

# **MEETING OF THE PARLIAMENT**

Thursday 29 January 2004

Session 2

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# CONTENTS

Thursday 29 January 2004

## Debates

	<b>Col.</b>
<b>SUPREME COURT</b> .....	5283
<i>Motion moved—[Cathy Jamieson].</i>	
<i>Amendment moved—[Nicola Sturgeon].</i>	
<i>Amendment moved—[Miss Annabel Goldie].</i>	
The Minister for Justice (Cathy Jamieson) .....	5283
Nicola Sturgeon (Glasgow) (SNP).....	5289
Miss Annabel Goldie (West of Scotland) (Con).....	5294
Margaret Smith (Edinburgh West) (LD).....	5299
Pauline McNeill (Glasgow Kelvin) (Lab).....	5303
Alasdair Morgan (South of Scotland) (SNP).....	5306
Robert Brown (Glasgow) (LD).....	5308
Bill Butler (Glasgow Anniesland) (Lab).....	5311
Lord James Douglas-Hamilton (Lothians) (Con).....	5313
Karen Whitefield (Airdrie and Shotts) (Lab).....	5315
Mr Adam Ingram (South of Scotland) (SNP).....	5317
Jackie Baillie (Dumbarton) (Lab).....	5319
Phil Gallie (South of Scotland) (Con).....	5321
Mike Pringle (Edinburgh South) (LD).....	5323
Margaret Mitchell (Central Scotland) (Con).....	5326
Michael Matheson (Central Scotland) (SNP).....	5329
The Solicitor General for Scotland (Mrs Elish Angiolini).....	5331
<b>FIRST MINISTER'S QUESTION TIME</b> .....	5335
<b>QUESTION TIME</b> .....	5348
<b>BUDGET (SCOTLAND) BILL: STAGE 1</b> .....	5364
<i>Motion moved—[Mr Andy Kerr].</i>	
The Minister for Finance and Public Services (Mr Andy Kerr).....	5364
Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP).....	5367
Mr Brian Monteith (Mid Scotland and Fife) (Con).....	5369
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD).....	5371
Des McNulty (Clydebank and Milngavie) (Lab).....	5374
Stewart Stevenson (Banff and Buchan) (SNP).....	5376
Murdo Fraser (Mid Scotland and Fife) (Con).....	5378
Mark Ballard (Lothians) (Green).....	5380
Bristow Muldoon (Livingston) (Lab).....	5382
Mike Rumbles (West Aberdeenshire and Kincardine) (LD).....	5384
Brian Adam (Aberdeen North) (SNP).....	5386
Ms Wendy Alexander (Paisley North) (Lab).....	5388
Jeremy Purvis.....	5390
Mr David Davidson (North East Scotland) (Con).....	5392
Jim Mather (Highlands and Islands) (SNP).....	5395
Mr Kerr.....	5397
<b>HEALTH PROTECTION AGENCY BILL</b> .....	5401
<i>Motion moved—[Mr Tom McCabe].</i>	
<b>DECISION TIME</b> .....	5402
<b>PRIVATE PRISONS (CONSULTATION)</b> .....	5410
<i>Motion debated—[Fiona Hyslop].</i>	
Fiona Hyslop (Lothians) (SNP).....	5410
Bristow Muldoon (Livingston) (Lab).....	5413
Dr Jean Turner (Strathkelvin and Bearsden) (Ind).....	5414
Miss Annabel Goldie (West of Scotland) (Con).....	5417
Robin Harper (Lothians) (Green).....	5419
Donald Gorrie (Central Scotland) (LD).....	5420
Michael Matheson (Central Scotland) (SNP).....	5422

Stewart Stevenson (Banff and Buchan) (SNP) .....	5423
The Deputy Minister for Justice (Hugh Henry) .....	5425

## Oral Answers

**Col.**

<b>FIRST MINISTER'S QUESTION TIME</b> .....	5335
Cabinet (Meetings) .....	5335
Cannabis (Policing) .....	5341
Child Protection .....	5344
Faith Schools (Shared Campuses) .....	5346
Prime Minister (Meetings).....	5337
Secretary of State for Scotland (Meetings) .....	5339
<b>QUESTION TIME</b>	
<b>SCOTTISH EXECUTIVE</b> .....	5348
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Progress) .....	5353
Dental Services (Highlands) .....	5361
English as a Foreign Language (Promotion).....	5354
Iraq (Trade).....	5348
Job Dispersal (Dumfries and Galloway) .....	5359
Labour Force (Skills) .....	5348
M74 Northern Extension (Public Inquiry).....	5352
National Concessionary Travel Scheme (Consultation).....	5350
Queen Mother's Hospital (National Services) .....	5355
Schools (Vending Machines) .....	5362
ScotRail (Edinburgh Park Station).....	5360
State Aid (Caledonian MacBrayne) .....	5357

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## Scottish Parliament

Thursday 29 January 2004

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

### Supreme Court

**The Presiding Officer (Mr George Reid):** Good morning. The first item of business is a debate on motion S2M-828, in the name of Cathy Jamieson, on modernising the court system and a new supreme court, and two amendments to that motion.

09:30

**The Minister for Justice (Cathy Jamieson):** I welcome this opportunity for members of the Scottish Parliament to have a full debate on the United Kingdom Government's proposal for the creation of a new supreme court with a UK-wide jurisdiction. I am sure that the public galleries and the chamber will fill up as the morning progresses and that people will listen with interest. It is important to remember that the new court will take on responsibility for appeals from Scotland on devolution issues and in other civil appeal cases and so is of significance and importance for Scotland, the Scottish people and the Scottish Parliament.

Here in Scotland we take a pride in our unique legal system, which I believe is of central importance in making devolution work and in making this Parliament effective. We all recognise the importance of maintaining the distinctiveness and independence of the Scottish legal system. However, that is not what this debate is about. Scots law is not under attack.

We should see this debate in the context of what the UK Government and the Scottish Executive are doing to modernise our legal system and replace outmoded laws and practices. Let us remember that good progress has already been made here in Scotland as part of that on-going modernising process. We have made progress on the adoption of an open system for the appointment of judges, legislating for freedom of information and reforming land law.

The determination of the UK Government to reform institutions such as the House of Lords is part of that process and we in Scotland should endorse and support that determination.

**The Presiding Officer:** Order. I am sorry about the howl round the chamber. It is being checked

and will be cut as quickly as possible. In the meantime, we have to continue.

**Cathy Jamieson:** Thank you, Presiding Officer.

The Lord Advocate and I have been active in working with Lord Falconer and with judges both here in the Court of Session and in the House of Lords to consider the implications for Scotland. We have also engaged with the Law Society of Scotland and the Faculty of Advocates, and last week the Lord Advocate gave an important speech to the Law Society on the subject. My officials have worked closely with the Department for Constitutional Affairs to ensure that the Scottish perspective is taken into account in developing the proposal.

Yes, this reform package is targeted at old, established institutions and practices, but it is important to remember that the proposals analyse the case for updating them. That has led to radical steps to bring the second chamber of the UK Parliament up to date.

As well as considering whether the House of Lords should operate as a Parliament and as a court, the UK Government is, quite properly, considering arrangements in England for the appointment of Queen's counsel and judges. I am pleased to say that, with our Judicial Appointments Board for Scotland, we are acknowledged to be ahead of the UK Government in our processes for judicial appointments.

Modernisation of the judiciary and public services in the context of the proposed supreme court is intended to put the relationship between Government, the legislature and the judiciary on a modern footing, reflecting public expectations in the 21<sup>st</sup> century.

The proposals are clear in their intention of reinforcing the independence and transparency of the judicial system. The independence of judges in their decision-making—deciding cases without fear or favour—is central to our democratic society, and the Executive and, I am sure, the Parliament, support that fundamentally.

As the Secretary of State for Constitutional Affairs has said and as the Lord Advocate said in his speech to the Law Society last week, in supporting the creation of the new court, we are not making any criticism of how judges in the House of Lords or elsewhere have carried out their judicial duties.

Separation of the Parliament from the judiciary is a long-established principle, but it is one that is potentially compromised for as long as the House of Lords sits simultaneously as a court and as part of Parliament. That is a matter of principle. That accident of history is no longer acceptable and it

would surprise me to hear any MSP today argue that it is.

We support these long-overdue steps towards the modernisation of the institutions of Government. We see clear benefit in the separation of the two roles of the House of Lords. It will increase confidence in the judicial process, make the court system more transparent and avoid the confusion that can arise in knowing what is meant when we hear the term "the House of Lords". It will counter the risk of the public perception of a lack of adequate independence in the House of Lords when it sits as a court.

How do we think that those processes are best brought about? When the First Minister welcomed the proposals last summer he made two important points. First, on the creation of the proposed new court, he emphasised the commitment of the Executive to ensuring the maintenance and enhancement of Scotland's constitutional position and the unique nature of the Scottish justice system. Secondly, he said that the creation of the new UK-wide institution will strengthen the union, with Scotland as a vital and equal partner.

We believe that the creation of a new supreme court with the same jurisdiction as the current House of Lords, and including the Judicial Committee of the Privy Council, is the best and most efficient way forward in delivering the modernisation process.

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

**Cathy Jamieson:** I would like to move on briefly and then I will take an intervention.

The UK Government's proposals have encouraged debate and discussion on the issue in Scotland, which is good. However, let us also be realistic enough to recognise that this is a coherent package of reform, which is best delivered by the proposed bill, within a timescale that maintains the momentum for reform and with the support of the Executive and the Parliament.

**Phil Gallie:** The minister talked about the relationship between the Parliaments and the House of Lords. She and her party support the UK signing up to the proposed European constitution. Will she say what effect articles 6 and 28.3 of the draft European constitution will have on the proposed supreme court? Will the proposed court of justice take precedence over the proposed supreme court?

**Cathy Jamieson:** I will say more about the Scottish constitutional position. I am not surprised that Phil Gallie has raised that point, because we all know that he is absolutely in favour of everything that happens in Europe. I am sure that he will want to develop his points later.

I will move on to other issues; I will pick up the point on the links with the European justice system later. It is right that we have the opportunity to address the constitutional position, but let us remember that the debate is not simply about the Scottish civil court system.

Despite what Scottish National Party members say—or what I expect them to say—I do not believe that there are real concerns that having an appeal in a civil case to the House of Lords is eroding the integrity of the Scottish legal system. It will come as no surprise to the SNP to hear me say that. In the almost 300 years in which that right has existed, we have seen no evidence of the so-called erosion of Scots law because of the existence of a civil right of appeal, nor has there been any outcry demanding action in that respect.

We should recognise that a UK-wide jurisdiction will remain necessary for resolving devolution issues. It cannot be right for a Scottish court alone to determine UK-wide, constitutionally important issues on matters such as the reserved-devolved divide.

There are those who would argue that the right to appeal in civil cases should not extend to taking a case to the House of Lords. Adam Ingram has proposed a bill about the repatriation of civil appeals and it is his right to do so. However, we believe that the current appeal right is important and benefits Scotland and Scots law. There is value in hearing the contributions of judges from other jurisdictions within the UK and I believe that there is value to the English system in hearing the contributions of our judges.

**Nicola Sturgeon (Glasgow) (SNP):** Will the minister give way?

**Cathy Jamieson:** I want to move on at the moment.

We must be open and receptive to ideas and influences from other parts of the UK and—in the modern world—from beyond the UK. Judge David Edwards said:

"In law as in agriculture, if you allow no fresh water into your fields, they will become stagnant and progressively less productive."

At this point I will allow in fresh water—I hope.

**Nicola Sturgeon:** I have a simple question. If all that the minister said is true for civil law, why is it not true for criminal law?

**Cathy Jamieson:** I will deal with that point as I go through my speech.

We have to recognise that the appeal right is valuable and important. To remove it would, in our view, restrict the rights of access to justice that are currently available to and enjoyed by the people of

Scotland. I recognise the fact that the SNP will not take that view; however, I would like to move on.

We should also remember that, in civil cases, significant areas of the legal systems of Scotland and England are common to both systems. There is merit in ensuring consistency in the decisions of judges when that is the case. For that reason, we do not believe that the case is made for repatriation of such appeals to Scotland.

Concern has been raised about criminal cases, in relation to which fewer significant areas of the legal systems are common. Members will recognise that—I am sure that the SNP will make this point—in Scotland, our system of criminal justice is fundamentally distinct from the English one. Not every part of our legal system is different, of course, but because of the differences I see no reason to change the current arrangements so as to permit an appeal to the new supreme court in criminal cases. That is not what is proposed by the UK Government. As I have said, we believe that the separation of the House of Lords as a legislature from the House of Lords as a court is an important improvement. It is also important that we keep the issue in perspective. In a typical year, the number of cases that go to the House of Lords is in single figures.

I want to answer some of the questions that have been asked about the constitutionality of the proposals. Concerns have been raised by well-respected legal figures and we have considered them extremely carefully. In his speech last week, the Lord Advocate fully addressed those points; he did so in more detail than I have time to do today. Nevertheless, I shall try to cover them briefly. Concerns have been expressed that the proposed bill may be unconstitutional, because of the claim of right or the treaty of union, and that it will be flawed because the court will be funded by the Department for Constitutional Affairs. Concern has also been raised about the appropriate number of Scottish judges.

We have looked closely at all those issues and believe that either the concerns are misplaced or, in some cases, people have not had full regard to the practical arrangements that it is proposed to put in place. We do not believe that the claim of right is an entrenched constitutional document, as some people have suggested. People should look at it closely and see whether all of it is relevant to the 21<sup>st</sup> century. As the Lord Advocate pointed out last week, the claim of right asserted the protestant ascendancy and outlawed popish books. I question whether that is relevant in a modern, multifaith, tolerant Scotland. The treaty of union is different. It is important to respect the treaty of union fully and ensure that it is not infringed on. A new supreme court, taking cases

from all the legal jurisdictions of the UK, is consistent with the treaty of union.

Let me address concerns about funding and the question of the number of judges. The proposal for the creation of a new supreme court for the UK does not impact on the integrity and independence of Scots law and does not make it subservient to the English court system. Like the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council, the proposed new supreme court will be a UK court and will have separate funding and separate administration from the courts in England and Wales. All judges' salaries ultimately come from general taxation. I do not believe that judicial independence will be compromised by which particular Government department provides judges' funding.

Equally, we do not believe that there have been any constitutional or practical difficulties based on the number of Scottish judges who sit in the House of Lords at present. There has been no significant evidence of damage to Scots law because the existing arrangements do not provide for a majority of Scottish judges in Scottish House of Lords cases. Scotland's share of the number of judges reflects the independence of the Scottish legal system. Could we justify having more than two out of 12 judges when Scots law covers just one in 11 of the population? I am sure that that point will be raised in the debate and that we will have further discussion on it.

There is a misconception as to how Scottish cases can be allocated. We do not believe in artificial quotas of judges or that the allocation of judges to cases should be prejudged. We believe that the court must be flexible in how it goes about its business. The proposals for using additional judges from the Court of Session allow additional Scottish representation on a supreme court bench. If a civil case was before the court on a matter in which Scots law is significantly different from English law, a Scottish majority might be appropriate and could be accommodated. We support such flexibility.

**Nicola Sturgeon** *rose*—

**Cathy Jamieson:** I am sorry, but I am just about out of time.

The issues about numbers of judges must not be a distraction from the benefits of creating a new supreme court. At the highest levels of the court system, we must look forward. We must create a respected bench of judges that is truly representative of this country and responsive to its needs in the 21<sup>st</sup> century. The House of Lords, as it stands at present, does not deliver that. The procedures for appeals to the House of Lords are antiquated and outmoded. As an institution, the House of Lords runs the risk of becoming

discredited unless steps are taken to modernise its structure in a way that is independent of the UK Parliament. In one of Europe's most modern Parliaments, we can and should support that aim. To stand in the way of progress would risk sending a narrow-minded, self-serving message purporting to promote Scotland and Scotland's interests. That would be a mistake.

**John Swinburne (Central Scotland) (SSCUP):** Will the minister give way?

**Cathy Jamieson:** I am coming to my last sentence.

Instead, we have the opportunity to be open, positive and constructive in the establishment of a modern, forward-looking court. We should back, not block, those reforms.

We will not accept the SNP's amendment. There is much in the Conservative amendment with which we could agree; however, we felt that, because of the way in which it was structured, it took too much out of the motion. Therefore, with regret, we cannot accept it. I urge Parliament to support the motion.

I move,

That the Parliament believes that it is a cardinal feature of a modern democratic state that the judiciary should be separated from the legislature and therefore supports the creation of a new supreme court believing that it will strengthen the independence of the judiciary.

**The Presiding Officer:** There is sufficient time this morning, and I would encourage dialogue and interventions.

09:46

**Nicola Sturgeon (Glasgow) (SNP):** I will be happy to take interventions, Presiding Officer.

The central question that I want to address is this: should there be a continued right of appeal in Scottish civil cases to a court south of the border, or does the current shake-up present us with an opportunity to modernise our system and repatriate Scottish justice? Before we rush to a modern-day judgment about what, if any, jurisdiction a UK supreme court should have in Scottish civil cases, it is instructive, not to mention interesting, to have a look at the history of the House of Lords' Scottish jurisdiction. That history shows that it was neither planned nor ever set in stone.

**Miss Annabel Goldie (West of Scotland) (Con):** Does the member agree that that has never stopped it from working extremely well?

**Nicola Sturgeon:** I will come on to my objections to the House of Lords' current system, which, in the interests of consensus, are not too far removed from those that have been expressed

by the minister. However, first I want to go back in time and look at the earlier days of the House of Lords' Scottish jurisdiction.

Notwithstanding the treaty of union—about which we will, no doubt, hear much this morning—there has been a right of appeal to the House of Lords since the earliest days of the union, when the UK Parliament succeeded to the power of the old Scottish Parliament to hear appeals from the Court of Session and exercised that through the House of Lords. That succession was deeply controversial at the time. One of the earliest Scottish cases to be heard in the House of Lords—the 1711 case of James Greenshields—led to a motion in the legislative House of Lords for the repeal of the Acts of Union. It is an interesting but little-known fact that that motion won the support of the majority of the surviving Scottish politicians who had voted for the union in 1706; however, sadly, their will was thwarted by the English majority—a sad sign of things to come.

It is important to appreciate the fact that the House of Lords' jurisdiction in Scottish cases was not immediately confined to civil matters. In his speech to the Law Society of Scotland last week, the Lord Advocate mentioned the fact that criminal appeals have never gone beyond the High Court of Justiciary. I hesitate to offer the Lord Advocate lessons in legal history—

**Stewart Stevenson (Banff and Buchan) (SNP):** Oh, go on.

**Nicola Sturgeon:** Okay. On that fact, the Lord Advocate is plain wrong. Appeals from the High Court were heard by the House of Lords until it chose to decline jurisdiction in 1876. I am sure that the minister will be aware that it was not until the Criminal Procedure (Scotland) Act 1887 that the position of the High Court of Justiciary as the highest court in Scottish criminal matters was formally enacted. Therefore, the position in respect of Scottish appeals has changed over time and has evolved as Scottish interests have dictated. We should not shy away from making further changes now if they are in the interests of our justice system.

I turn briefly to the treaty of union. Those who question whether the supreme court would fall foul of the treaty are within their right to do so, even if the Lord Advocate questions the soundness of their judgment. However, as I am sure that it is not beyond the wit even of the present Government to design a court that would stay true to the intentions of the treaty, that is not a point on which it is useful or helpful to dwell.

Instead, I want to focus on whether we have an opportunity here and now in Scotland to modernise our system of justice. I return to the issue raised by Annabel Goldie. The UK



Government is right to strip the House of Lords of its judicial function. The confusion of legislative and judicial functions in one institution—especially an institution as lacking in democratic legitimacy as the House of Lords—is indefensible. If the best replacement for the House of Lords in England and Wales is thought to be a supreme court, that is all well and good.

**Alasdair Morgan (South of Scotland) (SNP):** Does the member accept that one of the problems with the democratic legitimacy of the House of Lords is that under the reform proposals of the Westminster Government it will have no more democratic legitimacy in the future than it had in the past?

**Nicola Sturgeon:** I agree entirely with Alasdair Morgan. In my view, the House of Lords should be abolished lock, stock and barrel, but that is not the subject of today's debate.

It is entirely appropriate for England and Wales to decide that they want a supreme court. For the purposes of the debate, I will make a concession. I even accept that it makes sense for the supreme court to take over the Privy Council's role in determining devolution disputes—at least as an interim measure, until Scotland is independent and that role becomes entirely redundant.

**Phil Gallie:** Given her support for Scotland's independence, her determination, in such circumstances, to take Scotland into the European Union and her aim of abandoning the House of Lords, would the member feel comfortable if the appeal court sat within the European Court of Justice?

**Nicola Sturgeon:** Later I will make a specific point about the European Union and return to the issue that Phil Gallie has raised. The trend in Europe towards the intended harmonisation of laws is a pertinent issue when we are discussing the proposed supreme court.

I was talking about the supreme court that the UK Government intends to establish. As an interim measure, it would make sense for the role of the Judicial Committee of the Privy Council to be combined with a supreme court. The fundamental point is that we should decide what is best for Scotland when it comes to our domestic law. We should take this opportunity to make any changes that would be for the better.

One of those changes should be to bring to an end the quirk of history—it is nothing more—that has resulted in the different treatment of civil and criminal cases in Scotland. Bizarrely, the UK Government's consultation paper, which was published in the summer of last year, did not consult on that central question—it did not even seek views on that point. It simply tried to justify the status quo and argued that the new supreme

court should inherit the right of the House of Lords to hear Scottish civil cases, but that criminal appeals should continue to be disposed of here in Scotland.

The argument for not allowing the supreme court to hear criminal appeals from Scotland is sound, as there are considerable differences between Scottish and English criminal law. I have no difficulty in accepting that as a justification for not altering that part of the status quo. However, the implication that flows from the proposition is that there are no considerable differences between Scottish and English civil law, which is manifestly not the case.

I want briefly to examine the arguments for continuing to send civil appeals south of the border that have been made in the consultation document—such as it was—by the Lord Advocate and by the minister this morning. The first of the arguments was aired in the consultation paper and repeated by the Lord Advocate when he said last week:

"The Scottish legal system benefits from the exposure of our legal practices and principles to friendly but critical examination by members of another legal discipline ... As a legal system in a small country on the edge of Europe, we must be conscious of the risk of becoming ... inward-looking."

I make the passing observation that if that is true of our civil law, why is it not true of our criminal law?

The point that the Lord Advocate was making is quite worrying. He was saying that without the House of Lords—which hears only about eight Scottish cases a year, on average—Scots law would be insular. With the greatest respect to the Lord Advocate, that is a load of utter rubbish. Scots law is not, never has been and—with or without the House of Lords or its successor—never will be insular. Scottish judges, like judges in every other jurisdiction in the world, draw daily on decisions in other jurisdictions. To suggest that without a civilising influence from south of the border Scots law would be parochial and inward looking is to insult centuries of Scottish legal tradition.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I agree with the Lord Advocate that we should not have a system that makes Scots law insular. Does the member consider that there may be wider benefits in being part of a larger court that includes judges from England, Wales and Northern Ireland?

**Nicola Sturgeon:** I concede that in these days of greater European harmonisation and mutual recognition of laws, there are benefits in having a court that includes judges not just from Scotland, England and Northern Ireland, but from every

country in the European Union. That court is called the European Court of Justice. If Scotland were independently represented on that court, our interests would be much better protected there. The argument that the Scottish legal system would be insular without the House of Lords or a supreme court does not hold water, as it defies the experience of centuries of a very proud legal tradition. The suggestion is unworthy of the Lord Advocate.

**Miss Goldie:** Will the member give way?

**John Swinburne:** Will the member give way?

**Nicola Sturgeon:** I must make progress now. I have been very generous in taking interventions.

The second argument that has been made is that the House of Lords ensures consistent UK-wide interpretation of the application of UK statutes and of common-law issues that are substantially the same north and south of the border. That may be so, but the logical inconsistency of the argument is quite breathtaking. We cannot ignore the fact that the High Court of Justiciary frequently decides cases on the basis of UK-wide criminal legislation, without any reference to the House of Lords. To the best of my knowledge, the sky has not yet fallen in on the Scottish criminal justice system. The argument does not bear critical examination.

The third and final argument to which I want to refer is a defensive argument, rather than a positive one. The suggestion is that we have nothing to fear from a supreme court. We have survived 300 years of appeals to the House of Lords and Scots law is still standing. That may be the case partly because so few appeals go there. As I said earlier, on average only eight cases a year are referred to the House of Lords; in only two of those are verdicts overturned. That led Hector MacQueen, the dean of Edinburgh University school of law, to say:

"It is thus far from clear that, were the appeal from the Court of Session to the House of Lords not to survive in a new supreme court, any major injustice would result for the Scottish people."

Who can be sure that in this litigious age, with a new high-profile court, the number of appeals would not rise? Who can be sure that the current convention of the House of Lords that non-Scottish law lords do not deliver opinions on matters of Scottish common law will survive? I am sure that from time to time it causes irritation among Scottish judges that unanimous decisions of the Court of Session can be overturned by two Scottish law lords. Who can be sure that even the convention to which I have referred, which is an important protection for Scottish common law, would survive in the supreme court, or that the ability, cited by the Lord Advocate, of the House of

Lords to distinguish between the different legal systems in the UK and adapt accordingly would be transferred to the new court?

That brings me back to the point that Phil Gallie made. The new supreme court will be a creature of the UK Parliament, which raises questions about the independence of the judiciary. It will also operate within an EU that is intent on legal harmonisation. Can we be sure that the supreme court will be able—or even want—to resist the pressure to harmonise English and Scottish law? In reality, Scots law may have a great deal to fear from the supreme court.

If not the supreme court, what should be the final court of civil appeal in Scotland? Should it be the inner house of the Court of Session, a larger bench of judges or, indeed, a separate Scottish supreme court? We would have to find a different name for such a court, because supreme courts already exist in Scotland. I am sure that that matter has not passed the Department for Constitutional Affairs by, although perhaps it has. I confess to being open minded on this issue—I do not have a fixed view on it. However, I believe passionately and fundamentally that it should be a matter for the Scottish Executive to consult on and for this Parliament—not another Parliament—to decide.

The time is right for change. We should grasp the opportunity that is afforded by the shake-up south of the border to end a glaring anomaly in our judicial system and to repatriate Scottish justice.

I move amendment S2M-828.1, to leave out from "believing" to end and insert:

"for England and Wales; considers, however, that its creation affords an opportunity for the modernisation and repatriation of Scotland's justice system, including an end to the historic anomaly that allows civil, but not criminal, cases to be appealed to a UK court and, having established that principle, calls on the Scottish Executive to consult on whether the Inner House of the Court of Session or a higher appellate authority within Scotland should be the final court of appeal in Scottish civil cases."

09:59

**Miss Annabel Goldie (West of Scotland) (Con):** I, too, am pleased to take part in the debate, and I thank the Executive for ensuring that it is occurring early in the new year. The subject is extremely important. We recognise that any legislative change in respect of a supreme court will be the responsibility of Westminster, but it is vital from the Scottish standpoint that we influence the debate to secure the best outcome for Scots law, Scottish civil litigation, and, in relation to devolution issues, the Scottish people.

At this early stage, I regard myself as departing pretty well totally from Nicola Sturgeon's argument. The nub of the issue is that the SNP is

not interested in a UK structure. Nicola Sturgeon said that she would like to get rid of the House of Lords and have what would be—however she might consider it—a completely insular system of law in Scotland.

**Nicola Sturgeon:** Will the member take an intervention?

**Miss Goldie:** I want to expand my point. I listened with, I think, a great deal of patience to Nicola Sturgeon and I am at an early stage in my argument.

It seems to me important to recognise that it will be difficult to find a sustainable argument that bridges the political differences about what the suitable or sensible adjustments to the existing structures might be. I make that general point from the beginning.

The general proposition in the Executive's motion is that the judiciary should be separated from the legislature. If that means that the judiciary should be free from Government interference or influence—or both—and should feel able to discharge its judicial obligations freely and impartially, there is not a scintilla of difference between my party and the Executive. What I do not know is whether that aspiration will be served by the proposal—in so far as it exists—to create a supreme court. It is just a proposal; there is no draft bill.

I want to consider the process that has brought us to this point. I am not in the habit of conferring credit on the Scottish Executive, but if the Scottish Minister for Justice or the Lord Advocate had contemplated a change to our legal institutions, particularly to structures that have existed for centuries, I think that there would have been what is by now a familiar process. The First Minister would have given a well-trailed speech to a community. That would have been followed by a ministerial odyssey as his colleagues rushed off around Scotland to speak to people. Then we would have had a consultation process. We might even have had a general debate in Parliament on the proposed principles of change. Indeed, one of the justice committees might have been asked to undertake an inquiry. Finally, a bill would have been published. I probably would still have disagreed with the Executive, but at least a debate would have taken place, nobody would have been ignorant of what was proposed and an extensive range of views would have been exchanged before the parliamentary process commenced.

What is proposed in the case that we are considering is one of the most substantial and radical reforms of the constitution and the British legal system for centuries. Has it proceeded on the report of a royal commission? No. Is it in response to an escalating wave of discontent

about the current system? Not as far as I am aware. The only specific instances of discontent that we have heard are that Nicola Sturgeon just wants rid of the House of Lords and the minister does not think that the current system is good. Is the proposed change a consequence of joint representations from the law societies of Scotland, England and Wales and their respective judiciaries? I do not believe so.

As we are well aware, the proposals stem from a Cabinet reshuffle at Westminster last summer, which abolished the ministerial office of Lord Chancellor and created a vacuum that necessitated a consultation—of four months, no less—to consider how to replace structures that have been in place for centuries. I do not make my points in a mood of trite humour. It is important to understand the process that has brought us to this stage. Unless we are alert to the process's manifest deficiencies, we are in grave danger of coming to simple and, arguably, erroneous conclusions.

I will consider briefly the current structures. The highest court of appeal for civil cases in Scotland is the Appellate Committee of the House of Lords. There are 12 law lords, of whom two are usually of Scottish origin. The special nature of Scots law and the need to protect that within the UK was enshrined in article 19 of the Act of Union 1707, which specifically excluded the jurisdiction of English courts over Scottish cases. That is not just a tedious historic statistic; it is one of the all-protecting guardians of the stature of Scots law.

On a broader front, as members of the House of Lords, judges, like appointed bishops, are free to take part in debates. Far from regarding that as a deficiency, I think that it is an attribute. It is not a coincidence that many people consider the debates in the House of Lords to be well informed and eloquently argued and that that chamber benefits from the constituents of intellect, wisdom and experience. Under the current proposals, that will virtually be lost. Further, we should not underestimate the significance of judges' being able to express in debate views and opinions for the record. There will be no channel for that to happen under the new proposals.

What I would like is specific evidence of how the current system is failing.

**Nicola Sturgeon:** For the clarity of the record, is Annabel Goldie arguing that the confusion of legislative and judicial functions in one institution remains, in this day and age, at all defensible?

**Miss Goldie:** That depends on whether we accept that there is confusion. Nicola Sturgeon's argument is that there is. My argument, as I said in my earlier intervention on her, is that whatever the patent inconsistencies of the current system may

be, it works. All I am asking for is evidence that the system does not work; I have not had such evidence so far.

**John Swinburne:** Will the member give way?

**Miss Goldie:** If Mr Swinney does not mind, I am getting a bit—sorry, I beg his pardon. I mean Mr Swinburne. I am getting just a little tight for time.

I want to know where the instances of the judiciary being influenced by Government or of its impartiality being compromised under the present system are. Indeed, the evidence is to the contrary and is very dramatic and recent—the Hutton inquiry. Did the Prime Minister have difficulty in finding a robust, competent, independent figure to lead that inquiry under the present system? Of course he did not.

I turn now to the proposed change in the appellate function for Scottish cases. Because the proposed new structure would exist predominantly to serve England and Wales, it is vital that its Scottish component should be based on an informed appointments system that is knowledgeable about the Scottish judiciary. The appointment of any Scottish judges or panel members should require, at best, the knowledge of the First Minister. Indeed, there is an argument that the appointments should emanate from the Judicial Appointments Board for Scotland and not from the proposed appointments commission. Surely a mechanism could be found to achieve that, because only in a structure such as that could there be confidence in the ability of the proposed new supreme court to determine Scottish appeals and devolution cases fairly and competently.

I turn now to my amendment. On the effect on Scots law of appeal decisions emanating from any supreme court, it is essential that decisions that are appropriate only to England and Wales are not binding in Scots law—hence the amendment in my name. That simply reaffirms existing practice. We must make it crystal clear that unless specific provision is made, that will not happen. We are talking not just about a proposed neat construction of a supreme court; we are talking about a fairly massive dismantlement of the constitution, with all the precedents, practices and conventions that have attached to it, some of which now have the force of judicial precedent.

I am unable to support the SNP amendment because, frankly, it is irrelevant to the debate. We have a legal system that operates within a UK framework. Some law is appropriate only to Scotland, but UK-wide law covers other issues and it seems—

**Nicola Sturgeon:** Will the member take an intervention?

**Miss Goldie:** I am sorry, but I am running out of time and, in fairness to the Presiding Officer, I must proceed.

**The Presiding Officer:** There is an abundance of time this morning.

**Miss Goldie:** In that case, with the Presiding Officer's usual compassion and indulgence, I will let Nicola Sturgeon in.

