

MEETING OF THE PARLIAMENT

Thursday 15 December 2005

Session 2

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Scottish Parliament

Thursday 15 December 2005

[THE PRESIDING OFFICER *opened the meeting at 09:15*]

Family Law (Scotland) Bill: Stage 3

The Presiding Officer (Mr George Reid): Good morning. We start with stage 3 of the Family Law (Scotland) Bill. I will make the usual announcement about the procedures to be followed. First, we deal with amendments to the bill, and then we move on to the debate on the motion to pass the bill. For the first part, members should have before them the bill as amended at stage 2; the marshalled list, which contains the amendments that have been selected for debate; a supplement to the marshalled list, which contains one manuscript amendment that I have agreed may be moved during today's proceedings; and the groupings, which I have agreed.

The division bell will sound and proceedings will be suspended for five minutes before the first division this morning. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division following a debate. All other divisions will last 30 seconds.

Section 2—Void marriages

The Presiding Officer: Group 1 is on void marriages and civil partnerships. Amendment 1 is grouped with amendments 2 and 5.

The Deputy Minister for Justice (Hugh Henry): Section 2 is concerned with putting on record certain elements of the common law in Scotland. It will place on a statutory footing the existing grounds at common law under which a marriage would be void. One of the key policy objectives in putting the rules for void marriage into statute was to dispense with tacit mental reservation as a ground for nullity, because it is considered to encourage sham marriages. Persuasive arguments have been received from the Scottish Law Commission that, due to a recent court case—which was reported after stage 2 consideration of section 2—the existing section is potentially flawed under certain circumstances, so amendments 1 and 2 have been lodged to ensure that the policy aims of the section will be met. Amendment 5 replicates the change in relation to civil partnership.

I move amendment 1.

Stewart Stevenson (Banff and Buchan) (SNP): What a welcome relief it is that we are at

stage 3 at last. I will support all three of the amendments in the group. I welcome the rejection of a manuscript amendment that was submitted very late, because not selecting late amendments promotes effective debate at this stage. I would like, with your indulgence, Presiding Officer, to ask whether the minister can confirm that manuscript amendment 55's not being selected for debate will not have any material effect on the bill.

Margaret Mitchell (Central Scotland) (Con): I confirm that I will support amendment 1, which is welcome in that it will fill a gap in current law.

Hugh Henry: We do not believe that there will be any unforeseen consequences of manuscript amendment 55's not being selected. In effect, that amendment referred to something that was no longer there. At some point in the future, we will use a suitable legislative vehicle to effect the appropriate change.

I apologise to you, Presiding Officer, and to Parliament, for the lodging of that manuscript amendment. It was done without our knowledge, albeit with the best intentions, at a very late stage. Both Cathy Jamieson and I felt that it would be inappropriate for it to be debated and considered today. We felt that, given that there would essentially be no consequences of its not being agreed to, it would be better to deal with the matter at another time, rather than have it cause anxiety and confusion or create the impression of our trying to bounce Parliament into a decision.

Amendment 1 agreed to.

Amendment 2 moved—[Hugh Henry]—and agreed to.

Section 2A—Abolition of marriage by cohabitation with habit and repute

The Presiding Officer: Group 2 is on circumstances in which marriage by cohabitation with habit and repute may have effect. Amendment 6, in the name of Pauline McNeill, is the only amendment in the group.

Pauline McNeill (Glasgow Kelvin) (Lab): The doctrine of marriage by cohabitation with habit and repute was defined by the Scottish Law Commission as follows:

"If a man and a woman who are free to marry each other cohabit as husband and wife in Scotland for a considerable time and are generally regarded as being husband and wife they are presumed to have consented to be married, even if only tacitly, and, if the presumption is not rebutted, will be held to be married by cohabitation with habit and repute ... without the need for a court decree".

In practice, a court decree of declarator is sometimes necessary before a third party will accept that the requirements for this type of marriage have been met.

It has been said that this form of marriage has little to commend it and that it has in reality been a way of conferring rights on cohabitants, particularly on the death of a partner. For that reason, the Scottish Law Commission and the Law Society of Scotland argue that we should abolish the doctrine.

The doctrine was used during world wars when people never got around to marrying but, to all intents and purposes, held themselves out as married. Other people have also relied on the provision. Times have changed and it is now socially acceptable to live in forms of relationship other than marriage. Given that we are to confer new rights on cohabiting couples, perhaps it is time to move on.

Some 57 per cent of people who were surveyed thought that people living in a common-law marriage had the same rights as married couples, but that is clearly not the case. The Justice 1 Committee was keen for the Executive to make it clear to couples what type of relationship they are in and what the legal consequences are. The bill provides a good opportunity for it to do so.

