of reclassification of the current funding package to objective 1? Does he recognise that securing such an outcome would ensure that vital regional aid continues beyond 2006 in the Highlands and Islands?

Peter Peacock: The question demonstrates a lack of understanding of the issues by the Scottish National Party.

Stewart Stevenson (Banff and Buchan) (SNP): By you.

Peter Peacock: Not by me—by SNP members. The Commission has confirmed that past negotiations cannot be reopened. However, that is not relevant because the future negotiations are what is important. I have always made it clear that we will use the most up-to-date statistics in future negotiations, at which we will argue hard for the Highlands and Islands and for Scotland.

Mr Jamie McGrigor (Highlands and Islands) (Con): If a mistake has been made and an enormous amount of money has been lost for the Highlands and Islands, does the minister intend to get the money back and, if so, how?

Peter Peacock: Mr McGrigor's question is based on another misunderstanding and implies that the Highlands and Islands has somehow lost out, which is not the case. In Berlin in 1999, Tony Blair negotiated a special deal for the Highlands and Islands, which will bring more than €300 million to the area over a six-year period. That deal is comparable to what would have happened if the area had retained objective 1 status and is the reason why progress has been made on many infrastructure programmes throughout the Highlands and Islands. As I have said, the Executive will continue to argue hard on that issue.

Community Care Services

3. Elaine Thomson (Aberdeen North) (Lab): To ask the Scottish Executive what progress has been made on developing a joint-future approach to the delivery of community care services. (S10-6050)

The Deputy Minister for Health and Community Care (Mr Frank McAveety): We are already making good progress on shifting the balance of care for older people using the new funding, which will rise to £48 million next year, to develop more intensive and flexible home care services. By April 2003, we will implement key areas such as joint resourcing and joint management for older people and single shared assessment for all care groups.

Elaine Thomson: Is the minister aware of the recent newspaper article that misrepresented a

joint community-care project to provide non-hospital care for older people in Smithfield Court in Aberdeen? Will the minister reassure the families and the older people involved that the community care that is provided is of a high standard? Will he join me in condemning the ill-informed comments made by some Opposition MSPs?

Mr McAveety: I thank Elaine Thomson for her question. The project she mentions is a joint project agreed between Aberdeen City Council and the local health board. It is part of the strategic response to delayed discharge, which aims to find more effective local ways of helping people who are taken out of hospital. I am not surprised by the sensationalist press coverage, but to describe the project—as the Opposition spokesperson on health has done—as a makeshift hospital that is not the answer and which will not provide the care the patients need, is to ignore the key role of the Scottish Commission for the Regulation of Care in assessing the quality of care. The project will complement existing provision of sheltered housing for older people and is part of a package that aims to provide the most appropriate care in the localities where people want it.

Shona Robison (North-East Scotland) (SNP): Does the minister agree that the joint-future approach between local authorities and health boards is completely missing from the Mental Health (Scotland) Bill, which is being considered by the Health and Community Care Committee? Will the Executive address that omission?

Mr McAveety: We are absolutely committed to working in partnership on community care. In fact, the Health and Community Care Committee has examined many of those issues. The Executive is confident that we will develop a partnership approach that recognises the issue of mental health.

The original question was about the appropriateness of care provision. I assure members—although Opposition members do not want to hear this—that the project that Elaine Thomson mentioned is a model that will deliver for older people in the Aberdeen area and that will provide the support they require in their community. It is not only in relation to that project that we need to be sensitive about the language we use; language on care issues throughout Scotland should be sensitive as we try to deliver the best quality care for the older people of Scotland.

NHS 24

4. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Executive what progress is being made on the roll-out of NHS 24. (S10-6026)

The Minister for Health and Community Care (Malcolm Chisholm): NHS 24 was launched in Grampian in May 2002 and in greater Glasgow in November. It now provides a 24-hour service to some 1.6 million people. The phased roll-out programme aims to provide Scotland-wide coverage by December 2004.

Karen Whitefield: I welcome the move to roll out the service and I inform the minister of the support for the service that I have encountered in my constituency. When does he expect the service to be rolled out in Lanarkshire? Will he comment on the fact that the staff who provide the service are invaluable members of the national health service family?

Malcolm Chisholm: I pay tribute to the staff who work for NHS 24, whom I was pleased to meet in both Aberdeen and Glasgow. I am sure that all members were as appalled as I was by the senior doctor who described them as monkeys. I am sure that we all condemn that unreservedly.

On the first point that Margaret Jamieson made—

The Presiding Officer (Sir David Steel): It was Karen Whitefield.

Malcolm Chisholm: I apologise. I am utterly confident that NHS 24 provides a good service because I have spoken to people in Aberdeen and Glasgow who have used it and who have benefited from an integrated service. In the past 24 hours, I have spoken to someone who phoned NHS 24 in Glasgow. The information from that call went straight through to the accident and emergency department that she then attended. Patients will benefit increasingly from integrated and seamless services.

Maureen Macmillan (Highlands and Islands) (Lab): Does the minister realise that the advent of NHS 24 is eagerly awaited by rural communities in the Highlands, where primary care services are under great pressure? Can he assure me that NHS 24 will be able to deliver an improvement to the health service in rural areas? When can we expect it to be rolled out to the Highlands and Islands?

Malcolm Chisholm: As I said in my first answer, NHS 24 will be rolled out across Scotland by the end of 2004. It will be rolled out early in the Highland region, given that it started in the north of Scotland. Over and above the general benefits that will apply throughout Scotland, NHS 24 will have particular advantages for rural areas. For example, general practitioners in rural areas will benefit, in terms of their being on call.

The Presiding Officer: Question 5 has been withdrawn.

European Funding (Highlands and Islands)

6. Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): To ask the Scottish Executive what its estimate is of how much the Highlands and Islands will receive in regional aid from the European Union from 2006 to 2010. (S10-6018)

The Deputy Minister for Finance and Public Services (Peter Peacock): It is premature to place any limitation on our ambitions for regional aid post-2006 within the context of a significantly enlarged EU.

Fergus Ewing: I would have thanked the minister if he had answered the question. First, will he admit that the Highlands and Islands should now have objective 1 status? Secondly, will he admit that we do not have objective 1 status because the UK Office for National Statistics bungled the job and the figures? Thirdly, does he agree that, if we had objective 1 status, we would automatically qualify for transitional relief after 2006? Fourthly, does he accept that the cost of that failure by the UK Government and its agencies could be up to £200 million for the Highlands? Finally, will he publish or keep secret the letter from the Commission, to which he referred earlier?

Peter Peacock: Fergus Ewing is not right about many things, and he is wrong again on this occasion, on all fronts. There is no automatic qualification—[*Interruption.*]

Fergus Ewing: Will the minister publish the letter?

The Presiding Officer: Order. Let us have no commentary during the answer, please.

Peter Peacock: There is no automatic entitlement to transitional aid. The Executive continues to fight hard for the Highlands and Islands, as it always has. I have already referred to the fact that the Highlands and Islands have not lost out in any respect, as they have received special transitional aid from Europe equivalent to what would have been received under objective 1 status.

Fergus Ewing displays a misunderstanding of the situation that reveals the difference between the coalition parties and the SNP. We are certain about what we are seeking to do and we are using the facts, whereas SNP members like to use incomplete statistics. We have a proven track record, in contrast to the risk and uncertainty that is offered by the SNP as it seeks to take us out of the UK, threatening our future in Europe and our share of the rebate. That is why the Scots people do not trust the SNP.

Dr Winnie Ewing (Highlands and Islands) (SNP): Could we please clear up a mis-statement of fact that keeps being made by members of the

Labour Government? They say that a special deal was made when we lost objective 1 status; that lie is not only told, but is repeated and repeated. Areas that had objective 1 status would have qualified automatically for transitional money.

I remind the minister that when the Highlands and Islands were alone in Europe in having bordering on 70 per cent of the average gross domestic product per head—we had no competitors at that—Scottish Office officials wanted to fight to get objective 1 status for the Highlands, because we were so near the threshold. However, we did not fight then. Is there going to be no fight again by the Labour Government?

Peter Peacock: Those are extraordinary assertions when it is known full well—I repeat—that there is no automatic entitlement to anything else at the end of an aid period. The transitional aid was achieved by negotiations that were partly conducted by Scottish interests through the Convention of Scottish Local Authorities and others, such as the former Scottish Office. As I indicated, the Highlands and Islands benefit enormously from European aid. We will continue to fight our corner in the future, using the most up-to-date statistics to do so.

Transport Infrastructure (Ayrshire)

7. Irene Oldfather (Cunninghame South) (Lab): To ask the Scottish Executive what progress is being made on improving transport infrastructure in Ayrshire. (S10-6016)

The Minister for Enterprise, Transport and Lifelong Learning (Iain Gray): Scottish Executive investments are improving roads, railways and buses in Ayrshire.

Irene Oldfather: I thank the minister for his answer. Does he agree that best use can be made of the proposed three towns bypass by ensuring that it is adequately linked to an upgraded A737, so that we can properly connect North Ayrshire to Glasgow and the east?

Iain Gray: I am happy to agree that the three towns bypass will be an important element of the improvement of the transport infrastructure in Ayrshire. Invitations to tender for that project went out last month. Irene Oldfather will know that improvements are also taking place on the A737 at the Roadhead roundabout and the Head Street junction. I am aware of proposals and suggestions that further improvements could take place at Dalry, for example. However, such decisions will be made as part of future major investment programmes.

Phil Gallie (South of Scotland) (Con): Is the minister aware that last week his deputy ruled out any chance of a toll bypass around Maybole? Can

he say what plans the Executive inherited for a Maybole bypass? Can he say whether a route has been defined for that bypass and, if so, whether that route has been protected? Does he agree that the A77 southern link between Ayr and Stranraer is an important artery for Ayrshire's infrastructure? What does he intend to do about the problems in Maybole?

Iain Gray: I am happy to agree that the link to Stranraer is important for Scotland and for Galloway in particular. We continue to work closely with the partnership there. Lewis Macdonald has been involved in recent weeks with that partnership, looking at the A75 and A77 links to Stranraer. On the detail of the legal position on a potential route for a Maybole bypass, I am loth to make anything of legal positions when I reply to a question in the chamber, but I am willing to find out the detailed answer to Mr Gallie's question and reply to him in writing.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I thank the minister for acknowledging the importance of the A77 south of Ayr, not just to Ayrshire, but to Dumfries and Galloway. That was also acknowledged by the fact that the recent meeting of the north channel partnership—the organisation that represents ferry interests—was hosted by South Ayrshire Council in Ayr. Can we expect further announcements—indeed, any announcements—about improvements to the A77 in the near future?

Iain Gray: The most significant improvement to the A77 is, of course, the M74 extension. We made announcements on that issue only in the past few days, when the preferred bidder was announced. I appreciate that the question was about further south on the A77 but, as a regular user of the road, I must say that both parts of it are important in relation to how long it takes to reach Stranraer.

As the member knows, the north channel partnership discussions are looking at several proposed schemes for the A77 and A75, which are geared particularly towards making the transit from ferries easier. I would expect to be able to make announcements in the relatively near future about the outcome of those negotiations.

Haddock Fishing

8. Mr Andrew Welsh (Angus) (SNP): To ask the Scottish Executive what measures are being taken to protect the haddock fishing and Arbroath smokie industries. (S10-6041)

The Minister for Environment and Rural Development (Ross Finnie): As the member will be aware, in a general sense the Scottish Executive is committed to avoiding the closure of our mixed fishery, which particularly affects our

valuable haddock fishery as well as our whiting and cod fisheries. We are negotiating for a solution that respects the science but affords a sustainable future for the catching and processing sectors. We support in particular the Arbroath smokie industry with financial assistance from the European Union structural fund allocation.

Mr Welsh: Nice answer, but I will check against delivery.

Is the minister listening to today's massive demonstration by fishing communities from throughout Scotland and representatives of all political parties, which demands a secure future for Scotland's fishing industry? Is not the plain truth that, while Scotland's fishermen take the pain of cuts, closures and fishing bans, any benefit that might be gained is being undermined by European factory fishing, which uses tiny-meshed nets, a sample of which I have with me, to fish for sand eels, thereby also undermining the sand banks? Given the simple equation that no food plus no fish equals no fishing industry, what is the minister doing to stop such industrial fishing? What is he delivering for Scotland's fishermen? We do not want words from the minister; we want action.

Ross Finnie: The negotiations that will finally determine the matter will take place later in December. It will be important for us to have words of substance to negotiate with at that table before we come to a result.

On industrial fishing, we have in recent weeks made our position absolutely clear to the European Commission: if we are to have an equitable solution to the difficulties that are affecting all of the species, there must be equity in terms of mesh sizes—

Mr Welsh: The mesh size of the nets that are used is tiny.

Ross Finnie: I understand the member's point, but that is the position. The member asked what my position was. My position, and that of the Scottish Executive, is clear: we do not accept the continued use of nets with such a small mesh size, whether by the Dutch or the Danish, for industrial fishing. We will continue to put that case. It is not equitable for those fisheries to catch the amount of cod that they do as a bycatch when we are required to use much larger mesh sizes in the North sea. We will continue to articulate that case in the negotiations.

Alex Johnstone (North-East Scotland) (Con): Is there any attempt to reassess the economic impact of fishing on the regions in Scotland? I notice, from the papers that were being handed out at today's demonstration, that the figures that are being given exclude Arbroath entirely, on first investigation.

Has the minister taken any steps to ensure that his political masters are present in the fishing communities? Will he take the First Minister and others to places such as Arbroath, which David McLetchie and Iain Duncan Smith will visit tomorrow?

Ross Finnie: I have no doubt that those communities will find that visit uplifting. However, given that—unless I have my geography wrong—both my Scottish leader and my federal leader represent fishing constituencies, I am not entirely sure that they need me to take them on visits. Perhaps Alex Johnstone's leaders need to be taken on visits so they can have explained to them what the fishing industry is and where Scotland is, but mine do not.

On the impact on communities of the current proposals, I assure the member and the communities that we are working hard on economic modelling—in close collaboration with my colleague Iain Gray—to assess that impact to ensure that we have a clear view of the possibilities. We are acutely aware of the fact that the potential impact must be taken seriously.

Richard Lochhead (North-East Scotland) (SNP): Does the minister appreciate that industrial fishing and its impact on white fish stocks is one of the biggest concerns of Scotland's fishing communities? Can he explain why, in a written answer this week, he said that he has made no attempt to consider the impact of industrial fishing on white fish stocks, despite the fact that he has more than 250 scientists in his employ? Does he agree that that is shameful? Should not he be trying to find evidence to take to Europe to help him fight Scotland's corner?

Ross Finnie: We have access to the scientific information that is produced throughout the European Community. The issue is not only about our opposition to the member states that practise industrial fishing. In my response to Andrew Welsh, I made it absolutely clear that we do not need much more scientific advice to make it obvious that nets of the mesh size that he held up have a deleterious impact on the fishery.

However, Richard Lochhead should also be aware that, when we talk about industrial fishing, we must be clear and explicit about what we are trying to achieve, because we also need some of the nations that have industrial fisheries to support us in what we are trying to do in relation to the cod fishery. It is not a simple argument.

Mr Welsh: What about the nets?

Ross Finnie: We know about the nets. The matter is not just about the industrial fishery. Having examined the issue closely, Andrew Welsh will also be aware that the flat fishery is also causing us real problems in relation to its cod

bycatch. All that information is out in the open. I make it abundantly clear to the Parliament that that is part of the argument that we are articulating as hard as we possibly can to ensure that we protect Scottish interests in terms of the cod, haddock and whiting fisheries.

Public-private Partnerships (Hospitals)

9. Ms Margo MacDonald (Lothians) (SNP): To ask the Scottish Executive whether it has held any discussions with, or issued any guidelines to, national health service trusts regarding the inclusion in public-private partnership agreements of hospital ancillary facilities such as parking, television and telephones. (S1O-6013)

The Minister for Health and Community Care (Malcolm Chisholm): No guidance has been issued to or discussions held with NHS trusts regarding car parking, television or telephone charges for PPP facilities. There is general guidance in relation to car parking charges, which is currently being revised.

Ms MacDonald: I genuinely thank the minister for that reply because, when I raised the matter with him in September, there were no plans to revise the guidance. Does he think that the Lothian University Hospitals NHS Trust has breached the general guidelines that have been issued in regard to what it charges patients for car parking? It charges £10 per day, compared to the daily rate of £1 at Perth royal infirmary. I assure the minister that I am not being selective in my comparisons; I have investigated all the health boards in Scotland. The minister will find, once he gets into the subject, that the television payment rate of £3.50 per day at Dumfries royal infirmary compares to £1.50 per hour at the Royal infirmary of Edinburgh. Will he comment?

Malcolm Chisholm: Car parking charges at the Royal infirmary of Edinburgh have, in my experience as a constituency MSP in Edinburgh, been the most—indeed, so far, the only—controversial element of the new hospital that has been drawn to my attention. We need to look carefully at the new guidance on car parking charges. The existing guidance says that the charges should not be excessive, but I accept that there is an element of subjectivity in that. I think that charges were relatively expensive even at the old Royal infirmary of Edinburgh, so the increase is not all that great in Edinburgh terms. However, that does not altogether remove concerns about the charges.