**Nicola Sturgeon:** I am a great believer in logical consistency, which I am sure is always evident in my speeches in the chamber. The logical conclusion of Annabel Goldie's position on the UK framework is that we should also allow criminal appeals to go to a supreme court. Is she arguing that that change should be made?

**Miss Goldie:** No, I am not, but I am grateful to Nicola Sturgeon for raising a valuable point. I have always felt that there is a genuine distinction between criminal law and civil law in Scotland. Nicola Sturgeon will be aware that the situation that, as I understand it, induced the creation of the criminal appeal court in Scotland was the Oscar Slater case, which demonstrated the deficiencies of the system at that time. However, in Scotland criminal law is significantly founded upon common law, which is completely different from that in England and Wales, and on the principles of Justinian, which are also irrelevant to the legal system of England and Wales. Therefore, I have always been able to make a complete separation between how the two systems in Scotland are treated. The criminal appeal court in Scotland has worked well, and we must recognise that it was introduced—heavens above—getting on for nearly 80 years ago. I see no reason to disturb that court. We must also recognise that civil law in Scotland has developed and evolved in a manner that is to be expected.

To return to my starting point on the SNP's position, we are where we are. We are within a UK framework and there are extensive areas of law that affect the whole UK. Therefore, I think that the SNP proposal is inappropriate and that, if it were adopted, it would result in the Scottish legal system becoming insular, as the Lord Advocate said.

Interestingly—and I would have thought that the Scottish nationalists would applaud this—there have been appeal cases. The appeal of *Donoghue v Stevenson* in the 1930s, involving the famous snail in the ginger beer bottle in the Paisley café, determined such an important point of law that it was applied not just on a UK basis but worldwide. To me, that is a refreshing illustration of how significant Scots law is. Where an important legal principle is involved, because of what we all acknowledge to be the sound underpinning principles of Scots law, the benefit can be

conveyed to a wider audience than just Scotland and the United Kingdom. That application of the best principles of Scots law would not apply under the nationalists' proposal.

In general, I do not consider that the Executive has made the case for change, but if change is to happen, vital safeguards must be incorporated to protect the Scottish interest.

I move amendment S2M-828.2, to leave out from "it is" to end and insert:

"in the event of a United Kingdom Supreme Court being created, the Scottish Executive needs to ensure both that Scottish judges are appointed to sit in all civil appeals from Scotland and that decisions of the Supreme Court in non-Scottish cases are not binding in Scots law except in so far as the law determining such cases is applicable on a United Kingdom basis."

10:11

**Margaret Smith (Edinburgh West) (LD):** I welcome today's debate, although it is always daunting to follow behind lawyers in taking on such issues. I make that my opening remark on the issue, so that members do not expect a history of the judicial process of the House of Lords from me. Nicola Sturgeon has done us proud on that one so far.

It is right to see the matter—as the Minister for Justice did in her speech—as part of the continuing modernisation of our judiciary and processes. This is not just about what will happen with a supreme court; it involves the Executive's on-going work in the area. The Parliament's two justice committees have also been working on the issue in the past few weeks.

**John Swinburne:** We are talking today about modernising the court system and about the new supreme court. We have had four lady speakers in the debate and we have a perfect gender balance in the chamber this morning, but no one has yet mentioned the fact that the judiciary has a gender imbalance. Would the new, modern court rectify that?

**Margaret Smith:** It is unusual for me to find myself in agreement with John Swinburne but, for once, I do. Nicola Sturgeon said that we should seize the opportunity not only to do some of the things that we have been hearing about in connection with setting up the supreme court but to make the supreme court more reflective of all the component parts of the United Kingdom and to improve on the current systems. The supreme court is a good opportunity to increase representation not only of women but of our ethnic minorities.

We support the proposal for the creation of a new court, subject to adequate protections to preserve the independence of Scots law. The new

supreme court should not do anything to change the relationship between English and Scots law, as it will replace existing bodies at United Kingdom level, some of which have been in operation for hundreds of years without many problems, as we have heard from other members.

In 2001, the Liberal Democrat manifesto committed our party to transferring judicial functions from the House of Lords to a supreme court. Our party shares the concerns that Annabel Goldie outlined about the manner in which the matter has been handled. The manner in which this was done at Westminster is not the manner in which it would have been done by the Scottish Executive, and that is probably putting it kindly. This is an important issue and an important change to practices that have been in place for hundreds of years. Those practices might well not be right, but we must have a proper, full consultation to find out whether the way forward is what the Government proposes. Some of the issues that the Law Society of Scotland, the Faculty of Advocates, the SNP and other parties have raised are certainly worthy of serious consideration not only by the Scottish Executive but by the Westminster Government.

The time is ripe for a supreme court, as can be seen if we consider the wider spectrum of what is happening and the greater moves towards a federal United Kingdom. If we consider devolution to Parliaments and Assemblies around the kingdom, the introduction of human rights legislation, the reform of the House of Lords itself—it does not go far enough, but it tinkers around the edges if nothing else—and the on-going modernisation of our court system, we see that now is the right time to consider the formation of a supreme court. We agree with much of what the minister has said, with the Executive's views and with the United Kingdom proposals. We feel strongly that there should be no reduction in Scottish influence or input or in the proportionate number of Scottish judges who serve in the supreme court.

We share some of the concerns that are outlined in Annabel Goldie's amendment and I am pleased that the minister has said that it will not be accepted simply on a technicality. We should be vigilant in ensuring that, if the supreme court is considering a peculiarly Scottish case, there is no question of Scottish judges being in the minority. Obviously, they should be in the majority, and we need in-built flexibility in the system to allow temporary judges to come in and take on those responsibilities.

**Alasdair Morgan:** Does Margaret Smith concede that the proposals go nowhere near giving us that option? They simply suggest that the presence of two Scottish law lords might continue.

**Margaret Smith:** With respect, that is the point of our holding this type of debate. I detect that there is general concern on all sides of the chamber about some of these points, and it is for the Executive to reflect those concerns in its consultation response and in on-going dialogue with the UK Government. I do not think that anyone in the chamber would think that, if the supreme court was considering a peculiarly Scottish case, anything other than a majority of Scottish judges should be involved. My understanding of the system is that there would be flexibility to allow temporary judges to be brought into the frame to do just that. That is the point that I was making, and I think that it is an important one.

**Nicola Sturgeon:** There is a view in Scotland among some members of the judiciary that having two Scottish judges as law lords in the House of Lords already places a burden on the Scottish judiciary that it can ill afford. That would also be a concern in relation to the supreme court. Taking additional judges out of the system to temp in the supreme court would place even more burdens on a Scottish judiciary that even the minister would accept is already seriously overworked.

**Margaret Smith:** I am quite well aware of the burdens that there already are on our judges. We have to see the question in the context of how often the situation is likely to arise. There are only eight or 10 cases a year in which we are likely to be faced with anything like that dilemma; it would not be happening every week. However, we must have safeguards in place to ensure that the situation can be dealt with.

**Cathy Jamieson:** Does Margaret Smith agree with the point that we made in our consultation response? We said:

"The Executive believes it essential that, at any one time, the membership of the new Court should comprise not fewer than two people suitably qualified in Scots law and experienced in its administration ... This requirement should not exclude the possibility of appointing *more than* two or of reserves being Scottish, if appropriate."

Does she agree that that goes some way towards addressing the points of concern that she has raised?

**Margaret Smith:** Yes. I welcome that clarification and the minister's earlier comments. The situation would arise in a small number of cases, but we need that kind of flexibility. I also concur with the two points made in Annabel Goldie's amendment. We must ensure that Scottish judges are appointed to sit on all civil appeals from Scotland, and that decisions of the supreme court in non-Scottish cases are not binding in Scots law, except in so far as the law determining such cases is applicable on a UK basis. The reason why we are in agreement with

the idea that civil cases should be heard on appeal at a UK level in a new supreme court is because a vast range of cases would be heard on the basis of UK legislation. We are talking about cases of commercial law and taxation law. We see that as being perfectly acceptable.

**Nicola Sturgeon:** Will the member take an intervention?

**Margaret Smith:** No, I would like to make progress.

We are concerned to ensure that there is input in the appointment of the supreme court judges from our own, independent Judicial Appointments Board for Scotland. We think that it is important that the judges are appointed on merit and we think that the system must be open and transparent.

We welcome whole-heartedly the separation of powers between the judiciary and the legislature. In a modern democracy, it is important that no supreme court judge should sit as a member of any Parliament or Assembly in the country. We agree that the supreme court should take over from the Appellate Committee of the House of Lords the role of highest court of appeal. As we have heard, a number of aspects of civil law are covered by UK-wide legislation, so we believe that the proposition is reasonable.

Criminal cases should continue to be dealt with in Scotland by the High Court. That would protect and preserve the law of criminal procedure that is unique to Scotland and would keep the interpretation of Scots criminal law in Scotland. I agree with the points that Annabel Goldie made on that subject in response to Nicola Sturgeon.

**Nicola Sturgeon:** Will the member give way?

**The Deputy Presiding Officer (Murray Tosh):** I think that the member can allow a final intervention.

**Nicola Sturgeon:** Does Margaret Smith consider that any problems are caused for Scottish law because we do not have a UK ultimate court of appeal to ensure consistent interpretation of legislation, for example the Misuse of Drugs Act 1971?

**Margaret Smith:** To be honest, I am probably not qualified to talk about that on the hoof. I do not think that there will be a problem of consistency and that has not been the case historically. The proposal is a more modern response that contains an in-built propensity towards a certain amount of consistency. I note that the Lord Advocate has said that there may be an argument for having a greater number of judges to allow levels of consistency to improve further. I note that, in the Liberal Democrat party policy on the issue, we say that we are concerned about the whole question of

precedent. We do not have the ability to change precedent at the moment, but we think that the issue should be considered and that we should consider increasing the number of judges to develop precedent in the new supreme court. There are ways in which we could tackle consistency.

Surprisingly, like the SNP, we agree that devolution issues, which are currently determined by the Judicial Committee of the Privy Council, should be dealt with by the new supreme court. In a devolved United Kingdom, that would seem to be a pragmatic, workable, federal solution.

Of course, the SNP does not agree with the proposal for a supreme court. Underlying that is the fact that the SNP does not agree with the United Kingdom. The SNP wants to deny the links between Scotland and England and to deny the links between Scots and English law. In fact, the SNP not only wants to destroy the United Kingdom, but proposes that we should act as if the union has already been destroyed and does not exist. The United Kingdom does exist, and the proposals represent an attempt to develop a judicial framework that acknowledges its diversity. In many cases, common UK statute applies; in others, particularly in criminal law, there are crucial differences.

I have raised the Liberal Democrats' concerns. My final point is that we would like to see the supreme court sited in Scotland, specifically in Edinburgh—that might make up for some of the jobs that keep being taken away from us. We agree with the minister that Scots law is not under attack from the proposal. We think that there would be no better way to show that than in bricks and mortar, by siting the supreme court here in Edinburgh.

**The Deputy Presiding Officer:** We move to the open debate. As there is quite a lot of flexibility, I can compensate members fully for interventions. However, members will understand that I might need to tighten things up a bit later on, depending on how things go.

10:24

**Pauline McNeill (Glasgow Kelvin) (Lab):** I think that DCAf—the Department for Constitutional Affairs—is the most interesting acronym that I have heard for a while. For ages, every time I heard lawyers talk about it, I wondered what they were talking about. It meant something else to me.

We have been asked to consider constitutional reform and a supreme court for the United Kingdom. I agree, probably with all members who have spoken, that the debate is crucial. We need to ensure that the Scottish Parliament shapes the future of the new set-up for the United Kingdom.

The current arrangements in Scotland work well. However, we live in times of great constitutional change. The decision to reform the House of Lords and to separate the functions of the Appellate Committee means that we are being asked to consider a new constitutional arrangement.

In general, the thinking on the subject is to be welcomed. We should not miss an opportunity to modernise our system where that is appropriate. Equally, we should not miss the opportunity to protect the traditions, treaties and other aspects of the system that people would expect us to protect and that we think are important to our law. Our present system ensures that there is a distinctly Scottish dimension to our law, whether civil or criminal. The House of Lords may be the court of last instance for Scottish civil cases, but it is not English law but Scots law that is applied.

Annabel Goldie referred to the famous case of *Donoghue v Stevenson*, which is a Scottish case that is applied more generally in the UK. There are many such instances of Scots law having been adopted and, indeed, favoured. There is the case of *Black v Carmichael*, which members may know as the famous wheel-clamping case. We were much more imaginative in Scotland and found a way to outlaw the practice of wheel clamping, whereas that was not possible in England. Much can be learned from Scots law.

All of us are surprised by the number of devolved issues that we have found going to the Privy Council. When the arrangements were set up under the Scotland Act 1998, I am not sure whether we thought that quite so many lawyers would attempt to mount challenges to criminal cases on the basis of human rights. Perhaps we should have realised that in advance. However, good decisions have come out of that practice, too.

We have differences in Scotland. For instance, we have the right to seek leave to appeal to the House of Lords. That is an individual right and it is not afforded outwith Scotland. I hope that there is agreement that we should retain that particular aspect of our arrangements.

The Scottish Parliament's objective should be to ensure that there is no detriment to our present system. I believe what Scottish ministers said this morning and that they will ensure that. I believe that they will resist any aspect of the system that dilutes the application of Scots law. I trust Scottish ministers to make that clear in the debate with the Department for Constitutional Affairs.

I do not like the title "supreme court", although I cannot think of a better one. I am also not comfortable with the notion of

"a single apex to the UK's judicial system",

which is the phrase that is used in the consultation document. We must refine the language and the proposal, which is what the debate is all about.

Nevertheless, the document is quite sensitively written. With reference to the proposals for the Privy Council, it uses language such as,

“On balance, the Government believes that it would be right to transfer the jurisdiction ... to the new Supreme Court”,

which leaves the door open for us to consider whether we think that that is the wrong decision. I welcome that sensitivity.

I am pleased with what I heard the minister say about the appointment of judges. It is right that we should have a flexible system. We also need assurances that we will have enough flexibility to ensure that, where decisions are distinctly Scottish, the right people make them. I am pleased to have received those assurances.

I am clear that the decisions of the supreme court should not be binding on Scottish cases in so far as English law is not binding at present. I think that that is agreed, but I would like to ensure that I am right on that point.

Nicola Surgeon mentioned civil cases going not to the supreme court but to the Court of Session. I believe that most ordinary Scots would not want to see any change made to the present arrangements. At the moment, people have the right to go to the House of Lords and it would be difficult to take that right away from them.

It would be a good proposition if the supreme court—if that is what it is to be called—sat around the country. That would mean that it would sit in Scotland on occasion. I do not think that that is the most important aspect of the proposal—the most important aspect is to get the system right—but it would be a good gesture if the court were to do that. I believe that concessions have been made and that it might be able to sit in Edinburgh or Glasgow. Indeed, Karen Whitefield might argue that it should sit in Airdrie or Shotts, which would be fair enough.

Certain benefits would derive from a larger court. We are talking about eminent judges from England, Wales and Northern Ireland who have a lot to offer. Notwithstanding what I said earlier about the need to protect our own law, we should listen to what they have to say.

We should not miss any opportunity for Scots law to influence the body of law in the UK. I hope that that is widely accepted. We must ensure that, where we think that we do things better, we have the right to influence the law. That is true not just of our influence over other law in the UK; we should take that approach in the European Union. Of course, the real supreme court is the European Court of Justice, because it is supreme in all

matters. Whether we like it or not, decisions made there must be applied in the whole of the UK. We should be more proactive and less defensive when we do things better here than they do in other countries in Europe.

I finish on the appointment of judges. John Swinburne made the point—with which Margaret Smith agreed, and with which we all agree—that we have made great progress in Scotland on the appointment of judges, for which we have a new panel that has been operating for 18 months or so. We have to allow that to bed down before we assess its impact. The Parliament will want to assess the extent to which the gender balance is changing, the extent to which people from different backgrounds are becoming judges and the extent to which racial minorities are being represented in the judiciary. We have got the mechanism right for that to happen. We as politicians must keep an eye on the situation to ensure that those things happen.

I welcome the debate.

10:31

**Alasdair Morgan (South of Scotland) (SNP):** I, too, will deal with the jurisdiction of the proposed supreme court in civil cases. I accept that some mechanism is necessary to deal with devolution issues. As Nicola Sturgeon said, we have got our own medium-term solution to that problem.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Medium term?

**Alasdair Morgan:** Yes, it is the next election.

The minister said that we have our own unique legal system, but one of the unique features of that system is not one of which we should be proud—how many other countries give the final court of appeal to another jurisdiction? Why do we do that?

Long before I ever came into politics, I was interested in history. I was always puzzled by the seeming anomaly that the treaty of union, which allegedly preserved the Scottish legal system, simultaneously granted civil appeals to the House of Lords, which was and remains an overwhelmingly English institution. I was somewhat puzzled, therefore, that the Lord Advocate—who managed to be the subject of a very flattering article in *The Herald* today, entitled “Lawman with mission to modernise”; I am unsure whether all members have had the chance to read it—should wish to preserve an anomaly that resulted from the political machinations of more than three centuries ago.

It has been alleged that the Act of Union 1707 has something to do with our being in the current situation, but the act did not give the right of appeal to the House of Lords; it is silent on that. A



D Gibb, in his work “Law from Over the Border” said:

“It is a historical mystery as yet unsolved what the Commissioners for negotiating the Union really intended to do about the right of appeal.”

Some people say that the union commissioners wanted civil appeals to go south of the border, but just left it out of the treaty for their own reasons.

I will go back to a case before the one to which Nicola Sturgeon referred. The first appellant who tried to lodge such an appeal was the Earl of Roseberie in his case versus Sir John Inglis, about which it is said:

“It appears ... when the appeal was presented the officers of the House of Lords did not know what to do with it. The officers of the Court of Session, for their part, were unwilling to give the appellant copies and extracts for use in the House of Lords”.

Clearly, it was not seen as an inevitable consequence of the treaty of union at that stage that such appeals should go south of the border.

The second reason that is quoted for the current situation, to which the minister referred, is the claim of right put forward by the convention, when James VII had left the country and was replaced by William II, to use his proper Scottish title. That was nothing to do with appeals. It was part of the power struggle between the Court Party and the rest of the convention, and the unwillingness to be subject to a Court of Session that was packed with the King’s appointees.

I argue that neither of those reasons has any relevance or validity in today’s Scotland.

I accept that there could be confusion, or worse, when the legislative and judicial functions are combined in one body, as they are at the moment in the House of Lords, even though we know that the House of Lords for all appeals purposes is totally separate from the legislative House of Lords. With due deference to my colleagues, I say that that problem is more theoretical than real; it hardly justifies the emphasis that the minister placed on it in her speech. I suspect that the minister is using that argument because there are not many other convincing arguments for the proposed change.

The Executive presented the proposal as part of its modernising agenda, but it is entirely separate from that agenda and stands or falls on its own merits. I have a suspicion—on this I agree with Annabel Goldie—that the proposal stems more from Labour’s botched attempt to reform the House of Lords than it does from anything else.

Members can read “Constitutional reform: a Supreme Court for the United Kingdom” and see some of the hugely compelling reasons why we have to change. For example:

“the Law Lords’ administration works in cramped conditions: one Law Lord does not even have a room. The position in the Palace cannot be improved without asking other peers to give up their desks.”

Our hearts bleed for those people down there. Clearly, we have to change the constitution, instead of just getting a couple of extra desks into the Palace of Westminster. What absolute nonsense. I do not see that the accommodation problems in the Palace of Westminster justify a situation that, according to the Faculty of Advocates, would threaten to undermine the independence of Scots law.

Reference has been made to the number of Scots judges, and it is clear that the current situation is not satisfactory. According to “The Legal System of Scotland”:

“Scots-trained judges have rarely constituted a majority of those sitting in a particular case. In fact, there are still Scottish appeals where only one, or sometimes no, Scots-trained judge is sitting.”

The proposal will not improve that situation very much, because although there may well be two Scots law lords on the panel, that will not guarantee the presence of that number on any particular case, which is the important point.

I will not mention criminal appeals, because that matter has been well dealt with, but the proponents of the measure have not made the case why there should be a difference between criminal appeals and civil cases. By supinely accepting the product of a flawed reform of the House of Lords, we are missing an opportunity to investigate the process of appeal in Scots civil cases, and to examine whether that final tier of appeal is necessary.

It has been argued that wanting to retain appeals in Scotland is somehow insular. The Executive makes that argument every time that it wants to transfer out of Scotland responsibility for decisions that it should be making. By the same logic, anything that we do in this Parliament is insular. If we took the Executive’s argument to its logical conclusion, we would do away with this Parliament altogether. I suspect that that is one of the reasons why the Conservatives use that argument so often.

10:38

**Robert Brown (Glasgow) (LD):** This has been an excellent debate, with a lot of good speeches. If I may, I instance Pauline McNeill’s speech in particular.

I apologise to the chamber, as I will have to leave shortly after my speech to speak at a conference. I am sorry about that, because I would have liked to hear what happens afterwards.

I hold a curious affection for the current appeal arrangements: the Lord Chancellor, who is not just part of the judiciary, but is part of the legislature and the executive all at the same time; the Judicial Committee of the Privy Council; the rather curious—not modern, but traditional—arrangement for the Appellate Committee of the House of Lords; and orders and decorations of the once-great British empire all round. The system is entirely anachronistic, entirely odd and, as Annabel Goldie rightly said, it worked rather well, but it is entirely unsuitable for a modern liberal state and it is right that it should be modernised and sorted out.

Of course, the Prime Minister made a total and utter hash of it, as indeed he has done with the whole issue of House of Lords reform. To abolish the lord chancellorship as a by-blow of a ministerial reshuffle, especially after spending all that money on the wallpaper, was senseless. The Prime Minister did not consult the judges, the lawyers, the Scottish Executive or anyone else about it. The only redeeming feature is the fact that, not for the first time, he took over a long-standing Liberal Democrat theme by proposing the creation of a United Kingdom supreme court. The central policy is, of course, right.

My colleague Alan Beith, the chair of the Select Committee on the Lord Chancellor's Department, said:

"These are fundamental and potentially valuable reforms but they seem to have been worked out on the back of an envelope".

With a Scottish Parliament, devolved Assemblies for Wales, Northern Ireland and London and moves towards English regional devolution, we are well down the road to establishing a federal or quasi-federal system. Such a system is used by most normal democratic countries—to coin a phrase—in Europe, the Commonwealth and throughout the world. Indeed, it was the arrangement that the Scottish commissioners who negotiated the union would have preferred back in 1706-07.

**Alasdair Morgan:** I know that federalism is Liberal Democrat policy, as Margaret Smith indicated. Is the member not over-egging the custard in saying that we are moving towards a federal system at the moment? It is clear that we are not.

**Robert Brown:** It is clear that we are moving towards a federal system much faster than we are moving towards independence. That is the central point.

There is no sign that the Government has thought through what a UK federal union would require, or the further fruition of its devolution policy.

**Margaret Mitchell (Central Scotland) (Con):** Does the member accept that a supreme court is usually introduced when there is a written constitution, which we do not have?

**Robert Brown:** I accept that that is the case, but we have considerable sections of a written constitution. Much play has been made of the treaty of union; there is also the European convention on human rights and the Scotland Act 1998 and associated documents. We must go further, but we are well on the way towards having a written constitution; the Liberal Democrats support that.

The institutions for a federal union—and even for the sort of lop-sided federalism that we are moving towards—would include a UK supreme court, which would consider civil appeals and devolution and ECHR issues. It might be appropriate for the court, in its consideration of devolution issues, to have powers to challenge Westminster legislation—a suggestion that I think Gordon Jackson has made.

In my view, the Lord Advocate was right to give a robust response to the Faculty of Advocates and others who suggested that the proposal was contrary to the treaty of union. It is clear that the proposal is no more contrary to the treaty of union than is the civil jurisdiction of the House of Lords.

It is instructive to read out article 19 of the Act of Union, which Annabel Goldie mentioned. It says that

"no Causes in Scotland be cognoscible by the Courts of Chancery, Queens-Bench, Common-Pleas, or any other Court in Westminster-hall".

I will explain in passing that the House of Lords did not sit in Westminster hall—that was why, historically, it was able to take jurisdiction for civil appeals. The article goes on to say that

"the said Courts, or any other of the like nature after the Union"—

which I would interpret as meaning English domestic courts—

"shall have no power to Cognosce, Review or Alter the Acts or Sentences of the Judicatures within Scotland, or stop the Execution of the same".

It is certainly a little odd that a 300-year-old act, which was passed when we did not have democratic institutions in the modern form or anything like the present structure of government, should be the touchstone for deciding such matters, but the excerpt emphasises the independence of the Scottish system, to which I, as a Scottish lawyer, am highly committed. That is an important point.

A suitable way of demonstrating the complete independence of the UK supreme court and of establishing a visible symbol of a balanced

partnership between England, Scotland and the other nations and regions of the UK would be to locate the court in Edinburgh. I made that suggestion to the Lord Chancellor a while ago. Scots law is well placed to be at the centre of the UK legal system, because of its historic connections with England and the continent. Edinburgh could provide a fitting home—possibly in the old Royal High School building—and support services for the supreme court. That would send a clear message that the court respected the different legal traditions within the UK.

I am conscious that the Scottish National Party does not go along with that proposition. Although it would bring an important institution to Scotland, it does not fit in with the nationalists' long-term objective of independence. That raises the question why they have bothered to take part in the debate in the first place.

I will finish on a few more technical matters, on which I agree with the Faculty of Advocates. The court should not be run by the Department for Constitutional Affairs, which runs the English court system, but should have a separate court organisation that is funded by Westminster and is answerable to the court itself. Regardless of its permanent location, the court should go on circuit. It should also have at least three full-time judges with expertise in Scots law; a normal panel would have five judges. The Executive response on that aspect is a little weak. I support the Law Society of Scotland's argument for a pan-UK independent judicial appointments arrangement.

I agree with the motion; the creation of a UK supreme court should enhance the independence of the judiciary. However, that independence was arrived at not by dint of a theoretical separation of powers, but by dint of practical and hard-won liberties that were established after the revolution of 1688. The Westminster Parliament must get its proposal right. We in this Parliament have a considerable interest in the matter and we must examine the legislation closely and ensure that our requirements are satisfied. Any other outcome would be a constitutional disaster to succeed the dog's breakfast with which the Government began the changes. I support the motion.

10:46

**Bill Butler (Glasgow Anniesland) (Lab):** Given the fact that so many lawyers have spoken, as a non-lawyer I approach the debate with a degree of trepidation.

The Lord Advocate said, in his lecture to the Law Society of Scotland conference on 21 January, that the current proposals on and around

the creation of a new supreme court presented us with

“the opportunity to rationalise the present Byzantine and archaic procedures which take devolution issues to the Judicial Committee of the Privy Council and other appeals to the House of Lords.”

To someone with no legal training, such as me, that is as fine an example of litotes as I have heard for some considerable time.

To my untutored eye, some aspects of the debate are fiercely esoteric and best left to the initiated. I intend to do my best to focus on the central democratic impetus that is driving the proposed reform—the need to ensure, in a modern democracy, that the separation of the judiciary from the legislature and executive is clear and unambiguous.

Before I turn to the central focus of the proposal, I will say a word about the manner in which the Westminster Government announced its intention to consult on the establishment of a new supreme court for the UK in June last year. Commentators and members such as Annabel Goldie, Alasdair Morgan and Margaret Smith referred to that announcement as the messy outcome of a botched Cabinet reshuffle. It would be fair to say that the handling of the matter could have been better—that is another example of litotes. However, that should not blind us to the essentially positive nature at the core of the proposed reform.

As members will know, the Government's proposals involve reshaping the highest level of the judicial system and removing the jurisdiction of the Appellate Committee of the House of Lords, the functions of which will be placed in the hands of the new supreme court, which will be separate from Parliament. At present, the functions of the highest courts are divided between the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. I believe that such a situation raises concerns about the transparency and independence of the judicial system. It is vital that systems are put in place that will lessen the possibility of judges' decisions being perceived to spring from any political motivation.

In my opinion, the Executive has been absolutely correct to stress, in its response to the consultation, a welcome for a supreme court that would assume the functions of the Appellate Committee of the House of Lords and take on the decision-making role in relation to the powers of the devolved administrations. I share—and I believe that we should all share—the concern about the current anomalous situation in which the House of Lords can sit as a court within a legislative body and, when it does so, be headed by the Lord Chancellor, who is a member of the

Government. That situation is deeply unsatisfactory.

The Executive is right to emphasise the importance of the principle of the separation of powers within a developed democracy. I share the view that there is

“widespread acceptance of the desirability of separating powers between the three pillars of the state: the judiciary, the executive and the legislature”.

I believe that the establishment of a supreme court would make that separation self-evident and that such a body would better fit the constitutional context of the 21<sup>st</sup> century.

A UK-wide supreme court would be particularly helpful in cases in which breaches of the ECHR, whether under the Human Rights Act 1998 or by operation of section 57(2) of the Scotland Act 1998, are involved. Consideration of such matters by the same court would aid consistency of approach and eliminate the risk of conflicting judgments on issues of constitutional importance.

My support for the creation of a supreme court rests, to a large extent, on the need for a modernised, clearly defined separation of powers. The actions of those who administer justice on behalf of society must not only be beyond reproach, but be seen to be beyond reproach. I acknowledge freely that there are sincerely held concerns about, for example, the proposed appointments process, the proposed number of Scottish judges on appeals, which has been mentioned, and the possibility of Scots law being submerged. However, on balance, I believe that the Lord Advocate was right when he concluded his recent lecture by saying:

“In a modern democratic society the highest court should be clearly separated from the legislature. I also welcome the opportunity which the new proposal gives us in Scotland to modernise the arrangements for Scottish appeals so that we can have a single source of authority at the highest level. I have no fears that Scots law will be submerged in that process. On the contrary, I look forward to the new arrangements enabling Scots law to continue to make its distinctive contribution to the common law systems of the world and to the civil law systems of the European community.”

I commend the Lord Advocate's words on that occasion and the Executive's motion.

10:52

**Lord James Douglas-Hamilton (Lothians)**  
**(Con):** I mention my interest as a non-practising Queen's counsel. I am glad to have the opportunity to say a few words this morning, because I contributed on 25 June when we debated the subject of modernising justice in general.

As Bill Butler noted, there was considerable controversy at the time of the UK Cabinet reshuffle, because it appeared that there had been virtually no consultation of legitimate Scottish interests and that the reshuffle had important implications for Scotland. Indeed, it was noticed only half way through that controversial reshuffle that the Lord Chancellor's office could not be abolished without legislation. To try to deal with such important subjects in a reshuffle was opportunism, and I gently remind the Prime Minister of his own words that opportunism is not leadership. I am glad that, since then, the Lord Advocate has become involved and has made it clear where he believes Scottish interests lie.

During the debate in June, I requested that judges from Scotland who are highly qualified in Scots law and well experienced in the Scottish legal system's rules of evidence and procedure be appointed to the supreme court. To be frank, if cases with a Scottish input were under consideration, they could not be dealt with effectively if no one who was fully qualified in Scottish law was present. Also, the appointment of judges from Scotland to a supreme court must be done through a system that is clearly distinct from the appointments commissions in the jurisdictions of England, Wales and Northern Ireland.

I ask for reassurances from the Solicitor General on a number of points. First, I ask for reassurance that the appointing commission for the supreme court will be independent and that it will contain representation from a person or persons who are highly qualified in Scots law. It follows that a sufficiency of Scottish law lords should be appointed to ensure that somebody with the utmost expertise in Scots law is readily available to make any contribution that is necessary. At present, there are two such law lords, Lord Hope and Lord Rodger, each of whom has been Lord President of the Court of Session.

The Law Society of Scotland suggests that the supreme court should have at least three full-time members from Scotland and that the number of judges should be increased to 15, along with an additional panel. I ask the law officers and the First Minister to consider sympathetically all such representations on the system for appointments. In particular, the Law Society recommends that the selection of members of the new court should be set out in a statutory code of practice that is subject to parliamentary approval.

Secondly, I mention the roles of the Prime Minister and the First Minister. I note that there is a proposal that they should be consulted on appointments and I contend that all such appointments should be made solely on merit, should not be political appointments, should not be subject to politicisation and should not be solely

the result of prime ministerial patronage. I also suggest that there should not be a quota system and I submit that the Scottish interest can be protected only by the involvement of the Judicial Appointments Board for Scotland and the First Minister's knowledge.

My third point relates to the Act of Union 1707. The Law Society of Scotland has asked that special care be taken to comply with article 19 of the treaty of union and to protect the judicial and administrative independence of the Scottish judicial system. That issue needs to be kept in mind and to be considered properly, because the act should not be amended accidentally or by default and the matter should be handled professionally and deliberately.