Before stage 1, the Executive said that it was neutral on whether to abolish the doctrine, and sought the committee's view on whether the laws in question should be swept away. By and large, the committee was concerned only about whether any couple would be disadvantaged if the doctrine were swept away. During the stage 2 debate, the committee was advised that it would, in the case of foreign marriages, still be possible for couples to rely on the doctrine, but that later turned out not to be the case.

Other members of the committee and I were concerned that there might be disadvantage, albeit in only a few cases a year, to couples who married abroad but found out later that they were not legally married in that country; such couples would no longer be able to rely on the doctrine of marriage by cohabitation with habit and repute.

I am grateful to the Executive for the dialogue that we have had on the matter. Amendment 6 would simply retain the provision for some people. Paragraph (d) of proposed new subsection (4) of section 2A states, as a condition, that

"in consequence of the purported marriage, A and B believed themselves to be married to each other and continued in that belief until B's death;

That means that we would still use the doctrine of marriage by cohabitation with habit and repute for the purposes of such marriages, on the death of one of the partners.

We should always be cautious about sweeping away a doctrine that has existed for several hundred years, even though there is consensus in the Scottish Law Commission and the Law Society

that the provision is no longer required and that only a small number of people would be affected.

I hope that the Executive will support amendment 6 and I ask Parliament to do so, too.

I move amendment 6.

Stewart Stevenson: Like other Justice 1 Committee members, I have wrestled with the issue during our deliberations at previous stages. I concur with the view that has been expressed by the committee's convener and I will support amendment 6. To sum up the argument, when people believe that they are married and have been through a marriage ceremony elsewhere, but thereafter discover that their marriage is invalid for a technical reason, they can—if both are living—do something about it by having a civil ceremony in Scotland. However, if one partner dies, there is a real disadvantage. Amendment 6 addresses that particular situation, which applies to very few people, and protects a potentially vulnerable minority.

Margaret Mitchell: I am happy to support amendment 6. It would retain the provision in law relating to a couple who genuinely thought that they were married but who subsequently found out that that was not the case. The amendment would stop potential abuse of the status of marriage by cohabitation with habit and repute, which the Executive and the Law Society were concerned about when they first thought that it would be acceptable to do away with the provision entirely.

Hugh Henry: In response to the request from the committee in its stage 1 report, the Executive reconsidered its decision to retain marriage by cohabitation with habit and repute and lodged an amendment at stage 2 for its abolition.

I appreciate that a number of committee members have expressed concern about difficulties that might face some Scottish couples who choose to marry abroad—members have heard about that in detail from Pauline McNeill. Stewart Stevenson was right to say that changes in that regard will affect few, if any, people. However, the point has been made well by Pauline McNeill. We are happy to support amendment 6, which is designed to address the particular circumstances that caused concern for the Justice 1 Committee.

Pauline McNeill: I am pleased that the Executive will accept amendment 6. It is clear that there will no longer be a doctrine of marriage by cohabitation with habit and repute other than for this saving provision for foreign marriages, in relation to which people will still have to go to court to plead their case as to why they did not know that, when then they got married in a foreign country, they would not be legally married in Scotland.

Amendment 6 agreed to.

Section 5—Occupancy rights: dealings with third parties

The Presiding Officer: Group 3 is on occupancy rights: dealings with third parties. Amendment 7, in the name of Cathy Jamieson, is grouped with amendment 26.

Hugh Henry: Amendment 7 will make a minor technical change to the wording of section 5 of the bill, which concerns the conveyancing of a matrimonial home and protection of the occupancy rights of a non-entitled spouse.

Section 5(3)(a) of the bill will operate on section 6(3)(e) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. It will do so by reference to the word “sale” but, in fact, there are two instances of that word in paragraph (e). By specifying that we are amending the word where it first occurs, we are removing any potential doubt as to precisely which part of the 1981 act will be amended. The same problem arises in relation to the mirroring provision for civil partnerships, so an equivalent change to schedule 1 will be made by amendment 26.

I move amendment 7.

Amendment 7 agreed to.

Section 10—Divorce: reduction in separation periods

The Presiding Officer: Group 4 is on separation periods for divorce and the dissolution of civil partnerships. Amendment 35, in the name of Brian Adam, is grouped with amendments 8, 9, 27, 28 and 54. If amendment 35 is agreed to, amendment 8 will be pre-empted and, if amendment 54 is agreed to, amendment 27 will be pre-empted.

Brian Adam (Aberdeen North) (SNP): This is one of the more controversial areas of the bill. At stage 2, I lodged an amendment that was similar to amendment 8, but I would not have lodged amendment 8 had the Executive been willing to accept the compromise position that was reached by the Justice 1 Committee. In fact, the committee only narrowly failed to support the amendment that I lodged at stage 2.

The effect of amendment 8 would be to retain two years as the amount of time of separation prior to a divorce when there is consent. The reasoning behind that is that I am not in any way convinced that it is unreasonable for a couple to seek a divorce when they have failed to cohabit for a consecutive period of two years. I accept that the current stipulation of five years in situations in which there is no consent is unreasonable.