Television is nothing to do with the PPP contract—it is not part of the contract. I think that Ms Macdonald will find that the rate that she quoted for Dumfries is more or less the same as the rate for Edinburgh, because, after the first two hours, there is no charge at all.

Helen Eadie (Dunfermline East) (Lab): In view of the current World Trade Organisation negotiations on the general agreement on trade in services, does the Executive have a view on how GATS will affect future policy on involvement of the private sector in our public services? Will the Executive reassure the Parliament that all efforts are being made to represent Scotland's interests to United Kingdom and European Union negotiators?

Malcolm Chisholm: I cannot talk across all the ministers' portfolios, but GATS will have no significant implications for health.

Livestock Auction Markets

10. Alex Fergusson (South of Scotland) (Con): To ask the Scottish Executive what plans it has for the future operation of livestock auction markets in the light of last year's outbreak of foot-and-mouth disease. (S1O-6021)

The Minister for Environment and Rural Development (Ross Finnie): Everyone is pleased that livestock markets are back in business following the foot-and-mouth outbreak. In the aftermath of that outbreak, I expect livestock markets to comply with all existing legislation, including the current biosecurity provisions.

Alex Fergusson: I endorse the minister's remarks. Does he agree that the livestock auction markets have a vital future role to play in ensuring that livestock changes hands in the safe, biosecure environment that they can provide? Does he also agree that, by setting a base price for most other forms of stock purchase, they form an irreplaceable part of Scotland's food price chain? Will he give his robust backing to the continuing operations of livestock marketing companies? They are still struggling to recover from last year's disease outbreak, which they were highly influential in helping to stamp out.

Ross Finnie: I have no difficulty in assuring the member that the Executive has absolutely no plans to interfere with the provision of livestock auction markets. We must understand that there are direct purchasers who would offer particular deals, and I do not think that there is anything that I can do about that. We have to be concerned that, under such deals, transactions are carried out in a way that does not breach biosecurity arrangements. I agree fully with the member on the general principle of the continuing need for livestock markets.

Sex Offenders

11. Dorothy-Grace Elder (Glasgow) (Ind): To ask the Scottish Executive how many convicted sex offenders are receiving treatment and how many such offenders who have been released have had treatment. (S1O-6066)

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): That information is not available in the form that the member requested. In June 2002, 466 known sex offenders were serving terms of imprisonment. There are 42 places currently available on accredited programmes for the treatment of sex offenders and in May 2002, 179 prisoners were liberated after participating in prison-based treatment for sexual offenders.

Dorothy-Grace Elder: I understand from the minister's reply that only 42 of the 466 sex offenders are currently receiving any treatment to stop them reoffending against children and women. It has been revealed that less than one third of prisoners at HMP Peterhead are given treatment before release. Does not that make a mockery of child protection?

Today's *Scottish Daily Express* contains claims that prisoners at Peterhead are planning to open a toy shop after their release, that one particularly dangerous paedophile, Francis Currens, made a video of pregnant women and of children while he was in Peterhead, and that those men are in contact with other perverts in the outside world. Will the minister please look into what on earth is happening in our prisons?

Mr Wallace: I will put Dorothy-Grace Elder's point into some kind of perspective. She will appreciate that if one is serving a very long-term sentence, the programmes that one can receive are not continuous. The STOP 2000 programme, for example, runs for a specific period and is not repeated. Therefore, we would not expect all prisoners to be undergoing treatment continually.

The Spencer report, which was published in September this year, highlighted the insufficient number of sexual offender treatment places; indeed, it called for a fourfold increase in places. The Scottish Prison Service is gearing itself up to deliver a greater number of programme places, but that takes time and involves proper training for what is very sensitive work.

The Scottish Prison Service is also developing a rolling programme for prisoners who are serving shorter sentences. Much of the effort has, so far, been concentrated on prisoners who are serving longer sentences but, as members will agree, shorter-term prisoners also need programmes. Work on providing such programmes is being done.

Lord James Douglas-Hamilton (Lothians) (Con): Can the Minister for Justice provide an assessment of how many of those who received treatment prior to being released have reoffended? What actions is the Executive taking to address that reoffending?

Mr Wallace: Lord James will recall that, during some of the Justice 1 Committee's discussions on

the prison estate review, various figures on the level of reoffending were posited. From memory, I do not think that there was agreement as to how reliable those figures are. It is important, however, that we obtain that information.

Lord James will also be aware of the work that the Justice 2 Committee is doing in its stage 2 consideration of the Criminal Justice (Scotland) Bill, part 1 of which relates to the new orders for lifelong restriction, which will be directed in particular towards serious violent and sexual offenders. I think that we are taking a significant step forward on how we, as a community, deal with prisoners in those categories.

Dental Services (Borders)

12. Christine Grahame (South of Scotland) (SNP): To ask the Scottish Executive what concerns it has in respect of the delivery of general dental services in the Scottish Borders. (S10-6029)

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): We are aware that there is evidence that access to national health service dental services in the Borders is becoming more difficult. That is why the Borders is one of the designated areas for the £1 million package that we introduced in August as part of a phased programme to improve recruitment and retention of dentists in Scotland. Although elements of the package cover all areas of Scotland, there are enhanced incentives for designated areas.

Christine Grahame: I refer the minister to a report of 24 September to the Borders NHS Board executive team. The report, which postdates the allocation of the money to which the minister referred, makes it clear that it is becoming more difficult to access general dental services in the Borders. I refer the minister to the case of a woman in Kelso, who after scouring the Borders for NHS treatment was forced to go to England as a private patient, because no care was available in the Borders. If the minister agrees that that is a disgrace, what does she intend to do about it?

Mrs Mulligan: We are aware that there are a number of pressure points in dental services throughout Scotland. That is why we have instituted the designated areas scheme. The £1 million package will include payments of £3,000 to each new dental graduate, £5,000 to all new dentists and up to £10,000 to dentists who take on trainees. One cannot say that the Executive is not doing anything about the problem.

I am aware of the report to which Christine Grahame referred. Borders NHS Board is considering that report and how to address the issues that it raises. We will support Borders NHS

Board and continue to examine ways to bring dentists to areas where they are needed. I have answered a number of questions on the issue in the chamber and have said continually that we will examine new ways of bringing dentists to areas of need. However, members from the SNP have failed to come up with one suggestion for addressing the problem.

Recycling

13. Nora Radcliffe (Gordon) (LD): To ask the Scottish Executive how it plans to meet its stated recycling targets. (S10-6062)

The Minister for Environment and Rural Development (Ross Finnie): The target to recycle and compost 25 per cent of municipal waste by 2006 will be met by local authorities implementing the national waste strategy.

The Executive has allocated £230 million over the next three years to the strategic waste fund to assist local authorities in the implementation of the area waste plans. Yesterday I announced that £6 million of this year's allocation to the strategic waste fund is to be distributed between local authorities now, to help them to expand recycling and composting.

Nora Radcliffe: I am sure that the minister agrees that sustained, concerted effort across agencies will be needed to persuade people to be more waste aware and to change their behaviour. Does he agree that the report on the Waste Aware Scotland survey, "Public attitudes to Reduce, Reuse, Recycle in Scotland" is encouraging and offers good pointers to what is likely to be effective? Based on that survey, will the minister do what he can to facilitate and encourage the introduction of kerbside collections where population density makes them a sensible option?

Ross Finnie: Yes. The survey indicated that 83 per cent of people would be more willing to participate in recycling if kerbside collection were available. In the area waste plans and their contributions to the national waste strategy, local authorities are required to indicate how they intend to increase public willingness to participate in, and public awareness of, recycling. Included in the strategy are measures such as kerbside collection. Local authorities will be able to apply to the Scottish Executive for money from the strategic waste fund to finance kerbside collection.

Robin Harper (Lothians) (Green): If my memory serves me correctly, two years ago £50 million was allocated to waste management, to be bid for by councils. Has all that money been bid for? What percentage of it went to fund recycling, rather than to deal with general waste management problems?

Ross Finnie: I do not have the details that Robin Harper seeks. I will be happy to provide him with a breakdown of the figures in writing.

Bruce Crawford (Mid Scotland and Fife) (SNP): Will the minister help me to solve a little mystery? Will the minister confirm—*[Interruption.]* I know that the minister cannot hear me, so I will wait until the rabble clam up. Will the minister confirm that on 20 February he said:

"The National Waste Plan based on the area waste plans will be in place by Autumn this year. We then want to set mandatory recycling and waste reduction targets and the forthcoming Local Government Bill will give Ministers the power to set such targets."

What happened to that ministerial promise?

Ross Finnie: The ministerial promise remains. The difficulty has been in finalising—*[Interruption.]* There are different ways of approaching the matter. We have tried to proceed through co-operation and collaboration with local authorities. That is the way in which Labour and Liberal Democrat members prefer to proceed. We have built that plan from the bottom up and that is why it has taken a little longer to get the area waste plans.

The second part of the question was on setting targets. We have taken the view that, as the interim area waste plans have indicated, it is possible to reach the target of 25 per cent waste recycling. Although we have not finalised the national waste strategy, it begins to look as if we could achieve a figure of something of the order of 40 per cent waste recycling. If that is the case and if the plan confirms that, that is the target that we will include in the local government bill when we introduce it. That is the answer to the member's question. If he disagrees with a bottom-up approach, I ask him to give us his alternative.

Elaine Smith (Coatbridge and Chryston) (Lab): Have steps been taken to encourage businesses, particularly those that operate premises in which considerable recyclable waste is generated, such as business centres and serviced office accommodation, to employ the recycling services that many waste management providers are making available?

Ross Finnie: Yes. We have a group of people who are trying to deal much more generally with the various elements of the national waste strategy. In particular, we are giving local authorities every encouragement to do exactly what the member suggested.

First Minister's Question Time

15:11

The Presiding Officer (Sir David Steel): The next item of business is First Minister's question time.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): On a point of order, Presiding Officer. I draw to your attention the edition of *The Scotsman* from Monday 2 December, in which Mike Russell stated that he would use First Minister's question time today to demand assurances from the Executive on theatre funding. [*Interruption.*] I am trying to make a serious point.

The Presiding Officer: Order. Let me hear the point of order.

Mr McNeil: Unless Mr Russell is now operating under the title, "Mystic Mike", how would he know that his question would be selected for today? Will the Presiding Officer give us an assurance about the criteria for the selection of questions and will he assure us that there was no prior agreement to select Mike Russell's question for the First Minister today?

The Presiding Officer: In the first place, I did not see that report on Monday morning. If I had seen it, it might have tempted me not to select the question. I do not know when the question was lodged, but questions are not selected until Monday afternoon and *The Scotsman* goes to bed on Sunday night, so perhaps Mike Russell is Mystic Meg.

Secretary of State for Scotland (Meetings)

1. Mr John Swinney (North Tayside) (SNP): To ask the First Minister when he next plans to meet the Secretary of State for Scotland and what issues he intends to discuss. (S1F-2313)

The First Minister (Mr Jack McConnell): I met the Secretary of State last week and I will see her again tomorrow when I will take the opportunity to discuss with her the meeting that she and Ross Finnie have had this week with Scottish fishing organisations. Today, we welcome to our Parliament campaigners from the fishing communities in Scotland. I assure them of our support to secure both a sustainable stock in the North sea and sustainable communities in Scotland's fishing areas.

Mr Swinney: I thank the First Minister for his answer and I welcome his comments.

I wonder whether the First Minister has taken an interest this week in opinion polls. If so, he will have seen a poll showing that 94 per cent of Scots believe that the fishing industry is important to Scotland's future—a conclusion that, I am sure, is

shared throughout the chamber. We are told, as the First Minister has just told us, that one part of the Scottish Executive is fighting to save the fishing industry, while another part—the Scottish Prison Service—is trying to recruit fishermen in the north-east of Scotland with the rather crass slogan:

"Not all careers float away with the tide."

Will the First Minister reassure Scotland that that disgraceful propaganda does not represent the view of his Government and that the Executive will pull out all the stops to save Scotland's fishing industry?

The First Minister: There is no doubt in my mind that that was a crass and insensitive advert and an apology could not have been issued too quickly, because it is important to deal with such incidents quickly.

The main issue today is that we in this Parliament are most effective when we are united. In the next fortnight, we need to be united and strong in ensuring that our fisheries minister can go to Brussels, argue on behalf of the fishing communities and deliver a result in what will be very difficult circumstances.

Mr Swinney: In that spirit, I say to the First Minister that he will be aware that a new regime for fishery management will be introduced on 1 January. That regime will give much greater influence to countries with a direct interest in particular fisheries, and in this case the North sea fishery. Does the First Minister agree that it is essential that the European Union negotiations later this month, which will seek to secure a long-term future for the industry, should be carried out under that new regime rather than under an old system that has always failed the Scottish fishing industry?

The First Minister: We must deal with the reality of the situation, which is that the decisions will be made at a meeting that will take place in two weeks' time. For a number of weeks, our job in the Parliament has been to ensure that, if possible, we build a consensus with those in Scotland's fishing industries and within the Parliament for a strategy that has the right solutions and that wins enough support among our European partners to enable the right decision to be secured in December. That will not be an easy task.

Anyone who thinks that if we simply make demands all the other European countries will fall into line is wrong. We must ensure that we have the right arguments and that we work well in advance of the European Council to put forward those arguments and win support. If we do that, we can be as successful as we have been in the past.

Mr Swinney: My point concerns the difference between conducting the negotiations on 20 December under an old regime that will come to an end on 31 December and conducting them under a new regime that will come into place on 1 January, which will give much greater decision-making power to those with a direct interest in the North sea fishery. Will the First Minister assure us that he would support a plan that would give much greater significance to a North sea management plan and that he would support the production of such a plan by participant countries at a future European Council in the new year? Will the First Minister instruct his fisheries minister to lodge such a proposal at the meeting in December?

The First Minister: There is a difference here between rhetoric and reality. The meeting in December will make the relevant decisions. We must influence those decisions here and now. We should not pretend that an easy solution can be obtained by postponing until another day.

I see that Mr Welsh is about to say something. He should be cautious for a second. I support regional management of the fisheries and a North sea management plan. A North sea management plan would still involve the Danes, for example, who are involved in the practice of industrial fishing that we want to tackle. The issues remain the same whether we are talking about the whole European Union or a North sea management plan.

We must ensure that the right decisions are taken in December, that we sustain a stock in the North sea and that we sustain our fishing communities. As I have said, we need to be united in that approach. We also need to ensure that we have regional implementation of those fishing plans to secure a better system for the future.

Mr Swinney: All that I am asking the First Minister to do is to give an agreement that he will at least put on the table the proposal that I have made to the Parliament. Will he do that?

The First Minister: We are trying hard, and have been trying hard for weeks, to secure a consensus in the Parliament that backs up the fisheries minister when he represents our country in Brussels and seeks to secure a future for Scotland's fisheries. We have sometimes made such efforts in difficult circumstances and in the face of provocation.

Solutions that attempt to put off decisions until another day will not work at the European Council. We need to win the argument now. We are taking on that argument and working with the fishing organisations and the representatives of fishing communities, some of whom are here again today, to obtain the best solution for Scotland that it is possible to obtain in a majority vote situation in the European Council.

Cabinet (Meetings)

2. David McLetchie (Lothians) (Con): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S1F-2325)

The First Minister (Mr Jack McConnell): The agenda for next week's Cabinet meeting will be agreed later this week.

I would like to take the opportunity to congratulate Mr McLetchie on the award that he won last week. I look forward to debating with him again in the future.

David McLetchie: Thank you very much.

The First Minister will recall that, at question time five weeks ago, when some people were more concerned about the petty cash in Mr McConnell's local Labour party, I asked him about the crisis that was facing Scotland's fishing industry. That crisis is obviously still facing the industry. With the benefit of five weeks' hindsight, will the First Minister acknowledge that far too many people are responsible for fishing within the EU institutions and within the United Kingdom Government, which appears to have already accepted a case for bans and major quota cuts and which is talking the language of compensation—the language of defeat?

Will the First Minister encourage Mr Finnie and the other members of the UK delegation to the fisheries council to challenge that kind of defeatist mentality and demand measures that will sustain our communities rather than simply manage their decline?

The First Minister: As I said in my previous answers, we need to be serious about this subject in the chamber. It is easy for those who are not required to go to Brussels and make the case to say that we should not make what are sensible proposals. Those proposals will do the two things that are important. First, they will conserve stocks in the North sea, so that our fishing communities have an industry years and years from now. Secondly, they will ensure that we have fishing communities with a strong fishing industry in the meantime. Both those objectives run side by side. Ross Finnie's discussions have been aimed at achieving those objectives. That is why it is important that we enter into positive discussions with our European partners and with others. That is also why we have the full support of the UK Government in doing so.

David McLetchie: I accept what the First Minister says about the need both for a short-term decision to be reached and for the longer-term issues concerning fisheries conservation to be dealt with.

I want to ask about that slightly longer-term agenda. The last time that we discussed the issue at question time—and again today, if I heard him correctly—the First Minister spoke about his support for regional management of our fisheries. Yesterday in the Westminster Parliament, his colleague Anne Begg spoke of the need to reform the common fisheries policy with what she called zonal management. Does the First Minister accept that such semantics perhaps miss the point, which is that what is needed in the longer term is national control of our fisheries? Our fishing communities managed to sustain themselves for hundreds of years without a common fisheries policy but it is apparent that they are now being destroyed by the CFP. Would not it be more appropriate for their destiny to be put back in their own hands, as part of a longer-term reform?