I ask for confirmation that sufficient resources will be made available to the supreme court in respect of the new building, its accessibility, its library, computers and judicial offices, as well as its having sufficient properly trained staff. The Faculty of Advocates has suggested that there should be established a distinct supreme court service that would be funded by block grant from Parliament and subject to the ultimate control of the court. The faculty believes that that would guarantee the court's actual and apparent independence.

I hope that the Solicitor General for Scotland will be able to say where it is proposed that the new supreme court will be located and when it is anticipated that it will start its operations in earnest.

The Lord Advocate, in a recent speech, gave a reassurance:

"I have no fears that Scots law will be submerged in that process. On the contrary, I look forward to the new arrangements enabling Scots law to continue to make its distinctive contribution to the common law systems of the world and to the civil law systems of the European community."

I wish the Lord Advocate and the Solicitor General for Scotland well in their task of ensuring that that will happen.

10:57

**Karen Whitefield (Airdrie and Shotts) (Lab):** Like other members, I welcome the opportunity to take part in the debate. The creation of a supreme court represents a small part of Labour's continuing modernising agenda; Labour is not only modernising the House of Lords as a legislative body, but transforming its judicial function. Along with many others, I am clear that there is a need for the proposal. The time has come for a more obvious separation between those who create legislation and those who administer justice on our behalf, and the creation of a supreme court that is

separate from the House of Lords will send a clear signal to the public that our courts are entirely separate from our Government. That is fundamentally a more important point than could be addressed by putting a few additional desks into the House of Lords.

Much has been said about the value of the Scottish legal system. It is right that we should be proud of that system and protect its integrity, but it is also right that we should regard the system as open to change and development. I do not accept that the proposed supreme court represents a threat to our legal system. In fact, I believe quite the opposite: the proposed supreme court, which will reflect the central features of the Appellate Committee of the House of Lords in terms of jurisdiction in civil cases, can and will strengthen Scottish, English and UK civil law.

As the Lord Advocate pointed out in his recent speech to the Law Society, which has been much quoted this morning, the current system allows English and Scots law to benefit from the experience of judges in both countries. He said:

"The Scottish legal system benefits from the exposure of our legal practices and principles to friendly but critical examination by members of another legal discipline".

The same could be said to be true for England and Wales.

I believe firmly that, for the many occasions when civil law in Scotland, England and Wales is similar, there would be a direct benefit from a system that allowed a common ruling to be made. As I understand it, where there is a clear difference between the legal systems, the supreme court will be able to take that into account when reaching its decisions.

There are those who take great delight in turning this matter into a constitutional argument for separation from the rest of the United Kingdom. As ever, those people are more concerned with isolating Scotland than they are with improving public services. They are more concerned with scoring political points than they are with improving our justice system. At a time when the world is becoming ever-more interconnected, those people advocate the destruction of our strong links with our nearest neighbours. We on the Labour benches know that that is not the way forward for a modern and dynamic Scotland. I agree with the minister that the creation of the new UK supreme court will strengthen the union. Unlike members on other benches, I think that that is a good thing.

There is a need to discuss the number and national composition of the judges who are appointed to the supreme court. Members have highlighted those issues today. I do not see the necessity of having a majority of Scottish judges in

all Scottish cases, especially if the results of the case could apply throughout the United Kingdom. In some cases, a Scottish majority could prove detrimental to advocating the extension of a ruling across the United Kingdom. I welcome the proposals for flexibility in the composition of the court when it is dealing with cases in which Scots law is significantly different from that of the rest of the UK. I seek assurances that that flexibility will indeed be central to the proposals. I welcome the Lord Advocate's remarks on the appointment of judges to the supreme court. I agree with him that the First Minister should be consulted by the Prime Minister before recommendations are made to the Queen.

The Parliament has considered, and will continue to consider, important measures that are designed to create a judicial system fit for the 21<sup>st</sup> century. Efforts to improve the Procurator Fiscal Service, to provide enhanced rights for victims and witnesses and to establish a judicial appointments board are all part of that process. The creation of a more transparent and more independent supreme court is to be welcomed in that context. I hope that members will be able to set aside constitutional wrangles on this occasion and recognise that the proposals represent a positive step forward for Scotland and the United Kingdom as a whole. I am happy to support the Executive motion and encourage others to do so.

11:03

**Mr Adam Ingram (South of Scotland) (SNP):** I would agree with the minister on one thing. The House of Lords is an anachronism and it should not have a role in the governance of a modern Scotland. What is more, the House of Lords has proved to be fallible in the few decisions that it has had to make on Scots law, most notably in the recent case of *Sharp v Thomson*, in which English law concepts were applied to overturn the decision of a Scottish court, creating so much consternation in legal circles that the Scottish Law Commission has recommended that the decision be overturned by statute. If Annabel Goldie were here, I would suggest to her that the ginger beer has gone very flat indeed. I would also suggest that, apart from by those Scots lawyers who enjoy their days out at Westminster, appeals to the House of Lords will not be missed.

Last week, I, too, attended the Lord Advocate's lecture in the Signet library. I found his defence of the Government's proposals for a UK supreme court to be unconvincing and his attack on proposals to repatriate the right of appeal in civil cases from the House of Lords to the inner house of the Court of Session to be patronising. Nicola Sturgeon has already quoted from the Lord Advocate's contribution to the Scottish cringe, but I

think that it is worth repeating. The Lord Advocate said:

"As a legal system in a small country on the edge of Europe, we must be conscious of the risk of becoming self-centred and inward-looking."

I seem to recall those same sentiments being expressed many times by those who battled hard over the years to prevent the re-establishment of the Scottish Parliament.

The Lord Advocate also claimed:

"the presence of Scottish judges in the supreme court, whether it is the current House of Lords or the proposed new institution, opens a two-way window for us into the worldwide family of common law systems."

Excuse me—I am not a lawyer—but has not the Scottish legal tradition, unlike its English counterpart, been part of the European main stream from time immemorial? Surely, given our membership of the European Union, all the various European legal institutions are much more relevant as vehicles for our interaction with the wider world. Disparaging attitudes to Scotland and its institutions seem to be entrenched in UK Government circles. Why does the consultation paper on the proposals for the supreme court make no mention of the legislative competence of the Scottish Parliament in devolved judicial matters? The paper makes it clear that the powers of the Appellate Committee of the House of Lords will transfer to the supreme court, but that proposal is apparently not for debate and is not subject to consultation.

Given that arrogant disregard for the Scottish experience, it is little wonder that senior figures in the Scottish legal establishment have been sounding the alarm bells. Lord Hope of Craighead summed up the situation accurately. He said:

"There are two quite distinct things at stake. The first is the integrity of the Scottish legal system, which was protected by the Act of Union and has always been respected up until now ... The second is the devolution system".

The question is what the Parliament will do to counter those threats. To my mind, we should first oppose the whole kit and caboodle of what is being proposed. Taking the judiciary out of the legislature and placing it under the control of an arm of the Executive in the form of the Department for Constitutional Affairs is no constitutional advance. Secondly, and perhaps more pertinently, given that this is a devolved question, we should abolish the practice of sending appeals to the House of Lords and repatriate them, as the SNP amendment suggests. I serve notice to the Scottish Executive today that, if it refuses to take on board our amendment, I intend to introduce a member's bill for that purpose. The proposal is already lodged.

11:08

**Jackie Baillie (Dumbarton) (Lab):** Like other members, I hesitate, as a lay person, to contribute to the debate. I am conscious that many members have direct experience of the Scots legal system. Nevertheless, I will comment on a number of the basic, underlying principles behind the proposal for a supreme court, although I run the risk of intruding on what has at times seemed like a private argument among lawyers.

The minister spoke about modernising our constitution, about the need to have a judiciary that is clearly independent of the state and about the need for transparency. I have no difficulty with any of those principles and I have no problem with the principles underpinning the creation of the supreme court. I recognise that, in a modern, progressive society, we need to have confidence in our judiciary and we need to ensure that it is independent of the Government. I therefore accept that the overlap between the legislature and the judiciary that exists in the Appellate Committee of the House of Lords is no longer appropriate.

I acknowledge that, as Nicola Sturgeon said, the proposals present an opportunity to consider what arrangements are best suited to our needs. That does not mean that I agree with repatriating all civil cases to Scotland, because I am mindful that the right of appeal in civil cases to the House of Lords has served us well in the past 300 years. Nevertheless, we need to reflect on the advantages and disadvantages of various approaches and this debate is particularly helpful in giving us an opportunity to do so.

**Phil Gallie:** Jackie Baillie is coming from a user or constituent angle with respect to civil law, rather than from a legal angle. In the parts of today's debate that I have been present for, I have not heard any reference to the difficulties that individuals face in getting access to civil law. Does Jackie Baillie have any thoughts on that?

**Jackie Baillie:** I thank Phil Gallie for that intervention. I could probably fill several minutes with reflections on that matter.

**The Deputy Presiding Officer:** There is time for that.

**Jackie Baillie:** I am not going to be tempted, Presiding Officer, but thank you for the offer. As I am not a user of the House of Lords and am not likely to be a user of the proposed supreme court, there are others who could better reflect on the opening up of our justice system to ensure better access. However, I am sure that, if Phil Gallie considers what the Labour-led Executive has done to modernise the legal system and to make it more accessible to the people whom it should be serving, he will agree that it has done a tremendously good job.

**Phil Gallie:** Do not go too far.

**Jackie Baillie:** Phil Gallie is always welcome to stand up and agree with me.

It is important to debate the issues that Phil Gallie has raised, but I want to focus on the numbers in the court. Annabel Goldie helpfully outlined the current arrangements. There are 12 law lords, who generally sit in panels of five to hear cases, and there is the Appellate Committee, which operates a constitutional convention that ensures that at least two members of the committee are Scottish judges. I note that the Executive is comfortable for that arrangement to continue. In its response, the Executive said:

"it is essential that, at any one time, the membership of the new Court should comprise not fewer than two people suitably qualified in Scots law and experienced in its administration."

I ask the Executive whether it is proposed that we are simply to rely on that historical convention or whether it is intended to express that arrangement in statute.

**Cathy Jamieson:** On that point, I point out that, at the end of the part of the response that Jackie Baillie refers to, we said:

"There should be adequate safeguards based in statute".

**Jackie Baillie:** That confirms the Executive's position and will help to ensure that there will be at least two suitably qualified people in the new court.

The overall number of judges is less important than the balance that is needed when individual cases under Scots law are dealt with. The flexibility of being able to add additional members is helpful and means that whether there are three, four, five or however many Scottish law lords as permanent members of the court becomes less of an issue. My concern is not dissimilar to Margaret Smith's, however. There is much to be said for the principle of ensuring that, when individual cases under Scots law are before the court, a majority of judges who are sitting on the panel should be Scottish law lords.

I acknowledge the points made by the minister and Nicola Sturgeon about the practicality of such an arrangement and the additional burden that that might place on judges. However, I feel that, given the limited number of cases—I believe that eight was the figure cited—and the ability to use additional members, the burden should not be unduly onerous, particularly in the context of five-member panels in which the majority would be three.

I am persuaded by the comments of Pauline McNeill and the minister about the experience that judges from England, Wales and Northern Ireland can bring to our reflections. We should not close

our minds to learning from other jurisdictions. Equally, we should be proud to reflect to others our knowledge and experience of the best tenets of Scots law.

For me, the key question is balance. We need to ensure that there is no unintended erosion of our legal system. I recognise that, although that might not always have been an issue and certainly was not an issue in the past, that does not automatically mean that everything will remain unchanged in the context of a new supreme court. I ask members to reflect on that important point again.

Bill Butler was absolutely right to highlight the benefit of consistent decision making across all cases relating to breaches of the ECHR. That consistency will come from the supreme court. It is clearly advantageous not to have differing decisions in what are important constitutional matters.

We have heard that the decisions of the supreme court in relation to the rest of the UK will not be binding on Scots law but will be seen as being highly persuasive. Perhaps the difference is too subtle for me to understand, but I am not sure that something that is highly persuasive is that far from being a must-do. I am sure that the Solicitor General will shed some light on that matter for the benefit of us poor souls who know no better.

Like Pauline McNeill, I acknowledge the work that ministers have done in ensuring that the well-respected system of Scots law is not diminished but enhanced by the proposals and I will support the Executive's motion.

11:16

**Phil Gallie (South of Scotland) (Con):** Members often start their speeches by saying that they take great pleasure in participating in the debate, but I am not sure that I can say that this morning, as I came along totally unprepared to speak. However, members will know that I am never one to miss an opportunity to mention the effects of Europe on this country.

The proposals on the supreme court and on the removal of political influence should come as no great surprise to us, because we have all lived through such a process with respect to our local district courts and our sheriff courts—individuals who were appointed to serve in those courts had to be removed because of the perceived political influence in their appointments. We have been here before and here we are again.

One of my frustrations relates to the fact that we are talking about a supreme court in the UK. Earlier, I asked the Minister for Justice about the ways in which article 6 and article 28.3 of the draft

European constitution will affect the supreme court if or when it comes into being. I leave that question on the table, as the European constitution could make any debate that we have in this chamber totally irrelevant.

I took the opportunity to ask Jackie Baillie about ease of access to the civil law. I recognise that that matter might be seen as being quite separate from the subject of this debate, but I am not quite sure what assistance in the form of legal aid is available to people who want to take cases into the appeals process or—in future, perhaps—to the supreme court. If the Solicitor General could comment on that, I would be much obliged.

I understand that, when I was out of the chamber, John Swinburne raised the issue of gender balance. I am not greatly in favour of gender balance if it is achieved through manipulation and I have to commend Elish Angiolini, who, despite all the ideas of male supremacy in the legal profession, has risen to her position purely on merit and has done a good job as Solicitor General. Perhaps that is a lesson to all members who have considered manipulation to give one sex or the other an advantage. Elish Angiolini has made it in her profession on her merit, as I am sure have the other ladies in the chamber.

**Miss Goldie:** Will the member give way?

**Jackie Baillie:** Will the member give way?

**Phil Gallie:** Of course.

**The Deputy Presiding Officer:** Ms Goldie will be followed by Ms Baillie.

**Miss Goldie:** Does the member agree that it is extremely important never to patronise ladies who have attained positions in their sectors of activity on the basis of merit?

**Phil Gallie:** I would hate it to be thought that I was being patronising, because I certainly did not intend to be. I have said before that the Lord Advocate and the Solicitor General have done a good job in the main. Saying that is certainly not an attempt to patronise. I would hate to think that Miss Goldie or anybody else would dare to think that I would take such a line.

**Jackie Baillie:** I rarely associate myself with Annabel Goldie's remarks, but I do so entirely on this occasion. Is Phil Gallie suggesting that the small number of women Conservative members somehow relates to the fact that other women in his party lack merit?

**Phil Gallie:** No. We want far more women who could use their extensive talents in the Conservative party, but who choose to use those talents in other ways, to come forward. We would like those talents to be used in the chamber.



Perhaps such women will be here in the future. I point to our successes in South Ayrshire Council, where we have almost achieved, purely through merit and without manipulation, the gender balance that Jackie Baillie seeks. That does not involve patronising anybody.

**The Deputy Presiding Officer:** I think that Mr Gallie should return to the subject of the debate.

**Phil Gallie:** On a serious note, I will make a point about political influence, which Annabel Goldie mentioned. I understand that the Prime Minister and the First Minister will have input into judicial appointments to the supreme court. That input is a political influence, which seems to cut across the responsibility to meet European judicial requirements. Perhaps the Solicitor General could comment on that when she responds to the debate.

I thank the Presiding Officer for allowing me at a late stage to speak in the debate.

**The Deputy Presiding Officer:** We come now to closing speeches. We have a little bit of time in hand, so I can still be fairly flexible with the indicative timings.

11:23

**Mike Pringle (Edinburgh South) (LD):** Like Jackie Baillie, I am no lawyer. Members might have heard before that my only legal experience comes from sitting in the district court. I am not sure whether that qualifies me to talk about legal matters.

Many people who are following the debate might wonder why we are discussing the topic. I am sorry that the children who were in the public gallery have gone, because I wondered what they made of the debate, which has been technical—they might have been confused by much of the language. My constituents would probably consider the UK supreme court of importance only to the constitutional and legal anoraks in the chamber.

Pauline McNeill said that she did not like the name “supreme court”. I do not like it, either. The words bring to mind the Supreme Court of the United States, which I understand has a completely different function. Perhaps somebody should consider a different name for the UK court.

The proposed supreme court is of fundamental importance to our constitution and I am glad that we are discussing it. As my two Liberal Democrat colleagues Margaret Smith and Robert Brown said—this relates to what Annabel Goldie said, too—the suggestion of a supreme court was first made in and lifted straight from our 2001 general election manifesto. When we first thought about the proposal, we had no concern for whether

enough office space was available or whether judges would have a place to sit when they were working. Alasdair Morgan mentioned that point.

At present, a panel that comprises full voting members of the UK legislature sits as the highest court in the land for some cases. Liberal Democrats recognise and accept that that situation is unsustainable. I agree that we need to sever the links between the court and the House of Lords and I have considerable sympathy with Nicola Sturgeon’s view about whether we need the House of Lords.

I agree with others who said that members of the court should not sit or vote in the House of Lords. Members of the court who came from the House of Lords could return there when their term of office expired and the House of Lords would benefit from their expertise. However, members of the court who had not previously been members of the House of Lords should not automatically be appointed to that chamber at the end of their term.

I agree entirely with Robert Brown’s point about the botched House of Lords reform. It was a shame that the reform was not mentioned in the Labour Party’s general election manifesto, but neither were tuition fees, and look what has happened with them this week. A more frank and full discussion would have been preferable before the farce of the reshuffle last year, to which members have referred. The supreme court policy was announced as a fait accompli alongside other changes and was followed by consultation. Something went wrong there. However, I agree that the proposal is fundamentally good.

We must keep a sense of proportion about the supreme court’s effect on our constituents. Nicola Sturgeon and other members referred to the numbers of cases from Scotland that have been brought to the House of Lords—in the past few years, those numbers have almost always been in single figures. Why should those few cases not go to the supreme court? A valuable tradition has been built up.

**Phil Gallie:** Does the member believe that the limited number of appeals to the House of Lords has anything to do with individuals’ means to fund appeals?

**Mike Pringle:** No, that is not right. My point is that few cases go to the House of Lords, but that they have merit in going there in respect of civil matters. The low figure does not take away from the fact that individuals can take that action.

The new court must not be part of the judicial system of England and Wales. It must be above both Scots and English law. The court would be the perfect place to deal with UK-wide constitutional issues. The suggestion that that

function should be removed from the Judicial Committee of the Privy Council is sensible.

**Maureen Macmillan (Highlands and Islands) (Lab):** Given what the member just said, does he still agree that the supreme court must not undermine Scots law and that it should not be able to set Scots law precedents unless it is dealing with a case under Scots law?

**Mike Pringle:** I accept that entirely. The House of Lords and the law lords are not bound by precedent, as Margaret Smith said. The consultation document suggests that that situation will continue. However, for clarity and consistency, I suggest that the supreme court should follow precedent and that that precedent should be able to be overruled only by a larger bench than the one that set it.

Any supreme court system should mirror the separation of the legislature and the judiciary and I am not convinced that interference is needed from the Prime Minister. The appointments commission would be composed of distinguished lay people, members of the judiciary and recruitment experts and would make a single recommendation. Lord James Douglas-Hamilton talked about how that process would work. I agree with him that the commission will have to be seen to be above all other influences. I do not understand what political interference is needed in judicial appointments.

How will the court sit? I agree that a panel system should be retained. However, in Scottish or Northern Irish appeal cases, it is important to have the possibility of a Scottish or Northern Irish majority on the panel. Members have talked about numbers. I am not sure that I am worried about whether more than two Scottish law lords should be appointed to the new court. Indeed, if more than two Scottish law lords were appointed, expertise would be taken away from Scotland that could be better used in Scotland, particularly given the small number of cases that would go to the supreme court. Having enough Scottish justices of the supreme court—or whatever they will be called—permanently employed is not practicable, but I agree with other members that we must consider the matter. There could be separate, national representation in the small number of cases that would go to the new court, with judges with particular expertise being brought in—I will refer to that matter in a moment. It seems sensible to allow a small number of people who have expertise in various aspects of the law to be used to give a majority if a case relates to a Scottish matter in particular.

I do not think that any member has referred to the suggestion that there should be a compulsory retirement age of 70 or 75 for supreme court judges. Those details can be worked out later. Retired members could be considered for the

reserve panel, although in a world in which most of us retire earlier than that, I do not understand why judges should be much different from everyone else. There is also a good argument for appointing long-standing legal academics, barristers and solicitors to the supreme court.

**Phil Gallie:** Mike Pringle should remember that we are sitting in a Parliament to which a senior pensioner has been elected. In the light of what he has said about judges retiring, what does he have to say about politicians retiring at a certain age?

**Mike Pringle:** Whether politicians retire is often up to voters. In most professions, people retire when they are 60 or 65. In the current system, judges can go on well beyond the age of 70, which is not right in this day and age.

An expansion in the possible pool of available members would also allow judges who have an acknowledged expertise in a specific area of law—and in devolution matters in particular—to sit in the court.

Robert Brown, Lord James Douglas-Hamilton and other members have spoken about the independence of the new supreme court. The court must be completely independent and devoid of all political interference and it must have its own budget.

Margaret Smith and Robert Brown talked about the possibility of the court sitting in Edinburgh on some occasions. I would welcome jobs coming to Edinburgh, as the Executive seems to be intent on sending jobs out of Edinburgh. Perhaps we should welcome the new supreme court—or whatever it will be called—to Edinburgh and perhaps the old Midlothian County Council chambers, which the Parliament now uses as its committee rooms, would be a good location for it. The council chambers would be a fine building in which to house the new court whenever we finally move to Holyrood.

11:33

**Margaret Mitchell (Central Scotland) (Con):** I welcome discussion of such an important issue but deeply regret how the issue has been introduced for discussion—Margaret Smith also said that and Bill Butler reinforced it. We are having this debate not as a result of any failures in the existing practice that the law lords use to hear civil appeals nor as a result of any discontent with the Judicial Committee of the Privy Council having jurisdiction over devolution cases. Indeed, we are not even having the debate as a result of any clamour for change from the public, despite the impression that Nicola Sturgeon has given. We are debating the implications of the establishment of the new supreme court now in large measure because, following a botched Cabinet reshuffle—

to which Alasdair Morgan, Robert Brown, Mike Pringle and other members referred—Tony Blair unilaterally decreed that there would be a supreme court and followed that prime ministerial diktat by announcing a consultation. That was the process by which he could ensure, to use the words of the starship Enterprise's Jean-Luc Picard, that he would "make it so".

Perhaps such an approach is not surprising from the man who, on coming to power, gave us cool Britannia, which has now sunk without trace, and from a man who has shown scant regard for parliamentary democracy or the best of British—or, indeed, Scottish—traditions. In the absence of any overwhelming reason for change, there is a need to guard against the perception that we are being asked to embark on the establishment of a supreme court merely for the sake of change, particularly in the light of the Minister for Justice's press release on the subject. The Minister for Justice said that she is in favour of plans for

"a modern Scottish Parliament to back a modern Supreme Court"

and mentioned

"a Scottish Parliament born from bold and radical constitutional reform".

That leads to the conclusion that the concept of change and being different is foremost in her mind, rather than possible improvements to the court system and, indeed, the concept of separating powers.

**Jackie Baillie:** I am unclear what the member is suggesting. Is she saying that an overlap between the judiciary and the state is acceptable? It is clear that that is not the Executive's position.

**Margaret Mitchell:** I am not clear exactly what the member is referring to. *[Interruption.]* If the member listens, she will hear my reply. My point is that there is no overwhelming need for change, as the system is working well. Perhaps there might be a need for change as things evolve, but no overwhelming case has been made for that at the moment.

**Maureen Macmillan** *rose—*

**Margaret Mitchell:** I want to move on, if the member does not mind.

I am not persuaded that the creation of a supreme court will strengthen the independence of the judiciary. That is a vacuous argument, as our judges are independent and jealously guard their independence. As Annabel Goldie pointed out, finding an independent judge to chair inquiries such as the Hutton inquiry or the Holyrood inquiry, for example, is not a problem. That is a testimony to our judges' independence.

**Nicola Sturgeon:** There is a glaring contradiction at the heart of Margaret Mitchell's

argument. I agree with what she says about the independence of the judiciary. Such independence is a fundamental principle of our legal system. However, how can she argue that the judiciary is independent when the people in the House of Lords who make the law also interpret and apply the law? Such a confusion between the judicial and legislative functions of the House of Lords is one thing that makes the position so unacceptable. Margaret Mitchell should reflect on the logical coherence of her argument during the remainder of her speech.

**Margaret Mitchell:** The pure and simple point is that things work in practice. One needs to know no more than that. All that is being proposed thereafter is change for the sake of change.

**Cathy Jamieson** *rose—*

**Margaret Mitchell:** I must press on.

The independence that I mentioned is strengthened by the fact that the law lords—who are otherwise referred to as lords of appeal in ordinary—work full-time on the judicial business of the house and receive a salary. That salary is not paid by the House of Lords, but comes directly from the consolidated fund, which is revenues that are held in the Bank of England's exchequer account. There must be concern—which Pauline McNeill voiced this morning—about the proposal that the salaries for the new supreme court judges will be administered and resourced by the Department for Constitutional Affairs. In fact, there is a real danger that the proposals could lead to the politicisation of the judiciary over time rather than strengthen its independence. The consultation document proposes that the appointments commission recommend new judges for the Prime Minister to appoint or, if the Scottish Executive has its way, the Prime Minister would appoint new judges in consultation with the First Minister. The Law Society of Scotland and the Faculty of Advocates do not support that provision. We support the involvement of the Judicial Appointments Board for Scotland, with the knowledge of the First Minister.

Furthermore, the consultation refers to the competence of judges and the Scottish Executive says that members of the appointments commission should have an understanding of "judicial qualities". Such comments certainly require clarification to ensure that there is no attempt to introduce political correctness as opposed to concentrating on a judge's ability. To say that judges must be representative is not a judicial notion, but a political notion. The background of any judge is irrelevant—what matters is their ability to apply and interpret the law.

If a UK supreme court is to be established, the Scottish Executive must ensure that, in the first

instance, Scottish judges are appointed to sit on all civil appeals from Scotland. I am encouraged by the minister's comments about flexibility in that regard. The Executive must also ensure that decisions of that supreme court in non-Scottish cases are not binding in Scots law—except in so far as the law that determines such cases is applicable on a UK basis. I support our amendment.

11:40

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

It has been an interesting debate, if only to witness Phil Gallie being chastised by his colleague Annabel Goldie. It must be concerning to Annabel Goldie that it appears that Phil Gallie is no longer aware when he is speaking out of turn in the chamber. It has also been interesting to receive a history lesson on the Scottish legal system. As is often the case in justice debates that are of a technical nature, those of us who do not have legal backgrounds get our defence in early. Although—unlike many who have spoken before me this morning—I do not know all the technicalities of our legal system, I ask members to bear with me and I will do my best.

Judging by the minister's opening speech, one could be forgiven for getting the impression that the consultation document was considered for some time, that much discussion took place and that consultation occurred with a variety of parties on what should be contained in the document. In reality, however, as several members from Annabel Goldie to Alasdair Morgan highlighted, the consultation document comes on the back of a botched reform of the House of Lords and a botched reshuffle that saw Derry Irvine getting his jotters. If the Westminster Government is having problems over the reform of the House of Lords—and I know that it does not have its problems to seek at present—I have a simple solution to suggest: abolish the House of Lords. As I have said before in the chamber, the House of Lords is probably the most expensive form of day care for the elderly in the world. If we are committed to modernising our constitution within the UK—as unionists would say—the Government should abolish the House of Lords.

I support the principle in the consultation document of separating the legislative process from the executive branch of government. That point of principle seems to have been lost on Margaret Mitchell. One of the concerning matters about the consultation document is that it appears to have been written to justify the decision that has already been made to have a UK supreme court. It is not a consultation document that is intended to generate meaningful discussion about the desirability, composition or jurisdiction of such a

supreme court. If we had such a meaningful consultation process, it is likely that its outcome would be different from the proposed reforms in the consultation document.

Given the proposals that are in the document, it is relevant for us to ask whether, if the Appellate Committee of the House of Lords is to be replaced by a new UK supreme court, we should continue to send civil appeals south of the border. Given that we are able to deal with appeals on criminal matters in Scotland and that we have done so successfully since 1876, as my colleague Nicola Sturgeon pointed out, why should we not be able to deal with civil appeals in Scotland?

The main argument that has been put forward this morning as to why civil appeals should not be dealt with in Scotland is that referring civil appeals to a UK supreme court would expose Scots law to the experience of judges from other jurisdictions. As Alasdair Morgan pointed out, that is the same argument that was exercised when there was a proposal to establish the Scottish Parliament. It was argued that such a Parliament would be parochial and insular and not internationalist and outward looking, which is what our legal system is today. Given that as many as eight cases a year are referred to the Appellate Committee in the House of Lords, we must question what the big issue is. The second argument that has been put forward today is that a UK supreme court would provide greater consistency in considering those cases. However, as Nicola Sturgeon highlighted, it does not appear to cause a problem when criminal matters are considered under the Misuse of Drugs Act 1971.

The reality is that the continued referral of civil appeals to the House of Lords or to any future UK supreme court is an anomaly that should end. Even the detail in the consultation document on the proposed supreme court does not clarify how it will operate.

We have had the window-dressing approach from Robert Brown, who said that the supreme court could be based in Scotland and others have talked about how many members of the Scottish benches would sit on that court. Pauline McNeill said that the automatic right of appeal on civil matters, which we have at present, should continue with any new UK supreme court. However, the consultation document is entirely silent on whether that right, which has been enshrined in Scots law for many centuries, will continue under a UK supreme court.

If the document is about modernising our legal system, it seems rather strange that its authors should choose to preserve the anomaly of civil matters being considered south of the border. The Scottish Parliament has a duty to listen when the most senior legal figures in Scotland raise serious

concerns about the proposals contained in the consultation document. I ask members to support the amendment in Nicola Sturgeon's name.

11:47

**The Solicitor General for Scotland (Mrs Elish Angiolini):** I am grateful for the opportunity to participate in the debate, particularly as it was unexpected. The Lord Advocate offers his apologies to Parliament because he has been detained in court on a continuing appeal. As a rather poor substitute, I hope that I will be able to explain the position as I see it from my perspective as a lawyer. As is well known, the law is far too important to be left to lawyers to deal with. That is why I welcome the opportunity for Parliament to engage in a serious and detailed debate about a momentous change to the constitution of this country that cannot be understated.

As a student in politics and law, I found it somewhat bemusing to go from a class where I studied Locke and Montesquieu to a constitutional law class where the principles of the separation of powers were somehow eclipsed by the integration of the court and the legislature in the House of Lords. It is a puzzle and an enigma that has troubled me ever since. It is therefore a tremendous privilege to be part of what I consider to be an exciting constitutional development.

I am pleased that we have this opportunity to have a vigorous debate on the wide-ranging issues. I recognise the importance of the reforms of the House of Lords and I echo the minister in supporting the process of modernisation of government and its judicial processes. Annabel Goldie questioned whether it was truly a matter of principle or whether we were simply tinkering with something that ain't broke. We are doing much more than changing for change's sake. We are dealing with fundamental issues of principle that many constitutional lawyers would recognise. There is certainly consensus in Parliament today about the need to recognise the significance of the separation of powers.

As the Lord Advocate said in his speech to the Law Society of Scotland last week, the current arrangements of the House of the Lords are labyrinthine, Byzantine, archaic and somewhat esoteric. If the law is to be accessible to and understood by the people whom it serves, it is vital that we consider not simply what is suitable and appropriate for those who work in the system but what serves the community.

The case for separating the functions of the House of Lords is, in my humble submission, overwhelming. The proposed reform is consistent with the principle of separation of powers, which is a cardinal feature of our British constitution and

indeed of any modern democracy. A situation in which the highest court in the land sits as part of the legislature has long been seen as unusual, to say the least. However, the inevitable pressure to reanalyse the institutions—

**Miss Goldie:** I am grateful to the Solicitor General for taking my intervention. It is quite important to establish just what principle we are talking about. Does she agree that, when we talk about the separation of powers, we are discussing the issue that I mentioned in my speech of the judiciary being neither compromised nor influenced by Government interference? That is the reality that we need to address, and the idea that structures obstruct such a process might be a red herring.

**The Solicitor General for Scotland:** There is no doubt about the impartiality or independence of those who sit on the Appellate Committee of the House of Lords. Indeed, I think that, on occasion, its judicial decisions can be described as masterpieces. The question is the structure and the appearance of that impartiality and the difficulties that that issue creates. That very issue has been acknowledged even by those who have carried out the function. Lord Bingham recently described the difficulties of sitting on the Appellate Committee. For example, the committee shares committee rooms, chambers and facilities with the legislature. On occasion, the committee will sit in the chamber of the House of Lords itself. Moreover, lobbyists in the House of Lords might lobby a judge on a matter that he has just considered in a debate.