Figures have been produced that show that, when the law on divorce has been liberalised, the number of divorces has increased. The committee was anxious not to change the law in a way that would increase or decrease the number of divorces; it wanted the law to be neutral in that regard. However, the effect of the Divorce (Scotland) Act 1976 was a 21 per cent increase in the number of divorces that took place in 1980 and a 30 per cent increase in 1982. The committee might want the law not to increase the number of divorces, but I suggest that evidence from previous liberalisation in the divorce laws shows that there is likely to be a further increase in divorce.

09:30

I also understand the argument that we should try to make the process as painless as possible and that a long period in the limbo of separation can lead to greater conflict, but I am not convinced that that is necessarily the case. After all, it can take people a long time to work through difficulties in their relationships.

I accept that we cannot make people stay together and I do not think that divorce should never happen—although that is a perfectly honourable position to take. I believe that there is a place for divorce, but we should not take steps that actively encourage it. When, at stage 2, I asked the minister how the bill’s provisions would support and encourage marriage, his silence was deafening. In my view, section 10 will actively encourage more divorce.

A briefing from Couple Counselling Scotland delineates a number of the consequences that result—

Mr Jim Wallace (Orkney) (LD): Will the member give way?

Brian Adam: I am more than happy to do so.

Mr Wallace: Figures suggest that, in Finland, where the non-cohabitation period is six months, the divorce rate is 1.8 per 1,000. However, in New Zealand, where the period is two years, the rate is 2.63 per 1,000. How can the member claim that there is a correlation between the period of cohabitation and the prevalence of divorce?

Brian Adam: I beg to suggest that arguments that are based on the culture in Switzerland or New Zealand cannot necessarily be transferred to Scotland. Today, we are making significant changes to family law that successive Governments have shrunk away from implementing. I commend the Executive for having the courage to introduce the bill, but I simply feel that we should genuinely debate this matter—indeed, I lodged amendment 35 to allow us to air

the whole range of views. I respect Mr Wallace's views; I just do not agree either with them or with his analysis. Evidence shows that, when divorce laws are liberalised, divorce rates increase. I am merely reiterating the committee's view that that should not happen.

The fact is that people's circumstances change. This morning, I heard on the radio that the Government has decided to put some more financial muscle behind organisations that seek to save marriages through reconciliation. I welcome that move.

Richard Lochhead (North East Scotland) (SNP): Does Brian Adam agree that, if children are involved in relationships that break down, it is sometimes to their benefit if their parents are allowed to move on with their lives as soon as possible?

Brian Adam: Throughout the long debate on the bill, I kept hearing that the bill was about trying to help children, but there is very little focus on children and none of the proposals suggests that we should take different views in respect of whether children are or are not involved in such situations. I accept what my colleague Mr Lochhead said, but it does not automatically follow that a quick divorce is less painful, particularly for children.

I also understand the—I have to say, totally erroneous—argument that has sometimes been advanced against the terms of amendment 35 that, in cases of spousal abuse, waiting for two years could have dangerous consequences for the individual who is being abused. I draw members' attention to the fact that abuse is specifically in and of itself a ground for divorce. Under the Divorce (Scotland) Act 1976, where a marriage has broken down irretrievably, a divorce can be granted by the pursuer if one of five factual circumstances exists. In such cases, abuse is a ground for divorce in itself, so it would not have any influence in a situation in which there is consent.

I do not think that we will be able to get to a point at which things will be done and dusted within a year. If amendment 35 does not gather sufficient support to win the day, I shall urge colleagues to examine the bill as it has emerged from the Justice 1 Committee. The committee's position is reasonable and takes cognisance of the fact that many people are concerned about devaluation of marriage, which it is perceived might happen as a consequence of the change that is proposed by the Executive. I certainly do not want the arguments in favour of longer periods to go by default, just because there may have been stresses and strains in the Executive parties in delivering what they perceive to be a commitment.

I urge members to support amendment 35, which would leave the position as it is today. I believe that two years is a perfectly reasonable time and I do not accept that five years is reasonable. The Justice 1 Committee took the position that, for cases where consent is not given, three years is an appropriate time. I urge members to reject moves to introduce periods of one year and two years.

I move amendment 35.

Hugh Henry: Section 10 has, understandably, attracted more attention and debate than any other part of the Family Law (Scotland) Bill. We recognise that divorce is always a sensitive issue and that for many people it touches on their core beliefs about the sanctity of marriage and its importance as one of the principal building blocks of society. There are others who disagree, but people have strong views on the matter.

Ministers have stated many times—I am happy to do so again—that the Executive values and supports marriage. We recognise its special status and the value that it contributes to so many families in Scotland. The Executive has not, does not and will not undermine marriage, and we certainly do not do so with the proposals that we are considering today.