The First Minister: We are not in the business of renegotiating European Union treaties in the next 12 days or, for that matter, of looking to long-term solutions that come from the Conservative party's obsession with breaking up bits of the European Union. The situation is that we have a common fisheries policy, so we need to deal with the here and now by conducting the negotiations in the interests of Scotland.

We said weeks ago that we would secure the agreement of the UK Government—I remember both Opposition parties being sceptical about that—but that is what we now have. Yesterday, the Prime Minister endorsed our strategy and our campaign.

We also said that we would negotiate and deal in bilateral discussions with those other European countries with which it might be possible to secure a common interest. We have done that. Ross Finnie had those meetings and discussions in Brussels last week. We are working hard to ensure that we have more support.

We need a longer-term approach to secure a change in the way in which the European Union conducts its business in fishing and in other areas. We need more regional representation and more rights for regions and for nations to ensure that decisions that are made at a European level are properly implemented locally. Those are our objectives in the shorter and longer terms. I believe that they are right.

Racist Attacks

3. Paul Martin (Glasgow Springburn) (Lab): To ask the First Minister what measures the Scottish Executive will take to deal with any increase in the number of racist attacks. (S1F-2321)

The First Minister (Mr Jack McConnell): I want to make it clear that racist attacks have no

place in today's Scotland. We are committed to challenging racism, whatever form it takes and wherever in Scotland it occurs.

Where cases are reported, the Lord Advocate has made clear his commitment to ensure that the police and procurators fiscal improve the prosecution of racist crime.

Paul Martin: Will the First Minister join me in making it clear to the Parliament that asylum seekers will continue to be made welcome in Sighthill? I want to make it clear that those who carry out racist attacks are not welcome in Sighthill. I also want to make a plea to the media, to Government agencies and to all political parties that are represented in the Parliament to recognise the positive work that is being done in Sighthill with asylum seekers. We need to face up to the continuing challenges and ensure that we deal with them.

The First Minister: I endorse what Paul Martin has said. I praise him and all the community organisations in Sighthill for the work that has been undertaken to secure a much better community atmosphere in that area so as to provide a welcoming environment, not only for asylum seekers but for others in Sighthill.

The situation is very clear. If Scotland's economy is to grow, if we are to be proud of our country as we travel throughout the world, and if we are to have a society that we can be proud of in the 21st century, we must deal with racism, sectarianism and the other blights on our society. We have to tackle them head on and make it clear to young people that those things are unacceptable in modern Scotland. We intend to do that. It is one of the reasons why the Parliament was created and I intend to be involved.

National Theatre

4. Michael Russell (South of Scotland) (SNP): To ask the First Minister when the appointment of a chairperson for the board of the national theatre will be announced. (S1F-2315)

The First Minister (Mr Jack McConnell): The Scottish Arts Council will make an appointment from a shortlist of candidates, which has been drawn up on its behalf.

Michael Russell: One would not have to be Mystic Mike to be disappointed with that answer.

The Executive's delay on the matter has landed it with two problems rather than one: under-resourcing in Scottish theatre leading to a drain of talent from Scotland, and endless delays in appointing a director for the national theatre. Would not the First Minister do better by funding Scottish theatre and the national theatre and by taking what the chairman of the Scottish Arts

Council has suggested as a new baseline approach to Scottish arts funding so that we can move the arts forward rather than driving them backwards as his Administration has done?

The First Minister: I will say three things as briefly as I can.

First, Mr Russell should recognise that arts funding—I am not talking about local authority funding and all the other sources of funding—through the Scottish Arts Council and the three Scottish national institutions will go through the £100 million barrier next year for the first time.

Secondly, within that overall budget, the funding for drama will go up in 2003 to £7.5 million, which is an increase of £1.1 million or 17.34 per cent.

Thirdly, if Mr Russell knows anything about Scottish arts and culture, he will be aware that Scottish theatre's current problem is with the funding of those regional theatres that are so important because they are a baseline for any future national theatre in Scotland. That is why, in 2002 alone, there has been a 90 per cent increase in funding for the Byre Theatre, a 92 per cent increase for the Dundee Rep Theatre, a 24 per cent increase for the Royal Lyceum Theatre Company, and a 60 per cent increase for the puppet and animation festival. All those are examples of increased funding for the Scottish regional theatres that will provide a basis for a national theatre in the years to come.

Sarah Boyack (Edinburgh Central) (Lab): I welcome the First Minister's statement of commitment to the theatre in Scotland.

Can I make the First Minister aware that many in the theatre community are concerned that the delays to the national theatre are unfortunate? I welcome his commitment to regional theatre, particularly to theatres such as the Royal Lyceum Theatre Company, which have suffered over the years because of local authority funding crises, many of which were due to the abolition of regional councils.

Will the First Minister agree to ask his colleague Mike Watson to meet me to discuss the matter further to see how we can develop some of the excellent producing theatres in Scotland, upon which a future theatre could be built?

The First Minister: I cannot praise enough some of the excellent work that has taken place in Scotland's theatres in recent years and is taking place at the moment. It is important that theatres such as the Lyceum are supported at the right level.

That is precisely why we have had to delay the national theatre project. We have had to ensure that those theatres throughout Scotland are properly funded with the sorts of increases that will

secure them as the basis for a proper national theatre in the years to come. I am sure that Mike Watson will be delighted to meet Sarah Boyack to discuss the subject. I reassure the chamber that the Executive's commitment to a national theatre remains firm. However, it will not be formed at the expense of regional theatre; it will build on Scotland's regional theatre.

Creutzfeld-Jakob Disease

5. Dorothy-Grace Elder (Glasgow) (Ind): Now to dying people.

To ask the First Minister whether the Scottish Executive has any plans to review the methods of alerting any patients who may have been at risk of exposure to variant Creutzfeldt-Jakob disease. (S1F-2332)

The First Minister (Mr Jack McConnell): The UK CJD incidents panel—the expert committee that was set up to give advice on the management of incidents—advises NHS Scotland on those matters. We have no plans to review those arrangements. However, I make it clear that I expect the panel and patients' clinicians to put the interests of patients and their families first at all times.

Dorothy-Grace Elder: The First Minister will be aware that many people in Scotland received frightening letters last week. Those people are ill, because they were contaminated in the past as a result of the bad-blood scandal in the national health service, whereby skid-row blood was bought in from America, which infected babies. How will the First Minister answer Mr Andrew Gunn, who is standing outside this Parliament and protesting in the rain? He is asking for answers and a proper inquiry into the entire bad-blood scandal, including the most recent incident. The Minister for Health and Community Care claims that he was not told about the latest variant CJD risk and, of course, he was not the Minister for Health and Community Care two years ago, but he was at least the Deputy Minister for Health and Community Care. Will the First Minister end cover-ups in the NHS? Will he go for a public inquiry?

The First Minister: I have made it clear that I do not want to see any cover-ups in the NHS. I expect the panel of clinicians to which I referred, and the other bodies with similar responsibilities in the health service, to put the interests of patients and their families first at all times.

I wish to put on the record the fact that the Minister for Health and Community Care acted as soon as he knew that the information was available. He did that quickly, which was in the interests of the patients. He was right to do so, and I am sure that he has made it absolutely clear to his department that he needs to be able to do that more quickly in the future.

The Presiding Officer: I will allow injury time for the point of order and take question 6.

Dangerous Cargoes

6. John Farquhar Munro (Ross, Skye and Inverness West) (LD): To ask the First Minister what representations the Scottish Executive has made to Her Majesty's Government regarding the passage of ships with dangerous cargoes past Scotland's coastline. (S1F-2328)

The First Minister (Mr Jack McConnell): We are in regular contact with the UK Government on a wide range of issues, including shipping. We share the same objective of ensuring that the seas around Scotland are safe and that the environment is protected.

John Farquhar Munro: I am sure that the First Minister will be aware that it is estimated that 20 per cent of the crude oil traffic in the United Kingdom goes through the biologically sensitive waters of the Minch. Will the First Minister make representations to the International Maritime Organisation and the Westminster Government to ensure that hazardous and dangerous shipping traffic takes the deep-water route west of the Hebrides?

The First Minister: Ministers will be happy to take up the points that John Farquhar Munro makes, but it is important to state that there are big issues of international maritime law. There are rights of free passage, and we cannot ignore that, but we need to ensure that our waters and our coast are as protected as they possibly can be, while respecting some of those international rights, which are important for Scots, as well as for people elsewhere in the world.

John Scott (Ayr) (Con): Does the First Minister agree, given the details that John Farquhar Munro has just outlined, that the use of pilots should be made mandatory for all ships passing through the Minch? Has he considered using the global positioning system to monitor and aid the passage of supertankers through those particularly dangerous waters?

The First Minister: The UK Government, as I understand it, is currently arguing for such changes in the international maritime regulations. We support it in those endeavours, and we are in regular contact with it.

The Presiding Officer: That ends question time.

Michael Russell (South of Scotland) (SNP): On a point of order, Presiding Officer. In your response to Duncan McNeil's point of order, you may have inadvertently indicated that there was some bar against talking about questions before they were lodged, and that you would be

prejudiced against questions that were talked about before they were lodged. Perhaps you could reflect upon that when you see the *Official Report*. If I am wrong about that, of course I shall apologise.

The Presiding Officer: There is no need for an apology. I made a light-hearted remark. The fact is that there was no communication—as he will confirm—between Mr Russell and myself before I selected the questions, nor had I seen the newspaper report. It was unfortunate—and I do not blame the member; it may just be the report—that the newspaper said that he was going to raise the matter. Mr Russell could not know that, of course, because he did not know whether his question would be selected. That was the point of order, I think, that Mr McNeil was raising. It is a nice point, but not one that we should linger over.

Future of Europe Convention

The Presiding Officer (Sir David Steel): The main debate this afternoon is on motion S1M-3678, in the name of Jim Wallace, on the future of Europe convention, and two amendments to the motion.

The Deputy Presiding Officer (Mr Murray Tosh): I invite those members leaving the chamber to do so quickly and quietly.

I invite those members who wish to speak in the debate to press their request-to-speak buttons now. As a result of various interruptions, we are five minutes late in getting under way.

15:35

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am pleased that we are having a debate today on a topic that is of considerable importance to Scotland. I have had exchanges with the European Committee on this topic, but there was always an expectation on both our parts that we would debate it in the chamber.

The outcomes of the future of Europe debate and the decisions that flow from the subsequent intergovernmental conference will hold the key to the future development and direction of the European Union.

Parliament will recall that the convention on the future of Europe was launched in February to consider a wide range of potential reforms. Those reforms are intended to modernise the Union to prepare it for the impact of enlargement and to address public perceptions that the European Union has become too detached from its citizens.

The Scottish Executive strongly supports the work of the convention. We believe that the convention represents an innovative and inclusive approach that is entirely fitting for the issues at stake. We have sought to play a full part in the future of Europe debate. We are consulted on and contribute to the United Kingdom's position at the convention and I am pleased with the constructive working relationship that we have enjoyed in the life of the debate so far.

Our work with other influential European Union sub-member state Administrations culminated in the adoption of a declaration by 43 Administrations in Florence last month.

The First Minister has acted as rapporteur for a Committee of the Regions opinion on more democracy, transparency and efficiency in the EU. That opinion was adopted unanimously and will form a crucial plank of the committee's formal submission to the convention. The First Minister also made an important speech on that issue on 6 June to opinion formers in Brussels.

We will introduce policy proposals in advance of the convention's plenary debate on the role of sub-member state Administrations early in 2003.

The Executive is firmly pro-European. The European Union has delivered considerable benefits for Scotland and we believe that it will continue to do so. It has helped to secure lasting peace and stability in Europe. It provides the market for two thirds of our exports. It has delivered environmental, social and consumer benefits. Enlargement of the European Union will bring significant additional opportunities.

We are only a matter of days away from the crucial summit in Copenhagen when there will be the proposal to increase the number of member states. Through an enlarged European Union, we can help the fight against terrorism and crime because we recognise that the proponents of terrorism and crime are no respecters of boundaries.

European Union anti-terrorist measures, such as the European arrest warrant, will be more effective when they apply to 27 instead of 15 member states. Enlargement will also strengthen the European Union's anti-crime institutions.

Enlargement will bring large-scale economic benefits. Independent research suggests that the United Kingdom's gross domestic product might be boosted by up to £1.75 billion and that up to 300,000 extra British jobs might be created across the European Union. With its traditional outward focus and reputation for technical excellence and innovation, Scotland is ideally placed to make the most of those opportunities.

Phil Gallie (South of Scotland) (Con): Will the minister comment on the potential for the expansion of jobs in Scotland, given the evident drift from Scotland to some of the eastern European countries?

Mr Wallace: I salute the work done by the Scottish Council for Development and Industry to alert Scottish business to the potential in the candidate nations. In many respects, those nations are still developing economies that need the expertise and excellence we have in renewable technologies, for example, or the excellence we have in decommissioning at Dounreay. I believe that we are well placed to seize opportunities where we find them.

We want an EU that is more effective, and able to respond quickly to changing situations. It must be more efficient, and able to deliver value for time and money, with less bureaucracy. It must also be easier to understand. People need to know what the union stands for and must feel that its treaties and principles are relevant. I want a union that is closer to the citizen—more democratic, more transparent and more accountable.

Tommy Sheridan (Glasgow) (SSP): Does the minister agree that there are often occasions when we should be prepared to be a bit more disobedient as far as the European Union is concerned? It seems that other member countries are more willing to act to defend their indigenous industries than we are in the United Kingdom.

Mr Wallace: I cannot agree that breaking the rules ever puts one in a better position in the long term. However, just because one is pro-European, that does not mean that one accepts that everything that comes out of Europe is right. There will be occasions when we will disagree with Europe. The First Minister indicated just moments ago that we will fight a very hard case for Scotland's fishing industry. However, I cannot accept that breaking the rules pays dividends in the long term.

I believe that Scotland and other sub-member state Administrations have a significant part to play in delivering some of the aspirations that I have referred to. It is worth recalling that more than half of the EU's citizens are represented by a devolved Government. In the case of Scotland, 80 per cent of the functions devolved to this Parliament have a European Union dimension. We implement and enact European legislation, we administer European Union funds and we are the closest level of legislative Government to the citizens of Scotland. Increasing the role of devolved Government in the European Union is about enhancing, supporting and, above all, legitimising the way in which the European Union carries out its functions. Such reform offers solutions, and the convention cannot afford to overlook that.

Those themes have been the focus of the Executive's proposals, building on our previous policy statements. I am keen that those proposals are also informed by the views of this Parliament. I read with considerable interest the paper published this week by the European Committee, which continues to make a positive contribution to the debate.

We will take account of our consultation with Scottish civic society, which included seeking written views from major non-governmental organisations. We held regional seminars that were attended by small and medium-sized NGOs, we created a website seeking views by e-mail, we placed leaflets and posters in libraries, to attract the views of private individuals, and we wrote to schools. I am pleased that we were able to do that work in co-operation with the European Committee, which held a valuable seminar in the chamber on 16 September.

I have been encouraged by the response to our consultation. We received 38 written responses from organisations and private individuals, and 40

non-governmental organisations attended the seminars that we held in Dumfries, Edinburgh and Perth. Comments were very diverse, but there were some general themes. People want the European Union to focus on its core, headline activities. The majority of respondents saw a clear role for the European Union, but were concerned that it is overly bureaucratic and becomes involved in areas that are best left to other tiers of governance. There was some enthusiasm for examining the role that members of the European Parliament might play in reconnecting the European Union with its citizens. There was broad support for a constitutional treaty, provided that it is focused on the European Union's key objectives and does not pave the way for an expansion of European Union competence.

The message from business was that the Commission needs to sharpen its approach to economic growth and minimise unnecessary regulatory burdens, particularly for small and medium-sized businesses. It was also felt that there should be a more rigorous application of the principle of subsidiarity.

I was particularly pleased to see responses from a number of schools. After all, who is the future of Europe debate for if not our young people? They offered a particular focus on environmental and social issues, broadly supported a constitutional treaty and registered a desire for greater publicity on the activities and decisions of the European Union.

Taking all these elements into account, I would like to outline the Executive's key policy views. We must focus on issues that relate directly to the responsibilities of sub-member state Administrations rather than seeking to comment on every single aspect of the European Union's future development. Subsidiarity is a key issue. We have already made several calls for the establishment of a political mechanism for monitoring the application of the subsidiarity principle at an early stage in the European Union's legislative process. There has been broad support for that at the convention, whatever mechanism is established, and I believe that active sub-member state involvement will be crucial.

On a related theme, we need to raise the constitutional profile of the subsidiarity principle, which extends beyond the member states themselves. We will repeat our calls for greater use of framework legislation, which would allow implementing authorities such as the Scottish Executive and the Scottish Parliament to put European Union laws into practice in a way that is appropriate to specific Scottish circumstances. We need the EU to consult sub-member state Administrations at an early stage in the development of legislation and policy. Time that is

spent in getting proposals right at the beginning will save considerable time over the piece.