Judges themselves have been aware of these difficulties and, as a result, have imposed on themselves the convention that they will not participate in debates that might be seen as sensitive or controversial. Such a self-imposed protocol is unsatisfactory in a modern democracy. With the ECHR's pressure and momentum, it must be quite clear that justice not only is done, but is seen to be done. The intimate and intricate fabric that weaves our judiciary and our political legislature together in the House of Lords is not satisfactory and is crying out for modernisation and change.

This morning's debate has been interesting. Indeed, it was particularly interesting, not because of the question whether Phil Gallie's compliments were patronising, but because of his points about the status of the supreme court's decisions. Clearly the European Communities Act 1972, which brings into effect EU treaties, has an impact on Parliament's general supremacy. There will be no change in that regard in relation to the supreme court's decisions.

Nicola Sturgeon understandably referred to the repatriation of civil cases. She will forgive me if I

do not dwell on the matter but, after all, we are dealing with the status quo. However, as a lawyer, I think that it would probably be naive to suggest that our jurisdiction has not been enriched by decision making on civil appeals in the House of Lords. Equally, we have benefited English jurisdiction by sharing Scottish expertise in that context. The House of Lords has presented a showcase for Scottish jurisprudence, of which the *Donoghue v Stevenson* case is a very good example. It is perhaps somewhat unfortunate that the fine town of Paisley is now remembered internationally for a deteriorating snail in a glass of ginger-beer instead of for its other fine qualities. I am sure that Hugh Henry will put that right.

**Nicola Sturgeon:** I am not quite sure why the Solicitor General feels constrained to discuss the status quo. After all, this should be—and has been—a wide-ranging debate. Is she seriously suggesting that the cross-fertilisation of ideas and legal principles and practices that has taken place between the English and Scottish jurisdictions would somehow cease if Scotland no longer sent civil appeals south of the border? Such cross-fertilisation happens between jurisdictions all over the world and I do not know why, in changed circumstances, it would not continue between the jurisdictions north and south of the border.

**The Solicitor General for Scotland:** It is not that cross-fertilisation would cease. However, we have benefited as considerably from the level of legal expertise of the lords of appeal in ordinary in the House of Lords as they have from Scottish contributions. It is important for Scots law to be seen not in terms of an adherence to tradition and history but in its contemporary context. We need a constitutional set-up that reflects our 21<sup>st</sup> century needs and the introduction of a supreme court will facilitate that aim.

Annabel Goldie asked for my views on the binding nature of supreme court decisions. I suggest that there will be no change in that respect. I have no difficulty with the section of the Conservative amendment that refers to the continuum of a situation in which the supreme court's decisions would be binding in respect of decisions on Scottish matters and highly persuasive in respect of decisions on other matters that it might deal with. It would be very difficult for a Scottish court to reject out of hand a decision involving an interpretation of a UK-wide statute, simply because the likely outcome of such a rejection would be an appeal to the House of Lords—at the moment—or to the supreme court.

**Nicola Sturgeon:** Will the Solicitor General give way?

**The Solicitor General for Scotland:** No. I still have a great deal of summing up to do before I finish.

Members made many worthwhile points. For example, Karen Whitefield and Bill Butler mentioned the importance of a vibrant and developing constitution. I believe that the development of the supreme court engenders and is part of that vital process.

Margaret Smith expressed concern about the court's composition and Lord James Douglas-Hamilton referred to the importance of maintaining the integrity of the appointments process. I do not agree with the proposal that a majority of Scottish judges in the court should sit on Scottish cases. It is not necessary for us to influence the process by such means; indeed, it would be unfortunate if an English panel of judges that sat on the same point reached a different decision from that of a supreme court in which a majority of Scottish judges sat on Scottish cases. It is important that any UK supreme court has a consensus on the important issues that it will have to consider. Of course, legal aid will be available for those who appeal to the supreme court in the same way as it is available to those who appeal to the House of Lords.

The appointments process is a delicate issue and requires a balance to be struck while ensuring that it retains its integrity. We in Scotland are ahead of England and Wales in having our own Judicial Appointments Board. Moreover, I am reassured by the Lord Chancellor's statements that every measure will be taken to ensure the supreme court's integrity and its independence from any suggestion of executive influence. The court will also have a separate administration within the Department of Constitutional Affairs, which I should remind the Parliament is a UK department, not an English or Welsh one.

The development of a supreme court contains a great deal not just for anorak lawyers but for everyone in the country to be excited about. It will improve access, understanding and this country's ability to have a fair and transparent system of justice that delivers what it sets out to deliver.

**The Presiding Officer (Mr George Reid):** We are a little early but I propose that, with the chamber's agreement, we continue our business.

## First Minister's Question Time

11:58

### Cabinet (Meetings)

#### 1. Mr John Swinney (North Tayside) (SNP):

To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-569)

**The First Minister (Mr Jack McConnell):** The next meeting of Cabinet will, as ever, discuss our progress towards implementing the partnership agreement to build a better Scotland.

Given that we have an additional minute or so, I want—I hope on behalf of all members of all parties—to give our best wishes to Murray Ritchie of *The Herald*, who retired yesterday from long service to Scottish journalism. I am sure that his granddaughter will enjoy the experience.

**Mr Swinney:** I thank the First Minister for his answer and I warmly welcome his comments about Murray Ritchie, who was a very distinguished journalist in Scottish political life.

On Sunday, the new fishing deal that the Government has negotiated comes into force. Three weeks ago, the First Minister said that his Government should be congratulated on the good deal that his ministers had negotiated for the Scottish fishing industry. At the same time, fishermen described the deal as “absolute madness”, “vindictive and offensive” and a “complete and utter disaster”. When did the First Minister realise that the fishermen were right and he was wrong?

**The First Minister:** I believe that Ross Finnie and our colleagues in the UK Government deserve our congratulations on significantly increasing the quotas and the total allowable catches that Scottish fishermen will be able to make this year. As Mr Swinney knows, we are now involved in serious negotiations to ensure that the technicalities of the agreement meet the needs and requirements of Scottish fishing communities. Those negotiations continue, even towards the end of this week. In those negotiations, we will ensure that Scotland's interests remain well represented.

**Mr Swinney:** I welcome the fact that the First Minister and the acting fisheries minister are no longer keeping up the pretence that the deal is a good deal for Scotland. Yesterday, the acting fisheries minister supported fundamental changes to the deal that was agreed in December. Now that the Government is at last listening to our concerns and the concerns of the industry about the deal, will the First Minister give a commitment

that his Government will argue for the Scottish fishing fleet to be given more days at sea to fish, and for Scottish boats to be free to fish in traditional Scottish fishing waters?

**The First Minister:** The discussions that are under way and the negotiations that are taking place to change the detailed arrangements of the agreement—the good parts of that agreement—that was reached in December are important discussions. They should reach—we intend that they will reach, but we need to conduct the negotiations to ensure this—an agreement that allows Scottish fishermen to fish in those areas of the North sea where there would not be the significant impact on cod that the European Commission believes there could be. We want to ensure that fishermen have access to those areas. That is critical, particularly in Shetland but also in other north-east fishing communities.

The negotiations are not helped by senior politicians from this chamber advocating the breaking of Scots and European law, which undermines the negotiations that are taking place. Frankly, the best thing that Mr Swinney could do today in the chamber would be to repudiate his remarks of 10 days ago, to give a firm commitment to implementing the law in Scotland rather than to breaking it and, in that way, to build in the European Commission and among the countries of the European Union confidence that we in Scotland are committed both to conservation and to strong fishing communities.

**Mr Swinney:** The First Minister can go on and on and on about all those points, but what I will go on and on and on about is protection of the livelihoods of people in the fishing industry in Scotland. I will not stand by and be silent when industries face bankruptcy. What the First Minister should do is what I did on Monday: he should get off his backside and get over to Europe right away and argue on behalf of the fishing industry. Will he take a leaf out my book? Will he move this issue up his list of priorities? Will he go over to Europe and argue for an increase in the number of days at sea for Scottish fishermen, and will he do something to protect the livelihoods of a community that is endangered by the stupid negotiations of his Government in December?

**The First Minister:** There are two choices: members in this chamber can either support those who negotiate on our behalf and who are doing so again this week, or they can undermine them. Members on the Labour and Liberal Democrat benches support Government ministers from north and south of the border who are negotiating for Scottish fishermen and who are going to get that deal changed if they can. Members on the Scottish National Party benches undermine those negotiations by their support for illegal action. Mr

Swinney has an opportunity today, as the negotiations take place, to withdraw his earlier remarks and to support the negotiations. If he will do so, he will help us to get a good deal.

**Mr Swinney:** I will never withdraw my support for the Scottish fishing industry in securing people's livelihoods. The First Minister should take this opportunity to apologise to the people of Scotland for negotiating a deal in December that he is now having to renegotiate. Will the First Minister take up my invitation to go and defend the fishing industry and not apologise for a deal that will have dreadful consequences for a vital national industry in Scotland?

**The First Minister:** Mr Swinney is squirming and squirming and squirming. He is unable to address the point that has been put to him now for 12 days. Will he withdraw his support for illegal activity? The support of senior politicians in Scotland for illegal activity in the North sea undermines the case of the negotiators. We need united support for the negotiators here in Scotland, and for the negotiators in London, who are currently securing changes to the deal. Those people deserve our support. Mr Swinney needs, at some point, to back them, and to stop backing illegal activity.

### Prime Minister (Meetings)

#### 2. David McLetchie (Edinburgh Pentlands)

**(Con):** To ask the First Minister when he next plans to meet the Prime Minister and what issues he intends to raise. (S2F-578)

**The First Minister (Mr Jack McConnell):** I have no formal meetings with the Prime Minister planned for the remainder of the month, but I expect to meet him in February.

**David McLetchie:** When the First Minister meets the Prime Minister, they may well discuss the consequences of the vote in the House of Commons earlier this week on so-called top-up fees. Last week the First Minister ruled out categorically the introduction of such fees in Scotland for as long as he is First Minister, but there was a suspicion afterwards that the Scottish Executive was playing its familiar semantic word games. For the record, will the First Minister give us the same unequivocal and categorical assurance that the graduate endowment in Scotland will not rise by more than the rate of inflation for as long as he is First Minister?

**The First Minister:** In answer to the questions that Mr McLetchie posed earlier this week in a letter to me, I will be very clear. First, there will be additional money for Scottish universities for both tuition fees and research. Secondly, Scottish students studying at universities in Scotland will not pay tuition fees or top-up tuition fees, as I

made clear in the chamber last week. Thirdly, income from the graduate endowment here in Scotland will not go towards tuition or research in Scotland's universities or elsewhere. Finally, in the course of the discussions that we have over the next few months about our budgets for the next three years, we will ensure that we take into account all factors, that we make rational decisions—as I have said before—and that we consider increasing student support, the contributions that students make and the best ways to fund research and tuition in Scotland's universities. Research and tuition will not be funded by the graduate endowment, but student support will be reviewed and we will make our announcements on that in the chamber in the proper manner.

**David McLetchie:** That was a very interesting answer. The First Minister answered about five questions that I did not ask and ignored the one that I did ask. I remind him that I asked whether he will give us an assurance that the graduate endowment will not rise by more than the rate of inflation for as long as he is First Minister. As well as give us that commitment, will he assure us that no other additional contribution will be required of Scottish students in respect of their education over and above the present graduate endowment for as long as he is First Minister? Those are straightforward questions. Will the First Minister kindly answer them?

**The First Minister:** For the avoidance of any doubt that there might be in Mr McLetchie's mind, I am happy to answer those questions. As I have made absolutely clear, not only will the graduate endowment not be used to help fund university tuition or research, but no other new fees will be introduced for that. Graduate endowment, like all other aspects of our income and expenditure, will be discussed in the course of the spending review. We are not going to make announcements on it six months in advance of the announcement of the budgets for the next three years, any more than we would make announcements in relation to bridge tolls, water charges or any other part of the income in our budget.

The position is absolutely clear: no contribution from the graduate endowment will go towards university tuition or research. In the course of the next few months we will identify first the substantial additional resources that will be available for Scottish higher education and, secondly, the improvements that we want to make to student support. We will then agree how we are going to fund those improvements and Parliament will get a chance to vote on them in the normal manner.

**David McLetchie:** Being coy does not really suit the First Minister. At last week's question time he



was keen to make a series of announcements about top-up fees and increasing the repayment threshold for the graduate endowment. I have asked him two perfectly straightforward questions. Will Scottish students be forced by the Scottish Executive to pay more while he is First Minister? That is a very simple question. Could we please have a straightforward answer?

**The First Minister:** In the same way that there will be no announcements before September on bridge tolls, water charges or any other aspect of income and expenditure in relation to our budget, we will deal with announcements on the graduate endowment in the normal manner. We will consider the money that we need to raise in relation to the money that we want to spend. In the course of that process we will ensure first that the graduate endowment, as agreed by the Parliament, is not used for university tuition or research, secondly that the income for Scottish universities increases by a substantial amount to ensure that they have the right facilities and support for tuition and research and thirdly, that student support in Scotland is improved. We will consider the various ways in which that could be funded and will report back to the Parliament for a vote in due course.

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

**3. Robin Harper (Lothians) (Green):** To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-589)

**The First Minister (Mr Jack McConnell):** I have no set date for my next meeting with the Secretary of State for Scotland, although I expect to see him again soon.

**Robin Harper:** When the First Minister next meets the Secretary of State for Scotland, he probably will not want to say that Labour in Scotland is in danger of supporting weaker legislation on nature conservation than is Labour in England and Wales. However, yesterday, during stage 2 of the Nature Conservation (Scotland) Bill, amendments from a cross-party consensus of MSPs, including the Liberal Democrats, which were intended to give the proposed biodiversity strategy a more robust framework, did not receive sufficient support. Will the First Minister give his assurance that the Executive will at least look again carefully at those amendments before stage 3 to ensure that this opportunity to give Scotland's biodiversity the status that it deserves is not missed?

**The First Minister:** Our proposals on nature conservation in Scotland are the result of widespread consultation and follow the due process of proper consideration. They reflect the balance of judgment that we made at the end of

the consultation period and they should command widespread support among members who have different perspectives on the environment.

Clearly, as Robin Harper states, there is a responsibility on ministers to continue to look at matters between stage 2 and stage 3, as amendments are proposed and discussions take place. We will conduct ourselves in the normal way between the votes at stage 2 and the final decisions of Parliament at the end of stage 3.

**Robin Harper:** Can the First Minister give an assurance that the bill will not be weaker than the legislation for England and Wales?

**The First Minister:** Mr Harper makes a judgment that is not necessarily sustained by the evidence. There are aspects of legislation in Scotland that may currently be described as stronger than the legislation in England and Wales and aspects that may be described as weaker. There will be aspects of the Nature Conservation (Scotland) Bill that, in the judgment of various members, may be stronger or weaker; however, that should not be the main factor that affects our decisions in Parliament. We are here to decide the best legislation for the national interest in Scotland. I hope that, in our consideration of stage 2 amendments and stage 3, members will take into account the interests of Scotland rather than try to play Scotland off against England in a way that does not reflect the facts.

**Alex Neil (Central Scotland) (SNP):** When the First Minister talks to the Secretary of State for Scotland, will he also raise the issue of yesterday's decision in Brussels in respect of state-aid rules as they affect Ryanair's flights into Charleroi airport in Brussels? In particular, will he look at the implications of that ruling for low-cost flights into and out of Scotland, which are essential to the future of Scottish tourism? Will he hold appropriate discussions with the European Commission and the low-cost airlines to ensure that there is no danger to the expansion of low-cost airlines' activity in Scotland?

**The First Minister:** I have two points to make. First, we look at any judgments that are relevant to our responsibilities in Scotland and will take into account any lessons that need to be learned or any impact on our service provision. Secondly, Ryanair—which has been mentioned regularly in the chamber by members of the Scottish National Party over the past three years—has constantly said that the current arrangements in Scotland do not allow it to move into new routes in and out of certain key Scottish airports. In fact, the activity of a wide range of other low-cost airlines over the past 15 months shows that those opportunities do exist and can be taken up—they are being grasped enthusiastically by other companies. I hope that the example of the other low-cost

companies that have, in the past 15 months, moved to use our route support fund to develop new direct routes into and out of Scotland will be followed by Ryanair regardless of decisions that affect it in Belgium or elsewhere.

#### **Cannabis (Policing)**

**4. Kate Maclean (Dundee West) (Lab):** To ask the First Minister how changes to the classification of cannabis will affect policing of the drug. (S2F-588)

**The First Minister (Mr Jack McConnell):** I make it clear today that declassification is not the same as decriminalisation. The use and sale of cannabis both remain illegal in Scotland.

I do not anticipate that cannabis reclassification will have any significant implications for policing in Scotland. Police forces in Scotland will continue to report cases involving cannabis to procurators fiscal, who will take the circumstances in each case into account before deciding on the appropriate course of action.

**Kate Maclean:** Is the First Minister aware that there are serious concerns that, because the approach in Scotland is different from that which is being taken in England and Wales, the reclassification of cannabis from a class B to a class C drug may lead to more police time, rather than less, being spent dealing with possession and supply of cannabis? Will he reassure me that, in addition to the planned advertising campaign to inform the public about the implications of the reclassification, the Executive will monitor closely and keep under review the Scottish situation, to ensure that valuable police time is not taken away from policing possession and supply of hard drugs, such as heroin and crack cocaine?

**The First Minister:** I again make it clear that the reclassification of cannabis will not significantly affect the use of police time and resources in Scotland, partly because police time and resources in Scotland are already concentrated on dealing with the most serious drugs. As a result of that activity over the past 12 months, there has been a 22 per cent increase in the number of arrests of persons involved in drug trafficking and other forms of serious and organised crime, a 366 per cent increase in the weight of class A drug seizures in Scotland and a 106 per cent increase in the weight of class B drug seizures in Scotland. We have seen 114 criminals or criminal enterprises disrupted or dismantled, against a target for that year for the Scottish Drug Enforcement Agency of only 77. Those are significant achievements by the Scottish Drug Enforcement Agency and by police forces across Scotland. Dealing with the most serious drugs will continue to be our top priority, but it will not be achieved as a result of a change in the law.

**Ms Rosemary Byrne (South of Scotland) (SSP):** Does the First Minister agree that the reclassification of cannabis in Scotland has been dealt with in a contradictory, uneven and irresponsible manner that has left an estimated £500 million cannabis market in Scotland in the hands of the criminal black market, with the resultant violent crime and social and health problems for which that market is responsible? Does he further agree that the continued criminalising of cannabis users in Scotland exacerbates the health problems that are associated with consumption of the substance?

**The First Minister:** I do not agree with the member. Cannabis is a harmful drug that should remain illegal in this country. Parliamentarians in Scotland and parties that are represented in Parliament should be responsible in these matters. I do not agree with the Scottish Socialist Party in relation to ending the illegal status of cannabis, or with its proposals concerning heroin and other more serious drugs. The SSP has got its drugs policy seriously wrong. That policy would result in serious harm and more criminal activity throughout Scotland. The illegal activity that surrounds the drugs trade in Scotland does not relate only to those who sell or take drugs. There is much other accompanying criminal activity that would increase as a result of the Scottish Socialist Party's policy. *[Interruption.]*

**The Presiding Officer:** Order.

**The First Minister:** Those who did not hear the shouting from the side may not be aware that I was being accused of not knowing the policy of the Scottish Socialist Party. The Scottish Socialist Party believes that drug taking is a victimless crime. It suggests that there should be both cannabis cafes—which I hear it is supporting today in Edinburgh—and shops that sell not only magic mushrooms, but drugs such as ecstasy, amphetamines, LSD and cocaine. It is shameful that a serious political party should adopt that approach. I hope that the Scottish Socialist Party will see sense soon.

**Miss Annabel Goldie (West of Scotland) (Con):** Does the First Minister accept that the public perception in Scotland of the reclassification has been different from what he envisaged? Is he concerned that an organisation entitled the Purple Haze Cafe has interpreted the reclassification as a relaxation, which will undoubtedly incur greater demands on police time? How does he propose to assist the police in dealing with increased breaches of the law?

**The First Minister:** Not only Lothian and Borders police but the Association of Chief Police Officers in Scotland have made it absolutely clear today that cannabis use and sale both remain illegal in Scotland. Not only does cannabis use

remain illegal in Scotland, but the penalty for cannabis sale in Scotland has increased, I believe, from five to 14 years' imprisonment. That is a serious consequence for what is serious illegal activity. Those who are tempted to interpret the law for their own ends should think about the consequences of their actions.

**Mr Keith Raffan (Mid Scotland and Fife) (LD):** Is the First Minister aware that, despite the arrests and seizures that he welcomed earlier, the street price of class A drugs in this country is plummeting? The price has come down, according to the United Kingdom Government's own figures, by between 20 and 50 per cent in the past two years. Does that not underline Miss Maclean's point that reclassification of cannabis must lead to the police placing greater emphasis and concentration on the class A drugs that cause the most harm to people in Scotland—opiates, and heroin in particular?

**The First Minister:** No. The main implication of the reclassification of cannabis is that prison sentences for the use of cannabis will be reduced and prison sentences for the sale of cannabis will be increased. Neither decision will have any impact on police time and how operational duties are carried out in Scotland. What is important is that we maintain the upward rate of arrests, seizures and action by the police and other forces in Scotland over recent years. The establishment of the Scottish Drug Enforcement Agency has been central to achieving that. It co-operates with police forces that dedicate themselves to class A and B drugs—it is wrong to suggest that they do not. Police forces are right to take that action and they are having success in doing so. They deserve the support of all parties in the chamber.

**Margo MacDonald (Lothians) (Ind):** Can the First Minister say which public and voluntary organisations or bodies were consulted by the Home Office before the decision to reclassify cannabis was taken? Further, can he explain to members the argument, which proved persuasive to the Executive, that police operations in Scotland should have less discretion in dealing with the effects of reclassification than do their counterparts in England and Wales? Finally, will the First Minister add his weight and influence to the call for a proper royal commission into the use of drugs? If he cares to read the Advisory Council on the Misuse of Drugs's report—which went to the Home Office and produced the result that has been produced—he will find that there are a great many questions on which the council says much more research is needed.

**The First Minister:** The discretion that exists in Scotland is, I believe, properly in the hands of procurators fiscal, who receive police reports and can determine whether to take further action. I

think that that is the right way under the Scottish system to apply the discretion. It maintains a clear distinction between what is legal and what is illegal and it confers a duty on the police to take action on illegal activity. However, it also allows procurators fiscal to make clear judgments on whether to pursue cases and how to do so. I do not think that that in any way lessens the pressure on other illegal drugs in Scotland or constrains the system in its acting responsibly. However, a clear message is also being sent out to people in Scotland, particularly those who would get involved in selling in the drugs trade, that the law in Scotland will be tough on them.

### Child Protection

**5. Nicola Sturgeon (Glasgow) (SNP):** To ask the First Minister whether cases of children who have been removed from a parent alleged to be suffering from Munchausen's syndrome by proxy will be independently reviewed. (S2F-577)

**The First Minister (Mr Jack McConnell):** The Scottish Children's Reporter Administration is currently investigating that matter. If it becomes clear that any families in Scotland have been affected, ministers will announce any action after the investigation is complete.

**Nicola Sturgeon:** Is the First Minister aware that many children in Scotland may have been taken into care as the result of a parent's being diagnosed with, or even simply being suspected to be suffering from, Munchausen's syndrome by proxy? Is he also aware that the methods used by Professor Roy Meadow, the author of "Munchausen's Syndrome by Proxy", which have been widely discredited following the Sally Clark and Angela Cannings cases in England, have also been relied upon by paediatricians here in Scotland and that there is now real concern that some parents might have been wrongly accused of harming their children? Will he therefore reflect on my strongly held view that, on a matter as serious as child protection, it is not sufficient that there be an internal inquiry by the Scottish Children's Reporter Administration but that, instead, all cases involving any suggestion of MSBP should be independently and publicly reviewed?

**The First Minister:** Nicola Sturgeon's final point is one that may well be legitimately debated and discussed at the end of the current investigation. The purpose of the investigation that is being carried out by the Scottish Children's Reporter Administration is to identify whether there have been any cases in Scotland where MSBP has been a factor. If there have been such cases, a debate clearly needs to take place about what should happen next. If that is the case, ministers

will come to Parliament and announce their intentions.

**Johann Lamont (Glasgow Pollok) (Lab):** Will the First Minister consider how best to explore the central issues for the legal system, for our child protection system and for social services, which are highlighted by some of the controversies around the syndrome, not only on the use of expert witnesses but on the means by which their authority is established? There are concerns not only about cases that are tested in court but about cases such as that of a constituent of mine, in which allegations of MSBP were made early on, but were never pursued or tested in court. However, in my constituent's view, those allegations infected every action of the agencies involved from the earliest stage.

Will the First Minister ensure, as a matter of urgency, that the debate around specific syndromes does not obscure the important work of developing secure and robust processes to protect children from abuse, regardless of the motives of those who are abusing? Will he ensure that the voices of constituents such as mine are heard at an early stage when decisions are taken about whether to take matters to independent review?

**The First Minister:** I am happy to ensure that Johann Lamont's points about the way in which the system deals with individual cases are considered as part of the current examination not only of individual cases, but of the impact of cases on the way matters are handled in future. We benefit in Scotland from having a system in which more than one source of evidence is required. In those circumstances, I hope that the Scottish system is at least as robust as systems elsewhere, if not more so. Of course, that does not deal with Johann Lamont's point, which is about cases that do not come to court. I am sure that ministers will want to take that on board.

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** Does the First Minister agree that there is now an urgent need to re-examine the procedure for assessing the credibility of expert witnesses in such cases, given that there are strongly conflicting views on the subject? Is he aware of the case of a constituent of mine, who has had her two children forcibly removed because of the testimony of one of Professor Roy Meadow's Scottish acolytes? When he agrees to the wider investigation that Nicola Sturgeon has asked for—which I thoroughly support and believe he must agree to, on moral if on no other grounds—will the First Minister ensure not only that evidence given by Professor Meadow is scrutinised, but that that given by his Scottish acolytes, whose testimonies may well have led to unjust and immoral actions, is also scrutinised?

**The First Minister:** The challenge for us is to

ensure that we identify whether there are such cases. There may be doubts about what people say about cases outwith the formal arrangements and about what actually took place when decisions were being made. It is important that we identify the evidence in each case, the decisions that were made and whether there are any cases in which allegations of MSBP were indeed a factor. If that is the case, ministers will consider what to do next. If it is not the case, we can perhaps be confident that our Scottish system has worked well in the interests of children without taking other factors into account.

### Faith Schools (Shared Campuses)

**6. Lord James Douglas-Hamilton (Lothians) (Con):** To ask the First Minister what the Scottish Executive's position is on faith schools and shared campuses. (S2F-591)

**The First Minister (Mr Jack McConnell):** I have already made it clear on a number of occasions that I believe that the Catholic schools of Scotland serve their parents and pupils very well indeed. I have also made it clear that individual local authorities in Scotland have a right to consider, and will consider, the use of shared campus facilities, but they should do so in consultation with local communities and with parents, if that is the best way to provide the best possible facilities in which children can learn.

**Lord James Douglas-Hamilton:** Does the First Minister agree that Catholic schools are popular in Scotland partly because of the strong emphasis that they place on moral education and because of their high standards of discipline? Does he agree that negotiations at local level, which involve parents and staff and which reflect community aspirations, should provide acceptable solutions where there are shared campuses?

**The First Minister:** Yes, I agree with Lord James Douglas-Hamilton on that matter.

**The Presiding Officer (Mr George Reid):** For reasons of balance, we will have one final question.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I know that the First Minister is aware of St Andrew's Primary and Nursery Cumbernauld and Cumbernauld Primary school, the shared campus school in my constituency. The schools operate very successfully and provide a rounded education for all the young people who share facilities such as entrances, common rooms and sporting facilities.

I invite the First Minister to take the opportunity to come to Cumbernauld and see for himself at first hand how the prejudices of a minority are balanced by the views of the young people who

are very able to advocate the success of their joint campus school.

**The First Minister:** I am happy to consider the invitation. I have spoken to parents and children from the two schools. St Andrew's and Cumbernauld primary schools have existed well together and I believe that that facility has improved educational provision in the area.

That said, it is right that individual local authorities make the right decision for each individual community. There will be communities in which schools that exist on separate campuses are the right thing to have because of pupil numbers and facilities or for historical reasons. However, there are also areas in which shared campuses can preserve schools that are required by local communities or can improve and enhance the facilities that are available for children in the area.

Ultimately, all the decision makers who are involved in the matter should put the interests of children first. For as long as they do that, they will have my support.

12:32

*Meeting suspended until 14:30.*

14:30

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### Iraq (Trade)

**1. Alex Johnstone (North East Scotland) (Con):** To ask the Scottish Executive what steps it has taken to help restart the trade in seed potatoes to Iraq. (S2O-1178)

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** The United Kingdom Government has established an industry working group on Iraq to provide advice to UK Trade & Investment on how to help UK companies to play a significant part in the regeneration of Iraq. Scottish Development International is working with UKTI to ensure that Scottish companies can fully access those opportunities.

The Scottish Executive Environment and Rural Affairs Department is responsible for the issue of phytosanitary certificates in respect of Scottish seed potatoes. It recently received a tentative inquiry from the Scottish potato trade about resuming seed potato exports to Iraq and was able to confirm that the previous Iraqi phytosanitary conditions should continue to apply.

**Alex Johnstone:** Given the importance to seed potato growers in the north-east of Scotland of contracts that have existed in previous years, and given that there were unfortunately no means to set up those trade contracts for the current year, will the minister undertake to observe the situation and to ensure that every step is taken to underpin the work of those who seek to further that trade?

**Allan Wilson:** Absolutely. The British Potato Council has been actively involved in trying to re-establish its contacts in Iraq and has recently had some success. Scottish companies have received inquiries about tenders for seed supply but, as yet, none has led to orders. I have this morning contacted the Prime Minister's special envoy on trade opportunities for British business to Iraq and he is happy to take up the case of Scotland's seed potato industry to see whether we can extend contracts into Iraq and Afghanistan.

#### Labour Force (Skills)

**2. Susan Deacon (Edinburgh East and Musselburgh) (Lab):** To ask the Scottish Executive what steps are being taken to ensure that the labour force has the necessary skills to meet the country's needs. (S2O-1197)

**The Deputy Minister for Enterprise and Lifelong Learning (Lewis Macdonald):** We are committed to strengthening Scotland's skills base. Future Skills Scotland is tasked with identifying skills gaps and skills shortages throughout the Scottish economy, and that information is used by the enterprise networks, Careers Scotland and other agencies to seek to match the future supply of skills to the identified demand.

**Susan Deacon:** Does the minister agree that there is growing evidence that significant skills gaps are emerging in a range of sectors in the economy and in a range of parts of the country? Such skills gaps span professional and technical skills as well as more traditional skills, such as plumbing, joinery and welding. Does he agree that closing those skills gaps is vital if the Executive is to secure not only its economic policy objectives but many of its wider policy objectives? Will he take this opportunity to indicate what steps are being taken to step up the national effort to ensure that we have the skills that are needed both now and in the future?

**Lewis Macdonald:** I am aware of Susan Deacon's close interest in these matters. She is, of course, right to say that skills gaps must be addressed if we are to reach the range of social and economic targets that we have set ourselves. She will be aware that, in the context of low unemployment and increasing economic activity, particularly in sectors such as construction, employers inevitably face some difficulty in finding workers who have the necessary skills. That is why we asked Future Skills Scotland to look into the skills gap issue, particularly in the high-pressure sectors, although the employer survey that it conducted in November last year and in the previous year looked right across the Scottish economy. We are talking to Future Skills Scotland about the areas that it might address this year—for example, it might consider skills gaps in science and engineering.

It is fair to say that, by definition, predicting future skills needs can never be an exact science, particularly in the context of a growing economy. However, the more accurate the picture that can be drawn by Future Skills Scotland and others, the more readily the local enterprise companies, Careers Scotland and education and training providers can gear what they offer to what is required in the real economy.

**Rob Gibson (Highlands and Islands) (SNP):** The minister will be aware that there are huge skills gaps in the Highlands and Islands for tradespeople such as plumbers, joiners, electricians and painters. The Construction Industry Training Board has been doing its best to fill those gaps, but what will the Government do to

speed up the process? Population loss goes with the problem of not being able to fill those posts.

**Lewis Macdonald:** I recognise those issues, which apply not only in the Highlands and Islands but in much of lowland Scotland. That is why just a couple of weeks ago I was delighted to take part in the Scottish launch of the construction sector skills council, in which employers come together with Government, both at a United Kingdom level and at a Scottish Executive level, to address those issues.

I also announced a couple of weeks ago the appointment of Graeme Millar as the chairman of the construction innovation and excellence forum, which is tasked specifically with addressing skills needs and other key issues in the construction and related sectors.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Will the minister outline what steps the Executive is taking to widen access to vocational training at further education colleges for 14 and 15-year-old school pupils?

**Lewis Macdonald:** As Murdo Fraser will be aware, we have made a commitment to carry that work forward. Work is being done jointly by the lifelong learning ministers and the education ministers to draw up the proper protocols and procedures to allow school pupils access to further education. We are clear about the importance of promoting vocational education opportunities at age 14 to those who are at school. We want to give school pupils access to further education courses where that can help.