However, it is equally right to say that the state cannot force people to remain married. A proportion of marriages will end in divorce for whatever reasons; in those circumstances it is important, as Richard Lochhead said, to support families so that the transition is as painless as possible, particularly where children are involved. Where the conflict is protracted and bitter, children will suffer.

I want to emphasise that relationship services are an important part of the Executive's overall effort to support stable families and to give children the best possible start in life. I believe that the best way is early intervention, through counselling to help couples to save their marriages or other committed relationships, where those marriages or relationships can be saved. I accept, however, that where separation is inevitable, mediation can help to ensure that parents work together sensibly to look after the best interests of their children. Parents should not use their children as pawns in their personal war.

I acknowledge that current services can be made to work more effectively for users. Our view is that counselling and mediation services are complementary and should be linked at national and local levels. We need integrated and cohesive services.

Phil Gallie (South of Scotland) (Con): I hear what the minister says about children and I accept his arguments, but does not evidence show that

the great majority of children suffer when their parents are divorced, and does not he agree that it is better to give them the maximum opportunity to have their parents stay together?

Hugh Henry: If people want the opportunity to stay together and to work things through in their own interests and those of their children, we want that to happen. Children suffer not so much from the process of divorce as from a wide range of factors including bitterness, fighting, arguments and distress. Many children go through a protracted period of suffering because of the agonies that have been inflicted on them by their parents. The Executive wants to try to remove that suffering. We hope that adults will behave like adults and behave responsibly, instead of seeing such situations as a surrogate war in which the children can be used to inflict harm and pain on the other individual. That is disgraceful and it happens in far too many cases.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Will the minister take an intervention?

Hugh Henry: I will move on. The member can come in later if he wishes.

We believe that people should have a range of relationship services to which to turn. The strategy on the ground for those services should be aligned with local authorities' overall goals for children and families. There should be easy access points and there should be flexibility to respond to families' changing needs. However, we need action in order to get the overall framework right, which is why we are encouraging and funding the national bodies to integrate their efforts and to build the capacity of local services to deliver more effectively. We have already made available some £500,000 this year and last year to the national family bodies, in addition to the existing grant funding of some £633,000 a year.

There is a particular challenge to develop the capacity of local family support services and to provide incentives for more joined-up working. Local services are at the sharp end—they deal with the people, with the fallout and with the breakdowns. I am pleased to announce that the Executive will provide an additional £300,000 for capacity building in local family support services in 2006-07. We will consider the details of how that investment will be made, but the key message is that more money will be available next year to fund proposals by local counselling and mediation services, acting together for capacity building, infrastructure development and joint working. I hope that that will put local services in a stronger position to contribute effectively to the wider agenda on integrated services for children and families that local authorities, with their partners, should be developing at local level.

Christine Grahame (South of Scotland) (SNP): Will the minister take an intervention?

Hugh Henry: I will make one point and then let Christine Grahame in.

I acknowledge the concern that has been expressed by the Justice 1 Committee in a number of our discussions and by the national bodies and many of the local bodies, about gaps throughout Scotland. They are worried about the failure in some areas to provide adequate services.

Pauline McNeill: Will the minister take an intervention?

Hugh Henry: I will finish this point and, if the Presiding Officer allows it, I will take both interventions.

I have asked the Convention of Scottish Local Authorities for a meeting to discuss that concern. The Justice 1 Committee is equally concerned—Pauline McNeill may develop that point. I am sure that it is something that the committee may consider. We need to consider the funding that the Executive has already provided under a number of headings, and we need to ask why that is not being used to deliver adequate local services. I hope that those discussions will lead to something productive.

Christine Grahame: In my many years as a family lawyer, one of the great problems was provision of contact centres, particularly in rural areas that have greatly dispersed communities, when there are disputatious arrangements for children. There is a huge difficulty in providing neutral territory at the early stages of separation and divorce where parents can have contact with their children. I ask the minister to consider that.

The Presiding Officer: We will have a separate debate on that.

Hugh Henry: Christine Grahame's point is about local service delivery and local service provision. We are funding the national bodies but we recognise that there is a problem with local service delivery. There is concern about that—the Justice 1 Committee raised that issue on a number of occasions.

Pauline McNeill: I am sure that it is on behalf of the whole of the Justice 1 Committee that I record a whole-hearted welcome for the funding decision that has been announced this morning. The minister has said that the committee has argued hard for that, and it should be welcomed. Given that the debate is about divorce and relationships, will the minister say whether, as well as the support for families, some of the additional funding could be used to provide early intervention when there is evidence that a relationship can be saved if we intervene early?

09:45

Hugh Henry: Exactly—we want there to be local capacity building. We acknowledge the contribution of mediation, but mediation comes at the end of the process, when people are negotiating how to part. We want to focus more attention and funding on counselling and conciliation, to help people to work through their difficulties. We will discuss with national bodies and local service providers exactly how that can be done.