We need greater transparency—for example, through the European Council meeting in public when it carries out its legislative role. There should also be an assessment of the potential financial impact of EU legislation on implementing authorities, compared to the value of benefits. Rather than establish a detailed catalogue of competences, the new constitutional treaty could usefully include a set of principles to govern when and how the EU acts.

Alongside those measures, we need to consider reform of the Committee of the Regions. We would not wish such reform to come at the expense of an enhanced role for individual sub-member state Administrations, but it is clear that the committee will continue to have a role. Obliging the European Commission to justify formally the extent to which it does or does not take heed of the committee's opinions, for example, would help.

Taken together, those ideas represent a comprehensive and helpful contribution to the future of Europe debate. I look forward to hearing what members think the convention should deliver for Scotland and to the Executive's continuing engagement with the future of Europe debate over the remaining life of the convention and through to the intergovernmental conference. I am optimistic about the outcomes of the debate for the EU and for Scotland's place within the EU and I am confident that the Executive and the Parliament will play its part in those developments.

I move,

That the Parliament acknowledges the many benefits that the European Union has delivered for Europe and for Scotland, welcomes the establishment of the Convention on the Future of Europe as an open and innovative means of addressing the issues now facing the European Union; believes that, in light of experience, the European Union needs to become more effective, efficient, easier to understand, democratic, transparent and accountable; recognises the role that Sub-Member State Administrations can play in realising these objectives; welcomes the Scottish Executive's engagement with Scottish civil society to stimulate discussion and to seek views on the Future of Europe; welcomes the contribution that the Executive has made to the debate so far, and calls on the Executive to press the Convention to bring forward proposals for strengthening the profile of the Subsidiarity Principle in the EU treaties, adopting a new mechanism for enforcing it which allows for full Sub-Member State Administration involvement, making greater use of framework legislation, consulting Sub-Member State Administrations at an early stage of policy development, generating greater transparency in European decision-making and introducing financial impact assessments for legislative proposals

The Deputy Presiding Officer: I invite Fiona Hyslop to speak to and move amendment S1M-3678.1.

15:46

Fiona Hyslop (Lothians) (SNP): I will move amendment S1M-3678.1, in the name of Richard Lochhead, who sends his apologies for being unable at short notice to speak in the debate.

Scotland's place in the wider world has been a topic of important debate, negotiation and indeed treaty not just in recent years with the development of the EU, but for centuries beforehand. The SNP agrees with the sentiment in the first part of the motion, as we recognise the role that Europe has played and in particular the important reason why the EU was established—to prevent any future European wars.

We recognise ourselves as Europeans, as many Scots do. There is always a danger that, on this shared island, people speak about Europeans as "them" and do not recognise that Europe is not apart from us. We are European as a country and Europeans as people.

It is significant that there is no Scottish Parliament or Executive representation on the convention, although *Business a.m.* reported that Jack McConnell had pledged to fight for a place on it. He failed. Two SNP representatives—Professor Neil MacCormick and Councillor Keith Brown—are the only democratically elected Scottish representatives.

Phil Gallie: Given the emphasis that we all place on being a multiracial society, will the member explain what she meant when she said that we are European as a people?

Fiona Hyslop: Opinion polls that take the views of Scots are significant. Many Scots see themselves first as Scots, then as Europeans and thirdly as British. That is the view of the world of younger people in Scotland in particular and we must reflect that in our analysis.

The SNP supports a positive vision of enlargement, with more transparency, accountability, democracy and subsidiarity within the EU. We welcome the constitution or treaty—although we think that it should be subject to a referendum—and we see that Europe can develop in terms of confederation rather than federation. The SNP has consistently argued that any major constitutional change should be approved by referendum, whether in respect of the Maastricht treaty, devolution or future independence in Europe. I would be interested to know whether the minister agrees with that.

Scotland has played different roles as a nation state and as a sub-state. Some may want to view Scotland as a constitutional region. In our nation's history, we can point to times in which our focus has been to look north and east to our nordic neighbours—the Parliament played host to the

Nordic Council seminar a few weeks ago—south to the Atlantic arc of Ireland and Portugal, east to the Baltic states and, of course, south to an auld alliance with France and a newer union with England.

In that context, I recognise the work of the convention and want to draw on some of the key debates. Scotland can see itself as an aspiring member state, a stateless nation or a constitutional region. Each provides a different prism through which to look at the convention's work and each perspective offers different angles on the evolving debate.

How does the current debate protect and promote the existing rights of devolved nations, particularly in an expanding Europe of accession states? From what perspective is the Executive trying to bat for Scotland? Is the Executive really batting for Britain and a centralised bigger member-state perspective and clawing back from the Liege declaration and the Flanders declaration that were signed by Henry McLeish? I fear that what we have seen from the Executive is missed opportunities and mixed messages.

Is it not the case that even under the limited powers of devolution, Jack McConnell is limiting the powers and influence of a devolved Scotland even further by failing to back the Liege declaration's call—which, importantly, is backed by the European Committee of this Parliament—for powers for sub-member state legislatures that would give full access to the European Court of Justice?

Irene Oldfather (Cunninghame South) (Lab): Is the member aware that the Scottish Executive has signed the Florence declaration, which encompasses much of what was discussed at Liege and Flanders?

Fiona Hyslop: I am aware of that, but if Irene Oldfather reads the SNP amendment she will see that our key consideration is access to the European Court of Justice. I will develop that point further. Jack McConnell is isolated among the so-called regions with legislative competence over direct access to European Court of Justice. Bearing in mind the crisis in our fishing industry, I think that that might prove to be essential. If members consider the recent ferries debacle, they will see that it would have been in Scotland's interest to have had direct access to the European Court of Justice when our subsidiarity was being infringed.

When it comes to Europe, who is serious about this nation playing as full a role as it can? Actions speak louder than words or, I fear, the spin of the presentation of the First Minister as rapporteur of the Committee of the Regions and chair of the group of regions with legislative competence. It is

interesting that that group is made up of many small regional Governments that are all calling for access to the European Court of Justice—a position that the group's newly appointed chair does not support. We are in the strange situation in which even Germany, as a full member state, calls for access to the European Court of Justice for Parliaments such as this one, but the Scottish Executive and UK Government do not.

Jack McConnell has, on our behalf—although it has taken until today for the Executive to ask for Parliament's agreement to this—been talking up the need for a subsidiarity champion, yet the convention's Mendez de Vigo working group on subsidiarity has dumped the subsidiarity champion idea. The new plan is for national, member state Parliaments to review proposed EU legislation before its consideration by the European Parliament and to issue a reasoned objection if subsidiarity seems likely to be infringed.

Scotland will therefore have to rely on Westminster to decide whether our subsidiarity is being infringed. That movement makes it clear that an enlarged Europe with more, but smaller, member states is emerging and that the right of independent nation states is prevailing over those of devolved states. That reinforces the argument that Scotland's interests would be served as a full member state.

Who leads for Scotland? The Scottish Executive fishing minister speaks for Scotland but does not necessarily lead for Scotland. Is it not significant that the European Parliament's constitutional committee report, as adopted on 28 November this year, notes the possibility under article 203 of the EC treaty for regional ministers to represent their member state at the Council in accordance with the state's own constitutional arrangements. I had a very interesting discussion about that issue last week with the Belgian ambassador in London.

How is the Scottish Executive serving the Highlands and Islands when an Office for National Statistics blunder has meant that the Highlands and Islands has lost objective 1 status? The Executive must argue for reclassification of the transitional payment as objective 1 so that the Highlands and Islands can get transitional payments post-2006.

It is important that the Executive should send a clear message. The Executive seems to want to make friends in Europe but do nothing on behalf of Scotland with that friendship. It wants to sit back and watch Westminster shape our future in Europe. I do not want to wait and watch. I want Scotland to decide for ourselves and form our own future as a full member state of the communities of Europe.

I move amendment S1M-3678.1, to leave out from "Scottish Executive's" to end and insert:

“Convention’s proposal for a constitution or constitutional treaty for the European Union which will delimit the powers of the EU and member states; believes that the people of Scotland must be given the opportunity to approve any such treaty in a referendum; supports the Liege Declaration and the European Committee’s calls for powers for sub-member state legislatures that would give Scotland full access to the European Court of Justice; urges the Scottish Executive to actively pursue this objective, and recognises that the most effective representation in the EU for small nations like Scotland is gained by full membership.”

15:54

Ben Wallace (North-East Scotland) (Con): The Scottish Conservatives are delighted to have the opportunity to debate the future of Europe and Scotland’s place in it. We are, of course, the party that took Scotland and the United Kingdom into the EU when many in the chamber were campaigning against it. Of course, there is never anybody in the Labour party now who campaigned against it. It is like trying to find someone who used to vote for Margaret Thatcher in Scotland—a lot of people did, but one can never find anyone who says that they did.

The Conservatives were at the heart of the enlargement when Spain, Portugal and Greece entered and attained membership. That is why we welcome enlargement, although we also see the need for reforms. We will not forget that that need is set against the background of a Europe that is perceived, rightly, to be distant from its citizens, elitist, undemocratic and secretive in the extreme. We welcome the Scottish Executive’s reaffirmation of the principle of subsidiarity, which was set out and fought for by John Major’s Government. It is interesting to note the remarkable similarity between the Conservative party’s position, as submitted to the convention by my colleague from Westminster, Richard Spring, and that of the First Minister.

We must avoid forcing changes in the wrong direction. We should not use the principle that because an enlarged Europe will not be able to agree on everything, we should always settle matters by a majority. It would be better if we agreed that the European Union should not legislate or become involved when it cannot achieve unanimity. The people of Europe have consented to the pooling of sovereignty to such an extent that we have formed a federal state. The best way in which to bring Europe closer to the people is to return decisions back to the member states. For example, as Fiona Hyslop said, powers should be given back to the Scottish Parliament rather than to Westminster. That is preferable to going above the heads of the people of the member states and straight to the centralised European Union.

Ms Margo MacDonald (Lothians) (SNP): Does the member agree that another important way of

ensuring that the people of the EU do not become disenchanting by the idea of Europeanism, would be to vote no to the euro? That issue undercuts all the constitutional questions that we are talking about.

Ben Wallace: It is clear that the euro is a federal currency and that it is one building block in producing a federal state. Now that I have used the word “federal”, my Liberal Democrat colleagues will accuse me of being paranoid, but we should remember that the Liberal Democrat representative on the convention, Andrew Duff, is also head of the federalist group in the European Parliament. Europe is awash with quotes from major political figures extolling the concept of a more federalised Europe. Today, Romano Prodi said:

“National leaders should act on their commitment to make Europe a superpower”.

In response to Margo MacDonald, I point out that we should remember that the euro is, by anyone’s standard, a federal currency. We should also remember Europe’s desire, as confirmed by Giscard d’Estaing and Romano Prodi, to expand qualified majority voting to cover practically every area, including foreign policy, defence and taxation. That can be seen only as a drive towards a united states of Europe. Of course, that is not my phrase; it is Giscard d’Estaing’s. People might think that that is just a phrase, but Europe is fast becoming a federal state; it walks, talks and looks like a federal state in all but name. Europe’s version of integration is becoming driven by federalism.

The matter gets worse because the Liberal Democrat Andrew Duff—I refer frequently to the Liberal Democrats because Jim Wallace is one—proposed in article 18 of his submission to the convention that in the future shape of Europe, a member state’s decision to try to withdraw from Europe should not be up to the people of that country. He says that a state that wants to secede or pull away from membership of the European Union would require permission either from more than three quarters of the member states or all the citizens of Europe. The last time such a suggestion was made was in Yugoslavia.

Dr Winnie Ewing (Highlands and Islands) (SNP): Will the member give way?

The Deputy Presiding Officer: The member is in his last minute. I am not prepared—

Dr Ewing: Does the member recognise that what he says on the withdrawal or acceptance of states flies in the face of the views of senior legal advisers?

The Deputy Presiding Officer: There are different rules for Dr Ewing.

Dr Ewing: Those advisers were the Scottish judge who was the first ever top judge of the European Court of Justice, Lord Mackenzie-Stuart, and the chief legal adviser to the Commission, Dr Noë. They said that if a member state broke up, the umbrella of legislation that applied to the whole would continue to apply to the bits. That is settled law so there is no point in trying to restate it.

The Deputy Presiding Officer: You asked for that Mr Wallace—you have 30 seconds left.

Ben Wallace: The intervention was not really relevant to the point that I was making. One reason for lodging our amendment was that we do not agree with the motion's congratulation of the Executive on the work that it has done. Most of the consultation has been done either by the Scottish Parliament's European Committee or by organisations such as the Confederation of British Industry and the Scottish Council for Development and Industry.

In fact, when I asked the Scottish Executive a parliamentary question on what it had done, Jim Wallace said that its website on the future of Europe debate had received eight hits. When I asked the First Minister whom he had consulted on Scotland's position in his submission to the Committee of the Regions, he said that he had answered in a personal capacity. We cannot, therefore, agree that the Scottish Executive has consulted and included the whole of Scotland, as it clearly has not.

The UK's position on the form of the EU has been inconsistent. We went from supporting an elected upper chamber to supporting a permanent delegation to supporting a written constitution, and we have had no clear direction from the EU member states. I move amendment S1M-3678.2, to leave out from second "welcomes" to "so far" and insert:

"condemns the Scottish Executive's failure to engage Scottish civil society in the debate; is disappointed in the inconsistent position of Her Majesty's Government and the Prime Minister on the future shape of the EU; further reaffirms the principle of unanimity in key policy sectors".

16:00

Irene Oldfather (Cunninghame South) (Lab): I apologise for the fact that I have a heavy cold. I will try to plough my way through my speech as quickly as I can.

I welcome the debate. Wearing my committee hat, I recall the number of times that we asked the Deputy First Minister to try to secure a debate on this subject. I appreciate the fact that he has done so in advance of publishing the Executive's final submission to the convention. I know that he is willing to listen to views that members put forward, which is to be welcomed.

It is difficult to do justice to the motion in five minutes. I begin with a few words about the convention process. For the first time in the revision of treaties, the people of Europe are being consulted. The open and transparent way in which the convention is operating is appreciated as a genuine attempt to equip the Union for the challenges and opportunities that lie ahead.

However, it is vital that we ensure that the convention listens to and acts on our views. Therefore, although the process must be welcomed, it is disappointing that the convention has not yet set up a working party on the role of regional and local government in Europe. There is still time to do that—some of the recommendations in the Napolitano report, which the European Parliament will vote on next month, refer to such measures. I urge all members to discuss those recommendations with MEPs in their parties and to consider how we can yet set up a working party to examine the specific role of local and regional government within the convention.

I welcome the fact that the Parliament is conducting its own deliberations in an open and transparent way. Colleagues from all parties welcomed the conference with civic Scotland that was held in the chamber on 16 September, which involved some 120 members of the public. Giving our ideas that kind of democratic legitimacy strengthens the case that we put forward.

The motion refers to the benefits that the European Union can bring. We started our conference on 16 September by asking the question: what is Europe for? There was a clear understanding that the EU is a force for peace and stability. Enlargement and the extension of the internal market to some 500 million consumers offer the possibility for trade and business development. Over the past few years, I have also been pleased with the social progress that Europe has made. Europe is about sustainable development and improvements in our environment. It is important to move away from the idea that it is only about foreign affairs.

One of the most positive opportunities to arise from membership of the European Union is the opportunity for interregional co-operation. In my constituency, schoolchildren from what might be called a socially disadvantaged area participate with children from Pisa, Italy, in an intercultural exchange involving language and art. That is the kind of practical demonstration of the benefits of the European Union that citizens easily recognise.

However, we must face up to concerns about the way in which the EU operates and the fact that citizens feel it to be somewhat remote from their everyday lives. We must consider how we can make the Union more efficient and easier to understand.

As Europe's newest and youngest Parliament, we sometimes underestimate just how far we have come in adopting the principles and practices of modern governance. Indeed, I was in London last week at a meeting of the central-local government partnership, at which I mentioned the principles on which the Scottish Parliament is founded: the sharing of power, accountability and accessibility, openness and transparency, and equal opportunities. I believe—this view was articulated in the European Committee's report—that the EU could learn much from those basic principles and practices of good governance, which we in Scotland sometimes take for granted but which are often regarded as innovative elsewhere.

Ms MacDonald: Will the member give way?

Irene Oldfather: Yes, certainly.

The Deputy Presiding Officer: No. We cannot keep doing this. The member's time is almost up.

Irene Oldfather: I apologise to Margo MacDonald.

I want to say a few words about consultative legitimacy, an issue that is raised in the motion. The issue was addressed in a Committee of the Regions opinion prepared by Lord Tope and agreed by the COR the other week. The European Committee's report also deals with the matter. The specific issue is that bodies that are ultimately responsible for implementing legislation have a right to be consulted at an earlier, formative stage in the process. A great deal of support is emerging across Europe for greater access to the Commission at the pre-legislative phase.

I wanted to speak about many other matters, such as the simplification of the treaties, increasing awareness and having a Europe day to look at the European Commission's forward legislative programme. However, I can see that the Presiding Officer will not allow me to speak about those issues, so I will just say that a great deal of work has been going on across Europe to influence the debate on the future of Europe. I am delighted that the Scottish Parliament is having the opportunity to have its say. I am reminded that, four years ago, that would not have been possible. It is important that we are playing our part and influencing the future of our children and our children's children in Europe. I am happy to support the motion.