**Marilyn Livingstone (Kirkcaldy) (Lab):** As the minister is aware, I chair the cross-party group for construction. Last night, Robert Brown and I attended the meeting of our skills and training sub-group. Is the minister prepared to meet our group, which has representatives of the CITB and all sectors in the industry? Some 30 representatives attended our meeting yesterday evening. We extend an invitation to the minister to come to talk to us about the work of the sector skills councils and about how we can take the strategy forward.

**Lewis Macdonald:** I would be delighted to accept an invitation to do that later this year.

### **National Concessionary Travel Scheme (Consultation)**

**3. John Swinburne (Central Scotland) (SSCUP):** To ask the Scottish Executive what the reasons are for any delay in launching the consultation document on the proposed national concessionary travel scheme for elderly and disabled people and whether a date has now been set for the launch. (S2O-1188)

**The Minister for Transport (Nicol Stephen):**

The consultation paper on concessionary travel is currently being finalised and will be issued soon.

**John Swinburne:** I thank the minister for that reply. Is he aware that the delay has left pensioners considering that the national concessionary travel scheme is not a priority for the Executive? I can tell him that the scheme is a priority for pensioners.

In the meantime, will the minister confirm whether the new transport authority will have the power to ensure that the money to reimburse local authorities for the national concessionary scheme is spent as intended? The current calculation for the allocation of funds is obviously flawed. Due to the fact that car ownership has not been taken into account, authorities in Strathclyde are left with a deficit of between £5 million and £15 million, whereas Fife Council had a surplus, which it spent on social work services.

**Nicol Stephen:** The scheme is a very high priority for the Executive and the document will be issued shortly. It is important that we consult not only the local authorities and operators involved but the groups that represent the elderly and disabled people with whom I am sure John Swinburne would wish us to engage in a thorough consultation. We will get on with the proposal and deliver it. The national scheme that we intend to introduce will be of significant benefit to all elderly people in Scotland.

**Shona Robison (Dundee East) (SNP):** Is the minister aware of the Dundee accessible transport action group's petition, which calls for affordable and accessible local transport for disabled people who cannot access public transport? Will he ensure that disabled people are given due consideration during the consultation period and that, in all parts of Scotland, options for door-to-door travel for disabled people will be properly explored?

**Nicol Stephen:** I certainly will. An important aspect of the consultation, as far as I am concerned, will be to deliver on our commitment to assess improved public transport concessions for people with disabilities. The consultation does not refer specifically to bus travel but to public transport in general.

I realise that some individuals cannot easily access bus travel. I get frustrated when I discover that some local authorities offer people with quite significant disabilities the choice of either bus travel or a taxi card scheme. In my view, people with disabilities should have access to at least the option of bus travel and, if possible, a local authority taxi card initiative as well. Free bus travel should not be withdrawn when people opt for the taxi card. Those are issues of detail, but they are

very important for a large number of disabled people in Scotland. I hope that the consultation that we will launch will tackle those issues and that we will make firm proposals thereafter.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Can the minister confirm that the existing local concessionary travel scheme for pensioners will continue? Can he also confirm that the Executive intends to introduce a nationwide travel scheme for pensioners by the end of the parliamentary session?

**Nicol Stephen:** That is exactly the case. The local scheme has been very successful. The number of elderly people making use of it and travelling on our buses has increased significantly. The amount of money that we invest in concessionary travel has shot up, as statistics that will soon be released will show. We are investing more than ever before in concessionary travel. The local scheme was only a start. We intend to move forward with a national scheme and are determined to deliver on the partnership agreement in that regard.

**M74 Northern Extension (Public Inquiry)**

**4. Chris Ballance (South of Scotland) (Green):** To ask the Scottish Executive whether contributors to the public inquiry on the M74 northern extension will be able to update their evidence, given the reported new funding arrangements of up to £1 billion for the motorway. (S2O-1200)

**The Minister for Transport (Nicol Stephen):** The estimated cost of the M74 completion scheme has not changed. That has been reconfirmed to the public local inquiry.

**Chris Ballance:** Does that mean that the plans for the public-private partnership scheme have been dropped, as has been reported in the papers? If they have not and the cost is to rise to £1 billion, as has also been reported, will the objectors definitely have a chance to revise their submissions to the inquiry?

**Nicol Stephen:** I understand why there may have been some confusion on first reading of the advertisement, and I would like to clarify the matter. The advert was a prior information notice, as required under European Union law, in relation to a possible PPP. I make it clear that no decision has been made on the method of procurement for the M74 project. The cost estimate has not changed, as I have just assured the chamber.

The advert included the option of a possible PPP that would involve only the completion of the M74 and a second option that would involve the completion of the M74 and taking on responsibility over a 30-year period for the operation and maintenance of approximately 100km of existing

associated motorway. That was the reason for the inflated figure, as option 2 would involve a substantial additional element of contract. I hope that that clarifies the reason for the difference. Those options are only being investigated at the moment to ensure that we get the best possible value for money when we proceed with the scheme.

**Janis Hughes (Glasgow Rutherglen) (Lab):** Does the minister agree that instead of reacting to rumours that have no substance, the Scottish Green Party would do better to accept and, indeed, to welcome the major economic benefits that the M74 northern extension will bring to the west of Scotland?

**Nicol Stephen:** Clearly, the scheme will have very significant benefits—in safety terms, environmental terms and economic terms. That is why the scheme is so widely supported throughout Scotland and why the number of objections to it has been relatively small, in comparison with other projects of a similar scale and nature. Nevertheless, it is very important that any assessment of the scheme is carried out fairly and objectively. We are now in that phase of the process. It is right that people should be given the opportunity to state their case for and against the scheme. That will be done fairly, through the public local inquiry system.

**David Mundell (South of Scotland) (Con):** Does the minister agree that although it is proper that legitimate objections are heard, delaying tactics by those with a political agenda to stop the motorway should not be allowed to delay further a project that is vital to the economy of the whole of Scotland?

**Nicol Stephen:** Clearly, I would always deprecate delaying tactics by those with a political agenda.

**The Presiding Officer (Mr George Reid):** Question 5 is withdrawn.

#### **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Progress)**

**6. Mark Ballard (Lothians) (Green):** To ask the Scottish Executive what progress is being made in complying with the terms of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. (S2O-1201)

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** The Scottish Executive is updating the regulations giving access to environmental information and is working towards giving non-governmental organisations access to the courts in environmental matters.

**Mark Ballard:** I thank the deputy minister for that answer. Does he agree that last week's welcome announcement on Crown Office modernisation was tarnished by the absence of any mention of extra funding for, or specialist training in, environmental matters? Given the proposals in the Nature Conservation (Scotland) Bill to give the Scottish Land Court a role in dealing with sites of special scientific interest, does he agree that one way to achieve the Executive's commitment to

“the establishment of environmental courts”

would be to expand the remit and role of the Land Court? When will we see some action on the pledges that the Executive made in this area in its partnership agreement?

**Allan Wilson:** Mark Ballard will see action in the area probably from early March, as that is when we expect to commence consultation on the environmental information orders that I referred to in my earlier response.

I am surprised by Mark Ballard's reference to the Crown Office, because the Crown Office and the Scottish Environment Protection Agency have recently commenced joint training events for prosecutors and SEPA lawyers. The aim is to strengthen the expertise that is available among environmentalists to ensure that more prosecutions can take place and that offences are properly prosecuted.

I do not recognise Mark Ballard's criticism of the system as a whole, but the complex inter-portfolio negotiations in relation to the establishment or otherwise of environmental courts will nonetheless proceed.

#### **English as a Foreign Language (Promotion)**

**7. Mr Kenny MacAskill (Lothians) (SNP):** To ask the Scottish Executive what action it has taken to promote the learning of English as a foreign language as a reason to visit Scotland. (S2O-1172)

**The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace):** We recognise that learning English can be an important reason for students and other visitors to come to Scotland. Therefore, it should come as no surprise that we encourage and support that activity.

The promotion of the learning of English is part of the work of Education UK Scotland, which receives its core funding from the British Council and is supported by the Scottish Executive, the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. In addition, VisitScotland is currently working with Scottish English language teaching in consortium



to identify opportunities to maximise the synergies between tourism and English-language teaching.

**Mr MacAskill:** I thank the minister for that response. I advise him that in order to compete not only with America and the antipodes, but with Ireland, Malta and south of the border, we require information as to who is coming, why they are coming, how much they are spending and what markets are available to be targeted. Will he ensure that such a study is carried out either by his department or by some other organisation to ensure that we have the basis upon which to build a strategy?

**Mr Wallace:** I assure Mr MacAskill that a considerable amount of work is done to try to ensure that people are aware of what is available in Scotland in respect of the teaching of English. Scottish English language teaching in consortium, which goes by the acronym of SELTIC—that might appeal to some more than others—has been engaging with VisitScotland. For example, one of the SELTIC members recently had a familiarisation trip for a group of Italian tour operators. VisitScotland has put SELTIC in contact with Scottish Development International, because SDI has offices in a number of places where Education UK Scotland does not have a presence, to ensure that what is available is widely known and disseminated in many parts of the world.

#### **Queen Mother's Hospital (National Services)**

**8. Pauline McNeill (Glasgow Kelvin) (Lab):** To ask the Scottish Executive what protection it will give to national services funded by the national services division, currently provided at the Queen Mother's hospital, in the event of implementation of the recommended closure of the hospital by Greater Glasgow NHS Board. (S2O-1173)

**The Minister for Health and Community Care (Malcolm Chisholm):** The national services division will be responding to the consultation on maternity services in Glasgow. I expect NHS Greater Glasgow to consider that and all other responses before it comes to a final decision.

**Pauline McNeill:** Does the minister accept that the implementation of Greater Glasgow NHS Board's recommendation that the Queen Mother's hospital should close could have a major impact on the national services that are funded directly by the national services division on behalf of NHS Scotland, such as newborn screening, the Scottish extracorporeal membrane oxygenation service and, in particular, the pioneering work in medical and surgical genetics? Will he consider meeting me and the clinicians who run those services, with a view to listening to what they say about how the services are run and the impact of the closure of the Queen Mother's hospital?

**Malcolm Chisholm:** I certainly intend to spend a lot of time over the next few weeks looking into the detail of all those issues and I would be pleased to take up Pauline McNeill's invitation to meet some of the clinicians from the Queen Mother's hospital. I assure the member that I am considering in great detail the matters that she raises in relation to the national services division—I recently spoke to someone who is very much involved in that. The division will give an honest account of any problems that it foresees as a result of the proposals and, as I said in my earlier answer, I expect Greater Glasgow NHS Board to take that matter into account.

**Ms Sandra White (Glasgow) (SNP):** Is the minister aware of the statement that Catriona Renfrew of Greater Glasgow NHS Board made the other day? She said that the Queen Mum's hospital would be closed in five years' time and would have to be demolished, but that the Southern general hospital would last for another 25 years. The minister said that he would meet clinicians from the Queen Mum's hospital. Does he agree with those clinicians—and with me—that it is disgraceful that Catriona Renfrew made such a statement three weeks before the consultation process is due to be completed? Will he now say that the whole consultation process is a sham? Will he intervene to end the process and ensure that Catriona Renfrew withdraws her statement? We have said all along that the consultation process is a sham. Will he admit that?

**Malcolm Chisholm:** I am unaware of Catriona Renfrew's statement, so it would be inappropriate for me to comment on that. However, I will ask her about it when I next talk to her. The consultation is in its final stages, so I think that the appropriate thing to do is to let it run its course. I assure Sandra White and other members that I will examine all the issues in great detail before I come to a view on the matter.

**Des McNulty (Clydebank and Milngavie) (Lab):** Does the minister agree that it is deeply unfortunate that the area medical committee in Glasgow has chosen not to comment on the proposals that have been put forward by the Greater Glasgow NHS Board? In Glasgow and elsewhere in Scotland, clinicians need to accept that they have a responsibility to comment authoritatively on such matters and to provide clear medical advice. That is not happening in Glasgow, where various people are making competing comments. The profession must accept responsibility for some of the changes that are taking place.

**Malcolm Chisholm:** In general terms, I agree with Des McNulty. Again, I do not know the specific circumstances around the area medical committee's decision not to comment. As I have

said before in the chamber, one of the distinctive features of the maternity services controversy in the Greater Glasgow NHS Board area is the fact that the clinicians—and in many cases, the senior clinicians—are fundamentally divided. That makes the situation different from that of most of the other service changes in Scotland, where, on the whole, there is a consensus among clinicians.

**Carolyn Leckie (Central Scotland) (SSP):** Given the general dissatisfaction in communities throughout Scotland about the conduct and responsiveness of maternity services consultations, and given the specific allegations by some clinicians that Greater Glasgow NHS Board distorted or suppressed submissions to its consultation, does the minister share my grave concerns about consultations? Does he agree that all oral and written submissions to such consultations should be made public? Does he also agree that confidence has been lost in those consultations and that there should be a moratorium on all maternity services closures?

**Malcolm Chisholm:** I do not think that it is right to generalise. There have, of course, been various consultations and it might be true to say that some have been handled better than others. I will consider the allegations about the fairness with which Greater Glasgow NHS Board has considered submissions. In general terms, I accept the principle of transparency and that people should be able to see the evidence that has been submitted. Notwithstanding people's concerns, the right thing to do now is to see the consultation through during the next four weeks or so. However, for the third time, I repeat that I will look in great detail at the matter and at all the points that members have raised.

#### **State Aid (Caledonian MacBrayne)**

**9. Jim Mather (Highlands and Islands) (SNP):** To ask the Scottish Executive, in light of the revised state-aid guidelines published by the European Union on 17 January 2004, what steps, including stopping the tendering process, it now proposes to take in respect of the Caledonian MacBrayne ferry routes. (S2O-1184)

**The Minister for Transport (Nicol Stephen):** We are considering the revised guidelines, along with the related communication that the European Commission issued on 23 December. I intend to discuss with the Commission the implications of the new guidelines for the tendering of the CalMac network.

**Jim Mather:** I ask the minister to consider the negative effect that the uncertainty and delay are having on people and investment. What immediate steps does he intend to take to accelerate the process?

**Nicol Stephen:** As members know and as we have discussed previously, we have already made contact with the Commission in the context of the Altmark decision. I am anxious to discuss the matter with the Commission in the early part of 2004, which means making further representations to the Commission in the next few weeks to arrange the meeting. Ultimately, I am in the hands of the Commission on how soon the meeting will be, but I am anxious that it should take place shortly.

**George Lyon (Argyll and Bute) (LD):** There is genuine concern about the issue among island communities and the 1,000 employees of Caledonian MacBrayne, who will be affected by the final decision on whether the tendering process will go ahead. Will the minister say whether it is the Scottish Executive's understanding that the 1992 maritime cabotage regulation, which is enshrined in Community law, requires the Executive to tender the CalMac routes? Does he agree that the revised state-aid guidelines on maritime transport do not clarify whether the Altmark judgment, which was recently handed down by the European Court of Justice, overrides the need to comply with the regulation? Will the minister try to clarify that issue once and for all on behalf of my constituents?

**Nicol Stephen:** It has been suggested that the revised guidelines that were published on 17 January and to which Jim Mather's question refers give clarity on the issue. I will quote from the relevant section, which states:

"In the field of maritime cabotage, public service obligations (PSOs) may be imposed or public service contracts (PSCs) may be concluded for the services indicated in Article 4 of Regulation (EEC) No 3577/92",

which is the regulation to which George Lyon referred. The guidelines continue:

"For those services, PSOs and PSCs as well as their compensation must fulfil the conditions of that provision and the Treaty rules and procedures governing State aid, as interpreted by the Court of Justice."

That is it—that is the new guidance that we have from the Commission. Any reasonable person would recognise that we need further clarification before there is the prospect of bringing tendering to a halt.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** Will the minister update me on what progress is being made with the new ferry linkspan in Oban, which is vital for the future of tourism in Oban and the Hebrides?

**Nicol Stephen:** I appreciate the difficulties that there have been on that matter. I am anxious to ensure that local differences of view are brought to a conclusion soon. As I may yet have to rule statutorily on important issues, it would be wrong

for me to go further than that at this stage. Suffice it to say that everyone involved would be pleased if there were local agreement.

### **Job Dispersal (Dumfries and Galloway)**

**10. Alasdair Morgan (South of Scotland) (SNP):** To ask the Scottish Executive how many jobs have been dispersed to Dumfries and Galloway as a result of its job dispersal programme. (S2O-1162)

**The Minister for Finance and Public Services (Mr Andy Kerr):** To date, no public sector jobs have been relocated to Dumfries and Galloway as a result of the Executive's job dispersal policy. We are committed to the policy of dispersing public sector jobs throughout Scotland. As the First Minister has assured the Parliament, we expect that Dumfries and Galloway will benefit from the policy when the time is right and when the opportunity allows.

**Alasdair Morgan:** I thank the minister for his answer, which at least has the virtue of being honest. Does he agree that members must sign up not only to the principle of the scheme, but to its implementation in practice? Will he give a commitment to the furtherance and continuance of the scheme and to spreading its benefits throughout the entirety of Scotland?

**Mr Kerr:** I am pleased that the Scottish National Party front bench is telling Fergus Ewing what to do on this matter. That is most encouraging.

We are absolutely committed to the policy. As someone who was born and brought up in East Kilbride, where the centre one tax office and the Overseas Development Administration were located, I am all too well aware of the impact that relocations can have and the difference that they can make to communities. We are working hard to ensure that all parts of Scotland benefit, but it is down to the decision on the day, which is about the particular organisation, the particular location, the premises that are available and the social and economic impacts. Those are all critical to the discussion. However, Alasdair Morgan can rest assured that the Executive remains absolutely committed to its relocation policy.

**Dr Elaine Murray (Dumfries) (Lab):** Does the minister share my concern that the way in which consultants who are examining possible relocations apply the Executive's criteria militates against many parts of Scotland, including Dumfries and Galloway? Will he undertake to review the criteria and the operation of the Executive's relocation policy in order to ensure that all parts of Scotland benefit?

**Mr Kerr:** The policy is always under review for fine-tuning purposes. I am aware that Dr Elaine Murray met Tavish Scott, my deputy, to discuss

those matters. When Tavish Scott met the local council, the health board and the local enterprise company, some of those issues were raised, so the point is well made. However, these are difficult decisions. There is competition—quite correctly—from around Scotland for the relocations and we need to be as scientific and proper about them as we can. The policy is always under review, but we must stick to guidelines that will allow ministers to make proper decisions.

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** Given the difficulty that the Executive seems to have in relocating jobs to Dumfries and Galloway, does the minister agree that there would be no better site for the new Scottish transport agency than Stranraer, in my constituency? Stranraer is the home of the second busiest port in the United Kingdom and is the British gateway to and from Northern Ireland.

**Mr Kerr:** As Alex Fergusson would expect, I cannot comment on those matters, as a detailed process has to be carried out. However, many parts of Scotland have benefited, and many parts of Scotland will benefit, from relocation policy decisions.

### **ScotRail (Edinburgh Park Station)**

**11. Margaret Smith (Edinburgh West) (LD):** To ask the Scottish Executive whether it plans to increase the number of services stopping at Edinburgh Park station under the new ScotRail franchise. (S2O-1174)

**The Minister for Transport (Nicol Stephen):** The specification of the ScotRail franchise is based on the current level of rail services in Scotland. That does not in anyway prevent improvements from being introduced in due course and the Scottish Executive has ambitious plans to support the development of new and improved services.

**Margaret Smith:** Will the minister look favourably on any proposals from the City of Edinburgh Council or franchisees to include Edinburgh Park station as a stop on the Edinburgh to Glasgow service, which could result in a modal shift of thousands of passengers from road to rail?

**Nicol Stephen:** Certainly. It is appropriate that new proposals come from such organisations, whether on the opening of a new station, the opening of a new section of line or an improved frequency of service. On proposals to stop more frequently at a new station, such as Edinburgh Park, the involvement of the local authority is always welcome and the involvement of ScotRail, or the subsequent franchisee, would also be important. The appropriate Scottish transport appraisal guidance process has to be gone through and developed. If partners wish to support

the sort of improvements that Margaret Smith wishes to see at Edinburgh Park, I would be pleased to consider the proposals in due course, but I am sure that all members will welcome the fact that Edinburgh Park, which is a brand-new station of quality, is serving the network in Scotland.

### Dental Services (Highlands)

**12. John Farquhar Munro (Ross, Skye and Inverness West) (LD):** To ask the Scottish Executive what specific action it is taking with regard to issues facing national health service dentistry in the Highlands. (S2O-1206)

**The Deputy Minister for Health and Community Care (Mr Tom McCabe):** Responsibility for the overall provision of NHS dental services in Highland rests with Highland Primary Care NHS Trust. However, I announced on 20 November a number of further measures to support NHS dentistry in Scotland, including Highland, which, as the member will know, is a specially designated area.

**John Farquhar Munro:** I understand that the minister will be visiting Inverness as part of the consultation process on dentistry. I am sure that, when he does, he will be made aware of the acute situation facing all those who cannot register with an NHS dentist or afford a private dentist. Following the conclusion of the consultation process, will he give a commitment that all my constituents will have access to an NHS dentist?

**Mr McCabe:** When I spoke at the first of the consultation meetings in Stirling earlier this week, I made it clear to the members of the dental profession who attended that we had launched the consultation because we knew that there were difficulties with access, not only in remote and rural parts of Scotland, but in urban Scotland. We also knew that there was dissatisfaction among members of the profession and the allied health professionals who support them and that there was increasing evidence of a requirement for modernisation and redesign. I made it clear that, in return for addressing those issues, we would expect a substantial increase in the commitment to NHS dentistry. That will apply in Highland just as much as in Stirling.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** At present, those people who cannot afford a private dentist and who require emergency treatment have to phone up an emergency helpline first thing in the morning. Sometimes they are taken, sometimes they are told to ring back the next day. If they are taken, they are advised by the dentists that only temporary repairs can be done, which means that they have to go back time and again. Surely emergency treatment should be the full treatment.

The present situation is not only unfair to the patients, but a false economy.

**Mr McCabe:** We have a clear commitment to improving the overall level of service in dentistry in the NHS. That is why, in recent weeks, I announced the provision of a substantial amount of money to supplement emergency dental services in Scotland. I am sure that constituents in Mr Ewing's area will benefit as much as constituents in any other area.

**Maureen Macmillan (Highlands and Islands) (Lab):** I appreciate the measures that the minister has already announced to improve NHS dental services in the Highlands, but does he agree that there are still serious worries about the long-term future for NHS health care, particularly in Caithness? What contact has he had with Highland Primary Care NHS Trust to discuss some of its innovative ideas for addressing the problem, including the establishment of a think-tank in Caithness? Will he visit the think-tank as part of the consultation procedure?

**Mr McCabe:** I am more than happy to visit Caithness to speak to that think-tank. Highland Primary Care NHS Trust has permission for 32 salaried dentist posts, seven of which are vacant—although I am pleased to say that three of those posts have recently been filled.

We are aware of increasing difficulties in the provision of NHS dentistry. That is why we have launched the consultation and given the commitment that we are interested in addressing all those issues. That is also why we have made it perfectly clear to members of the profession that we expect them to increase substantially their commitment to the NHS.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Can the minister confirm that he will be reviewing the structure of the golden-hello package to make it more effective in attracting NHS dentists to all areas of need?

**Mr McCabe:** I can confirm that such matters are under constant review. We introduced the measures in question in order to effect improvements in the service, as far as that is possible. If at any time we feel that the impact is not being felt as widely as we would like it to be, of course we will review that to try to improve the situation.

### Schools (Vending Machines)

**13. Frances Curran (West of Scotland) (SSP):** To ask the Scottish Executive whether it supports the removal from schools of all vending machines selling fizzy drinks. (S2O-1155)

**The Deputy Minister for Education and Young People (Euan Robson):** As part of the implementation of “Hungry for Success”, the recent report of the expert panel on school meals, we expect all schools to end the active promotion or advertising of fizzy, sugary soft drinks within the dining room before December 2004 for primary and special schools and December 2006 for secondaries.

**Frances Curran:** That was a bit of a contradictory answer. We know the damage to health that the corn syrup in those drinks causes, so why are we allowing schools still to sell them? Schools are selling young people bad health. Is the real issue the fact that schools need the money from Coca-Cola? [*Interruption.*]

**The Presiding Officer:** Order.

**Frances Curran:** Is it right that our young people should be expected to fill a funding gap in education one Pepsi at a time? I ask the Executive to consider banning the vending machines from schools altogether.

**Euan Robson:** As I just explained, there is a gradual process of ending the promotion and advertising of fizzy, sugary soft drinks. The Scottish Executive was recently instrumental in encouraging Coca-Cola to remove its name from vending machines. As part of our implementation of the recommendations of the expert panel on school meals, we are encouraging schools to make fresh, chilled drinking water available for free in school dining halls, so the direction in which we are going is the one that Frances Curran suggests.

As to resources, Frances Curran cannot have been listening during the recent debate in which we made it clear that we are putting substantial resources into the expert panel's recommendations: £12 million this year; £21 million next year; and £24 million in the financial year after that. She should at least acknowledge that the Executive is putting a lot of money into school meals, because we are determined that the expert panel's recommendations will be followed through.

## Budget (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Murray Tosh):** The next item of business is a debate on motion S2M-807, in the name of Mr Andy Kerr, on the general principles of the Budget (Scotland) Bill.

15:12

**The Minister for Finance and Public Services (Mr Andy Kerr):** My colleague Tavish Scott is not with us today—he is stuck due to travel difficulties—so I will also close the debate on behalf of the Executive, which is obviously a great pleasure for me.

**Stewart Stevenson (Banff and Buchan) (SNP):** Double helpings.

**Mr Kerr:** Double helpings, indeed. [*Interruption.*] “Double jeopardy”, as well, as another member says, but we had better not go too far.

I intend to talk about three specific issues: the budget process; factors that have caused the numbers in the budget to be different from the ones that we published in the draft budget; and how the budget will deliver economic growth for Scotland.

The Finance Committee published its stage 2 report on 10 December. We welcome the report's constructive approach to improving the budget process. Our response, which we published last week, makes it clear that we view many of the committee's recommendations favourably. We will continue to work with the committee on several areas that are of particular concern to it, notably time-series data and information on capital spending. The supporting document for the Budget Bill now includes fuller information on capital expenditure than we have previously provided in budget documents. We will build on that to provide the committee with more comprehensive information in the run-up to the spending review, and we have started work on time-series data to improve further the information that is available to the committee before the spending review.

In the spring, we will produce a very different stage 1 document, which will include an assessment of the Executive's performance against objectives, in addition to an analysis of future spending prospects. We hope that that will avoid the duplication of information that has been a feature of previous budget processes. It will also change the nature of stage 1 of the budget process into a more strategic look at the Executive's performance. That is in line with the initial intentions of the financial issues advisory group and should assist parliamentary scrutiny before the next spending review. We are also

trying to ensure that budget documents are shorter and clearer. We have already started to do that, which is why this year's supporting document for the bill will be 252 pages shorter than last year's.

The Executive's willingness to work with the committee and to make major changes to the budget process and the budget documents is a clear indication of our commitment to transparent and rigorous scrutiny of the Scottish budget. We have already achieved a lot in this area. Any objective comparison of the Scottish budget process—including with the Westminster process—would demonstrate that. We look forward to working with the Finance Committee to improve further the budget process in the future.

Although we have made a lot of progress in improving the clarity of our documents, the nature of finance means that there will sometimes be changes to our treatment of the numbers in the documents. That can be annoying, but it is inevitable, given the need for us to keep up to date with accepted accounting and financial practices.

It might be helpful if I explain two major changes that have come into effect for this year's Budget Bill and which have had an impact on the numbers that we have already published. The first change is our implementation of financial reporting standard 17 for pension schemes, which affects our presentation of teachers' and national health service pension schemes. It means that the change in the total liability for teachers' and NHS pensions is put through the annual accounts. This year, that has had the effect of increasing our budget by more than £1 billion. However, no cash movements were involved in that and there has been no impact on other items.

A second change in the budget arises from the new prudential regime for local authorities. Because that regime removes borrowing limits for local authorities, we no longer need to include those limits in the Budget Bill. However, where borrowing consents were granted to support specific expenditure, they have been converted to specific capital grants, as has happened with the initiatives fund and the cities growth fund. That needs to be carried through in the budget documentation. The prudential regime will give local authorities the freedom to make their own decisions about how much money they borrow or spend within a framework that requires them to manage their expenditure rigorously and responsibly. That will allow local authorities to make the best possible use of public money and it exemplifies the Executive's overall approach to public finance.

We are determined to secure the best possible value for money. One of the main ways in which we will do that is by ensuring that the money that we allocate will help to grow Scotland's economy.

If we can provide the conditions that allow people to create wealth, we will make a massive difference to the prosperity and happiness of people throughout Scotland. That is why growing the economy was our top priority when we put together the partnership agreement, which sets out our plans for this parliamentary session.

We want to increase our standard of living as measured by gross domestic product per head and we want to move from being in the third quartile of Organisation for Economic Co-operation and Development countries to the top quartile. We believe that the strategy of having a smart, successful Scotland will help us to achieve that long-term goal.

We also believe that the Scottish economy benefits from the stability of the current constitutional settlement and from the current macroeconomic climate.

**Brian Adam (Aberdeen North) (SNP):** The minister quite rightly has ambitions for Scotland and its economy. Where are we currently placed relative to other countries in the OECD?

**Mr Kerr:** As I said, we are currently in the third quartile; our longer-term objective is to get ourselves into the top quartile. That forms part of our ambitions to grow the Scottish economy. Those are longer-term strategic matters for which the Executive takes responsibility.

I had just mentioned the current constitutional settlement. At the moment, interest rates are at historically low levels, inflation is at historically low levels, unemployment is at its lowest rate for more than two decades and there are competitive levels of corporate taxation.

**Stewart Stevenson:** Can the minister tell me the average interest rate for the whole of Government borrowing?

**Mr Kerr:** No, I cannot give Mr Stevenson that figure at the moment. However, in relation to what I was talking about with regard to the pressure that Government places on the business community here in Scotland and in the rest of the United Kingdom, I guide the member to the survey that was carried out recently by the Executive on behalf of the manufacturing steering group, which places Scotland in a low-band grouping of economies in terms of business-taxation.

Rightly, many of the important fiscal and monetary levers are under UK control. The Executive does not, of course, control the global factors that matter so much to our open trading economy, but we do have substantial powers of our own to improve the microeconomic capability of our economy. Our budget will help us to make the most of them.

The spending plans that are set out in the budget will help to make our economic ambitions

possible. We are investing in infrastructure by supporting broadband provision and by substantially increasing our investment in transport. We are investing in skills by creating 30,000 modern apprenticeships, by piloting business learning accounts and by providing funding that allows 50 per cent of young Scots to enter higher or further education. We are funding research and development through intermediary technology institutes and the Scottish co-investment fund.

We support business directly through regional selective assistance and many other schemes. We are keeping business rates low by freezing rates in the current financial year and increasing them at a rate below last autumn's inflation rate for the next financial year.

All those measures create the conditions in which businesses can create wealth. By doing so, they will have a real and lasting impact on the happiness and prosperity of the people of Scotland.

We believe that our rigorous approach to public spending has benefited Scotland over the past four years. The money that we have invested has already brought results and we want to build on those achievements during the next four years by fulfilling the commitments that we set out in the partnership agreement. The budget provides a basis for doing that, so I commend it to the chamber.

I move,

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

15:20

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** The bill deals with some fairly dry material that falls into three categories, namely resource budgeting, prudential borrowing and the requirements of FRS 17. The Scottish National Party has supported resource budgeting on the basis that it allows us to show the underlying cash position and strength of the accounts. On prudential borrowing, we look forward to studying the fine print in the Finance Committee, which has not yet considered the bill.

On FRS 17, like a true anorak, I glanced at a document on the subject the other night and was concerned to note that, for many years, the UK has not followed the practice that has been adopted throughout the rest of the world, which is to value scheme assets at a fair market value as opposed to an actuarial value. That seems to me to be something that should have been corrected long ago.

While we are on the topic of pensions, I must say that it is unfortunate that Parliament does not have the power to tackle a serious problem in pensions law, which is that more than a decade after the events that led to the Maxwell pensioners—some of whom were very near to retirement—losing their pensions, the loophole in the law that allowed that situation to arise has still not been closed up. That companies can still borrow the actuarially calculated notional—I stress “notional”—surplus is wrong in principle and, if the Scottish Parliament had the requisite powers, we would not have allowed that to stand as Westminster has done.

The minister has canvassed on terrain that is far wider in its scope than the bill, so I will follow his example. With regard to the budget, the people of Scotland want to hear how we are going to ensure that proper value for money is obtained from the funds that are spent. Is the money that is being spent at the moment being spent wisely and to the greatest effect? Conversely, are some of the spending programmes and decisions not achieving real benefit for the public?

In that regard, I want to raise six points. First, it is wrong in budgetary and control terms that quangos are allowed to operate as independent organisations that are, in effect, free of Government direction and control. To some extent, the powers exist to exert control by means of direction. However, there have been widespread and well-publicised criticisms of, for example, Scottish Enterprise's decisions over the years to spend a great deal of money on consultants' reports. The Auditor General for Scotland has opined on that, but I do not think that any effective action has been taken.