Divorce is a process not an event. It does not happen overnight; it happens after relationships begin to break down and after people begin to argue, to move apart and to lose contact with each other.

Brian Adam said that things could not be “done and dusted” within a year. That is right, and our proposals do not suggest that they could. We are talking about a minimum of one year’s separation before divorce can be contemplated, so there is no way that everything could be “done and dusted” within a year. Mr Adam also spoke about evidence, but he suggested that the evidence that Jim Wallace presented was not valid because the circumstances were different. I am not quite sure what Mr Adam’s evidence is.

We know that many couples will have been unhappy and will have been working to resolve their relationship for a considerable time before they make the difficult and heartbreaking decision that their marriage is over and they want to separate. That decision made, the sole ground for divorce is the irretrievable breakdown of the marriage, as established by one of five facts. At present, one of the facts is separation. When there is consent, the period of separation that courts require to establish irretrievable breakdown is two years; when there is no consent, it is five years. It is important to understand that the separation periods represent the minimum time after the couple separate and before a divorce can be applied for. Even then, divorce is not granted automatically. Regardless of the length of the separation, the court must still be convinced that the marriage has irretrievably broken down. If the court considers that there is a reasonable prospect of reconciliation between the parties, it will not grant the divorce. Contrary to what may be said, divorce is never easy.

In reforming divorce laws, we have made it clear that we do not wish to change the nature of the divorce process. We want the law to continue to underline the importance of marriage. That is why couples will still have to prove to the court that their marriage has irretrievably broken down, and it is why a court will still not grant a divorce if it considers that there is a reasonable prospect of reconciliation.

Following the recommendations of the Scottish Law Commission, we looked closely at the statutory non-cohabitation period. We accepted the commission’s proposals that the time periods should be reduced to one year when both parties consent and to two years when they do not. I accept that an element of judgment came into that. However, that is what politicians are elected to do—to judge what we think is best. We have based our decisions on the advice of the Scottish Law Commission and on the subsequent support of legal practitioners and academics in successive consultation exercises. We have not plucked the figures from thin air; we have consulted on divorce three times in the past five years. Parliament has also consulted.

The Executive’s amendments 8 and 9 seek to return section 10 to its original form. We propose time periods that, first, were recommended by the Scottish Law Commission; secondly, have been in the public domain for more than a decade; thirdly, have been fully consulted on; and fourthly, have broad support among legal practitioners. The time periods that the Justice 1 Committee agreed at stage 2 were subject to no consultation whatever. The Parliament places great emphasis on consultation as a critical part of the legislative process. I would argue that to pick arbitrary time periods for such an important and significant issue without consultation and careful deliberation would be to do a disservice to our legislative process. I am not convinced that the alternative separation periods that were agreed at stage 2—or those that are proposed today by Brian Adam—have any foundation to support them like the foundation that supports our proposals.

Finally, I want to clarify an issue that many members may have found confusing. Our amendments 27, 28 and 54 seek to ensure that whatever decision Parliament makes on the separation periods for divorce, the same periods will apply to the dissolution of civil partnerships. We are concerned that if the arrangements for divorce do not mirror those for the dissolution of civil partnerships, the bill as a whole might not be compliant with the European convention on human rights and so might be defective. I am sure that members understand the principle that is at stake. We might not need to move amendments 27, 28 and 54, but we must have a fallback that will ensure that whatever decision Parliament makes, the bill is consistent.

The Presiding Officer: This is an important debate, which is heavily subscribed. I will try to fit everyone in, but speeches should be kept to about three minutes.

Stewart Stevenson: I hope that my speech will drop short of three minutes.

At the risk of pre-empting the debate on group 12, when we will talk about support services, I take an early opportunity to welcome the movement and—more important—the money that the Executive has offered. The minister obviously saw the formidable Liz Wallace from Family Mediation Grampian in the public gallery and realised that he would not escape alive if he did not take such action.

It is worth reminding ourselves that there is a consensus to reduce the length of time that it takes to divorce—not when there is agreement, of course, but when there is not agreement. No one is seriously suggesting that we should maintain the current five-year period for obtaining divorce when there is not agreement. That puts in context the debate that we are having about the relevant periods and indicates that, as a Parliament, we are seriously engaging with the subject, rather than just making knee-jerk reactions.

That said, at stage 2, I voted to keep the period of separation for divorce when there is agreement at two years. When that proposal failed, I supported a period of 18 months. One of the threads that must run through any such debate is what value we place on marriage. I have no hesitation in saying that in relationships and in building stable families, marriage is the gold standard. People who make other choices are perfectly capable of living good, useful lives and of bringing up children who will be useful members of the community, but the safest, most secure way of achieving those ends is through the bounds of marriage.