The Deputy Presiding Officer: We come now to the open debate, in which we will have speeches of four minutes.

16:07

Dr Winnie Ewing (Highlands and Islands) (SNP): A matter that concerned everyone on the European scene for many years was the secrecy

of the European Council. Members of the European Parliament constantly tried to unveil the secrets and find out about major discussions. Sometimes we could find out, if we had a friend at court who told us what went on inside. That happened to me sometimes—I have to admit that it was usually through an Irish connection. That secrecy is still with us and is one of the big problems that all the institutions of Europe face. It is not good that there is secrecy about the UK's negotiations. Often, we cannot find out what has happened in the negotiations. In a world that is looking for more openness, be that in the UK, Europe or elsewhere, we are not doing too well in the secrecy stakes.

I welcome the work that the European Committee has done for its report. There is much need for simplification as far as European citizens are concerned. We need idiots' guides to the treaties, citizens' rights and the powers of the EU and member states. We also need a guide to petition access, because I do not think that many people realise that they have it. Perhaps we also need a good word about the Erasmus programme, which I had the pleasure of thinking up and introducing.

I congratulate the European Committee on its report on Scotland's representation in the European Union. I agree with section 149, which suggests that the Scottish Parliament should have a presence in Brussels as the Scottish Parliament and not through other presences that might be suggested as options. I also agree with section 113, which states:

"The ... biggest area for improvement is ... gathering and dissemination of information ... the trick is secure access to the right sort of information at the right moment".

When I was a member of the European Committee, I always said that the problem is not that we look at and comment on legislation that has been passed; the problem is finding out when an issue important to Scotland is to be given to a rapporteur, so that we can approach that rapporteur with our input before he has even drafted his full report. I am afraid that we have not got round to doing that, but I welcome the European Committee's report, which seems to agree with that stance.

I have a couple of points on the constitution. We do not agree with a superstate, of course. We believe in a supranational union that acknowledges shared sovereignty. Four tiers must be recognised: the member states, the EU, the internal territorial legislative units and local authorities, which obviously have a part to play. I believe that, in the future, the executive power should be the European Commission, which should be answerable to the Council of Ministers and the European Parliament, and that the Council

of Ministers should become part of a bicameral legislature. That is the only way in which we can ever hope to have a democratic Europe. People might disagree with that, but I think that that situation is inevitable.

I agree that subsidiarity should be redefined and I think that the members of the Committee of the Regions—I totally approve of that body, in whose setting up I was involved—should be sent by the regions, not the states. If they are not, it is a nonsense to call it the Committee of the Regions.

As Fiona Hyslop said, we support having a referendum on the major constitutional change that Europe faces. Given the powers that be in London, I doubt that we will get one, but we should still press for it.

As Fiona Hyslop also said, it is clearly ludicrous to say that the Committee of the Regions and legislative assemblies inside member states should not have access to the European Court of Justice.

The Deputy Presiding Officer: Please wind up, Dr Ewing.

Dr Ewing: Is my time up already? I feel as though I have just got started.

My view is that an internal legislative assembly should be able to have direct representation in Europe. I reject the myth that being in Europe as part of the UK gives us clout. In fact, we have the opposite of clout. Look at fishing. Look at what happened with objective 1 funding. Look at the numerical representation that we would have if we were a normal country. Even though we will be surrounded by the new member states—all of them independent countries that will have a seat at the top table—the unambitious unionists are quite happy for us to be a substate.

16:12

Sarah Boyack (Edinburgh Central) (Lab): I welcome the fact that we are debating this important issue, which the European Committee has been discussing for months. Having tried to follow the debate about the future of Europe, I think that it is appropriate that the key issues on our agenda today relate to transparency, subsidiarity—although I hate the word—and making the EU more efficient and effective. Above all, however, the key issues are about ways in which the EU institutions can relate more effectively to the citizens whom they represent.

The key to the debate is the need to increase the democratic legitimacy of the institutions of Europe, by reforming them and making them fit for the 21st century. The institutions were developed 50 years ago, in another era, after the second world war. As we start the new century, we are

facing a larger Europe. The states that are joining the Union are looking for security, economic progress and the high quality of life that many of the states that are already in the EU almost take for granted. This is a radical time to be debating the future of Europe.

I was disappointed by the Tory amendment and by Ben Wallace's speech. The Executive and MSPs have made a significant effort to stimulate debate. I have been to a series of seminars—I am conscious that I have missed some—as well as debates and discussions on the issue. In those meetings, there has been an attempt to engage people from trade unions, small businesses and so on, rather than the usual suspects and people like us who are already engaged in politics. It is important that we increase awareness.

Ben Wallace: Will the member take an intervention?

Sarah Boyack: No. Ben Wallace has already had a chance to speak.

I was also disappointed by the SNP's amendment, although I agree with some of the spirit behind it. Much of what Irene Oldfather would have talked about if she had had 20 minutes would have related to the detail of the committee's recommendations, which are about ensuring that Scotland's perspective is represented at the table. We do that through the UK Government and through a plethora of organisations in the convention on the future of Europe. The convention does not comprise many people and they are not necessarily the most representative: there is an appalling gender imbalance and there are few young people. There is an issue about how we who are outside the convention can have our voices heard inside it. That is why this debate is important.

In the UK, we have had the debate about our constitutional future; the challenge is to make it work. Every two weeks, the European Committee of the Scottish Parliament scrutinises forthcoming issues. We also talk to our colleagues in the European Parliament. The debate is about getting the best of both worlds: being part of the wider UK, being able to network with other regions and member states in Europe and being part of the bigger picture. When we are finally presented with the convention's conclusions, it will be very difficult to make major changes. That is why we need to make our comments now. It is also why our different political groups need to engage in that debate now from their different perspectives.

It is difficult to imagine the process coming to a conclusion at the moment, because there are very different political strands in Europe. One strand advocates an approach similar to the one that we take, with asymmetrical devolution and different

solutions throughout the UK. We make that work and we network. There is the much more prescriptive approach, which is perhaps the French style, which is to write everything down—

The Deputy Presiding Officer: I beg your pardon; I pressed the wrong button. May we have Miss Boyack's sound back, please? You have it back, Miss Boyack.

Sarah Boyack: I had not noticed you warning me, but I take that as a subtle hint that I should finish soon.

The Deputy Presiding Officer: You have about 20 seconds.

Sarah Boyack: Concluding the process will be a challenge. That is why we need the debate. The Executive motion is positive. It challenges us to make the most of the changes that are happening in Europe.

There will be new states in the European Union, some of which have had conflicts in the past couple of decades. They are looking for security and the economic, social and environmental progress that we have started to take for granted.

We are now part of Europe and the challenge is to make that work more effectively. That means more transparency. I welcome Jim Wallace's comments about Council meetings, which take place in secret but make laws that apply to us all. There will still be scope for negotiation and little discussions in the backrooms, but the big decisions that affect us all—and, in future, the 500 million citizens of Europe—need to be taken in public. That ethos should run throughout the whole European Union and its dealings.

16:17

John Young (West of Scotland) (Con): I am glad that Murray Tosh is not the President of the United States. If he was, I would shudder to think that he had pressed the wrong button.

I will try to be brief. I know that time is of the essence, so I will try to do my speech in three and a half minutes.

The British empire is gone, apart from some small dependencies and islands with an estimated total population of 125,000. The Commonwealth has undergone change and will, no doubt, continue to do so. The big power brokers are the United States and China. I believe that it is imperative that a small country such as Britain should be a major player in Europe. The mechanism that is under discussion today is therefore of supreme importance.

There is now a queue of probable new entrants from eastern Europe, plus Cyprus and Turkey. That means considerable diversity. The

Conservatives oppose a European constitution because that would be a further step down the road to a unitary superstate. A new treaty, rather than a constitution, would be preferred. Most member states share that view.

The nearest analogies to a European superstate of which I can think would be the Roman and Napoleonic empires, along with Hitler's third Reich, but all three used warfare to conquer and dictatorship to rule. As has been said, the Conservatives want arrangements to be based on a common, basic set of laws—rather than a constitution—with the emphasis on securing a single market for trade.

A key function of the convention should be to promote and develop democracy and accountability not only at a European level, but within nation states. The power to initiate legislation must be transferred from the Commission to the European Parliament. That is democracy. What do we read in Jim Wallace's motion? We read the coalition's favourite words:

"effective, efficient ... democratic, transparent and accountable".

I am not criticising Jim Wallace's choice of words, but we hear those words repeatedly from members of the Executive parties.

At the national level, member states' Parliaments should have greater powers, along with Governments and civic society. The subsidiarity principle—that power should be devolved to the level closest to the citizen wherever possible—is at the core of Conservative thinking on the convention. A Conservative MEP, Timothy Kirkhope, has proposed the creation of the post of European arbiter, who would be elected every five years to adjudicate on cases in which it was felt that competencies had been allocated to the wrong institution.

Decisions on the future of Europe will have a direct effect on present and future generations. On that, we are all united.

16:19

Colin Campbell (West of Scotland) (SNP): I will not attempt to emulate John Young and speak as quickly as he did, but I will try to stay within my time.

I have been a member of the European Committee since the start of 2001. The committee is characterised by a genuine desire to serve the Scottish Parliament's needs and to forge successful links with the EU. In our future of Europe debate, we brought together an extensive report that expresses the committee's collective view on the situation as we find it. Many of the report's conclusions were arrived at following

prolonged discussion and compromise, so that all members could sign up to it. Other aspects were quite easily agreed on.

I concur with the view expressed by other members that the most important justification for the European Union is the fact that it has saved western Europe from the kind of conflicts that scourged the whole continent in the 20th century—the first and second world wars, in which all Europeans, including Scots, English, Irish and Welsh Europeans, paid a very heavy price for the stupidity of politicians. All the EU's economic and political structures are by-products of that important reason for its existence.

The convention on the future of Europe became necessary because those who had become too closely involved in the processes of Europe were losing touch with the people whom they were supposed to engage and serve. That is the convention's value. It attempts to engage nations, regions and peoples in the debate on the way ahead for the EU. My colleague Lloyd Quinan is engaged in that process at the moment and at the weekend. As the European Committee's report bears witness, we engaged citizens in the debate in a Scottish parliamentary convention in September.

The way ahead must take into account all the diverse views of the EU's people. The SNP's view is that the EU should exercise certain powers based on pooled sovereignty from its member states, but that each state should retain sovereignty in constitutional, fiscal and other areas.

As far as I can tell, there is little disagreement—except on the part of the Conservatives—on the need for a constitution or constitutional treaty for the EU. Not to have one is to maintain a situation in which precedents can be established by the political experts in Europe. Those people often have their own agendas in mind, which might lock people, regions and nations into situations not of their choosing. Rather than viewing constitutions as iron bands, we should treat them as something that might control the wilder, federal inclinations of some people in Europe.

I totally support the SNP amendment's call for any new constitutional arrangement for the EU to be put to the people of Scotland in a referendum. Apart from giving the constitution democratic endorsement, such an exercise would engage the people, which is surely part of the reason for having the convention.

The SNP amendment also supports the proposal in the European Committee's report that

“regions' with legislative powers should have the right of direct access to the European Court of Justice to challenge Community legislation.”

I point out that the word “regions” was given inverted commas in deference to SNP committee members. Without a right of direct access, the process is a bit of a waste of time.

Although I believe that the European Committee does the best that it can, given the constraints under which it acts, I am often consumed by a great cloud of despair when I contemplate the voluntary blindness of my non-SNP colleagues, who cannot see that all our discussions on our vital access to Europe would be so much easier were Scotland a normal, independent nation. I say to Sarah Boyack, who thinks that the debate is over, that the debate will not be over until the Scottish flag flies in its own right, representing a normal nation, both in Europe and at the United Nations.

16:23

Helen Eadie (Dunfermline East) (Lab): I support the motion in Jim Wallace's name. Sarah Boyack's views on our efforts to engage with the people of Scotland certainly chime with mine. I would be surprised if the Parliament were not unanimous in thinking that the work of the convention on the future of Europe is vital. The convention is undertaking key work, which will shape the decisions that are taken at the intergovernmental conference in 2004. The Parliament has consistently supported the development of Scotland's influence on the corridors of power at EU level.

In past years, the challenge that has been faced at every level of government has been how to engage civic society in the development of policy in the EU. As Irene Oldfather said, the Parliament made a good start by holding our own convention—the conference that we held in the chamber in September—which involved participants from all over Scotland, including some young people. For many years, I have been eager to witness such engagement.

Ben Wallace has met someone who has always been very positive about Europe. I campaigned for the yes campaign in the 1975 referendum, when I was living and working in London. I am a member of the executive committee of the European Movement in Scotland, a cross-party organisation whose patrons include Jack McConnell, Alex Salmond, Jim Wallace and Lord Younger. I am a member of the Labour Movement in Europe Scotland and was formerly a member of the association of democratic socialists in Europe.

Only last week I had the privilege of attending a meeting in Edinburgh at which Gisela Stuart, one of the democratically elected United Kingdom representatives at the convention, was the guest speaker. Gisela outlined the work of the working

group that she chairs, which is considering the role of Parliaments across the EU. She was very interested to learn about the work that Scotland's politicians are doing in the context of the EU and was able to hear the views of many members of the public who attended the meeting.

I have no doubt that it is critical for every member of the Parliament to campaign actively to ensure that the voices of our people are heard more clearly in Europe. The ways in which we can do that are outlined in the European Committee's report. We have said that a constitutional treaty should be drafted that will simplify all existing legislation—that is an important task. We must strive to improve access and increase participation. Sharing power and accountability are also important.

The initiatives that the Scottish Executive took in the Flanders, Liège and Florence declarations and that the Scottish Parliament's European Committee took this October, as a founder member of a new network of regional parliamentary European committees, are to be applauded. Those initiatives are designed to strengthen the voices of regional Parliaments across the EU. At the most recent meeting of the European Committee, we agreed that the committee convener should be in contact with the conveners of European committees of other regional Parliaments.

Ben Wallace: Helen Eadie highlights the good work that the Parliament has done to engage with people. Does she find it regrettable that the Scottish Executive's motion does not mention the role that the Parliament, the European Committee and members of all parties have played in promoting the debate on the future of Europe?

Helen Eadie: From discussions with the Deputy First Minister, officials of the Scottish Executive and Labour members of the Executive, I know that the Executive is committed to and supportive of initiatives that the European Committee has taken. For example, recently I spoke to the Deputy First Minister about organising school quizzes throughout Scotland and found that I was pushing at an open door. Whenever we approach the Scottish Executive, our initiatives are taken up.

We understand the complexities of the European Union's decision-making process. The challenge for us all is to simplify and make much more transparent the way in which decisions are made. Irene Oldfather mentioned the goal and prize of peace, which motivated the founding fathers and mothers of the EU. We are still challenged and exercised by those goals. Only by securing agreements and treaties, as the convention proposes, and by enlarging the European Union, can we ensure the peaceful development of Europe for our people.

Because of the work of the Parliament's European Committee, the Scottish Executive, our partners in local government and members of the European Parliament, Scotland is making a real impact. Scotland is punching above its weight in Europe. Scotland's enthusiasm for and involvement in Europe is renowned at all levels of government in Europe. I welcome recent developments in the European Committee, which now deals with pre-Council agenda setting as well as post-Council scrutiny.

The main challenge that confronts us is that of ensuring connectivity between Europe's citizens and Europe's institutions. I believe that the Parliament's European Committee has forged a positive relationship with the Scottish Executive and with ministers, who have embraced enthusiastically the commitment of all enthusiasts for Europe in Scotland.

16:29

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The great thing about having a middle slot in a debate of this nature is that one may unashamedly make a couple of constituency points. I intend to do that.

In Donald Gorrie fashion, I will dispose of what has been said so far by saying that Europe is a good thing. The two points that I want to make will come as no surprise to members.

There has been mention today of objective 1 assistance for the Highlands. We have heard the allegation that the calculation was made wrongly in the first place and that it is not in the power of Europe to go back and regrant objective 1 assistance.

Dr Ewing: It is.

Mr Stone: Some people have said that. The point is that the past is the past and we cannot change it. However, we can change the future.

As Dr Ewing will recall, when the decision was made, John Farquhar Munro and I—and others—made what I believe was the cogent argument that had Inverness not been included in the equation for the Highlands and Islands, other parts of the Highlands would have qualified for objective 1 assistance. At a recent Finance Committee meeting, I took that up with witnesses, and it was confirmed that that was the case. When Wales applied for objective 1 assistance, it fine-tuned the boundaries for its application and so was successful.

I exhort the Executive and the powers that be to ensure that next time round we look for a more sensitive and accurately targeted method of securing objective 1 funding. That relates to the efficiency and transparency that we have talked about.

My second point will come as absolutely no surprise to members, because it touches on the dairy industry. For the record, I declare an interest in my brother's cheese-making business. I remember that when I was involved in the business some years ago, we had to do up what was essentially an old steading and turn it into premises in which one could make cheese in proper modern conditions. I remember visiting a camembert-making plant in France and being struck by the different interpretation of the laws. We have all heard that argument before, again and again—I see Jim Wallace looking wearily at his papers. The point is that one should not carp or criticise, because it is a strong reason to engage with Europe. It would make enormous sense for us to get in there and put our views across further.