Secondly, the Executive has been proved by the economic wizards, Jim and Margaret Cuthbert, to have seriously miscalculated the borrowing limits that have been applied to Scottish Water and, in consequence, it is possible that more than £100 million a year could have been borrowed. They have also identified that the investment by Scottish Water in the year 2002-03 was about £52 million. That means that, although we have had high charges, we have not had the high investment that people would expect and which they were assured was happening. As Jim and Margaret Cuthbert told the Finance Committee this week, that means that today's water rate payers have been paying for yesterday's accumulated debt and are not even getting the investment that we would expect.

The result is that in places such as Kingussie in my constituency, people are told that sewerage capacity will not be upgraded for 10 years, the result of which is that Scottish Water objects to every application for sewerage services for a new house or business. A total blight has been placed

on development, partly because Scottish Water was given the wrong instructions. Those instructions were based on a flaw—which the Cuthberts identified—in the letter that commissioned the review of water charges. I know that Allan Wilson anticipates gleefully his visit to the Finance Committee next week to face questioning on the matter.

Thirdly, it is correct to say that financial memorandums, which the Finance Committee considers, are increasingly poorly worked out and ill thought through. Just yesterday, we heard a virtual admission by Mr Peacock that his figures were wrong, yet he said, “Don’t worry—if we need more money, it will be there.” He said that on the record yesterday. I ask him how much will be available over what period and whether other services will suffer if an unidentified surplus exists. That seems to be fiscally irresponsible.

Fourthly, we have seen the Administration’s failure on individual learning accounts. Where was the monitoring then? Where is the monitoring of social inclusion partnerships?

My fifth point arises particularly from the Holyrood inquiry. I seriously question whether the model that the Auditor General uses in his *modus operandi* is correct, because he must agree the facts with the audited body. Most people who are interested and who expect the Auditor General to be an independent watchdog expect him to be entirely independent and to reach his own view of the facts without a requirement to agree the facts with the audited body. That topic will emerge.

As for the macroeconomic climate, western countries fairly uniformly enjoy low inflation, low interest rates and economic success, but I expect that, as the Institute for Fiscal Studies paper of December 2003 by Carl Emmerson and others showed, we will see the UK Chancellor of the Exchequer face a time of considerable pressure that he will be unable to withstand, given his commitment to, for example, defence expenditure at Tory levels. That is the conclusion of the Institute for Fiscal Studies. The SNP would pursue different spending plans and would therefore be able to devote resources where they are needed—to our prime public services and to allowing our businesses a fairer deal.

15:27

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** A perusal of this week’s newspapers would make it easy to believe that the most important debates that affected Scots’ lives were held not here, but in London. We have had the debate on top-up fees, in which Messrs Darling, McGuire & co abandoned their constituency interests and voted in favour of top-up fees. We have had the

Hutton report’s publication, which saved the Prime Minister’s bacon and consumed vast acres of newsprint as people tried to understand how and why. Those were momentous occasions, but today’s solemn and probably rather dry debate is, ultimately, far more important to the people of Scotland and may be the most important debate of the year.

The Budget Bill is the foundation on which all the Government’s activities must be built. We can debate the health service, antisocial behaviour or violence in the classroom, but whatever the remedy to those ills, the Executive must be required to put its hand in its pocket to finance that solution. Of course, I should say that the Executive puts its hand in the public’s pocket, for the Executive has no money of its own—it has only what it receives from the taxpayer. That point should never be forgotten.

Ministers have often said that the Opposition parties have not produced their own proposals and that we are willing to talk fine words about spending here or cutting there but we are not willing to show our hand. I do not believe that the job of Opposition parties is to propose numerous—I use that word intentionally—amendments through the subject committees at the initial stages of the budget process. First, it is often difficult enough for committee members to make sense of the available information at that stage and secondly, a committee’s priority should be to scrutinise the Government’s proposals rather than to debate alternative proposals from members, which would distract it. Therefore, it is no surprise that committees have suggested very few amendments in the previous four budget exercises—indeed, I think that only two amendments have been lodged, but I might even be wrong about that.

A debate about the core principles of the budget is needed. To achieve that aim, I lodged a reasoned amendment yesterday that showed our support for the Executive’s need to produce a budget, but suggested that more could be done to improve economic growth. If the amendment had been accepted, we could have fulfilled the Opposition’s role of offering a genuine alternative economic approach, which the Executive has rightly challenged us to offer. Conservative councillors in opposition regularly do that sort of thing every year when council budgets are set. Unfortunately, my reasoned amendment was not accepted and, given that amendments at stages 2 and 3 can be lodged only by the Executive, the bill will now pass through the process without Opposition amendments. I do not criticise the Presiding Officer’s decision—

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** He does.



**Mr Monteith:** The member should hear me out.

I merely suggest that if Parliament wants to have a more serious debate on the Budget Bill that would give it the importance that it merits and make the debate a grander occasion, ways will have to be found to allow reasoned amendments to be lodged and to turn a whole day over to debating the bill's first stage.

Before I eat up all my time on procedural matters, I will turn to the debate in hand. The minister has talked to us in the past and today about record spending on this and on that, but he has forgotten to tell us about the record taxation on this and on that, which all of us have to endure to pay for the Executive's grand schemes. Public expenditure has grown by some 73 per cent in the past five years. If the anecdotal evidence that I and many MSPs from all parties hear is true, there is a genuine worry that the vast majority of that much-vaunted increase in expenditure is going on expanding bureaucracy and on public sector salary increases.

As a list MSP, I meet many health board chairmen. More than one has told me that the uplift in health funding has gone entirely on pay increases to general practitioners, nurses and consultants and that there is nothing left to finance the improvement in services that the public expect. Such things are happening when private sector pay is at a standstill. That is a serious matter for all parties and we must consider it.

Finally, I say to the minister that it is not possible to continue to increase public spending ahead of inflation every year—doing so is unsustainable and will be the ruin of our economy. A day of reckoning will come when that will stop and hard and tough decisions will have to be made. The Parliament cannot borrow, so I finish with a simple question to the minister. Will he raise taxes or will he cut spending when the revenue that he receives from Westminster is not enough to finance his future commitments?

15:33

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I share some of Brian Monteith's views. This debate should be a core moment for Parliament. It should be covered widely in the press and our constituents should be following it.

I rise to support the general principles of the Budget Bill. Those general principles are the provision of public services in Scotland, reducing inequality, improving and sustaining our environment and helping all our communities to live in peace and safety. Those issues are major issues for Parliament and the debate.

We are rightly debating the Executive's proposals and the financial tools to implement the partnership agreement. It is welcome to see, in the introduction to the bill's supporting documents, that the Executive has taken on board the views of members of the Finance Committee in respect of presentation of the budget figures. How the budget is put together and how clearly the information is presented is important to Parliament in scrutinising the Executive's proposals, but it is also important for the public to understand them.

It is much harder for the public to understand other parties' positions, however. We have heard about Fergus Ewing's spending plans, but where are they? I will touch on that in a moment.

**Mr David Davidson (North East Scotland) (Con):** Can Mr Purvis tell us which part of the budget that is before us today was wholly and entirely a result of the activities of the Scottish Liberal Democrat Party?

**Jeremy Purvis:** I helpfully hold up the partnership agreement so that Mr David Davidson can see the Liberal Democrat elements therein.

The SNP leader argued an incredible position this week when he said:

"Financial independence would, at a stroke, end the need for Scots MPs to ever vote on an issue like top-up fees again."

What total nonsense. How on earth would a separate Scotland be immune from policy and budget decisions that were taken south of the border? If the businesses in my constituency that export goods around the world are affected by the outbreak of SARS—severe acute respiratory syndrome—on the other side of the world, students who were thinking of going to English universities would be affected by decisions that were made in England. University funding and student finance are policy decisions and not constitutional arguments.

**Fergus Ewing:** Does Mr Purvis regret the fact that his Liberal colleagues in the previous session voted on every possible occasion to go ahead with the Holyrood fiasco, whereas we rejected that decision? If he wants to talk about spending, does he accept that it has been found that defence spending with BAE Systems has overshot by £3 billion, which is three times as much as the amount that Tony Blair says will be raised by his top-up fees? If we had slightly more efficiency at the UK level, those fees would be completely unnecessary by a factor of 300 per cent.

**Jeremy Purvis:** Mr Ewing's obsession with the constitution is matched only by his obsession with the Holyrood project.

In the debate on the Finance Committee's report on the budget process in December, Brian Monteith said:

“it would be beneficial for the Parliament to have alternative budgets to discuss at some stage”.— [Official Report, 17 December 2003; c 4322.]

I agree that it would be beneficial. It would have been interesting to see Mr Monteith’s reasoned amendment. It would be beneficial to compare proposals for higher education. Scotland is sixth in the OECD league table for spending on higher education as a percentage of gross domestic product. For 2003-04, the Executive is spending £734 million on higher education institutions. In 2004-05, it will spend £783 million. The Executive is supporting students to the tune of £230 million in Scotland for the payment of fees, grants and bursaries. That is the answer to Mr Davidson’s question. At no stage have the SNP or the Tories said what they would do for the sector or for students, how their plans would be paid for or how much they would spend.

**Mr Monteith:** I thank the member for giving way and for allowing me to explain that, in the May elections, we published our full costs for higher education, and that they would result in an increase in funding that would reach both the HE and FE sectors. If the member is willing to accept those figures, would he support them?

**Jeremy Purvis:** I will touch on the philosophy of cutting taxes and claiming to increase expenditure in a moment. There is a surprising similarity between that approach and some of the SNP’s approach.

However, we do not have an alternative budget from the SNP. The last one that I could find—I would be delighted if the SNP would correct me—was from 1997. In the duration of the Parliament, the SNP has not once said what its proposed tax would be, by how much revenue that would reduce the budget or where it would make cuts. We got close in the 2001 manifesto— [Interruption.] I am sure that the spokesman will send me the paper that he holds up—it will make delightful reading. We got close in the 2001 manifesto, in which the SNP told the world that in that year Scotland would contribute

“even by the most cautious estimates ... almost £8 billion more to the London Treasury than it receives”

and that only through that money

“can we see the investment so urgently needed in our schools”.

Yet again, however, we hear about tax cuts from the SNP. Cutting taxes while the budget is in deficit? I am sure that George Bush would be pleased with his new economic followers. Even the Policy Institute has said:

“over the past two or three decades and, so far as we can see in the coming years, Scotland is running a modest deficit relative to that in the United Kingdom as a whole.”

That includes North sea revenue.

I have not mentioned the “Government Expenditure Revenue in Scotland” documents, so I will spare the SNP front bench’s apoplexy. The only figures that I have mentioned so far are either from the SNP or from independent academics.

The budget is about providing better public services and more support for local authorities, and investing in infrastructure and people in Scotland. We should support it today.

15:40

**Des McNulty (Clydebank and Milngavie)**

**(Lab):** The first thing to be said about the budget could have been said about previous budget documents since the Labour and Liberal Democrats came into government in 1999: it shows that there are very substantial increases in spending across the range of portfolios. According to the budget plans, the amounts that will be invested in health this year, next year and the year after—as well as the substantial amounts that have been invested over the past four years—mark a significant departure from the situation that has existed since I came into politics.

I go back quite a long way. Indeed, I lived through the very difficult period in the 1980s and 1990s when, year on year, local authorities, health boards and other public agencies were lacerated by cuts and reductions in expenditure. However, the substantial and sustained increases in expenditure that we have seen have been made possible through sound management of the economy by Gordon Brown and the Westminster Government. We in Scotland have benefited from that approach.

I agree with Fergus Ewing that, in taking forward our responsibilities, we must manage our resources as effectively as possible. However, that is about the only comment that he made that I agree with.

**Brian Adam:** Does the member agree that the important issue is not just the amount of money that is spent, but what that expenditure delivers? When will the changes in outputs, particularly in the health service, work their way through the system? We are not seeing the effects of those changes at the moment.

**Des McNulty:** Brian Adam must live in a strange parallel universe. Substantial health improvements are being made. We have increased health expenditure substantially and, although we have not been able to meet every possible need, we have come closer to meeting those needs than we have done at any time over the past 20 years. We have been able to modernise and renew the health service, not least in my area of greater

Glasgow. For example, the purchase of the former Health Care International hospital has allowed new operations to take place in a facility that was not being utilised effectively, and the new expenditure has also made possible other dimensions of change. The question is whether we can do things better. Undoubtedly we can, and one of the Finance Committee's roles must be to highlight how and where improvements can be made.

One matter that the past year's scrutiny process highlighted, and which I hope will be followed through when the budget is implemented, is how we organise our expenditure to structure and maintain growth in Scotland. Every political party in the chamber—with perhaps one or two exceptions among the smaller parties—would argue that economic growth is a top priority. However, achieving growth is not simply a matter of getting the right distribution among budget lines or departmental heads. We must ensure that the allocation, use and management of resources and the bringing together of different departments or agencies deliver meaningful change on the ground and in localities throughout Scotland.

The minister frequently refers to his experience in East Kilbride, which was a new town. Expenditure was brought together under one agency, which managed the future of that area effectively and well. If we are to transform Clydebank, for example, in the area that I represent, or the areas that others are concerned about in west central Scotland, there must be more effective co-ordination of the expenditure on economic development, regeneration, housing, health and local government so that the huge resources that the budget makes available are used to the maximum benefit of the people.

**Brian Adam:** I agree whole-heartedly that we need to address difficulties in areas of high unemployment and high deprivation. However, where are the measures in the budget to assess the impact of the sums of money that are being poured in to tackle deprivation? As far as I can see, there is no way of monitoring that. We have no cross-cutting analysis in that area.

**Des McNulty:** Brian Adam was a member of the Finance Committee when we discussed some of those issues. They are certainly on the agenda that the new Finance Committee, along with the Executive, is anxious to work on.

Issues of transparency arise. I welcome some of the issues that have been raised in responses from ministers to Finance Committee reports. However, I criticise the fact that we do not get enough specific information in the responses. Ministers must make improving the data a priority—especially the throughputs and year-on-year data that the Finance Committee has asked

for. At the same time, as we consider, scrutinise and monitor the way in which money is spent, it is important that we ensure that outcomes are being delivered. That is crucial. It is not just a question of monitoring the process and thinking that we are doing a good job; we must ensure that the way in which money is levered in is really making a difference.

That is a job for everybody in the Parliament. It is not just a matter for Andy Kerr or other ministers; it is a matter for all of us. It is our collective shared responsibility. When the party-political in-fighting goes away, what the people of Scotland will expect from us is that we have made a difference. We will do that if we focus on outcomes rather than focusing narrowly on the scrutiny process and on jousting in this chamber.

15:47

**Stewart Stevenson (Banff and Buchan) (SNP):** The minister opened the debate by saying that we needed a transparent and rigorous review of the budget. That is hardly a statement that anyone in the chamber would have any serious difficulty with. I want to cover a number of technical issues that can, however, get in the way of achieving such a review. Before I do so, I acknowledge that, over the years, we have seen improvements in the presentation of the data that are important to this process; we have also seen improvements in the scope of the data. However, there is more to be done. In essence, we are the management board of the company and we are reviewing the performance of the officers who have been given charge of the operation. I ask Fergus Ewing not to take away my copy of FRS 17 just yet; I shall need it.

Let me start with income and expenditure. The minister said something quite interesting. I think that he said that he had put in £1 billion to cover pensions liability, but that it was not a cash £1 billion. Of course, that is perfectly proper because we have not yet had to pay any money in respect of that particular liability. The minister placed the liability in the context of income and expenditure. However, were we talking about a company, I would have expected, as does FRS 17, that it would have come after

*"Accruals and deferred income but before ... Capital and reserves".*

In other words, it is part of the assets and liabilities of the enterprise that is the Scottish Executive, rather than part of income and expenditure. Of course, that figure will move from assets and liabilities to income and expenditure at the point when the liability for future payment of pensions—which has previously been underestimated—translates into our actually paying the pensions. In the Executive—as in many commercial companies—that provision has been

underfunded. The minister has therefore immediately opened up a difficulty.

Jeremy Purvis referred to the deficit in the Scottish economy but, of course, he is talking only about identifiable public expenditure—

**Jeremy Purvis** rose—

**Stewart Stevenson:** No. Wait.

Jeremy Purvis is talking only about identifiable public expenditure; he is not talking about the other 50 per cent of public expenditure that is non-identifiable. In that connection, I direct him to a Westminster parliamentary answer of 31 March 1997 from the previous Conservative Administration. The answer showed that from 1979 to 1997, Scotland paid £30 billion more into the Westminster coffers than it received. That was a clarification of an answer that had been given some seven weeks earlier, which had suggested a figure of £27 billion. Those are substantial sums of money and they more properly reflect the balance between identifiable public expenditure and non-identifiable public expenditure.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Will the member take an intervention?

**Stewart Stevenson:** If Jeremy Purvis has not forgotten why he stood up, I will take his intervention.

**Jeremy Purvis:** I was highlighting the deficit in the SNP's ability to provide an alternative, rather than the proposed surplus that we would have. Has the member seen the Policy Institute document "Paying our Way", by Professor Ross Harper and Iain Stewart, which is described as

"A definitive guide to the debate on 'fiscal autonomy'"?

That document says quite definitively that, even including all the aspects that Stewart Stevenson mentions and 90 per cent of oil revenues, there would still be a Scottish deficit of £1.1 billion.

**Stewart Stevenson:** We always welcome contributions to the debate from apolitical sources such as Ross Harper, but if Scotland is doing so badly, that is hardly a ringing endorsement of the present arrangements.

There are other technical issues that we must deal with and I will return to specific points about expenditure. In answering my intervention, the minister was unable to tell us the interest rate that we are paying on average. One of the reasons for his inability to do so is that we do not have a statement of assets and liabilities against which to assess whether the interest rate is sensible, what its nature is and how it breaks down. Furthermore, without assets and liabilities, we have no way of knowing our future private finance initiative liabilities and no way of assessing whether the depreciation that moves from assets and liabilities

into the current account is a sensible provision in relation to the nature of the assets and liabilities that there may be.

We have plenty of targets—in the draft budget, there are 147. What is missing—from parliamentary answers, I know it to be missing—is any understanding of whether ministers are getting adequate support from civil servants in taking responsibility for delivering on those 147 targets. Privately, some people suggest that they are not. Sure, the minister can leave office if we fail to meet a target, but the reality is that that will just mean another minister will come in and fail, if the civil service does not change its culture to take on board accountability for the targets. Also, initiatives and projects that transcend both the budget lines and the yearly budgets are not described in a way that helps us to understand them. The minister should consider that point for the future.

I will end by pinpointing one target and commending the Executive. It is rare to miss a target even before we have reached the financial year to which it applies. Target 7 for health and community care states:

"No patient should wait longer than 26 weeks for a new outpatient appointment by the end of 2005."

Nonetheless, the Executive has already failed to reach that target. I have an appointment as an outpatient at Woolmanhill hospital for 14 August 2007—that is more than six months after the end of 2005. I say to the minister that he has problems.

15:54

**Murdo Fraser (Mid Scotland and Fife) (Con):** I am sure that we all wish Mr Stevenson a speedy recovery from whatever ailment besets him.

Stewart Stevenson made a point about the famous budget surplus over 18 years. Interestingly enough, if we consider the figures, Scotland was in surplus in three of those 18 years because of the high oil price at that time. For the remaining 15 years, Scotland was in deficit. However, why pick those 18 years? I appreciate the fact that they correspond to the term of office of the previous, great Conservative Government, but that period is entirely arbitrary. Why pick 1979 to 1997? Why does Stewart Stevenson not take the period from 1950 to 1997 or from 1901 to 1997? I suspect that the reason is that, across the piece, Scotland would have been in deficit for the majority of time during those periods.

**Fergus Ewing:** Does Mr Fraser argue that Scotland cannot be independent because it has sometimes had a deficit? If so, can he explain how the United States of America, which has a deficit of trillions, manages to remain independent and apparently successful?

**Murdo Fraser:** I would never make the argument that Scotland could not be independent. Of course Scotland could be an independent country. We may have a deficit, as many other countries do.

I am rather disappointed that the SNP keeps raising the issue about the balance of payments between Scotland and the rest of the United Kingdom. For me, the question whether Scotland should be independent is nothing to do with finance. It is about our place in the world, our culture, our history and our trade links to the rest of the UK. Anyway, I am digressing from the subject of the debate.

**Stewart Stevenson:** Keep digging.

**Murdo Fraser:** Do not worry; I am not digging a hole for myself. I am sure that, when the people of Scotland are asked to judge, they will vote to remain part of the United Kingdom, as they have done consistently when they have had that opportunity.

I listened intently to the minister's opening speech, which I enjoyed, so I was pleased to hear him say that the bill provided a budget for economic growth. Indeed, that reflects the partnership agreement, which states:

"Growing the economy is our top priority."

I also agreed with much of what Des McNulty said about the need to achieve further economic growth in Scotland. The budget should be about doing that.

Let us consider, therefore, what the Executive is doing to achieve economic growth. I appreciate that there is only so much that the Executive can do, because many of the economic levers are not in the control of this Parliament but lie elsewhere. It is well known that I have some sympathy for the argument that this Parliament should perhaps have greater economic powers.

Although the Executive's powers are restricted, it has power over business rates. The minister mentioned that business rates had been frozen for the current year. That was welcomed by the business community, but it is pretty disappointing that the Executive will increase business rates next year. Albeit that the business rate poundage will increase by just 1p—up from 47.8p to 48.8p—that is still an increase, and it is being made at a time when the business community would be much happier with at least another freeze.

Let us remember that, under the unified business rate, businesses in Scotland used to pay the same rate poundage as businesses south of the border. However, when a certain J McConnell Esq was Minister for Finance, he broke away from the UBR that the previous Conservative Government had worked hard to establish and he

increased Scottish business rates to a level that is higher than that for the rest of the UK.

I have heard all the minister's arguments about how the situation can be accounted for by the fact that the basis for rateable value in Scotland is different from that which applies down south. However, if the minister listens to business organisations, he will find that they often take issue with that. Certain sectors of the economy—for example, small and medium-sized hotels—are already disadvantaged by the basis for rateable value in Scotland before we come to the question of the rate poundage.

Even if, for the sake of argument, we accept that the minister is correct on that issue, why did he freeze business rates? If business rates are not the issue, why were they frozen? Surely the minister is arguing against himself. Secondly, even if businesses in Scotland are not paying more in rates than businesses in the rest of the UK, why does the Scottish Executive not have the ambition to give Scottish businesses a competitive advantage against businesses south of the border?

Scotland is already disadvantaged by our distance from markets, our relatively poor transport infrastructure and our disparate population. Many Scottish businesses trade with the south of the UK or with Europe, so they are further away from those markets than businesses down south are. Scottish businesses start at a disadvantage, so why not try to give them a leg up? Why not give them a hand by cutting business rates to at least the level that applies in the rest of the UK, if not lower than that? That is the challenge for the Executive.

I am sure that every member in the chamber has received letters from businesses about the rise in water charges in the current year. In many cases, charges have risen by 300, 400 or 500 per cent. We proposed a relief scheme for small businesses that would ease the pain of those increases in charges. The scheme would have cost around £10 million a year over the next three years. That is not a substantial sum of money—it is easily affordable in the context of the Executive's annual overspend. If we are serious about growing the economy and having a budget for business, why cannot we have a water charge relief scheme and a reduction in business rates? That would prove that when the Executive says that growing the economy is its top priority, those are not just words. Action is also needed.

16:00

**Mark Ballard (Lothians) (Green):** This debate may not have attracted the largest number of members to the chamber, but in many ways it is

one of the most important debates that we will have over the next year.

One of the key elements of the Scottish Parliament is that the budget process should be transparent and that that transparency should have at its heart proper scrutiny by the subject committees, the Finance Committee and, finally, the whole Parliament. We are moving towards the end of that process.

Back in 2002, the First Minister made

“a commitment to sustainable development running throughout all of our spending proposals”.

However, during the stage 2 debate on the budget process last December, I echoed the concerns of Des McNulty and the Finance Committee that the budget information does not allow full scrutiny of cross-cutting themes such as sustainable development. For that reason, the Executive's claim to have greened the budget is not justifiable. Not only are we unable to see how the budget supports sustainable development and relates to cross-cutting issues, but it is becoming obvious that the Executive is actively undermining the sustainability pledges and obligations.

I do not have time to deal with the whole budget, so I will concentrate on one issue: the fact that this is still a road-building budget. Transport is the fourth-largest item in the Executive's shopping basket, with a budget of more than £1.2 billion in this spending year. Members may recall the oft-repeated commitment to target 70 per cent of transport spending at public transport. Unfortunately, that pledge does not come into effect until 2006. That is why the budget that we are debating allocates most transport funding to trunk roads and motorways. We have promises for tomorrow, but for now public transport gets the crumbs while the goodies go to the road builders.

We have heard members debate whether the M74 extension in Glasgow will cost £0.5 billion or £1 billion. Regardless of which figure is correct, that is far too great a capital investment in continuing to build motorways. We cannot build motorways to get ourselves out of congestion. Only the investment in public transport that the Executive has promised but is not delivering this year can get us out of that hole. The priorities are fundamentally wrong. Cutting three and a half minutes off a car journey may be a worthy objective, but we cannot do that at any cost. Until sustainability can be shown to be truly at the heart of Executive policy, we will continue to oppose its spending plans.

Today we have heard the minister say that economic growth will be the main priority of the budget and of the Executive. In particular, he defined economic growth as increasing our gross domestic product, which he saw as the way in

which to increase our standard of living. I am sorry, but the minister must recognise that increases in people's standard of living and growth in GDP do not necessarily go hand in hand. We should concentrate on raising the standard of living of everyone in Scotland. A large part of that will be building a better environment for people in Scotland. That cannot be sacrificed for the sake of increasing GDP. The two issues are not one and the same. The target of this and every other budget must be to raise people's standard of living, rather than to seek slavishly increase on increase in GDP, regardless of how that relates to standards of living.

16:05

**Bristow Muldoon (Livingston) (Lab):** I agree with the point made by a number of other members that the budget debate should attract more attention than it has in the past and is likely to on this occasion. To some extent, I say that as a challenge to the Opposition parties. If they brought more comprehensive proposals of their own to the debate, it would be far more interesting and the people of Scotland would pay far more attention to it. I have not seen the amendment that Brian Monteith tried to lodge, so I do not know whether it would have achieved that end.

The challenge in future years is to make this a debate about the way in which each of us wishes to take Scotland forward. We have alternative visions of the Scotland that we want to build and it would be good to use this occasion to engage in that debate with the people of Scotland.

**Stewart Stevenson:** I hope that the member recalls standing order 9.16.6, which prevents the lodging of amendments to the bill in its substance. However, if Bristow Muldoon is able to tell the Opposition that we can have access to civil servants and to all the numbers that have been used to derive the budget, with an appropriate resource, I am sure that we would be happy to match every single number in the Executive's proposals with an alternative.

**Bristow Muldoon:** I have to confess that I was not aware of that particular rule, so I bow to Stewart Stevenson's greater knowledge of the standing orders. However, I would have thought that his previous involvement in banking would have given him all the expertise necessary to prepare an alternative budget to put before the Parliament.

I will concentrate on two issues. First, I will raise some issues about the budget process and the recommendations that the Local Government and Transport Committee, in particular, has made to improve the process. Secondly, I will talk about some of the specifics as they apply to transport

and raise some issues with the minister about progress in that regard. I do not intend to touch on local government issues, because the debate on the Local Government Finance (Scotland) Order 2004 next week will give us an opportunity to go into such issues in far more detail.

I very much welcome the minister's announcement that in future budgets there will be clear statements of progress against the targets that the Executive has previously set. That will aid committees in ensuring that the appropriate scrutiny takes place.

I also recognise that the overall level of the budget will enable the Executive to invest in many of its key priorities—whether that is enabling the Scottish economy to grow, delivering on social justice or developing first-class public services. I recognise that it has been possible to produce that budget largely because of the strong partnership that exists between the Scottish Executive and the United Kingdom Government.

The Local Government and Transport Committee made some specific recommendations to the Executive and I would appreciate it if the minister took them on board. In future years we would like to see a greater identification of the inflationary pressures on local government, so that we can have a clear understanding of the degree to which increases in the budget address those pressures to an extent that enables investment in enhancements to services. We could then move beyond the annual debate between local government and the Executive about whether improvements in services have been fully funded.

We also want in future years to see a statement by the Executive on how the prudential borrowing framework has impacted on the ability of local government to enhance its investment in capital. I know that varying reports come from local authorities on the degree of additional flexibility that the framework gives them. It would be very good to see a strong report from the Executive that sets out how local authorities throughout the country have applied the new arrangements.

We would like to see greater financial clarity on where all the funding streams are coming from to deliver many of the transport projects. I know that in some cases the Executive will want to give itself a degree of protection when projects are still being let and contractors are bidding for them. However, a greater degree of clarity at as early a stage as possible would be useful for an analysis of the Executive's delivery of such projects.

It is important that targets should be clear and unambiguous and that they should relate to a specific base year. I will give a couple of examples of instances when targets in the draft budget document were not specific. For example, the target

“to increase rail passenger journeys on the Scottish rail network by a further 5% by 2006”

did not specify the base against which the target was set. There was a similar problem with the target for increasing local bus journeys. Those matters have been raised with the Minister for Transport, but I raise them again to illustrate how the Executive might improve the way in which it sets targets.

I move on to areas that we will consider in the future. The Scottish Labour manifesto and the partnership agreement clearly state that the number 1 priority of the Labour Party and the Executive is to grow Scotland's economy. I believe that one of the best ways in which the Executive could give a leg up to business—to use Murdo Fraser's words—would be to invest in a first-class transport infrastructure for Scotland. Scotland is situated on the western periphery of Europe and has suffered from underinvestment in the transport infrastructure for many years. The programme of transport improvements that has been developed by previous transport ministers reflects the right priorities, but we must now deliver on many of those projects. In particular, we should deliver the links to airports, complete the motorway network and ensure that we complete other major rail enhancements, such as the Stirling to Kincardine line and a local hobby-horse of mine, the Bathgate to Alloa line—I mean the Bathgate to Airdrie line; maybe we will go for a Bathgate to Alloa line in the future.

On Mark Ballard's point about the proportion of the transport budget that is spent on public transport as opposed to roads, I understand from the Minister for Transport that, already, the majority of transport funds are allocated to public transport projects and that the proportion will rise to 70 per cent by 2006. I believe that that represents a dramatic transformation, as only around 10 per cent of the transport budget was spent on public transport when the Conservatives were in power. That situation will improve in years to come.

I urge the minister to consider the recommendations of the Local Government and Transport Committee and other committees. I have no doubt that the budget will lead to major improvements in our transport systems, which will benefit Scotland's economy, and I have no doubt that it will enable local authorities to enhance local services. I urge members to support the bill.

16:12

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Unlike Bristow Muldoon, I want to take the opportunity to focus on the Executive's local government spending proposals, which are of course covered under several different

headings in the bill.

As with health service spending and other areas of Executive spending, there is no doubt that the Executive is ploughing additional and welcome funds into local authorities. Aberdeenshire Council, for example, will receive an extra 6.4 per cent next year and an extra 4.1 per cent the following year, as a result of the Budget Bill. That increase is, of course, well above the rate of inflation and I very much support it.

However, if councils are receiving additional funds from the budget, why has Aberdeenshire Council launched its fairshare campaign? Audit Scotland considers that the local authority is well run and I know that the minister also believes that. The council has, for instance, the lowest ratio of staff per head of population in Scotland. It has responsibility for 10 per cent of the country's road network. It is the fourth-largest local authority in area in Scotland and the fact that it has a growing population means that there has been a huge rise in demand for its services, with which it has coped by maintaining a council tax that is in the lowest quartile of Scottish council tax levels. By almost any measure, Aberdeenshire Council is efficient.

Aberdeenshire launched its fairshare campaign in November, because it believes that it is being underfunded—that is the word that the council uses—by some 11 per cent compared with other councils. The average allocation from the budget for all councils works out at some £1,557 per head of population, but in Aberdeenshire the figure is £1,359. There is a strong feeling that my constituents are missing out on about £200 per person every year. I will give one example of the perceived injustice of the system of allocation of funds from the budget. Aberdeenshire Council will receive around £3 million from the budget to provide transport for school pupils in what is a large rural area that, as I say, has 10 per cent of Scotland's roads. However, Glasgow City Council, which has a similar number of pupils who require transport in a much more compact area, will receive not £3 million but £10 million. To any observer, that cannot be right.

There is no doubt that the processes that are involved in the allocation of the budget to local authorities cannot continue. I am holding up an example of the card that Aberdeenshire Council has produced for its fairshare campaign. I will not go into the details but, as members can see, the card is rather strange because about 11 per cent of it is missing. I note that the Scottish Executive has agreed to establish an independent review of local government finance, following consultation with the Convention of Scottish Local Authorities. Obviously, I welcome that commitment, which was in the partnership agreement between the two coalition parties. Ministers recognise that the

present system cannot continue without reform. I stress my concern that the commitment in the partnership agreement to establish an independent review of local government finance seems to be taking an inordinately long time to come to fruition.