I will support only a small reduction in the length of time that it takes to divorce when there is agreement, to 18 months. In other words, I seek to maintain the position that the Justice 1 Committee adopted at stage 2. I will do so because I value marriage. That does not mean that all members Parliament will necessarily share my view. I think that the minister concedes that although the proposed periods of two years and one year were widely consulted on—I acknowledge that—and no other periods were consulted on, what periods are chosen is a matter of judgment. It will be impossible to prove, evidentially, that any particular figure has any particular outcome. Bluntly, we ain't going to be able to do that.

I, as an individual, will support the proposal to which the committee eventually agreed at stage 2, but I am sure that colleagues will have other views.

Margaret Mitchell: I am tremendously sympathetic towards, and agree totally with the sentiment behind, amendment 35, but from the evidence that has been taken at stage 1 and stage 2, I am convinced that the two-year period is slightly too long. However, I have grave concerns

about the Executive's proposal. From the beginning of our consideration of the bill, there seems to have been an acceptance that as soon as a couple separates and files for divorce, it is inevitable that the divorce will go through, but all members probably know of situations in which although a couple has separated and divorced, the same people have gone on to remarry.

Mr Stewart Maxwell (West of Scotland) (SNP)
rose—

Margaret Mitchell: I want to move on a little.

The huge problem with debating amendment 35 is that no empirical evidence has been produced, which means that we must consider such situations when we decide whether to support an increase in the timescales. From the beginning, there has been an emphasis on mediation as opposed to reconciliation and counselling to save the marriage. I believe that when the minister continues to talk about couples being intent on divorcing, he is making the same mistake.

I applaud the fact that resources will be put into local services for early intervention to try to solve any problems as they arise. However, I plead with the minister not to take away the opportunity for a husband and wife to have a one-year period, which can be considered as the bereavement process, during which time they go through a full year of changed circumstances, and, at the end of that time, an additional six months in which to decide whether they are absolutely sure that there is no prospect of reconciliation.

There seems to be an assumption that when people divorce, it will always be acrimonious. It will not. There will be myriad complex and varied reasons why relationships break down. The 18 months and the three years would ensure that the marriage is given every possible chance to survive.

The evidence of the Faculty of Advocates was that when one of the parties is still hoping for or seeking reconciliation, the two-year period is not long enough. Therefore, it is only sensible to give the extra year that the three-year period would give.

Today the Scottish Parliament will send out an important and powerful message about how we value the institution of marriage. The one-year and two-year periods have been referred to as “quickie divorces”. That sends out the wrong message. It undermines the very important institution of marriage and I earnestly urge colleagues from all parts of the chamber to vote honestly with their consciences and not just to follow blindly any party-political line.

Pauline McNeill: This is a very personal debate for us all. Despite the press making it the most

controversial issue, I am sure that we will continue to have a mature and responsible debate.

If I thought that my decision to support a reduction in the time limits for divorce would result in more divorces, I would not support it; I would support keeping the existing law. I do not believe that short time periods on no-fault grounds will lead to more divorces. I am a Christian and a Roman Catholic and I am also a legislator, so I have thought seriously about what the country needs.

What periods of separation should parties who are married have observed before the court will grant a dissolution of a civil partnership or a divorce? Jim Wallace has already demonstrated that there are no statistics to back up the assertion that a longer separation makes any difference to divorce.

Families of all shapes and sizes, whether there is a marriage or otherwise, go through difficult periods, so the only proviso that I make—and I welcome the Executive's commitment on this—is that professional support should be available, which is why the funding package is so important. It is much more important to try to save relationships at an early stage than to try to save them at the end, when most of the couples have gone through difficult and acrimonious times.

There are not even that many statistics to back up the Executive's assertion that longer time periods lead to more difficulties for children. Our gut instinct is that they probably do, but the committee really struggled with that point.

Through the years, couples have manipulated the grounds for divorce to get quicker divorces. The headline for today's debate should not say that the Executive supports quickie divorces. In certain cases, divorces might be quicker if Parliament passes the bill, but, certainly in my view, the bill will not lead to more divorces. There are other grounds for divorce, such as adultery, unreasonable behaviour, desertion and so on, which already get a couple into court quickly. Members must know that couples can get into court in a matter of months and couples have colluded on that; they might not know that the bill will remove the bar to collusion for adultery. Previously, it was against the law to collaborate with one's partner to get a quickie divorce on the ground of adultery. By passing the bill, we will remove that bar—and rightly so.

The five-year period when one party wants to get divorced and the other does not is a bit too long for contemplation. I do not believe that it is right to hold someone to a marriage for that long who does not want to be in it. I did not support Margaret Mitchell's amendment at stage 2 because I felt that three years is also a long time.

I had concerns about the shorter period of a year for couples who consent to divorce, but given the Executive's commitment on funding for family mediation and reconciliation services, I am much happier.