I remember when Nora Radcliffe and I were in Brussels earlier in the year. We talked to MEPs, who bemoaned the difficulty of getting a story about the hard work of all parties into the press.

Fiona Hyslop: On a point of order, Presiding Officer. Is it not important that the member addresses the terms of the motion? I understand that he has not mentioned the word "convention" once.

The Deputy Presiding Officer (Mr George Reid): I think that the member is just within the limits and no more. Not too much more cheese, please.

Mr Stone: I want to make a point about transparency, which is within the terms of the motion. It is a sad fact that the good work of our MEPs cannot always be got at. I think that Fiona Hyslop would accept that as a fair and valid point.

I support the motion. The more that we can engage with ordinary people to get them to understand, and the more that we can converse with Europe, the more that we can tackle problems such as the fine tuning of objective 1 funding and the carping about regulations, and bring across the value of Europe to the ordinary people of this country, who matter.

16:33

Mr Kenny MacAskill (Lothians) (SNP): Quoting selectively from history is always difficult and dangerous. John Young mentioned Rome, Napoleon and Hitler as historical analogies. I prefer to use the Hanseatic league and Charlemagne's holy Roman empire as better analogies of the sort of European Union that we hope to create.

We have to recognise that the argument about the UK and Scotland remaining in the European Union might be set, as Sarah Boyack said. The

debate now is about the type of union that we want to create and whether it has a social aspect or whether it is simply a free market. I certainly do not believe that the free market can be allowed to remain unregulated and uncontrolled. We require there to be a social dimension to Europe.

Our society is at an historic juncture. We can either go in the direction of a north European democracy, to which I think our membership of the European Union would add and from which we would gain a great deal, or we can go down the road taken by the United States, the UK at present and, indeed, Australia, which would present significant problems. Where the societies and economies of those countries are going holds no allure for me. We have growing disparities of income, wealth and power; we have the dislocation of political aspects, such as lower turnouts in elections; and we have myriad social problems.

Ben Wallace: Will the member give way?

Mr MacAskill: Not at the moment.

The fact of the matter is that going into Europe offers great opportunities. It is about making a choice that is not simply about better economic fortunes for ourselves, but about what sort of society we want to create not only for ourselves but for the whole of the European Union as it is and as it expands. That we will go in that direction is probably an historical inevitability. It would be better if we were to go willingly rather than grudgingly and if we were to go sooner rather than later. We must go in that direction.

My colleagues have made points about independence in Europe with which I fully agree. It is a pity that Wendy Alexander is not in the chamber. Her view is that the issue is about interdependence rather than independence. It is about both independence and interdependence. That raises the question of fields and levels of responsibility.

In the 21st century Europe in which we live and in which our children's children's children will grow up, some matters will be dealt with at a European level and others, such as those affecting a small island such as the UK, will be dealt with on an inter-island basis. I submit that it is better to have matters dealt with on the basis of equality than to be dictated to. Some matters, such as whom and what to tax and what to spend the revenue on, will remain within the control of the democratically elected representatives of our nation state.

Ben Wallace: Will the member take an intervention?

Mr MacAskill: No, I will not take an intervention.

In the new European Union that will develop, it is not a question of independence or of

interdependence; it is a question of both. It is a question of fields and levels of responsibility.

How should we play an active part? We can participate or we can spectate. At present, as Scotland is not an independent member of the European Union, we are simply spectators. I do not want to use inflammatory language about being bag-carriers, but we cannot participate to any great extent. We can go to a convention, but we cannot vote. We do not have the right to participate in consideration of whether there should be qualified majority voting on this, that or the next thing.

If we are to play a part in the formation of a new Europe—which might not be the same as the Europe that we are discussing or actively seeking at the moment—and to participate in the journey that Europe is undertaking, we require to be represented as an independent nation state.

Although I hope that we participate in the convention as fully as we can, ultimately, if we are to make the best of Europe—which is essential for our society and for future generations—we must participate in such events as an independent nation state. We should not necessarily seek greater powers, but we should not accept fewer powers.

The Deputy Presiding Officer: We move to winding-up speeches. We are on schedule.

16:37

Mr John Home Robertson (East Lothian) (Lab): The European Union is adapting, modernising and, above all, expanding into a new role for the 21st century. I am afraid that the same cannot be said of the Opposition parties from which we have heard. As we might expect, they seem to be well and truly stuck in their respective grooves.

The Tories still have an unhealthy obsession with the F-word and they are fundamentally Eurosceptic—which, in normal language, means anti-European. Although that is not the position of Ben Wallace, who makes constructive contributions to the European Committee's deliberations, it is the position of his party. As for the nationalists, as ever, they are more interested in breaking up the British Union than they are in developing the European Union. I am glad that I have got that off my chest.

I pay tribute to all my colleagues on the European Committee, regardless of their party. We have had a constructive discussion about the future of Europe. Our inquiry led to the publication yesterday of our report on the future of Europe. The report's key recommendation is the establishment of a clear role for regions with

legislative power within the EU. We also propose that the EU should adopt the underlying principles adopted by the Scottish Parliament: power sharing, accountability, access and participation and equal opportunities. Those principles have served as good, sound principles for the Parliament and they could usefully be adopted by the European Parliament.

A Europe of 500 million people that extends from the Atlantic to the Russian border is a phenomenal enterprise. It represents a colossal economic market that should offer the basis for a new era of security and development. As John Young indicated, it is completely different from all the dynasties and blocs that have gone before. It is not an empire that is controlled by one strong nation; it is a free partnership of nations, regions and peoples.

The expansion of the EU is an extremely ambitious enterprise. The existing institutions are under great strain with just 15 members and they cannot possibly survive in a union of 25 members plus. The rotating presidency will become impossible. The Council must be radically reformed. The Commission must be brought under effective control and scrutiny. The European Parliament must take on more responsibility and prove itself worthy of that responsibility. From a Scottish perspective, we must co-operate with regions such as Flanders and Catalonia to establish clear rights and responsibilities for regions with legislative powers in modern Europe.

I hate the word "subsidiarity", but if we get the right conclusions to the convention's deliberations on the future of Europe, the principle of subsidiarity should be so deeply engrained in the culture of the union that the word need never be spoken again. That should be the objective. An obvious example of how the idea could work better is the management of the fisheries adjacent to our coasts.

The European Union is about prosperity, security and co-operation among the peoples of Europe. It means policies and funding to address social and environmental problems and the active engagement of people throughout the union in a new citizens' Europe. That will not simply happen. There is a lot of cynicism out there about every level of representative government, but people may have forgotten just how awful all the alternatives to democracy and co-operation can be. I happen to be one of the older members of this Parliament, but even I was born three years after the end of the second world war. Nevertheless, during my time in Bosnia, I saw a little glimpse of how badly things can go wrong even in today's Europe.

The importance of achieving a successful outcome to the future of Europe debate cannot be

overemphasised. The alternatives to democracy and co-operation in Europe could be a return to the European history of division and poverty and far worse. We owe it to future generations to get it right.

16:42

Phil Gallie (South of Scotland) (Con): The debate has been interesting to say the least. John Home Robertson and several other members, including Irene Oldfather, Colin Campbell and Sarah Boyack, mentioned the peace benefits as the reason for bringing Europeans together. However, none of them seemed to remember that perhaps the key factor was the North Atlantic Treaty Organisation. NATO played a major part in bringing Europeans together and in keeping the peace. We must all remember that.

I want to pick up on the comments that Irene Oldfather made. I sympathise with her having a cold, but I suspect that in tramping around Europe she has picked up some European germs. I ask her to keep them to herself, but not her European thoughts, because some of her thoughts are very relevant indeed.

Remembering that the debate centred on the convention, Irene Oldfather acknowledged that the convention has been a disappointment to her. The convention has been a disappointment to me as well, because it has concentrated too much on what I see as a drive towards federalism. The convention envisages a constitution that would bond all nations together in a way that suggests that, in the longer term, we would operate under a single European state. The convention should have been an opportunity to examine the real issues of Europe, which are the issues that bother the people in all our constituencies and areas.

Irene Oldfather: I appreciate Phil Gallie's sentiments, but I want to put on record the fact that the disappointment that we share about some aspects of the convention is probably for different reasons. If I may mention one aspect that I am particularly disappointed in—

Phil Gallie: Okay, I take the point. Whether or not Irene Oldfather's disappointment is for different reasons, she expressed some disappointment in the convention.

My disappointment centres on the fact that the convention has failed to focus on key issues, such as the way in which the Commission has managed its finances. Just a few years ago, the European Parliament dismissed the Commission for failing to manage European financial affairs correctly. We seem to be moving towards that scenario again. It surprises me that no one mentioned that in today's debate despite the fact that I am sure that every one of our constituents would feel strongly about

it. We have talked about great visions for Europe, but when we come down to it, there are concerns about issues such as bureaucracy. The convention seems to have failed to address that and that is also disappointing.

Jim Wallace spoke about all the benefits of Europe, including the potential for more jobs. Let us be realistic. We are all for enlargement because it seems to make sense, but with that has to come reform. Until now, reforms have been too inadequate to meet the needs of enlargement. The convention could have addressed that issue and brought members together on it. The convention has missed many opportunities.

I am concerned that majority voting is being considered. That would be detrimental to the subsidiarity that has been the aim of the First Minister and the Deputy First Minister.

The convention should have addressed the kind of issues that I have mentioned. Instead, it has been guided by the Prodis and some of the other senior political figures in Europe who seem to see a federal Europe as the ultimate aim for us all.

16:46

Irene McGugan (North-East Scotland) (SNP): Many members have said that the convention is discussing reforms to the European Union and that it should be working to make the EU more efficient and to bring it closer to citizens. As a concept, the convention is broadly welcomed.

I suggest that one of the main purposes of the convention is to open up to all Europe's citizens and their representatives the process of reforming the EU. I suggest that the convention has a duty to all democratic institutions in the EU to clarify the role in the EU of nations and regions other than member states. Today's debate has reminded us of the importance of Europe in our lives and why it is so important that our voices are heard and that we are all involved.

The principle of subsidiarity, which has been mentioned many times, should mean that European decision making reaches right down to the localities where the decisions made will have an effect; it should ensure that those decisions are taken appropriately and locally. From what I have heard today, I suggest that subsidiarity has to be better defined, especially for countries such as Scotland where it is important that people understand the concept.

As a member of the Committee of the Regions, I am constantly reminded that regions come in all shapes and sizes. I sit as an MSP and can comment from a Scottish perspective; other members might refer to their often small council areas. However, the Committee of the Regions

has made a contribution to the debate on the convention with two key points that are relevant to Scotland.

First, the Committee of the Regions supports the proposal to grant the regions a specific status in the treaty, in the same way that the status of national Parliaments is recognised. It also supports the proposal to detail the areas in which the regions are involved, their responsibilities and the practical arrangements and procedures governing their participation. The Committee of the Regions also recognises that the principle of subsidiarity must be incorporated at sub-national level because, in many member states, local authorities share administrative responsibility for EU-related matters.

Secondly, the Committee of the Regions reiterated its call for the Committee and those regions that have legislative powers to be granted the right to bring proceedings before the European Court of Justice where the subsidiarity principle is not respected. Will the Deputy First Minister explain the Scottish Executive's opposition to those two key proposals from the Committee of the Regions?

Scotland has a long tradition of good relations with the nations of Europe and the SNP wholeheartedly supports the constitutional development of the EU in a way that is favourable to democracy. We welcome enlargement, not least because, as others have said, it provides a context for peace, enhancement of prosperity, co-operation and the environment. Those are all very good things.

We also support a European constitution that will delimit the powers exercised at EU, member state and regional level. However, we have always argued that major constitutional change should be approved through referenda.

In the debate, we have considered, to an extent, how the Scottish Parliament fits in and what our role is. Of even more relevance is the question that we should be asking: what has changed for us with devolution? We say, "Not very much." I give an example in conclusion. More than half the applicant countries are the same size as, or smaller than, Scotland, but they will all have a guaranteed seat at the top table, with permanent representation on the Council of Ministers, the right to nominate a commissioner, and considerably more members of the European Parliament per head of population. They are, quite rightly, set to enjoy first-class status, while Scotland will not. That is the basis of our amendment.

16:50

Mr Jim Wallace: I welcome the opportunity to have this debate and to have heard the

contributions of members from all parts of the chamber. As I indicated at the outset, we see the debate as an important part of developing the discussion in Scotland and as helping to inform the submission that the Executive will make to the future of Europe convention.

I thought that Ben Wallace was a bit churlish when, in an intervention, he said that the motion did not recognise the role that the Parliament and its European Committee had played. I went out of my way in my opening speech to pay tribute to the work of the European Committee, in relation both to its most recent report, which was published on Tuesday, and to the work that it did at the end of last year, the report on which we debated in February.

Ben Wallace: The minister's motion was lodged yesterday, and we lodged an amendment to it. We had no idea what he was going to say in his speech, but it is a fact that his motion did not acknowledge the cross-party parliamentary role of the committee.

Mr Jim Wallace: I regret giving way to enable Ben Wallace to make that fairly pointless intervention. I mentioned that role in my opening speech, but Ben Wallace's intervention came later. His amendment relates to what he claims is a

"failure to engage Scottish civil society".

That is churlish. We not only consulted the European Committee, we launched a wide-ranging consultation with Scottish civic society at many different levels. There was an opportunity for people to contribute. Ben Wallace says that the CBI collected some views, but that should not detract from the fact that we expressly went out and invited many large bodies, such as the CBI, to give us their views. The response may not have been as large as many people would have hoped for, but that underlines the need for the convention's work on trying to engage more people in the European debate.

I will address the next point to get it out of the way—I speak of the inevitable amendment from the SNP and the view that if Scotland had a seat at the top table, everything would be hunky-dory. We hear that view often, and I know that SNP members have to go through the motions of saying it. They get so obsessed with who is sitting at the table that they never give much thought to what is being said there. When we agree the common line with the United Kingdom, the most important point is that the person who represents Scottish interests has the clout of the United Kingdom at the table—they are not obsessing about the shape of the furniture.

A number of members talked about the importance of having a constitution for Europe. There was general support—except from the

Conservatives—for a constitution. I say to John Young that I cannot accept that those who support a constitution for Europe fall into the same mould as the Romans, Napoleon and Hitler. I do not think that they sought to dominate Europe by way of a constitution; they sought other ways of achieving that.

John Young: Will the minister give way?

Mr Jim Wallace: I have been fairly generous with interventions.

Fiona Hyslop: Will the minister give way?

Mr Jim Wallace: Yes.

Fiona Hyslop: As the minister is addressing the issue of the constitution, can he advise whether the Executive supports holding a referendum on any constitution treaty? Can he explain why the Executive is opposed to direct access for this Parliament to the European Court of Justice?

Mr Jim Wallace: I will deal with the second question in due course. As far as a referendum is concerned, that would be a matter for the Westminster Parliament. We are giving the people of Scotland an opportunity to express their views on those matters; we could not have given them more opportunity than we have tried to encourage in recent months.

I will give way to John Young now. It was unfair of me not to do so earlier.

John Young: I am grateful to the minister. I simply made the point that the Romans, Napoleon and Hitler conquered vast areas of Europe and ruled by dictatorship. Of course, Europe today does not.

Mr Jim Wallace: I agree fundamentally with John Young. The important point about constitutions is that they are in place to restrain wilder excesses. Colin Campbell made the point well. What is important in our consideration of constitutions is that we must not be driven by the constitution itself. We need to work out the principles of what we want to establish and devise the constitution to fit the Europe and the principles that we want to put in place.

Winnie Ewing and Sarah Boyack mentioned openness at meetings of the Council of Ministers. As I indicated in my opening remarks, we would support that development and reform of those meetings.

A number of members referred quite properly to the importance of subsidiarity. Kenny MacAskill referred to it as the level of responsibility at which decisions are made. That is an important issue for a Parliament such as the Scottish Parliament. As I said earlier, 80 per cent of our devolved competencies have a European dimension. We have argued that we should consider creating a

political mechanism to police subsidiarity and that we should do so before decisions are made. There is strong support for that suggestion. The basis for my reservation about the judicial route is that, by its very nature, appeals would be made after a decision had been made, and the judicial route tends to be pretty cumbersome. We need a political, rather than a judicial, approach, because a political approach is liable to proceed more speedily. However, I accept that the European Committee is absolutely right to set out that the two approaches are not mutually exclusive.

Before the SNP gets too carried away, I should point out that when Jack McConnell signed the Florence declaration, he said that measures within the declaration, such as calls for regional access to the European Court of Justice or guarantees of representation at the Council of Ministers, apply less to Scotland. He also said that he understood well why those issues were important to other members of the group.

The declaration demonstrates clearly the maturity and flexibility that exists within the group. That is to our credit and bodes well for the future. Jack McConnell's point is that, from our perspective, the need for the judicial approach is not as great as it is perceived to be by other countries and that we should focus our attention on establishing an *ex ante* method of political scrutiny.