I ask the Minister for Finance and Public Services in his summing-up speech to comment on the points that I have made and to say clearly when the independent review might get down to work, which would be helpful. My constituents in West Aberdeenshire and Kincardine look forward to real progress from the Executive on that commitment so that we can make proper use of the fairer distribution of funds among local authorities. My constituents expect the Parliament to agree not only to allocate funds fairly among budget headings—which we have been considering today—but, once that is done, to allocate local government funds fairly among councils. I would like to see progress on that matter.

16:17

**Brian Adam (Aberdeen North) (SNP):** The Government has suggested that growing the economy is at the top of its agenda, but we have yet to hear what the target for that growth is. In spite of repeated requests, we have no target for the key priority of the joint Administration. The minister admitted that Scotland is in the third quartile of OECD countries in terms of performance. He has worthy ambitions to take Scotland into the first quartile, but I am not sure that he spelled out exactly how we will get there and what measures in the budget will deliver that.

I see that the minister is getting to his feet. I ask him to let me develop my point, although I am more than happy to take an intervention.

**Mr Kerr:** Sorry, I was just pulling up my chair.

**Brian Adam:** If we are to have a successful economy, we must get taxation right, but the minister has limited control of taxation policy. If we are to have a successful economy, we must have proper infrastructure. As Fergus Ewing rightly pointed out, we have significant problems in getting the water infrastructure in place because no investment is available. The arcane methods of financing Scottish Water are rather unusual and suspect; they are not delivering an infrastructure change, which is key, particularly to developments on the east side of Scotland, particularly in the Highlands.

One of the main difficulties with delivering a big change in public transport is that we do not control the railways. We are going to deliver a change for the Alloa area, but we are not going to do the same for the east coast or west coast main lines



because we do not have control over that significant part of the infrastructure.

**Jeremy Purvis:** Will the member give way?

**Brian Adam:** No, thank you.

We must also develop the skills that are required for the economy. It is fair to say that the Government has introduced a series of programmes to try to address that issue, but I will highlight one issue on which we must make significant improvements. As well as having skills, our industry must show innovation and make productivity gains if we are to get growth. One of the measures of that is how we deliver business education. This week, the *Financial Times* published its worldwide assessment of business schools and their master of business administration courses. In the top 100, Scotland has precisely one business school, the position of which is on the slide: it is now 93<sup>rd</sup>. Schools were measured against a wide range of parameters closely associated with entrepreneurship, such as the success of the graduates, how much more they were getting paid than the year before, how they feel about the business education that they received, the placement record of the school, and the employment rate within three months of graduation. We are not doing well.

**Jeremy Purvis:** Will the member give way?

**Brian Adam:** No, thank you.

The small amount of money in the budget to drive forward innovation and entrepreneurship is welcome, although we should be particularly grateful to Tom Hunter for coming up with half of the money that is required. However, that money is aimed at the early stages of school. We want to have prestigious business schools that produce people with new business ideas that will drive our economy forward.

**Jeremy Purvis:** Will the member give way?

**Brian Adam:** No, thank you.

To deliver a successful economy, we need people. The only solution that the Executive has proposed to deliver people and the change that we require is that the First Minister will invite the Home Secretary to relax the rules on foreign students to give them permission to come here to work. That might be helpful but, once they have permission to stay here and work, what guarantee do we have that they will work in Scotland? It will be difficult to ensure that they stay here, for exactly the same reason that our own students choose not to stay here: the opportunities are not here. The headquarters and research and development are not here. We are exporting our best, and we are exporting the kind of people who would bring forward the next generation. It is our 18 to 34-year-olds who are emigrating and not

coming back, because we do not have an attractive, smart, successful Scotland. There is nothing of great significance in the budget that will deliver that. The key target is not there. There is no target in the budget to increase GDP.

16:23

**Ms Wendy Alexander (Paisley North) (Lab):**

The year after an election is the one when politicians sometimes seek to rise above the political fray. I will try to do that in my speech.

We are fast approaching a spending review, which it is anticipated will be tighter than for many years. We are also approaching the fifth anniversary of this Parliament which, as many people hoped, was to be governed by the principles of transparency, openness and direct engagement with the Scottish people. So today, instead of focusing on the specific measures in the budget—because that is properly the prerogative of the Executive—I will focus on the budgetary process and the Executive's fidelity in financial matters to those principles of transparency, openness and public engagement.

When the chief economist of one of Scotland's leading banks testified to the Finance Committee, he said:

"Coming fresh to this budget, I was surprised to find no real inter-year comparisons. Secondly, I defy anybody—including my colleague Peter Wood—to tell me the balance between capital and revenue spending."—[*Official Report, Finance Committee*, 28 October 2003; c 379.]

So Peter Wood, Scotland's best in the field, cannot tell how much we are spending now compared with 10 years ago on health, transport, education or anything else that members care to mention, nor can he say how much we are spending today relative to what we are investing for tomorrow.

Those are not new concerns. I raised them regularly in the Cabinet, with no success. Having failed as a minister, I decided to pursue those matters again in the Finance Committee. Since September, the Finance Committee has been in correspondence with the Executive to ask for 10-year trend data and accurate estimates of the total capital spend, which we requested to be provided before the spending review. The Executive responded formally last week. In essence, its response was, "We're working on it, but it's very difficult and the Treasury keeps changing the rules." My candid view is that we can do better. No one in the Treasury says, "Sorry, we can't tell you how much we were spending 10 years ago," and it operates under the same public accounting rules that we do.

**Stewart Stevenson:** Will the member give way?

**Ms Alexander:** No, I do not have time.

**The Presiding Officer (Mr George Reid):** There is an infinity of time at this point.

**Ms Alexander:** I should be as uncontroversial more often.

There are no more basic data required for a tight spending review than how much we are spending compared with how much we were spending a decade ago and what we and the public purse collectively are getting for our money. If ministers are to stop the spending review descending into unseemly horse-trading that is more a reflection of ministerial muscle than of underlying need—I believe sincerely that they wish to do that—we need to know how much we spent 10 years ago and how much we are spending today.

What should we do next?

**Stewart Stevenson:** Take an intervention?

**Ms Alexander:** No, I am going to finish. We need to be aware of the speck in our eye—if I may call it that—which is growing. Less than two weeks ago, under the watchful eye of the Financial Services Authority, Standard Life, which is the nation's largest mutual, was compelled to demonstrate transparency in public reporting within a matter of weeks. We cannot go on defending delays of months or even years in producing long-term trend data of our own. The responsibility for providing the most robust information possible about what we spend rests squarely with the Executive's officials, no one else. If they are too busy, they should hire someone else to do the work for them. We now know that, as the spending review goes on, it will not have the transparency that it should have, which makes it harder for it to be seen as truly strategic.

I said that I was not setting out to be party-politically controversial. I genuinely believe that the First Minister, the Minister for Finance and Public Services and the permanent secretary to the Scottish Executive are all committed to public service modernisation. I simply say to them that, in the absence of transparency on trends in spending and of accessibility to such data, their chances of success are diminished. I note in passing that it is a measure of the opportunism of the principal Opposition party that it cares little about such matters. We on the partnership side can do better.

There is little that is more important than what one is spending and how much is being spent on current versus capital. Securing that information should not require constant harrying by a parliamentary committee. We now know that the forthcoming spending review will take place in the absence of publicly available trend data. That is a cause of sadness and it has consequences for ministers, the Parliament and the country, because we will be setting budgets for the next three years without fully understanding what has happened in the past 10 years.

I urge the minister to try to succeed where so many of us have failed in the past, by ending the shortcomings in accounting for the public purse and our collective stewardship of it. All power to his elbow in achieving transparency on what we were spending 10 years ago compared with what we are spending today and on how much we are investing for the future compared with how much we are spending now.

**The Presiding Officer:** We now move to wind-up speeches.

16:29

**Jeremy Purvis:** I have sympathy for members, who have a reprise of my speaking in the debate.

We are at the beginning of a process that we will continue in the committee and the chamber, and I look forward to the continuation of debates with Wendy Alexander and others on the process, especially on securing consistency of data over at least the previous four years so that, at the very least, we understand the effect of different accounting procedures. We also need further work on capital budgets and on the Executive's results from expenditure. We are making progress—the supporting documents that we have in front of us are evidence of that—but the committee will continue its relationship with the minister, and I pay credit to his openness and responsiveness on that.

We must focus on a further move towards qualitative outcomes rather than quantitative outputs. Des McNulty gave examples from his constituency of improvements in public services and health, and asked all of us to have a self-denying ordinance in how we treat the results of data. I hope that, as we go forward, there will be an opportunity for us all to do that.

A further move in another direction would be welcome: towards a closer relationship in the setting of budgets in the differing levels and areas of government—Mike Rumbles and Stewart Stevenson touched on that. I am sure that many members have examples of pilot programmes or initiatives being created and local government and other agencies being given little notice to prepare bids for moneys, which, if the bids are successful, often have short lives. There are two effects of that: first, preparing the paperwork places a burden on agencies and local government; and secondly, for pilots that are not rolled out nationwide, there is a danger of false expectations.

Stewart Stevenson touched on targets and the difficulty of ensuring a closer relationship between the financial years of central and local government. I add that there would be much to be gained from a much closer relationship with the

financial years of health authorities, police forces, voluntary organisations and all other services that, in effect, provide public services, whether in the more private sector—the voluntary sector—or the public sector.

Murdo Fraser joined Fergus Ewing and the Parliament's cross-party group for the support of Reaganomics was formed, wanting to cut taxes while spending on services. Fergus Ewing's pointing to there being no problem in sustaining massive public deficits was a delight to see. I now know why the Conservatives and the Scottish National Party have not proposed alternative budgets.

**Murdo Fraser:** Will Jeremy Purvis give way?

**Jeremy Purvis:** I would be delighted to give way to Mr Reagan.

**Murdo Fraser:** I have no shame in aligning myself with Mr Reagan on many issues. Can Jeremy Purvis tell me why the economy of the United States has shown 8 per cent growth over the past year? Is it not as a direct result of tax cuts?

**Jeremy Purvis:** I do not want Scotland to go down the route of sustaining a massive deficit while slashing taxes for the rich. That is not an approach for a Liberal Democrat Scotland.

Mark Ballard challenged the budget's green credentials, but it was interesting that he was immediately followed by Bristow Muldoon, who mentioned investment in transport. The two topics are linked, and it is a shame that Mr Ballard did not point to the real increase in public transport investment. He is right to expect results—I do, too. A real increase in public transport investment will benefit my constituents, with a new railway line that is badly needed.

Growing the economy is about investing in people as well as investing in infrastructure. Brian Adam chose not to give way to me three times, but it is welcome to see in the supporting documents almost a tripling of the enterprise in education budget between 2003-04 and 2004-05. Brian Adam appealed for that, but had obviously read neither the partnership agreement nor the budget documents. The increase is a welcome sign of an investment in people that will be good for the Scottish economy.

Mike Rumbles raised the review of local government finance and spoke of the opportunity to build a relationship between central Government, local government and the public that will see us into the future. Like Mike Rumbles, I share the desire to get started on that review and for it to be a thorough examination. There is a big debate to be had on the Parliament's financial settlement and financial powers, but let us not

forget local authorities' existing powers and the future development of their relationship with the Scottish Parliament.

Wendy Alexander spoke about the process, which the Finance Committee has discussed in detail, particularly in relation to the need for transparency and time-series data. That is important, and I take nothing away from the argument, but Wendy Alexander knows that I take a slightly different view. She said that we need to prevent ministers' obsession with flexing their muscles in putting budgets together. I share that view, but time-series data that show us only how successful previous ministers were in flexing their muscles will not help us to understand better the relationship between ministers and departments in setting budgets.

Mr Stevenson said that he wanted the figures that would effectively bring the budget document together. There is still work to be done to understand the relationship between Government departments and to understand what is success and what is failure. I hope that some of the work that the Finance Committee has begun will help us to understand better the mechanisms that are in place. Fergus Ewing has quoted some of my comments on the Finance Committee's inquiries. When it comes to understanding where the money goes, is it about a gentlemanly agreement between officials or is it about writing blank cheques? I hope that it is neither. The Finance Committee's work on the budget and its various inquiries will uncover more about such relationships.

I am happy to support the budget.

16:37

**Mr David Davidson (North East Scotland) (Con):** We must remind ourselves that the debate is about the general principles of the Budget (Scotland) Bill. If our opening comments are about anything, they should say that a budget's principles ought to be to give value for money and to provide accessible, efficient and accountable public services on an increasing-value basis. I do not think that we have heard much about that from the minister. Perhaps he is saving his best until the end. I remind him of the comments that were made by his esteemed colleague Wendy Alexander, whose assessment was that we could do better.

The Finance Committee has been saying for the past four years, including when I was a member of it, that we have to do better, achieve transparency and accountability and get the necessary information. For goodness' sake—can we sort out the muddle that arises between the spending reviews and the rollover budgets, whereby

nobody, apparently including ministers from different departments, follows what is happening on the ground? There are mid-term reviews and little amendments here and there but, if we are going to be transparent, we really need to have a fundamental review. I very much support the comments that Wendy Alexander made on that point.

We should also remember, as a matter of principle, that we are dealing with taxpayers' money—the money that comes out of the pockets of the many people in Scotland who put their share into the Treasury and which comes back to us in the form of the grant that is then used by the Executive. Waste is rampant and bureaucracy is becoming over-burdensome. Central interference is growing out of control on every possible front. If we want clarity on the ground, we should give the people who are accountable for services the freedom to use their professional expertise instead of making them waste their time—and employing lots of civil servants—to pen-push, fill in forms and tick boxes. The minister did not talk about that principle at all.

The budget should be about outcomes not about outputs. Extra money is going into the budget, but are public services getting better? Are public services becoming centralised on the basis of cost or on the basis of management? What about the people trying to access those services—for example the maternity services at Wick, with ambulance drivers having to drive for two and a half hours? What is going wrong? The Executive crows about all the additional money, yet we are never told why delivery on the ground does not reflect the increased amount that the Executive is managing to spend. We do not see comparable figures for the improvement in public services. All the money must be applied to reformed organisational approaches in the various services. That will deliver improved service.

The minister talked about prudential schemes but, listening to some of the comments that are made in local government, I think that there is a risk that the idea will lead to higher council tax. Is it simply another way of the Executive getting more money out of the taxpayer—and those who pay council tax are the minority—and into the pot, whereupon the ministers at the centre can say something that we hear time and again: "It's not our fault; we gave you the money. What are you doing with it?" That cannot continue to be the case.

The most important comment that the minister made during his opening speech was his announcement that the stage 1 document that the Executive will produce in spring will include an assessment of the Executive's performance against objectives. Linked to the comments of

Wendy Alexander about realism and transparency, that might—in the fifth year since the establishment of the Scottish Parliament—move the process on. I know that my party would be keen to be involved in anything that makes the budget more accountable.

I will deal with the SNP's comments briefly, as they do not warrant much more time than that. I wholeheartedly agree with Fergus Ewing's opening comment about value for money. That echoes my sentiments. Of course, after that, he retreated to the bunker of constitutional change. Further, he did not prepare well enough for the debate. When he talked about the Cuthberts' views on the funding formula for Scottish Water, he was talking about a subject that I raised three years ago and which my colleagues have raised in various committees since. We have stated from the beginning that Scottish Water's funding formula is flawed. Fergus Ewing is only beginning to pick up on that, but I welcome his support in any case.

My colleague Brian Monteith was correct when he said that we need to take the budget more seriously. I could not possibly disagree with that sentiment. I am not the minister, but I can tell him that we will not be able to do that until we achieve the transparency that will allow the committees of the Parliament the opportunity to get their teeth into what is done on the ground.

Murdo Fraser talked about business rates and competitive advantage. When Wendy Alexander—who I am glad to see is here—was a minister, she talked about that, but everything has gone quiet since. I am disappointed that the Executive does not understand that wealth creation is what makes the world go round. Once we have created the wealth and given people jobs, we will have some money to spend on public services. In that regard, I support the scheme that we proposed for water rates relief for small businesses.

On the costs of the various proposals that the Government has made this year, if we take health as an example, we see the financial memorandum for the Primary Medical Services (Scotland) Bill being challenged right and left across the Parliament. Not enough provision is being made to roll out what is proposed. Where is the money for the junior doctors that we need to employ? What about the consultant contracts? Nobody seems to have figures for such things, yet, allegedly, commitments are being made. What will happen on the ground? More cash than ever is going into health, but there is no increase in the quality of the service. In debate after debate—even in members' business debates on motions lodged by members of the Labour Party—all we ever talk about is cuts in services and difficulties in accessing them.

Education—post-graduate and graduate—is the topic on people’s tongues this week. However, we do not train enough doctors, pharmacists or dentists. We need a new pharmacy school, a new dental school and more doctors being trained. As changes occur throughout the service, we now realise that nurses go to university as well and can be the specialists that we need to take over many of the roles that qualified medical people played in the past. Where is the money in the budget for those necessary improvements? Does the budget recognise the challenges that we face in this country? We need to have planned reform, to decide objectives for the future and to lay the groundwork for the process in the middle of everything.

I will finish with a reminder of the black hole that Mr Brown, our worthy Chancellor of the Exchequer, is approaching, which my colleague Brian Monteith asked about. When the crunch point is reached, the block grant will be cut. Has the Scottish Executive, in particular the Minister for Finance and Public Services, borne that in mind in prudent planning? Does he have a contingency plan? Will services be cut? Will we borrow money? We do not have the power to do that. Will we be bailed out from somewhere? Will we sell assets? What will we do to balance the books? That should be addressed in the bill.

16:45

**Jim Mather (Highlands and Islands) (SNP):**

The minister’s view on the budget’s effectiveness in relation to the Executive’s economic growth priority does not stand audit. In the Executive’s period in office, growth has not even reached the minimal average of the past 30 years, which is the lowest figure in western Europe. Average incomes have fallen further behind those in the rest of the UK and the private sector has shrunk to become only 50 per cent of the economy. It is now forecast that the population of economically active people will drop by about 8 per cent by 2027. That is especially bad news for rural Scotland.

Jeremy Purvis’s lack of ambition for Scotland is deeply disturbing. He ignores the fact that the UK is in massive deficit and shows no positive attitude to Scotland’s prospects. His view is typified by his refusal to add back our fair share of the oil and of corporation and income taxes and to make a proper assumption of a decent allocation of civil service and defence spending to Scotland. He has painted himself into a corner and put down a marker that is liable only to damage Scottish prospects, investment and confidence.

The minister’s aspirations are much more commendable than Mr Purvis’s nihilism. However, the minister’s budget process is almost exclusively an expenditure-only exercise. It has no borrowing

implications, does not state or manage a growth target and does not adjust tax rates to reflect Scotland’s economic needs. Therefore, it cannot be as effective for Scotland as budgets are in other countries.

That is not just our opinion. The view that was expressed recently by the constitution unit and which was reported in the *Sunday Herald* last weekend is that the Scottish Executive is

“too concerned with how to spend money.”

I trust that that means that the Scottish Executive is too exclusively concerned with how to spend money, as can be seen in the first line of Douglas Fraser’s article last Sunday, which said:

“The Scottish parliament”—

by which he undoubtedly means the Scottish Executive—

“suffers from a ‘pork barrel’ approach to spending money, without making imaginative use of its powers to shape Scotland by other means”.

However, within the current constraints, we should be grateful for signs of movement from the Executive and the minister, given the indications that they are willing to make budget information clearer and easier to understand and to provide a clearer breakdown between capital and revenue.

I am happy to be in the company of Wendy Alexander in being totally intolerant of the continuing delay in providing time-series data to allow committees, members and the people of Scotland to see spending trends and to map those trends against outcomes. That information would put Scotland in a position to evaluate properly the Executive’s custodianship of Scotland’s economic and social fabric. In the absence of such data, the Executive’s commitment to “undertake scoping work” and to continue its discussions with the Finance Committee is not good enough. Members should recognise that the lack of time-series data would be unacceptable to the board of directors of any company or public organisation, and it must be doubly so to the Parliament.

If it is difficult to restate current data in the same format and according to the same accounting protocols as were used in the past, the Government should restate old data in the new format and according to the new accounting protocols. We would be willing to accept whatever was produced as a true and fair view of historic time-series data. We would look forward to the accumulation of more consistent and robust data in the future.

Having those time-series data and being able to depend on them are the basic building blocks to support measurement and scrutiny of the Scottish Executive’s financial and operational performance. Even now, given that the budget is an

expenditure-only exercise and that we do not have complete data that stretch back in time, we could and should expect to have more ability to access and interrogate the current data.

Massive paper schedules that have a distinct absence of cross-references and many oblique and confusing headings surely do not represent openness, transparency and accountability in the modern sense. Nowadays, even small and medium-sized enterprises can provide their managers and directors with computer access to read-only files that allow them to interrogate financial data, drill down to deeper data and produce reports that illuminate and inform. Surely we should ask our Government for the same provision in relation to the most important accounting records in Scotland.

I do not want to leave members with the impression that improved clarity, time-series data and better access to financial information will placate me and my colleagues—that is not the case. The core issue for us will always be the sheer ineffectiveness of the expenditure-only approach to the financial governance of Scotland. It remains our view—and it is the view of an increasingly large number of people in Scotland—that the longer we stick with such an approach, the more we will underperform in respect of economic growth, value for money and the delivery of the maximum social good.

Of course, most of the budget is spent on vital projects that are needed to maintain the well-being of Scotland and its people, which is as things should be, but we will always regret that money is not being spent in a way that credibly builds and retains economic muscle in Scotland, that credibly builds and increases the capabilities and living standards of Scottish people and that credibly and openly persuades everyone that value for money is being achieved, rewarded and celebrated.

It is sad that that is not happening at present and that the situation will continue until we have the genuine openness and accountability that we crave and the powers to take this great country to a sustainably higher level of economic performance. Only then will we be able to address the key numbers that should drive all our budget activity, the material reversal of our population decline and our increasing demographic skew, and only then will we have a budget that is worthy of that name.

16:52

**Mr Kerr:** I will address as many of the points that have been made as I can. I expected little of the debate, but I think that we have got quite a lot out of it. Some fiscal irresponsibility has fluttered about the chamber, but members have addressed

some of the key issues in the budget and so I am happy to respond to comments that have been made.

Usually, we hear doom-and-gloom stuff from the SNP and we have heard it again. To say that we want to be part of a UK that delivers low interest rates at record levels, low unemployment rates at record levels, high employment rates at record levels, stability in the economy, access to our greatest markets and access to partnership lacks no ambition. People in Scotland's financial services sector must shiver in their corporate chairs every time Jim Mather and his colleagues speak. The financial sector is the most successful part of the Scottish economy and is growing at a faster rate than equivalent sectors in the rest of the UK. The worst thing for the Scottish financial sector is to hear the SNP talking about separation, which will make people say, "Why should I have my insurance policy with a company that is based in a foreign country? I tell you what I'll do—I'll move it out of Scotland, out of the business community in Edinburgh, Glasgow or another part of Scotland and move it south." If that happened, it would have an extremely detrimental effect on Scotland's trading position.

**Stewart Stevenson** rose—

**Mr Kerr:** The member has had long enough. I have a lot to cover and Stewart Stevenson has had his chance.

Jim Mather and his colleagues made ironic comments about a pork-barrel approach. Since the beginning of January, the SNP would have spent literally millions of pounds—I will address that matter in a minute—so it is a bit rich for SNP members to accuse the Executive of fiscal irresponsibility. The Scottish Executive is well aware of the economic environment, which is why we seek to ensure that the key microeconomic conditions that we want to create in Scotland—through the agenda outlined in "A Smart, Successful Scotland", intermediary technology institutes, getting university ideas into the business community, 30,000 modern apprenticeships and investment in the transport infrastructure—contribute to economic growth.

David Davidson moaned about targets. We should put in context how far the Executive has come since 1999. From a standing start of zero in respect of fiscal accountability and transparency, we have delivered a lot. I accept the point that many members have made that we can improve on delivery, but we should give credit to civil servants who are now working in a completely different environment for the 129 MSPs and ministers to whom they are accountable. Let us give them credit for going on the roadshows with me, my deputy and others in the past, to present the budget to Scotland's communities, and for

being accountable to the people of Scotland. We have come a long way, but there is further to go.

I do not recognise the accusations of rampant waste and bureaucracy. I invite David Davidson to look at what we are spending our money on. We are spending our money on more doctors, nurses and consultants. We are spending on infrastructure, health and education—

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

**Mr Kerr:** I have a lot of ground to cover.

There are no blank cheques in the Scottish Executive. We seek to ensure that every pound of the public's money that we spend is spent as effectively as possible. I make the point often enough in debate that I know that that money is not the Scottish Executive's money or the Parliament's money; the money belongs to businesses and to the people of Scotland. There will be no muscle flexing around the Cabinet table; we will seek to make collective decisions based on the partnership agreement and we will deliver the partnership agreement commitments.

Wendy Alexander is right to point out that the fiscal climate will be tighter than in previous years. We are aware of that situation, we are planning for it and we are ensuring that we squeeze every penny out of the pound. As I said, we have come a long way with regard to the financial information that we provide, but we can and will do better. It is light and easy to say that the scoping work that has begun is just not good enough. However, that work has begun and we will deliver on our commitment. We have employed hired hands, as Wendy Alexander suggested, in addition to our current staff to ensure that we reach our goal. I, too, want to see the time-series data, because they will show the contribution that the Executive is making to public services in Scotland. We will work with the Finance Committee to provide that information. On her point about current versus capital, the two are linked, but I agree that we need to get some work done in that area.

Brian Adam was astonishing when he spoke about the lack of proper infrastructure—that from the party that opposes billions of pounds of investment in our public services through public-private partnerships, which deliver hospitals and schools and other infrastructure throughout Scotland. Yet Brian Adam moans about infrastructure spend. That spend would not happen under the SNP.

**Stewart Stevenson:** Will the minister take an intervention?

**Mr Kerr:** I will not take an intervention, because I have plenty to get through.

We are working in partnership with Scottish companies to create a climate in which they can

deliver. We are working in Scotland to support the chancellor's efforts to increase the productivity of Scottish companies. I think that it was only today that Murray International Metals announced a huge contract in Africa that will ensure work in Scotland. That is another example of great Scottish success, but the SNP does not want such success because that would remove its ability to moan all the time.

Mike Rumbles talked about the effect of the review of local government finance on Aberdeenshire. I am aware of those arguments, but we cannot unpackage all the arrangements. The example that he used of roads and transportation was good. However, the argument that I will get from Glasgow City Council is that, because its roads are travelled on by many more buses and cars and the damage to its roads is greater, it needs more money. The review of local government finance has to bring out some of those arguments. I will work with COSLA and others to produce that review as soon as we can.

Bristow Muldoon referred to the flexibility and the funding streams that arise from the prudential regime. I accept his point about infrastructure planning over the years; the Executive seeks to address that matter. In delivering the projects, we have to accept and understand the huge modal shifts that are taking place in Scotland, such as the increased use of buses.

I assumed that I would have more time to speak, so I must speed to some conclusions. When the SNP reads the GERS and Chantrey Vellacott DFK reports one year, it declares game, set and match to independence. The next year, when the reports do not give the SNP the news that it wants, it says that they are gibberish written on the back of an envelope. The SNP cannot have it both ways. It was interesting to hear Fergus Ewing describe the Cuthberts as financial wizards. The Cuthberts said that fiscal independence

“poses an essential discipline on SNP policy ... SNP policy must avoid simply being a wish list of all the desirable things money could buy.”

Well, since the beginning of January, Kenny MacAskill has wanted more money for public libraries, rates relief and the main line station at Edinburgh airport; Richard Lochhead has asked for more money for a dental school and to fight drugs; and the list goes on and on. While Jim Mather argues for fiscal responsibility, all his SNP colleagues are arguing for the kind of fiscal irresponsibility that will drive a stake through the heart of the Scottish taxpayer and tax people out of Scotland. That is the real agenda. No wonder the Tories are becoming the real Opposition in this Parliament.

## Health Protection Agency Bill

17:00

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of motion S2M-786, in the name of Malcolm Chisholm, on the Health Protection Agency Bill, which is UK legislation.

*Motion moved,*

That the Parliament endorses the principle that the Health Protection Agency should be able to carry out, in Scotland, certain devolved radiation protection functions and, subject to the prescribed statutory requirements and procedures, other devolved health protection functions as set out in the Health Protection Agency Bill; agrees that the Bill should confer powers and functions on the Scottish Ministers and make provision for various other related matters in respect of the Health Protection Agency, and agrees that the Bill should be considered by the UK Parliament.—[*Mr Tom McCabe.*]

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

## Decision Time

17:00

**The Presiding Officer (Mr George Reid):** There are five questions to be put as a result of today's business. The first question is, that amendment S2M-828.1, in the name of Nicola Sturgeon, which seeks to amend motion S2M-828, in the name of Cathy Jamieson, on modernising the court system and a new supreme court, be agreed to. Are we agreed?

**Members:** No.

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

### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Curran, Frances (West of Scotland) (SSP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 White, Ms Sandra (Glasgow) (SNP)

### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)



Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 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)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 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)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Presiding Officer:** The result of the division is: For 30, Against 75, Abstentions 0.

*Amendment disagreed to.*

**The Presiding Officer:** The second question is, that amendment S2M-828.2, in the name of Annabel Goldie, which seeks to amend motion S2M-828, in the name of Cathy Jamieson, on modernising the court system and a new supreme court, be agreed to. Are we agreed?

**Members:** No.

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

## FOR

Adam, Brian (Aberdeen North) (SNP)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Canavan, Dennis (Falkirk West) (Ind)  
 Curran, Frances (West of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 White, Ms Sandra (Glasgow) (SNP)

## AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (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)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 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)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, 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)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Presiding Officer:** The result of the division is: For 46, Against 60, Abstentions 0.

*Amendment disagreed to.*

**The Presiding Officer:** The third question is, that motion S2M-828, in the name of Cathy Jamieson, on modernising the court system and a new supreme court, be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (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) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)

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)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, 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)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Curran, Frances (West of Scotland) (SSP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

#### ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)

Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 White, Ms Sandra (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 62, Against 18, Abstentions 27.

*Motion agreed to.*

That the Parliament believes that it is a cardinal feature of a modern democratic state that the judiciary should be separated from the legislature and therefore supports the creation of a new Supreme Court believing that it will strengthen the independence of the judiciary.

**The Presiding Officer:** The fourth question is, that motion S2M-807, in the name of Andy Kerr, on the general principles of the Budget (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (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) (Ind)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 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)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)

Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, 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)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**AGAINST**

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Curran, Frances (West of Scotland) (SSP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**ABSTENTIONS**

Adam, Brian (Aberdeen North) (SNP)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)

Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 White, Ms Sandra (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 61, Against 9, Abstentions 37.

*Motion agreed to.*

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

**The Presiding Officer:** The final question is, that motion S2M-786, in the name of Malcolm Chisholm, on the Health Protection Agency Bill, which is United Kingdom legislation, be agreed to.

*Motion agreed to.*

That the Parliament endorses the principle that the Health Protection Agency should be able to carry out, in Scotland, certain devolved radiation protection functions and, subject to the prescribed statutory requirements and procedures, other devolved health protection functions as set out in the Health Protection Agency Bill; agrees that the Bill should confer powers and functions on the Scottish Ministers and make provision for various other related matters in respect of the Health Protection Agency, and agrees that the Bill should be considered by the UK Parliament.

## Private Prisons (Consultation)

**The Deputy Presiding Officer (Murray Tosh):**

The final item of business today is a members' business debate on motion S2M-793, in the name of Fiona Hyslop, on public consultation on private prisons. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament notes the concerns of many of its members and amongst the wider public about the proposals for private prisons in Scotland; notes that applications for two new prisons have now been lodged in Addiewell and Low Moss but that as yet the public have not been informed if either or both are intended to operate as private prisons, and expresses the view that the public should be entitled to know what kind of operation is being planned for their local communities as part of any consultation and decision-making process.

17:07

**Fiona Hyslop (Lothians) (SNP):** I am pleased to have secured this debate this evening. The topic raises considerable local concerns in my Lothians constituency but it also touches on national issues in the fields of justice and planning policy. I thank members from political parties throughout the chamber for signing the motion, which is clear in focusing on the public's right to know whether proposed prison developments in their communities will or will not be run as private concerns. It is an issue of openness and accountability in public policy, and it is an issue of democracy.

Politicians want the public to participate in public policy but then, as happened in this case, ride rough-shod over the basic tools that the public want as part of the process. The public want all the information that they need at the right time, and to be treated with a bit of respect.

It is not very often that I quote a Labour politician, but I would like to quote from a recent publication by Robin Cook. He says:

"It is a strange and indefinable thing, community spirit. Every politician agrees that we need more of it but none of us can artificially conjure it up."

He continues:

"Yet despite all that"

deprivation, Addiewell

"has a stronger, fiercer sense of community, pride and solidarity than you'll find in Windsor or Maidenhead."