We know that divorce is an emotive issue, although I am sure that members will make the right decision at the end of the day. We all know of difficult cases and we know of all the different reasons why people get divorced, but we should not make the mistake of thinking that the law can force couples to remain together.

10:00

Mrs Mary Mulligan (Linlithgow) (Lab): As members have said, divorce is a sensitive issue, and many of us will have had painful experience of family and friends going through it. Today, we need to think about divorce and give it the same careful consideration that the committee has given it. I have every confidence that the Parliament will do that.

Let us be clear: we are talking about no-fault divorce. That does not include adultery or unreasonable behaviour, including domestic abuse. Why are we trying to reduce the time period? The reason most commonly given is that it will reduce acrimony, and Mr Lochhead said that it would also reduce the acrimony for the children who get caught up in their parents' divorce. Many of us would instinctively recognise that as a problem; however, there is no proof that reducing the time period lessens the acrimony of divorce. In considering the bill, our experience was that warring couples who are determined to end their marriage acrimoniously will continue on that path regardless of the timescale for the divorce. There is no evidence to support the claims made for shortening the time period, which was one of the problems that we faced.

Where is the support for reducing the time period? The minister made something of the consultations that have taken place over a substantial period. However, of the 190 individuals and organisations that responded to the Executive's most recent consultation, 74 per cent were against reducing the time period and only 26 per cent were in favour. I accept that those figures break down into individual and professional responses, but the Parliament should take them into consideration nevertheless. I have been considering the bill for the past few months, yet it was not until last Thursday that I got an e-mail from someone who suggested that I should support the Executive's position.

What do the amendments that the committee agreed to at stage 2 say? They say that, where there is agreement, the two-year limit should be

reduced to 18 months and that, where there is no agreement, the five-year limit should be reduced to three years. The committee accepts the need to move on. There is no great difference between its position and the Executive's; the committee is perhaps a little more cautious.

The Executive has always said—and, as Pauline McNeill said, the committee has agreed—that the bill should be neutral on the number of divorces. However, experience has shown that liberalisation has led to more divorces. I heard the figures that Jim Wallace quoted this morning, but we would have to dig deeper to find out the points from which those countries started to get the full picture.

I welcome the minister's announcement that £300,000 will be given to family support services. It will be a boost, and we will discuss it in more detail later. I hope that it will cover issues such as pre-marriage advice, reconciliation services, mediation and family contact centres. The Executive and the Parliament say that they value families, but we must demonstrate that we value them by supporting them.

The findings of the consultation were far from overwhelming and there is not much difference between the Executive's position and the committee's position. I accept that the Executive perceives that there is a desire to reduce the time limits, but the data to support that are sparse. I ask the Executive to be a little more cautious in its approach to divorce and to recognise the damage that its extension might cause.

Fergus Ewing: The debates at stages 1 and 2 and, so far, at stage 3 have been conducted with a great deal of sensitivity by all those who have taken part. We hold different views on the topic but those views are not a matter of party politics. My view has always been that the people of Scotland do not expect us to vote on such issues on party lines. Our decisions are entirely a matter of judgment.

I disagree strongly with the minister's suggestion that there is relevance in the fact that there has not been a consultation on the proposed reduction. As Mary Mulligan pointed out, the overwhelming majority of people who took the trouble to respond to the consultation and express their views were opposed to a reduction in the period of non-cohabitation that is required to found the irretrievable breakdown of marriage.

John Swinburne (Central Scotland) (SSCUP): Will the member take an intervention?

Fergus Ewing: I am sorry. I have very little time.

I am no expert, but my experience as a family lawyer for a couple of decades is that, when someone comes to seek advice about a divorce,

they face a momentous decision, which is not taken without a great deal of thought and pain. It involves a difficult discussion about private and deeply personal matters. It takes a long time for most people to undergo that process. To me, the idea that there is a host of people who desperately want a divorce after the first month but are frustrated by the law is wrong.

As I said at stage 1, I accept that five years is probably too long. Some people are probably waiting after two or three years, having gone through the torment and turmoil of the process, so the committee's compromise of three years is a good one. Some regard should be had to the fact that a committee of the Parliament has examined the issues in much more detail than we have. I am not saying that its view should be binding, but it should be persuasive to those who are thinking carefully about which way to vote.

I fundamentally disagree with the suggestion that changing the law can remove acrimony. For what it is worth, my experience is that there is a tendency for some litigants—often male litigants, I have to say—to use the grounds of adultery and unreasonable behaviour to create an embarrassment. They use it as a lever or as a weapon to try to get a better financial deal. That is wholly wrong, but if the minister really wanted to remove that possibility he would have removed the grounds of adultery and unreasonable behaviour so that they could not be used as a weapon. He has not done that, so he cannot argue that acrimony will be removed. To argue that the law on the page will remove acrimony from such situations is a misconception of the role of law.