I turn to the rights and responsibilities of sub-member state administrations. We highlighted the importance of framework decision making in respect of SMSAs. Perhaps that would not have dealt entirely with Jamie Stone's perennial cheese problem, but it might have helped when we were implementing European legislation. We recognise that Brussels cannot have a one-size-fits-all approach to Europe that applies equally to parts of Finland, Greece, Tuscany and Scotland. We believe that we need more framework decision making within which we can devise legislation that matches Scottish circumstances. Winnie Ewing mentioned the importance of early access to decision making, to which I also referred in my opening speech.

Phil Gallie said that with enlargement must come reform. That was the point that the leaders of the European Union had in mind when they established the convention. If the European Union of today is not engaging sufficiently well with its citizens, how much more difficult will it be for it to do so when we have a much greater population in the new, enlarged European Union? That is why the convention has a lot to live up to—

Phil Gallie: You have not done that.

Mr Jim Wallace: Phil Gallie can say that we have not done that, but the convention is still

sitting, which means that it has not produced its final report. Much work remains to be done and an inter-governmental conference is still to come.

We should not lose sight of what has been achieved. Sarah Boyack said that some of the countries that are coming into the European Union had suffered conflict in the past two decades. We need only cast our minds back 20 years to remember that many of the applicant nations were under communist rule. If people had said then that within 20 years those nations would be embraced by the European Union, they would have thought that Europe would have travelled a long way. However, Europe has done so, which is why it is so important to get the structures of the European Union right. I have much pleasure in commending the motion to the Parliament.

Parliamentary Bureau Motions

17:00

The Presiding Officer (Sir David Steel): The next item of business is consideration of two Parliamentary Bureau motions. I invite Euan Robson to move motion S1M-3683, on the establishment of the committee for the National Galleries of Scotland Bill, and motion S1M-3685, on the establishment of a consolidation committee of the Parliament.

Motions moved,

That the Parliament agrees to establish a Committee of the Parliament as follows—

Name of Committee: National Galleries of Scotland Bill Committee

Remit: To consider the National Galleries of Scotland Bill

Duration: Until the Bill is passed, or falls or is otherwise no longer in progress

Convenership: The Convener will be a member of the Labour Party and the Deputy Convener a member of the Scottish Conservative and Unionist Party

Membership: Rhona Brankin, Maureen Macmillan, Alasdair Morgan, Margaret Smith and John Young.

That the Parliament agrees to establish a Consolidation Committee of the Parliament as follows—

Name of Committee: Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee

Remit: To consider the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill

Duration: Until the Bill is passed, or falls or is otherwise no longer in progress

Convenership: The Convener will be a member of the Scottish Conservative and Unionist Party and the Deputy Convener a member of the Labour Party

Membership: Brian Fitzpatrick, Murdo Fraser, Duncan Hamilton, Gordon Jackson and John Farquhar Munro.—
[*Euan Robson.*]

Decision Time

17:00

The Presiding Officer (Sir David Steel): There are nine questions to be put as a result of today's business. The first question is, that motion S1M-3410, in the name of Ms Margaret Curran, on the general principles of the Building (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Building (Scotland) Bill.

The Presiding Officer: The second question is, that motion S1M-3456, in the name of Mr Andy Kerr, on the financial resolution in respect of that bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Parliament resulting from the Building (Scotland) Bill, agrees to—

(a) any increase in expenditure payable out of the Scottish Consolidated Fund in consequence of the Act, and

(b) any charge imposed, and any payment required to be made, by or under the Act.

The Presiding Officer: The third question is, that motion S1M-3671, in the name of Mr Jim Wallace, on the Criminal Justice Bill, which is UK legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)

Jackson, Gordon (Glasgow Govan) (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)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 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)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)

McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 79, Against 27, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the provisions in the Criminal Justice Bill that relate to devolved matters should be considered by the UK Parliament.

The Presiding Officer: The fourth question is, that motion S1M-3670, in the name of Mr Jim Wallace, on the Crime (International Co-operation) Bill, which is UK legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (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)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 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)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 80, Against 27, Abstentions 0.

Motion agreed to.

That the Parliament recognises the need for the United Kingdom to ensure compliance with the international obligations for which the Crime (International Co-operation) Bill makes provision and agrees that those provisions in the bill that relate to devolved matters should be considered by the UK Parliament.

The Presiding Officer: The fifth question is, that amendment S1M-3678.1, in the name of Richard Lochhead, which seeks to amend motion S1M-3678, in the name of Mr Jim Wallace, on the future of Europe convention—the Scottish dimension, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)

Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (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)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 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)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

The Presiding Officer: The result of the division is: For 27, Against 80, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The sixth question is, that amendment S1M-3678.2, in the name of Ben Wallace, which seeks to amend motion S1M-3678, in the name of Mr Jim Wallace, on the future of Europe convention—the Scottish dimension, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division

FOR

Aitken, Bill (Glasgow) (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)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Etrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (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)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 17, Against 69, Abstentions 23.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S1M-3678, in the name of Mr Jim Wallace, on the future of Europe convention—the Scottish dimension, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)

Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 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)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Etrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 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)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 64, Against 19, Abstentions 26.

Motion agreed to.

That the Parliament acknowledges the many benefits that the European Union has delivered for Europe and for Scotland, welcomes the establishment of the Convention on the Future of Europe as an open and innovative means of addressing the issues now facing the European Union; believes that, in light of experience, the European Union needs to become more effective, efficient, easier to understand, democratic, transparent and accountable; recognises the role that Sub-Member State Administrations can play in realising these objectives; welcomes the Scottish Executive's engagement with Scottish civil society to stimulate discussion and to seek views on the Future of Europe; welcomes the contribution that the Executive has made to the debate so far, and calls on the Executive to press the Convention to bring forward proposals for strengthening the profile of the Subsidiarity Principle in the EU treaties, adopting a new mechanism for enforcing it which allows for full Sub-Member State Administration involvement, making greater use of framework legislation, consulting Sub-Member State Administrations at an early stage of policy development, generating greater transparency in European decision-making and introducing financial impact assessments for legislative proposals.

The Presiding Officer: The next question is, that motion S1M-3683, in the name of Patricia Ferguson, on the establishment of a National Galleries of Scotland Bill committee, be agreed to.

Motion agreed to.

That the Parliament agrees to establish a Committee of the Parliament as follows—

Name of Committee: National Galleries of Scotland Bill Committee

Remit: To consider the National Galleries of Scotland Bill
Duration: Until the Bill is passed, or falls or is otherwise no longer in progress

Convenership: The Convener will be a member of the Labour Party and the Deputy Convener a member of the Scottish Conservative and Unionist Party

Membership: Rhona Brankin, Maureen Macmillan, Alasdair Morgan, Margaret Smith and John Young.

The Presiding Officer: The final question is, that motion S1M-3685, in the name of Patricia Ferguson, on the establishment of a Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill committee, be agreed to.

Motion agreed to.

That the Parliament agrees to establish a Consolidation Committee of the Parliament as follows—

Name of Committee: Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee

Remit: To consider the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill

Duration: Until the Bill is passed, or falls or is otherwise no longer in progress

Convenership: The Convener will be a member of the Scottish Conservative and Unionist Party and the Deputy Convener a member of the Labour Party

Membership: Brian Fitzpatrick, Murdo Fraser, Duncan Hamilton, Gordon Jackson and John Farquhar Munro.

The Presiding Officer: That concludes decision time.

Osteoporosis

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business is a members' business debate on motion S1M-3508, in the name of Fergus Ewing, on osteoporosis. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes that osteoporosis is a major public health problem which results in more than 20,000 fractures a year in Scotland, that the cost of osteoporotic fractures in the United Kingdom each year is estimated at over £1.7 billion and that one third of women and one in 12 men over 50 will suffer an osteoporotic fracture; further notes that with an ageing population profile this problem will become even more serious; is aware that osteoporosis is both treatable and largely preventable; welcomes the fact that the public and health professionals are becoming increasingly aware of osteoporosis as a major health problem but is concerned that health service provision throughout Scotland is patchy and that access to diagnostic testing and monitoring varies around the country; believes that sufficient funding can be made available so that all patients have equal access to services for both the diagnosis and treatment of osteoporosis and that all patients suffering a fragility fracture or having other risk factors for the disease should be assessed for the presence of osteoporosis, and further believes that public health campaigns should be promoting the importance of lifestyle factors as influencing bone health and preventing osteoporosis.

17:08

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am grateful to the Parliamentary Bureau for the opportunity to debate the issue of osteoporosis for the first time in the Scottish Parliament. Osteoporosis is one of the most widespread and pernicious diseases and affects more people than virtually any other serious disease or condition that we know of.

Osteoporosis, which is also known as fragile bones disease, affects men and women. One in three women and one in 12 men over the age of 50 will suffer from an osteoporotic fracture. The disease is a major cause of pain and disability and, in extreme cases, can cause death. The most common fractures that result from osteoporosis are fractures of the wrist, spine and hip. As the population of Scotland is ageing, the number of people who suffer from osteoporosis will continue to rise and the number of people who are at risk of fractures that are caused by osteoporosis is set to rise.

There is a huge financial cost in social care and in the acute costs of treating osteoporotic fractures. That cost is estimated at £1,700 million a year in the UK and £150 million in Scotland. There are huge costs to the national health service and social services. More than one fifth of all

orthopaedic beds are used by patients who have had hip fractures. The acute care cost for each hip fracture patient is around £5,000, and there are approximately 6,000 hip fractures each year in Scotland. More than half of patients who have a hip fracture are unable to live on their own or to sustain independent living as a result. That of course means that some may require residential or other care, which imposes a huge cost.

Behind those dry statistics, chilling though they are, lies the real issue that I want to talk about, which is the human cost—the hundreds of thousands of tales of misery and pain of the people who have the disease. The pain that is suffered, patients' great anxieties about what the future holds and the misery that the disease can create should not be under-estimated.

It is essential that we have a better understanding of the disease in Scotland. I pay tribute to the work of the National Osteoporosis Society, which is represented in the gallery, and in particular to Anne Simpson, who is well known to many of us as she has made us more aware of the problems of osteoporosis.

The NOS, which operates throughout Scotland and the UK, holds open meetings to spread awareness of osteoporosis and does a great deal of excellent work in the general promotion of good bone health. Fifteen local support groups have been established in Scotland and play a huge part in passing on information and supporting sufferers, often on a one-to-one basis; I saw that at first hand when I recently attended the annual general meeting of the Inverness osteoporosis support group. The groups provide succour to families and are a series of excellent ginger groups, the members of which—perhaps from their own or their family's experience—are well able to put pressure on local health boards and professional staff to improve services in their area.

What would each of us do if we were told tomorrow that we had osteoporosis? What would be in our thoughts? Who would we turn to? How would we look towards the future? Perhaps we would be extremely anxious. We would not know what the future would hold, how serious the condition would become and how quickly symptoms would develop. We would ask obvious questions such as, will the treatment work? Can I play golf? Can I bowl? Can I do the garden? If I do those things, will I risk breaking a bone?

The NOS, drawing on the experience of members of the support groups, has produced an excellent strategy document called "Reducing fractures and osteoporosis in Scotland: A strategy for Health Boards, Local Health Care Co-operatives, Acute and Primary Care Trusts".

Where do we go from here and what needs to be done? Four issues need to be addressed. The

first of those is a positive move—the impending introduction of the new Scottish intercollegiate guidelines network, or SIGN, guidelines, which will be published in spring 2003. Those guidelines will set out best practice for general practitioners and other health professionals and hospital clinicians on the way in which osteoporosis is diagnosed and treated and how patients who are most at risk can be identified. Obviously, those who are most at risk include women with early menopause, those who take steroids and those who have a poor diet. The publication of the guidelines will raise awareness among professionals of best practice. The NOS has ensured that the guidelines fully reflect the patient's perspective. I urge the minister to ensure that the guidelines are implemented throughout Scotland. When the minister responds to the debate, I ask him, first, to indicate whether that will happen.

Secondly, although the disease does not have a cure, it can be prevented and treated. To do that we should adopt a cradle-to-grave approach. We must target young people with the message of healthy bones. Surveys indicate that youngsters are not taking to heart any of the messages, which are extremely important. Free school milk for kids may seem like a costly policy, but in the long term it would provide a massive saving in human and financial terms. We must persuade kids that milk is not only good, it is cool, it tastes good, it makes them feel good, and it might even make them look good.

Thirdly, it is essential that dual-energy X-ray absorptiometry—DEXA—scanners are made more widely available in Scotland. Much work has been done, notably in the Highlands, where a DEXA scanner was obtained largely as a result of the work of Lorna Young, who has harried, badgered and lobbied on that issue for years. However, many people in Scotland do not have access to a DEXA scanner, which is a fatal defect.

Fourthly, we must educate health professionals. I acknowledge that the Health Education Board for Scotland and the health department have done a lot of work, but much more needs to be done.

The Presiding Officer is giving me that certain look, so I will draw my remarks to a close. I look forward to other members' speeches. I am proud that we are having the debate. I hope that the minister will tell us whether a strategy will be prepared for Scotland and to what extent health boards will be invited to implement the guidelines and ensure that DEXA scanners are available to everyone. We have an opportunity to explode the myth that nothing can be done about osteoporosis, which is the exact opposite of the truth. I hope that the debate will play a part in showing that there is a will across all the political parties to find the way ahead.

17:16

Maureen Macmillan (Highlands and Islands) (Lab): I will not be able to stay until the end of the debate because I hope to catch the early evening train to Inverness, so I apologise to the Presiding Officer and to members.

I thank Fergus Ewing for securing the debate. When I attended the presentation that the National Osteoporosis Society gave a couple of weeks ago, I knew nothing about osteoporosis, except that it made people's bones crumble, that old folks got it and that not very much could be done about it. How wrong I was. I am grateful to the society and the members of the area groups who came to Edinburgh to speak to us about the condition. I now have an understanding—albeit a basic one—of a condition that is debilitating for many people, but which is preventable and treatable. However, treatment and diagnosis are not available throughout the country. As Fergus Ewing said, we are lucky in the Highlands because there is a DEXA scanner in Dingwall, but not every part of the country is so lucky.

Awareness of the condition is important. We must educate people to protect their bones. Fergus Ewing's point about diet is crucial. It is a sad fact that even if one puts milk in front of children nowadays, some will not drink it because they want a fizzy drink instead. We must take account of the fact that people's unhealthy eating habits will prove disastrous in the future.

It would be expensive to install DEXA scanners throughout the country, but they would save the great deal of money that the national health service spends on people who have a grave form of osteoporosis. We must also take into account the misery and uncertainty of people who suffer from osteoporosis and the uncertainty of their families. I now realise that osteoporosis is not something that only elderly people have and that people who are much younger can get the condition.

It is important that there is proper diagnosis and treatment for osteoporosis and education from an early age to try to get children to drink milk and to take exercise, for example by walking to school. I ask the minister to consider the matter as a whole and to find out whether by spending a comparatively small amount of money now we could save a lot of money in the future and help people who otherwise would have miserable lives.

17:20

Michael Matheson (Central Scotland) (SNP): I congratulate my colleague Fergus Ewing on securing the debate. I know that this is a subject in which he has been interested for some time. He has pursued it diligently by the various

parliamentary routes, which have culminated in today's debate.

Fergus Ewing has presented the facts of osteoporosis in our society. One in three women and one in 12 men can expect to suffer from osteoporosis. The commonly held view is that osteoporosis is an illness of the old. However, the National Osteoporosis Society's booklet tells the story of Anna Richmond, a 15-year-old girl who suffered from anorexia. After a four-year battle with that condition, she found herself suffering from osteoporosis. She had lost some 2in in height before she had even reached the age of 20. That illustrates the fact that young people can also suffer from this condition, which can be very debilitating for them. For Anna, things got better following effective treatment and she has gone on to become a doctor. She now works closely with the National Osteoporosis Society, which shows that, with effective treatment, people who suffer from the condition can lead an almost normal life.

Fergus Ewing said that the condition cannot be cured, but it can be prevented. It can also be treated, but I shall focus on prevention. We should, where possible, ensure that future generations are taught about the potential dangers of osteoporosis if they fail to have a suitable diet and to take adequate exercise. I agree with the arguments for providing free milk in schools. I always enjoyed my free milk when I was at school. Winnie Ewing has also pointed out to me that fish is very good for the bones. However, I do not want to encroach on that territory in case Stewart Stevenson intends to cover it later in the debate. It is important that young people have the opportunity to have a healthy diet to head off the potential development of osteoporosis in later life.

Sport also plays an important role in ensuring that young people develop healthy bones through regular physical exercise. We know from the statistics that fewer of our young people—especially young women—are participating in sporting activities. We are already seeing the warning signs of that in increasing levels of juvenile diabetes and obesity among young people. If we do not ensure that young people have a healthy diet and participate more in physical activities, the possibility of their developing osteoporosis in later life will be much greater.

Fergus Ewing mentioned the potential impact on our health service. It is essential that the services that are available for those who suffer from osteoporosis are the best that they can receive. Those people should have ready access to the necessary medical treatment and the diagnostic procedures that they have to undergo if they are considered to be possibly suffering from the condition. Alongside that, there must be regular

monitoring of those who have been diagnosed as having osteoporosis, where possible, to ensure that their condition is being kept in check. The only way to achieve that is for GPs to be aware of the condition, and the SIGN guidelines will help to address that. We must also ensure that the acute hospitals sector has the resources to provide the continuing monitoring that is required.