Addiewell and West Calder are strong, vibrant communities. They deserve our respect on this issue. The west of West Lothian is often the forgotten place. It is where people want to have dumping; it is where there are plans for open-casting; and now it is where there are plans for a prison.

The proposal will involve the purchase of council-owned land, so I am quite aware that it will be referred to the Scottish ministers for a final decision. That may limit the scope of what the minister can say today, particularly in relation to objections that are purely to do with planning. Serious planning concerns arise, especially because the proposed West Lothian site is above a former shale mining work. When a refuse tip was proposed in the 1980s, concerns arose that the mine shaft would have to be sealed off and that the digging out and consolidation of old workings would be necessary and very expensive. In 1988, West Lothian District Council's planning report stated that the area should be used only for low-intensity purposes. All such planning aspects will be dealt with through the normal mechanisms.

Members might recall the many statements, debates and questions on the Executive's prison estates review, the concerns that were raised about prisons being run by the private sector, and the final acceptance by the Executive that it should give the public sector the chance to bid for one of the two prisons that are to be built.

I recognise the pressures of overcrowding and I appreciate that it is absolutely essential for the barbaric practice of slopping out to be dealt with. It should be noted that at the public meeting on prisons policy that was held in October and attended by more than 300 members of the local community, people were interested in discussing wider penal policy issues. They were concerned that, as a country, we jail more people per head of population than almost any other European country. It is interesting to note that although those people have strongly held views about local amenity issues, the environment, transport, the emergency services and house prices, the vast majority of them wanted to express the view that they are not just interested in making nimby arguments.

People are concerned about whether the prison is to be a private prison for two reasons. First, there is a moral reason. Private prisons bring a whole new meaning to the phrase "the proceeds of crime". It is not right for profits to be made as a result of the state's decision to incarcerate someone. Even if members do not agree with that proposition, do they not respect the rights of others to hold and express that view?

Secondly, there are operational concerns about private prisons. Perhaps other members will comment on the experience of Kilmarnock prison: high levels of violence and fire raising, high staff turnover, and poor conditions for staff. There are also issues to do with the effects on local amenities and local emergency services. Members should remember that we are talking about the edge of the Lothian and Borders police and fire

service area, and therefore the edge of the policing and fire service provision for that area.

Some people at the public meeting said that they do not care whether the prison is run by Martians, the private sector or the Scottish Prison Service, which is an interesting combination. However, a significant number of people care about who will run the prison and they are entitled to air their concerns. The problem is that our so-called democratic process does not give them information or respect.

The process clearly started with approaches to and from and negotiations between the Scottish Prison Service and West Lothian Council before the 2003 council elections, but the Labour council gave no indication that it would support the prison. On 23 May, weeks after the election, a paper suddenly appeared that proposed a joint site investigation at Addiewell by the SPS and the council. The council has an interest in the site not only because it owns the land but because it wanted to investigate the use of the site for waste management purposes. At the time, the council agreed to go ahead with the site investigation but said that there should be a full public consultation and that relevant issues that arose from that consultation should be taken into account in any subsequent applications for statutory or other consents. However, that has not happened.

The SPS is consulting—the consultation period ends tomorrow—but, according to the council, the applications themselves should be subject to the results of the consultation process. As the consultation that ends tomorrow is the only period during which non-design concerns may be raised, how can the council's requirements be met? The public do not even know whether the proposed prison is to be a private prison, and the results of the public consultation will not be made known.

Even before the consultation process ends, the Labour members of the council have agreed, by a majority, to pass the final decision to an unelected, unaccountable official. The decision will not be taken in the democratic forum of the council. Where exactly in the process is the public's voice about private prisons to be heard? This is a travesty of democracy. The process has been flawed in many ways and the people of West Lothian are being kept in the dark. Their democratic right to be heard has been denied, and that is why I lodged my motion for debate.

The issue of prisons is not just of national concern; whether the prison is to be private is of local concern. To all intents and purposes, the people of West Lothian are acting as the conscience of Scotland on the matter. That is why I ask the Executive to deny the current notice of proposed development and to instruct the SPS to resubmit full details of who will build and operate

the prison—of course, the Executive will have to tell the SPS which type of prison it will be. That information should form part of any new notice of proposed development. To do that would be to act in a manner that is open and accountable and in a way that treats the public with respect. If we want the public to be part of public policy, we should give them information at the right time and treat them with respect. That is why I lodged the motion.

17:15

**Bristow Muldoon (Livingston) (Lab):** Today's debate raises an important issue, but I personally feel that members' business is the wrong vehicle for this debate. Given that there is a strong concern among many members about the current shape of penal policy and whether it should favour private prisons against SPS prisons, it would be far better if the debate took place during Executive or SNP debating time, or during the debating time of any other parliamentary group, so that we could have a full debate and vote on the issue. That would be the right way to conduct such a debate.

On the issue itself, let me state clearly, as I have done on public platforms in West Lothian, that my personal position is that going down the road of private prisons is not the right way forward for our penal system. I believe that the state has a moral responsibility to deal with the incarceration of citizens who are sent to jail and to rehabilitate them, so I believe there should be a move in Executive policy. I have made such representations to both the current Minister for Justice, Cathy Jamieson, and the previous Minister for Justice, Jim Wallace. I have also had meetings with the SPS about the issue.

I recognise that there has been some movement by the Executive. When the prison estates review was first published, the original proposal was that there should be three new private prisons. The Executive recognised the Parliament's concern about that and moved its position. The current proposal is that there should be one new private prison and one new SPS-run prison. That is a step forward. I also recognise the Executive's difficulty with the cost basis of the two different types of prison, so I welcome the fact that a working group has been established within the SPS to investigate and develop a public sector model that can take us forward into the future.

Let me turn to the proposed development in West Lothian and some of the concerns about that. I disagree with Fiona Hyslop to a degree. At both the public meeting that was organised by the stop the prison campaign and the public exhibitions that were organised by the SPS, although I heard many local people object to the development, the concerns that they expressed

were not primarily about whether the prison would be private or public. Rather, people were concerned about the environmental impact and about transportation links, and they had fears about the impact on other public services. All those concerns have been quite legitimately raised and should be examined. The only people who have raised concerns with me locally about whether the prison will be public or private have been activists of other political parties—primarily the Scottish Socialist Party. Therefore, I do not think that that issue is key.

Fiona Hyslop referred to the statement that was issued by the stop the prison campaign, which has organised most of the opposition to the proposal. The statement was clear:

"The majority of villagers here don't want a prison, whether it's run by the private sector, the Scottish Prison Service or Martians."

That actually reflects the view of many of those who object to the proposed developments. It is appropriate for the council to judge the objections on the basis of whether those concerns are valid. In my view, many concerns that have been expressed so far do not hold up in planning terms. Many of them are based on fears and myths rather than being genuine concerns.

Finally, I want to mention that the SNP's position is born of opportunism. Fiona Hyslop referred to the paper that the council produced on 23 March 2003. At the council committee meeting on 3 June 2003, all four SNP councillors who were present agreed with the paper that the site should be made available to the SPS. At that time, it was known that the site could be used for either a public prison or a private prison. I know that the SNP group leader was still licking his wounds at the time—it was only a few weeks after the election. Nevertheless, the position that the SNP has now adopted is based more on opportunism than on principle.

I appeal to Fiona Hyslop and the SNP not to hide behind the public-private divide. The SNP should state clearly whether it thinks that the site would be suitable for a public prison. Fiona Hyslop said that the west of West Lothian is now regarded as a place for undesirable developments. If a prison is an undesirable development, why did Fiona Hyslop's colleague Stewart Stevenson fight so doggedly to keep Peterhead prison in his constituency? Stewart Stevenson obviously believes that there are positive as well as negative aspects to prisons. Why should that be different in West Lothian as compared to Peterhead?

17:20

**Dr Jean Turner (Strathkelvin and Bearsden) (Ind):** I am grateful for the opportunity to speak on behalf of my constituents. Low Moss prison, which

is located in my constituency, has been a temporary prison for 35 years. We must go back to the dictionary to find out what the word "temporary" really means, as Low Moss has been given a further temporary extension of 10 years.

The one sure thing is that we have more prisoners to house. I sometimes think that we are considering this issue the wrong way round. We are thinking about building more prisons, but perhaps we should examine how we deal with the people who go into prisons. Many offences are drug related. I visited a super place in east Glasgow called the new horizons project, which deals with drug addicts by maintaining them in their community and giving them many opportunities to find a new life there.

As I said, Low Moss has been granted a 10-year extension. East Dunbartonshire Council would have preferred to use the ground for something else—it is in the green belt—but there is no discussion of that and the council does not stand a chance. There are two debates: the debate with the community, which may be desperate to use the land for something else, about the fact that Low Moss is a temporary prison; and the debate about private prisons.

I do not think that many people know much about private prisons. When I started to do some research into the subject, I discovered that very little is known about them. Earlier we heard Wendy Alexander talk about whether what we are spending our money on is worth while. Very little proper research is aimed at finding out whether private prisons are beneficial in the long term—in the totality. They may be cheaper to build and run, but how many people who are in private prisons get a better service, do not repeat their crimes when they are released and therefore are not sent back to prison?

I have found only one decent piece of research that I think is worth while. It is by Patrick Bayer from Yale University and David Pozen from the University of Oxford and is entitled, "The Effectiveness of Juvenile Correctional Facilities: Public versus Private Management". Bayer and Pozen conclude:

"Relative to nonprofit and publicly operated facilities, for-profit facilities lead to a statistically significant increase in recidivism, but operate at a lower cost to the state per comparable individual released. Cost-benefit analysis implies that the short-run savings offered by for-profit facilities are reversed in the long-run due to increased recidivism rates."

It is important to spend money well. My grandmother used to say, "Buy cheap, buy dear in the end." We are not looking after our prisoners well. We do not want to increase the number of prisons.

Private prisons are big business. Those involved include companies such as Sodexo, which is in

the catering and hotel business. What could be better for such companies than to join up with businesses that have 100 per cent bed or room occupancy? In that situation, companies do not have to work very hard to make a profit. I am not sure that it is moral to make a profit from people who have to be in prison. If the state is to spend our money—taxpayers' money—it should work hard to reduce the number of prisons. It must ensure that we look after the people who go into prison better and that we provide better facilities.

The debate should just be beginning—we are always telling our people that we want more public involvement, but the debate about private prisons has not really got started.

I see that my time is almost up, Presiding Officer, so I will run quickly through some of the issues that concern me. Kilmarnock prison is the only private prison in Scotland, and staffing of prisons is an issue that concerns me. Prisons may be understaffed and wings may sometimes be left without staff cover. That is plainly dangerous. The debate should begin and should continue. I apologise for overstepping my time.

**The Deputy Presiding Officer:** I have been especially indulgent to constituency members, but from now on I ask members to stick to four minutes.

17:25

**Alex Neil (Central Scotland) (SNP):** I will, as always, stick to the time limit.

I congratulate Fiona Hyslop on securing the debate. I utterly disagree with Bristow Muldoon, who said that the subject is not appropriate for a members' business debate. It is a very appropriate subject for a members' business debate because it not only encapsulates the concerns of two constituencies in Scotland but raises the fundamental principle of whether profit and prisons go together or whether they are difficult to reconcile.

I speak in this debate because I already have a private prison in my constituency: Bowhouse in Kilmarnock. I say to those who are considering whether to set up private prisons—be it in Addiewell, Low Moss or anywhere else—that they should look at the experience of Bowhouse in Kilmarnock: it does not have a good track record. As well as the possibility of private prisons being established at Addiewell and Low Moss—or either—the possibility of a further extension of the facility at Bowhouse is under consideration.

I will make my points as quickly as I can. First, I do not believe that profitability can be reconciled with the proper running of prisons. Why is Bowhouse cheaper to run? The main reason is

that it has cut back on staffing. The ratio of staff to prisoners in Bowhouse is lamentably low. People who are recruited are young folk who are often desperate for a job and have no experience in the prison service. The latest turnover figures, which can be found in the HM prisons inspectorate for Scotland report of August last year, indicate an 18.5 per cent turnover of staff in Bowhouse prison in Kilmarnock every year. That is way above the average for the past two years. Morale among the staff is rock bottom, not least because they are among the lowest-paid prison staff in the United Kingdom.

Bowhouse prison is able to make a profit because it is run on the cheap. There is almost total reliance on technology, such as closed-circuit television cameras. When I visited Bowhouse about 18 months ago, I went to the metalwork room. One person was in charge of the room and there were 20 inmates. Obviously, in a metalwork room, the inmates have access to heavy kit and heavy equipment. There was a rotating camera, which could not see into every corner. I said to the governor that it was only a matter of time before a serious incident would take place. I regret to say that within 10 days of that visit a very serious incident took place: one prisoner assaulted another. Profits and prisons do not go together.

As for accountability, I am fed up to the back teeth—as are other members—of putting questions about Bowhouse to ministers and receiving the reply that it is not their business and that I should write to Tony Cameron, the head of the SPS. And I am fed up of the fact that when I write to Tony Cameron, he replies, “That information is private and commercially confidential, so we cannot tell you.” All that I ask for is basic, raw information that we can get on every other prison in the country. Not only is Bowhouse profitable for a small number of people and unprofitable for society, it is run like a secret society.

I say to the folk in West Lothian and Low Moss that they should oppose any proposal for a private prison at every opportunity as it is the worst thing that can happen to their communities.

17:29

**Miss Annabel Goldie (West of Scotland) (Con):** I welcome the opportunity to contribute to the debate. I have always respected Fiona Hyslop as an eloquent and articulate contributor to debate in the chamber and this evening was no exception.

I commend Fiona Hyslop, because I think that in the promotion of her argument she highlighted the dilemma that exists in relation to this debate. She has—and I accept that her conviction is sincere and well held—deep concerns about the concept

of private prison provision and she maintains that others share her concerns. I accept that she holds that view, although I do not agree with it, but the matter perhaps serves to indicate the kernel issues in a debate on the topic.

Two fundamental factors in relation to the provision of prison facilities in Scotland must be recognised by politicians. I say that not merely from my experience of the justice portfolio, but because I have visited various prisons in Scotland during the past six to eight months. First, it is perfectly obvious to me that we need more capacity, whether we think that that is good, bad, right, wrong, reprehensible or otherwise. That is the tragedy; we need more capacity now and we need to be taking the necessary action to provide it as soon as possible.

Secondly, the environment in a number of prisons that were constructed in Victorian times is oppressive, unproductive for prisoners and difficult to manage. I have visited Low Moss prison within the past few months and I urge members who have not been there to go. I maintain that members would be aghast at the conditions there. They would be astonished by staff morale and by the success the regime achieves, but they would be simply appalled by the prison's infrastructure and environment. Jean Turner referred to the background to that and, as far as I am concerned, anything that can be done to renew and refresh that facility is overdue.

When we consider the issues to which Fiona Hyslop alluded, it is important that we are clear about what we are talking about. If we are determined to identify priorities—and I have just outlined what must be the priority for politicians—we must accept that other, broader political issues should be considered and addressed at another time. I accept that Fiona Hyslop has articulated issues that are genuine for the purposes of debate, but I believe that such issues are genuine for debate, for example, as we approach local council or, for that matter, Scottish Parliament elections, when people can make their own judgment about what the different political parties offer and consider whether those parties' policies serve their aspirations and create the kind of Scottish society they need. It is dangerous to try to cloud the issue of the provision of an overdue facility with debate on more esoteric matters that might be legitimate matters for debate, but which in the germane consideration of what is needed now are no more than that.

I shall briefly consider Alex Neil's contribution to the debate. Of course, Alex Neil's antipathy to private prisons and in particular to the manifestation of that system in Kilmarnock is legendary. In defence of the Kilmarnock prison, I should say that when I visited it a couple of



months ago I found so many positive features that I was anxious to ascertain how some of those features might be replicated elsewhere in the prison service. I quote from the 2002 Scottish Prison Service estates review:

“It has been recognised by HM Chief Inspector of Prisons that Kilmarnock can deliver not only effective services, but can often be innovative. For example, this resulted in the formal recognition of twelve items of best practice in the formal inspection report (March 2001). This compared to eight at Edinburgh and four at Greenock, both of which had inspections during the same period.”

My impression of Kilmarnock prison was that the environment was beyond comparison with other prisons' estate. It was bright, modern and manageable. The prison population confirmed that they found it agreeable—in so far as it is possible to find a prison environment agreeable—and their morale seemed good. There is much to commend in the provision of private prison facilities in Scotland. Politicians urgently need to address what society needs now. In doing that, we must have strong regard to the best interests of prisoners—believe it or not—and we can do more and better for prisoners than we do just now.

**The Deputy Presiding Officer:** I apologise to Miss Goldie for the loss of the clock halfway through her speech.

17:34

**Robin Harper (Lothians) (Green):** There seem to be three elements to the argument in this evening's debate. The first is whether we should have prisons at all. The second is whether the prison should be private or run by the state. The third was raised by Dr Jean Turner and I would like to pursue it—it is whether we are pursuing the right policy in building more prisons or whether it would be far more sensible to apply the same sum of money to reducing the prison population using a whole host of methods that are well known and well tried in other countries, but which we seem to be slow in adopting.

I should declare an interest: I am a member of the Howard League for Penal Reform. Also, I am no stranger to prisons: many years ago I taught guitar in the long-stay unit in Saughton and I have visited other prisons in Scotland.

To make my argument on private finance initiative prisons, I will refer to the English experience, which appears to me to be appalling. In June 2003, a report highlighted staffing crises in seven PFI prisons in England and Wales, which account for about 5 per cent of the prison estate and 7 per cent of the prison population. The report noted the extremely high turnover of staff in those prisons, which lost on average 28 per cent of their staff in 2001-02. Rye Hill prison had the worst record: nearly 40 per cent of its staff left the prison

during the year. On average, public prisons lost just 6 per cent of staff in the same year.

What is the Scottish context? An article in *Scotland on Sunday* on 28 July 2002 stated:

“Taxpayers have unwittingly subsidised the private firm running Scotland's flagship private prison with a £700,000 handout that accounts for almost 70% of the operator's profits.”

We are chucking money into the pockets of the operators, hand over fist. The article continued:

“For the past two years, as Premier Prisons ran up profits of around £1m at Kilmarnock Prison, the Executive has been meeting the cost of staff and business rates.”

That is not a private prison; that is a state-subsidised prison that gives profits to the private sector.

We are far beyond the point at which we should have engaged in a thorough reform of the Scottish penal system. We have one of the highest incarceration rates in the European Union: the figure in September 2000 was 115 prisoners for every 100,000 members of the general population, compared with 87 per 100,000 in the Netherlands and 89 per 100,000 in France. The average daily prison population has increased threefold, from around 2,000 in 1950 to 5,869 in 2000.

The important point is that 82 per cent of prisoners have sentences of six months or less. They are minor offenders who are caught in the revolving door of offending because they have never learnt to survive in the outside world. As is done with such people in other countries, we could help them, as early as possible, not to reoffend. In fact, they should be given help not to reoffend the first time they go to prison. Dr Jean Turner will be glad to hear that, on this issue, there are plenty of examples and a lot of research to show that reoffending rates can be reduced by up to 70 per cent through relatively simple and inexpensive strategies.

17:38

**Donald Gorrie (Central Scotland) (LD):** I welcome the debate that Fiona Hyslop has launched. Our prison performance is one of the worst in Europe and the more we debate it and try to get it improved, the better.

I agree with Robin Harper that we need a review of penal policy. If we build more jails, we will fill them—life is like that. If we do not build more jails, we must get a grip on the situation. The courts will have to work better and we will need more investment in alternatives to custody, early intervention, bail hostels and that sort of measure. We are doing work on those issues—I welcome the recent opening of a centre in Glasgow for women with drug and alcohol problems, which will help to keep some women out of jail. However, we

need more and more of that sort of project. If we get a grip on the whole situation, we will not need to build new jails.

There is a lot of dispute about public versus private. I share people's concerns about private jails, but that debate to some degree masks the debate that we should be having about the prison service as a whole. As well as reviewing penal policy, we should review our prison system, both public and private. One of the many bad parts of our system is the fact that quangos and arm's-length units are totally unaccountable. There is no democratic control over the Scottish Prison Service. It is nominally responsible to the minister, but from experience of watching the situation, I know that that does not work. Nobody has any control whatsoever. It is well known that the Scottish Prison Service would like to build considerably more than two jails.

We should examine some of the things that go on in jails. Why is there so little education? There are good people involved in good educational programmes, but nobody goes to them. The number of prisoners who go into education programmes is very small. All research shows that illiteracy and innumeracy are major problems for prisoners, but we simply do nothing about it. We provide no training that equips them for jobs. They go along to workshops, as Alex Neil described, and they are occupied, but there is little relevant training that might help them to get a job in future.

We need to examine some of our shibboleths. I have spoken in favour of the STOP 2000 programme and anger management programmes, but there is no evidence to show that they do any good. We should examine what goes on in jails, why it happens, and whether it can be done better.

We could explore the idea of local democratic control. I am not suggesting that jails should be brought under the control of local councils, but instead of the well-meaning but rather toothless visiting committees, we should have much more local say in what goes on in jails. We should have a democratic element, which could address issues such as whether there should be a jail at all. There are a lot of issues to explore, and I welcome the chance to do that.

**The Deputy Presiding Officer:** I am minded to accept a motion without notice to allow a brief extension of up to five additional minutes to allow everyone on-screen to participate. It cannot be any more than that.

*Motion moved,*

That the Parliament agrees that Members' Business on 29 January 2004 be extended by up to 5 minutes.—[*Fiona Hyslop.*]

*Motion agreed to.*

**The Deputy Presiding Officer:** I am grateful to the minister for agreeing to that extension.

17:42

**Michael Matheson (Central Scotland) (SNP):** I congratulate Fiona Hyslop on securing the debate. Like Alex Neil, I feel that Bristow Muldoon's suggestion that it is inappropriate to have a members' business debate on public consultation on private prisons is entirely inappropriate in itself. I do not know where Bristow Muldoon has been, but we have had a variety of debates on the prison service. I do not know whether he has bothered to contribute to any of them, but we have had lengthy debates in the chamber and the justice committees have carried out detailed inquiries into the prison system.

**Bristow Muldoon:** I do not dispute that we are discussing an important issue—it is worthy of debate and I mentioned my concerns about private prisons in my speech—but a members' business debate can only draw issues to the attention of the Executive. It cannot change the policy of the Parliament or influence the policy of the Executive. If the SNP wants such a debate, it should use its time to that effect.

**Michael Matheson:** Bristow Muldoon might be surprised to hear that we have in the past done as he suggests. I do not know why he did not bother to contribute. Only in November we had a debate on the Justice 1 Committee's report on alternatives to custody, most of which focused on the prison service. That would have been another opportunity for Bristow Muldoon to contribute to the debate on penal reform in Scotland.

Prisons play far too central a role in our criminal justice system. Too often they are looked upon as the solution to tackling the problem of crime, whereas at times they are part of the problem. We all know that we have a prisons estate of which we are not proud. Some of it needs to be refurbished, some of it needs to be improved, and some of it should be removed completely. We expect our prison population to increase by another 16 per cent over the next 10 years—that is to happen on top of our record prison population which is, on average, larger than those of many other European countries.

As Robin Harper correctly said, 82 per cent of our prisoners are in prison for less than six months. With 50 per cent remission, they come out within three months without having had any opportunity to address their offending behaviour. Much more work has to be done to examine how we can more effectively tackle individuals' offending behaviour.

Just this week, that right-wing progressive, the Home Secretary, announced in London that he

was going to introduce weekend prisons. Periodic detention is a measure that helps to deal with offending behaviour much more effectively than just locking people up for 24 hours a day. There is also bags of evidence to demonstrate that community disposals are much more effective than prison in dealing with offending behaviour.

The minister will be aware that, after the Justice 1 Committee had produced its report on the prison estates review—the report was not very complimentary of the review—the Minister for Justice at that time gave a commitment to the Parliament. He said that two prisons had to be built and that one would be private, while the public sector would have the option of bidding against the private sector for the other, and that there would be a third option at some point in the future. Now that we are at the stage at which two planning applications for prisons are going before local authorities, I would have thought that, we should at the very least know which of those prisons is likely to be a private prison. Why does a culture of secrecy continue to surround the Scottish Prison Service and the way in which it operates?

Alex Neil highlighted the fact that any time someone asks a question about Kilmarnock prison, they are told that it is a matter for the prison service down there. Any time someone asks the Minister for Justice about the SPS, they are told that it is a matter for Tony Cameron. However, any time they ask him about such matters, he tries to tell them as little as he can. To have a culture of secrecy within a public agency such as the SPS is not acceptable, so the Executive must at some point take on some responsibility for changing that culture.

The people in West Lothian and the people in the Low Moss area have a right to know what the SPS intends to do. I hope that ministers will show some backbone by taking on the Prison Service and telling it to change by ending the culture of secrecy.

17:47

**Stewart Stevenson (Banff and Buchan) (SNP):** If members will forgive me for saying so, it is very nice to see that so many old lags of prison debates are present once again, but of course we are always prepared to welcome new inmates to the madhouse.

**Bristow Muldoon:** I ask the member to refresh Mr Matheson's recollection by confirming that I was present in the chamber for Jim Wallace's statement on the prison estates review and that I questioned the minister. I have met justice ministers to discuss the issue on a number of occasions.

**Stewart Stevenson:** I am sure that, if the member says that he was there, there is no doubt that he was there, as he is an honourable man. At that time, I wonder whether he knew as much about Addiewell as any of the rest of us.

In the past 18 months or so, I have visited five prisons, but unlike Robin Harper, I have not been giving guitar tuition. An explanation of why recidivism rates in Saughton are as high as they are might be that people want to go back to complete the excellent tuition that Robin has been giving them. I visited a private prison in Wales at Parc, which is run by Group 4, a hybrid prison in France, at Bapaume, which is about an hour north of Paris, and three prisons in Scotland—Saughton, the young offenders institution at Polmont and my local prison at Peterhead, which I visit regularly.

Among those prisons, there is a mixture of public and private provision. All those prisons—whether private, hybrid or public—contribute to their local communities, so why is it important that the local community be informed of what kind of prison is proposed at the decision-making or consultation point? I will suggest a number of reasons, beginning with the sustainability in the long term of the different models.

It is no news to any member that I am antipathetic to private prisons. They involve long-term contracts with long-term costs. For example, the occupancy rate—the loading—in our private prisons throughout the United Kingdom is locked in for 30 years. The French do things better—they have shorter contracts and they pay only for the places that are occupied. The point is that, if we are successful in reducing the prison population—a goal which I hope we all share—such contracts could be economic albatrosses around our necks. The possibility is that the prisons have to be filled because we are paying for them. One way or the other, that situation promotes prison closures.

I do not know whether that will mean closing a private prison, buying one out because closure is too expensive or closing a public prison because we have capacity in the private sector that we feel we have to use, but it will influence the long-term viability and employment prospects for communities. That is one reason why communities have a right to know.

We do not properly understand the economics of private prisons. The borrowing for Kilmarnock in the long term is running at something in excess of 8 per cent—I believe that it is 8.75 per cent—and the mezzanine finance, which was part of the construction process, was 13.75 per cent. We know that Andy Kerr does not know what he is paying for the Government's borrowing: in the previous debate, I asked him that question and he said that he did not know. It is therefore extremely difficult to work out the issues, and that is why

such information should be in the public domain. That would bring more people to the argument, inform the public debate and help us generally.

It is a bit rich of the Scottish Socialist Party to be campaigning in West Lothian. I see that they are on their holidays again; only two SSP members were here at decision time, and none is here now.

Perhaps one way we can break out of the problem is to publish all public sector contracts. The Executive would get a better deal on renewal if companies saw what they had to bid against; publication would inform public debate generally, and so doing could easily be made a condition of doing business with Government.

17:51

**The Deputy Minister for Justice (Hugh Henry):** I can confirm what ministers have already said in the Parliament about the Executive's plans for new prisons, but, as I am sure members appreciate, I cannot comment in detail on the outline planning proposals. That would be completely inappropriate, as those proposals are the subject of public consultation and others will have to make decisions about them through the normal planning process.

Our current position is the one that Jim Wallace announced on 5 September 2002, following the prison estates review: two new 700-place prisons will be built. One will be privately built and operated, as members have indicated; the other is our challenge to the management and unions within the Scottish Prison Service to bridge the gap with the private sector on costs and delivery. If they prove that they can do that—if they can compete fairly—they will get the contract, but the competition must be fair. We are giving them a fair chance; the outcome is not a given and the Prison Service must prove the case.

Regardless of who builds and runs the new prisons, they will be designed to the highest standard of specification. We will build on some of the lessons that have been learned from building and operating the most modern accommodation in the Scottish prison estate

**Stewart Stevenson:** Is the minister saying to us that he has turned his mind against separating the contracts for the building and operation of the prison? Will there always be one contract?

**Hugh Henry:** No. I am saying that the position is as Jim Wallace announced and that we will develop and unveil plans on the basis of what has been agreed. A number of considerations will be taken into account.

We have modern accommodation in the Scottish prison estate—we have Kilmarnock, as a number of members have said, but we also have new halls

at Edinburgh and Polmont—and it is important to develop such new facilities throughout the Scottish prison estate. The specification that we are considering is driven by the need to ensure secure custody, good order and appropriate levels of care; it is also driven by the need to provide the opportunities to challenge offending behaviour in an estate that is fit for purpose in the 21<sup>st</sup> century.

I will address some of the illogical fears that have been articulated that a privately operated prison is somehow riskier than a public prison. Before any potential private sector operator has any chance of being awarded the contract, it has to satisfy the Scottish Prison Service that it can meet the requirements of the specification. That common specification will also mean that the decision about private or public operation is fair and based on a level playing field for the public and private sectors.

The public sector team will need to show that it can do best in terms of timing, cost, quality and delivery. The bridging-the-gap team, which is made up of representatives of SPS management and trade unions, has already established a strong working partnership and, building on its extensive prison experience, has been preparing itself for the competition for one of the two new prisons.

Much has been said about the performance record of private prisons in general and about Kilmarnock in particular. To keep the issue in perspective, we should remember that the first few years of any new prison tend to be a settling-in time, as staff gain experience of working together and as they develop systems that best suit the local situation and the mix of prisoner population and staff. The most recent inspection report on Kilmarnock showed continuing improvement in those areas that had been indicated as requiring attention.

At the behest of ministers, the SPS is moving towards a system of contracts for managing all its prisons. Those contracts will specify the services and standards that the SPS expects from each prison, broadly reflecting the relationship that Kilmarnock prison has with the SPS. That will allow more realistic comparisons between the performances of different establishments in the public and private sectors.

The decision that two new prisons were needed was made in full awareness of plans for alternatives to custody. Everything that Cathy Jamieson has said on the matter indicates that she is fully committed not only to keeping people out of prison where possible and to preparing adequately those who are in prison for full re-engagement in society, but to taking the decisive measures that are needed to incarcerate people who deserve to be incarcerated for the sake of the

public and because of the crimes that they have committed.

We believe that the alternatives to custody could, and will, be successful in curbing the currently rising prison population. However, even if there was no debate on that, we would still need to replace old and outdated prison accommodation. Some of the accommodation in prisons in Scotland today is utterly unacceptable, as many members will know, having visited prisons. We must also at the earliest possible date end the undesirable practice of slopping out.

In a debate about prisoner management, I remind Parliament that all prisoners in Scotland remain the responsibility of the Scottish Prison Service, irrespective of whether they are located in public or private prisons. Members will appreciate that the process involved in determining the planning application means that I cannot comment in detail on either of the two applications.

**Fiona Hyslop:** I appreciate that the minister cannot comment on the planning applications. He mentions that the bridging-the-gap team is already in operation and is considering options. In the past, the Executive has said that the first prison of the two to have its planning application approved would be the privately built, privately run one. Is that still the case or are other criteria being used to judge which of the locations—Addiewell or Low Moss—should host the privately run prison and so be open to tender?

**Hugh Henry:** Nothing has changed from anything that we have said previously. Two planning applications are going through at roughly the same time. A decision will be made in due course about which one of the prisons will be private and—if the bridging-the-gap team is successful—which one will not. However, if that team is unsuccessful for any reason, that other prison might also be private.

I make it clear that the outline planning application and notices of proposed development are for two new prisons and have nothing to do with how those prisons are funded. The issues to be considered during the planning process are the same, irrespective of the funding mechanism. If and when any applications are given the go-ahead, detailed planning applications will follow. Those will be submitted to the relevant local authority. At that time, it will be clear who will be carrying out the development concerned.

I firmly believe that the actions that we are taking will help us to create a prison service that is fit for purpose and that provides decent living conditions for prisoners and decent working conditions for staff. The facilities that we will provide will give the maximum opportunity to challenge offending behaviour and will ensure that

the prison service plays its full part in helping to create a safer Scotland.

What we do and the quality of what we do is more important to us than who does it. However, I will reflect back to the Minister for Justice a number of the points that have been made. Fiona Hyslop said that this is not a nimby debate; I accept that she is not opposed to the idea of there being a prison in Addiewell or elsewhere and that her principled objection is to private finance and not to the prison itself. I will communicate those points to the minister.

*Meeting closed at 18:00.*



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