I hope that, in his closing remarks, the minister will be able to take a broader approach to the issue, rather than a purely medical approach, and address ways in which we can improve the health of our young people to head off the problem in the future.

17:24

Mary Scanlon (Highlands and Islands) (Con):

I thank Fergus Ewing for giving me the opportunity to speak on this subject. Fergus raises this issue persistently every time that MSPs from different parties meet the health chiefs in the Highlands. He does not always get the answers that he wants, but that does not stop him from raising the issue of osteoporosis as regular as clockwork.

I, too, would like to commend the National Osteoporosis Society on its strategy document "Reducing fractures and osteoporosis in Scotland: A strategy for Health Boards, Local Health Care Co-operatives, Acute and Primary Care Trusts", which was published in November 2000. I was heartened by the comment on the inside page from the chief medical officer for Scotland, who states:

"I hope that Local Health Care Co-operatives and Health Boards, Primary Care and Acute Trusts make its implementation a priority as part of their work in reducing osteoporotic fractures."

The strategy is also commendable because it is based on the principles of prevention and investment to save costs in the long run. Too often, we only consider issues such as how to cure fractures, but if we spent more money on prevention—which is at the heart of Fergus Ewing's motion—we would save money in the long run. The £150 million cost of osteoporosis to the NHS in Scotland cannot possibly measure an individual's loss of independence or the impact of bedblocking—or delayed discharge, as we call it. The most recent figure for that was 2,920 in July 2002, which represents a spending of millions of pounds.

Given that osteoporosis is treatable and preventable, any investment will undoubtedly save the NHS millions in the long run. I was shocked when I read the figures to find that only 50 per cent of osteoporosis patients return to full, independent living. The 50 per cent who do not do so represent an enormous amount of patients.

The SIGN guidelines are due in spring 2003 and will be welcome. I hope that they will be based on the NOS's strategy. All SIGN guidelines are welcome, but only if they are adhered to. If they gather dust on a shelf, they are of no great benefit. However, I am pleased to see that pharmacists are included as one of the agencies in the NOS's strategy. The strategy document states that pharmacists should

"encourage adherence to pharmacological treatment"

and

"ensure patients understand their medication and adhere to dosage."

I raise that matter in relation to a fact about which I got confused, which is that calcium is recommended to reduce vertebral fracture risk, but only if it is combined with vitamin D.

When one gets to a certain age in life and is considering how to avoid osteoporosis, one might read the following statement from the NOS's booklet: "Osteoporosis: Causes, prevention and treatment":

"There are some risks associated with HRT,"—

which is of course a common means of preventing and treating osteoporosis—

"such as a slight increase in both the risk of breast cancer (after five years of HRT use) and the risk of a blood clot (deep vein thrombosis)."

That is a wee bit confusing. I welcome the fact that pharmacists are included in the NOS's strategy. One might consider hormone replacement therapy as a means of preventing osteoporosis, but that would have to be measured against the risks that the booklet outlines.

As Michael Matheson said, much more can be achieved by health professionals working together to address osteoporosis. I also hope that the SIGN guidelines will give clear, unambiguous guidance because I found that the guidance is certainly not crystal clear. I am grateful for the opportunity to speak in the debate. I hope that the underlying principle of prevention will be adhered to for osteoporosis and many other conditions.

17:29

Stewart Stevenson (Banff and Buchan)

(SNP): I am happy to come along and support Fergus Ewing's motion and to take part in what I expect to be a consensual debate. I think that some of us at least will be old enough to remember children with rickets and the large number of older ladies in particular who were stooped and crippled in old age because of undetected and untreated fractures, among other causes.

I mention rickets in particular because it has all but been eliminated in our young. However, there

is some re-emergence of it because of dietary problems that are not the result of a lack of money, but of the spending of it in the wrong way on the wrong diet.

I well remember, in the immediate post-war period, going to the Ministry of Health office to collect my orange juice and cod-liver oil. As Michael Matheson would doubtless want me to acknowledge, fish is extremely important and as Fergus Ewing would doubtless want me to want me to clarify, yes, I am that old.

Diet is important. I grew up in an area with calcium-rich water and, until I left home, I did not realise that soap was supposed to foam. All that happened when I used it was that it formed a scum around the bath, and that was due not simply to the infrequency with which my parents persuaded me that I should bathe, but to the high amount of calcium in the water, which was absorbed into my teeth and bones. Not everyone is so lucky, of course. In the west of Scotland, where the water is much softer, the opportunity to take up calcium is much reduced.

Some estimates suggest that 50 per cent of young women take up inadequate calcium in their diet and, while there is a suggestion that young men do little better, they are not exposed to the risks later in life that can lead to bone mass depletion, such as pregnancy, breast feeding and blood loss. Women have particular problems, which is why one in three of them will experience osteoporosis at some stage in their lives.

Young women and men are taking less exercise than they used to and exercise is important in building up bone mass at an early age. That is helpful because it means that any later loss of bone mass is offset against the substantial amount that was present in the first place.

Of course, there are other risks. A substantially higher number of young people than ever before suffer from asthma. When I was a bairn, I was one of only three who suffered from asthma in my year. Now, however, the proportion would be substantially higher. Much of the treatment of asthma is done through the inhalation of steroids, which are another cause of bone mass depletion, which means that, in the future, there might be an uplift in problems relating to bone mass depletion.

Furthermore, the inadequate calcium intake that I spoke of earlier means that people's teeth are not as good as they used to be. One of the results of that is gingivitis and inflammation of the gums. Again, the treatment for those problems is generally steroid-based.

I am sure that we all agree about the need to address the range of problems that are developing in our young people with regard to osteoporosis. However, I should also mention that there is a rise

in the number of auto-immune diseases of one sort or another, which affect all age groups and which are also often treated with steroids.

Just as we eliminated rickets in the young by appropriate action after the war, it is important that we eliminate osteoporosis in the old now. It has been suggested that exposing people to sunlight for 15 minutes on three occasions a week would be a help. I do not propose that the Executive send everyone to the south of Spain three times a week; an improvement in the weather in Scotland would be welcome, however.

Let us bear it in mind that the cost of treating the fractures that are caused by osteoporosis is £15 a year for everyone in our population. This is an important problem. We must spend more money but we must also devote more of our attention to the problem.

17:33

Nora Radcliffe (Gordon) (LD): About this time last year, my husband and I were in our sitting room when we heard an awful thud from upstairs, where our nonagenarian aunt was going to bed. We found her lying on the floor and it transpired that either she had fallen and broken her leg or she had fallen because her leg had broken. Whichever is the case, she spent weeks in hospital and, while she has made an amazing recovery, she is markedly more frail than she was before. Often, elderly women who are leading independent lives prior to a similar incident are not able to go back to independent living afterwards and need expensive service provision. No one would grudge them that, but everyone involved would prefer to avoid it if at all possible. It makes both humane and material sense to take osteoporosis seriously.

It is important to make people aware of the lifestyle choices that can help to prevent osteoporosis and I would endorse what Fergus Ewing said about that and emphasise that exercise is important in early life.

Osteoporosis occurs in men, but women are much more at risk, as they have naturally smaller bones, which are less dense, and also because the menopause greatly accelerates bone loss.

Osteoporosis is called the silent disease, because bone loss occurs without symptoms. Awareness of risk factors is therefore important. The diagnostic test for osteoporosis is a bone density scan. I advocate better access to bone density scanning for women who may be at risk because it is a good thing to do, but also because it is spending to save. Screening can reduce the incidence of fractures by half.

I will mention some of the work that has been going on in Aberdeen over the past 10 years. In 1994, I was one of a random sample of around

5,000 women in Grampian who were called in for bone density scans. In passing, it was comforting to discover that my bones were suitably dense, but of wider benefit than my peace of mind was the useful data that were collected to inform policy on osteoporosis.

In Grampian, general practitioners and hospital doctors can refer patients at risk of osteoporosis for bone density scans, but there is a waiting list of about a year. The scanning facility costs about £55,000 per annum, excluding the consultant's time, and processes 1,500 scans every year. Dr Reid, who runs the service, estimates that 2,500 scans per annum would meet the demand. At a cost of £36 per patient, that could prove to be a good investment.

17:36

Fiona Hyslop (Lothians) (SNP): Almost 10 years ago to the day, I broke my wrist on the morning of the 12/12/92 demonstration for democracy as part of the campaign to achieve the Parliament. I know from that experience how debilitating three months in plaster was—I could not wash my hair or get the Christmas presents, for example. As Mary Scanlon said, for those who suffer from osteoporosis and cannot necessarily return to active living, it is imperative that we address the issue. We must have sympathy with osteoporosis sufferers, but if one message is coming from the debate, it is that prevention and considering osteoporosis in the round for all the community are the way forward.

I am particularly interested in the material on the action plan for population-wide primary prevention measures, with which the National Osteoporosis Society provided us. That material shows us the areas for intervention. Half the problem is that people are not aware that they might be at risk. Those with a family member—perhaps a mother—who has had, for example, a hip problem, might be worried that they or other female family members have osteoporosis, but not know what to do or where to go. When they decide that they want to do something about it, the facilities might not exist for them to have the scan that can help so much.

From contacts that I have had with the National Osteoporosis Society, I know that there are problems in Edinburgh, where no clinician specialises in osteoporosis. In the Forth Valley NHS Board area, there is no clinician for osteoporosis. We must address those issues and ensure that, where we can get the prevention message across, we have the facilities to follow it through. I also have concerns about the availability of scanners. My understanding is that there is none in the Forth Valley area. The scanner at St John's hospital at Howden in West Lothian is open only on a Monday and a Wednesday. In

Edinburgh, there is only one scanner, at the Western general hospital.

I appeal to the minister to think about osteoporosis in the round and to think about it in the public health arena, particularly among our young people. There is a danger that osteoporosis is considered to be something that affects older people. We can change the agenda by recognising, as Michael Matheson did, that we need to think about younger people not only as sufferers, but in terms of prevention. My children get their milk and enjoy it. However, an awful lot can be done, particularly on the nutritious school meals agenda. Are we taking the calcium agenda into the nutritious school meals agenda?

I understand that the minister was at last week's falls prevention conference, which was held in conjunction with Age Concern Scotland and health professionals. The National Osteoporosis Society is concerned that osteoporosis is only considered part of the older age group agenda. Will the minister reassure us that, when he considers what the Executive can do to support the osteoporosis agenda, he will acknowledge that it must be part of the public health agenda?

As I have said, we should address the issue in the round. Let us ensure that we make a difference, because investment made today will reap rewards for tomorrow. If that means peace of mind for today's population and security for the next generation, we should make that investment.

17:40

The Deputy Minister for Health and Community Care (Mr Frank McAveety): I thank Fergus Ewing for raising the important issue of osteoporosis, which affects a considerable number of citizens in Scotland. I also thank the National Osteoporosis Society for maintaining a public profile on the issue. There is a consensus in the chamber and among political parties about the variety of strategies that need to be adopted to tackle what is a growing concern.

I wish to address the demography of osteoporosis, its age profile, the approaches that may be taken at health board level and the question of resources, as well as other points that members raised in the debate.

I have listened carefully to what we might call the personal confessions from individuals' pasts. I remind Stewart Stevenson of the old Jesuit phrase: "I cannot know what you know." Now that I know what his bathing quality was like, I might keep 10 or 15 yards away from him in future.

On Michael Matheson's contribution, I recall the discussion that we shared on a previous occasion. I will make a confession—and this will be a big

surprise to everyone. Sadly, I was a milk monitor. Members can imagine the kind of scams that were pulled to maximise the consumption of milk by Michael and friends over the week. I made him particularly sick of it, judging from what he had left in the stash by the end of the day.

Of course, osteoporosis is an important issue, and members have quite rightly identified the figures. The evidence suggests that, typically, about one in three women and one in 12 men over the age of 50 will have an osteoporotic fracture at some stage in their life. The condition has a clear impact.

Clearly, there is an exceptional cost element for the health service, but the real issue is how we change the dynamic, so that we avoid having to administer costly treatment and so that we find various ways to make a difference, through lifestyle and support services.

Members have mentioned the risk factors that are associated with a family history of osteoporosis, particularly among women. The incidence of smoking among women has increased over the past 20 years, and we must bear in mind a range of other issues related to lifestyle choice, opportunities for exercise and so on.

Mary Scanlon touched on the impact of hormone replacement therapy on women who are going through, or are just past, the menopause—we have to consider the fact that pills, implants and gels that are used to replace oestrogen in the body do not have the same effects. We need to address the range of issues and co-ordinate our actions.

Not that long ago, the National Osteoporosis Society produced a document with a foreword by Dr Mac Armstrong, the chief medical officer, which contained a series of strategies.

One of the key themes of the debate was what the Executive is trying to do and what the Executive can encourage people to do to make a difference. I note that my colleague, Andy Kerr, the Minister for Finance and Public Services, is here. One of the key elements in the latest spending review was the health improvement agenda. In the long run, that should start to intervene in the areas that members have highlighted, if things are done properly over the next few years. That involves trying to reduce the incidence of smoking and recognising the impact of other lifestyle choices.

I recognise the different views about the impact on young children of milk at different stages of development. The use of milk among young primary school children would have a substantial impact; whether or not its use is most effective for teenagers, particularly teenage girls, is openly

debated in health circles. We are keen to move on that issue. That is why we want to make progress on the recommendations of the expert panel on school meals, which advised that, each week, children should have at least one portion of food from milk and dairy products in their school meals.

Many local authorities have adopted a positive approach to milk, but that is not universal throughout Scotland. That is one of the issues that ministers are currently having to assess in the context of the health improvement agenda and as a consequence of the Parliament's recent debate on the broader issues around school meals.

I have outlined some of the key strategies. Another key strategy is to keep people physically active. That is especially important for younger people. The physical activity task force, which reported recently, produced a series of recommendations aimed at keeping Scotland's older people physically active. A range of measures is being taken.

We need to reduce smoking and alcohol misuse, to implement the diet action plan and to develop the work of the physical activity task force. Measures that have been taken over the past few years to encourage breast-feeding have had an impact in parts of Scotland. The challenge is to ensure that breast-feeding takes place in all social classes and becomes much more widespread. We also need to make the investment that people have requested in the active primary schools programme and in school sport co-ordinators. In the long term, those measures should make a difference.

We recognise that more immediate action is needed. Both education and intervention are required. I acknowledge the point that was made about the recent falls prevention conference. We need to be concerned about the impact of falls not just on Scotland's older people, but on young people.

I want to stress the issue of research, which was raised in the debate. Substantial research has been undertaken so far. The chief scientist office would welcome well-founded applications for funding for research into osteoporosis. Currently it is funding one research project on osteoporosis, which is entitled "Identification and mapping of osteoporosis genes in the general population by DNA pooling". Once we have that evidence, we may be able to target resources, as Nora Radcliffe suggested.

At the moment, scientists are telling us that the statistical return on the use of scanning machines is uneven. It is difficult to justify a national screening programme, because in 50 out of 100 cases the result may be unclear. The National Osteoporosis Society wants to open up a debate

on that issue. I reassure members that the door is not closed on screening, but for the reason that I have given, the Medical Research Council is not convinced that a national screening programme would be effective.

Fergus Ewing: I do not disagree with any of the points that the minister has made. I understand that the NOS is not calling for national screening to be introduced. However, it is very concerned about the availability of scanning, especially for those who are most at risk. The minister and a number of other members have mentioned which categories of people are most at risk. Will he undertake to extract from each health board—particularly those where cover is non-existent or patchy—a statement indicating whether it will adopt a policy on scanning, what access will be available and what policies will be followed? Will the Executive actively pursue the issue of scanning in the future, to ensure that all people who are at risk have proper access to a DEXA scan?

Mr McAveety: I am conscious of the time, but I will try to deal with the key issues that Fergus Ewing has raised.

The Scottish needs assessment programme produced advice on protection against, detection of and management of the disease, which has been issued to boards to assist them in dealing with the issues. If Fergus Ewing is seeking an overview of the situation, we would be happy to explore that with health boards. Health boards need to carry out a mapping exercise to determine scanning requirements and the number of staff who are needed to deliver the service.

The Scottish intercollegiate guidelines network, to which members have referred, is in the process of producing a clinical guideline on osteoporosis, which is expected to be completed early next year. We want to use that as one way of improving the quality of service throughout Scotland. If we seek quick successes, we must identify where the highest risk factors are concentrated. By pulling together the two or three strategies that I have outlined, we can genuinely make a difference.

The fundamental message that members have conveyed is that we will make a difference in the long term by changing the lifestyle and health environment of citizens in Scotland. We may no longer have to deal with poverty factors such as rickets, but people are making unwise diet choices that will have an impact on our capacity to cope with osteoporosis, which emerges as people become older.

Tonight has been a welcome contribution. I am happy to take on board the specific points that members have raised on follow-through and to come back to members to indicate what we can

do. I am also conscious that all MSPs received a booklet from the National Osteoporosis Society this week, which I hope will help to develop ideas. No doubt questions will follow that welcome development.

I thank Fergus Ewing for giving the Scottish Parliament its first opportunity to discuss osteoporosis. I hope that in a few years' time, we can come back and say that a difference has been made in relation to some of the things that came out of the discussion. That is the fundamental reason why we all wanted the Parliament to succeed in the first place.

Meeting closed at 17:50.

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