I have never argued that if divorce is made easier and quicker, that will fundamentally undermine the institution of marriage. To argue that would be to overstate the position. However, if we change the law to allow divorce after as short a time as one year, we will be chipping away at the foundation columns of marriage, which is the bedrock and foundation of society and which offers the best possible chance for the upbringing of children. The majority opinion in the Parliament may be in favour of the shorter periods, but I do not think that there is such a majority in the nation that we represent.

Mr Wallace: I echo Fergus Ewing's views on the sensitivity with which the debate is being carried out. I certainly respect the views of members who propose different time periods, which I know are sincerely held. However, I disagree with Fergus Ewing and Margaret Mitchell in that I do not agree that the proposal in some way undermines marriage.

People do not just wake up one morning and say, "We're going to separate." Separation comes after a period, after which it is proposed that a

year must elapse before parties who agree can start a divorce action in court. The welcome additional support that the minister announced for agencies that are engaged in counselling and reconciliation underlines a commitment to marriage. The briefings that we have had from Couple Counselling Scotland and Scottish Marriage Care show that when efforts are made to reconcile—the process is not easy—the success rate can be very high. Early intervention is important, as is the opportunity that the debate and the bill offer to flag up the availability of those services. I hope that the additional money will make them available in parts of Scotland in which they have not necessarily been provided.

I quoted figures to Brian Adam that, like other figures, show that there is no correlation between the length of the separation before divorce and the divorce rate. That is not scientific but, as Hugh Henry said, the periods in amendments 8 and 9 in Cathy Jamieson's name—which were in the bill originally—are based on recommendations in a Scottish Law Commission report from as long ago as 1989 and on several white papers that were published before and after devolution. Amendment 8 specifies one year of separation before divorce proceedings with consent can start. Hugh Henry was right to say that, under the Divorce (Scotland) Act 1976, a court will still have to be satisfied that there is no prospect of a reconciliation between the parties before it grants divorce.

As a practising advocate many years ago, I dealt with divorce cases when proceedings were held in the Court of Session. I know that divorce on whatever ground is a serious matter for people and is not something that they enter into lightly. People take no particular relish in ending a marriage. Many tragic stories and sadness lay behind the cases that I dealt with.

If the separation period were longer, people might use another ground of divorce, such as unreasonable behaviour, to try to obtain a so-called quickie divorce. We want to avoid that situation. It is right and proper for the unreasonable behaviour ground of divorce to be available for serious domestic abuse. However, showing unreasonable behaviour has often meant that a small incident is blown out of proportion to be used as a lever. Children can be drawn into such situations and used as pawns. Even if they are not, they have to live through the acrimony that develops between the divorcing spouses. By reducing the periods as proposed in Cathy Jamieson's amendments, we can help to remove some of that acrimony. We will never eliminate it, but we can mitigate it. That is why I strongly support the amendments that Hugh Henry proposed.

Murdo Fraser (Mid Scotland and Fife) (Con): I will oppose Executive amendments 8 and 9. The

starting point for the debate and for all of us is that marriage is good for society—all the objective evidence points in that direction. As a Parliament, we should be clear and unapologetic about that in the face of political correctness. As a responsible Parliament, we should be nervous of taking any measures that might weaken or undermine marriage, even if to do so is not the bill's intention.

I have listened to the arguments on both sides and I simply do not know whether the measures, if passed, would undermine marriage and make divorce rates rise or fall. There is not enough evidence on either side to support either contention. However, we know that many couples change their minds about divorce during the process. I fear that the Executive's proposed reductions in separation periods go too far and so should be opposed. An important principle in a liberal democracy is that, before we change the law, a persuasive case should be made and compelling reasons should be given for the change. I do not think that the reasons for the proposed changes are compelling or that the evidence supports them.

I listened with interest to Brian Adam and I have much sympathy for his position, but it is fair to say that he takes an absolutist view—he believes that the current position should not be changed. Similarly, the Executive takes an absolutist view in the opposite direction—it believes that we should go right down to a one-year separation period with consent.

If there is a lack of clear evidence, it is entirely wrong to take an absolutist view in either direction. There is a case for reducing the periods, but not for reducing them by as much as the Executive proposes. If there is a lack of available evidence, it is surely sensible and responsible not to take an absolutist position; rather, a sensible middle road should be taken, which is what the bill currently takes.

10:15

We should remember that the Justice 1 Committee properly and thoroughly discussed the matters that we are considering. That committee reached the view that there is insufficient social research to support the reduction in periods to one and two years respectively, but the Executive is seeking to overturn that committee's decision. Not for the first time, we must ask what the point is of having a committee system in the Parliament. A strong committee system was supposed to be one of the Parliament's jewels. It was supposed to allow parties to consider difficult issues and the evidence on a cross-party basis. However, again an attempt is being made to ride roughshod over a committee's opinions. I cannot believe that doing so is in the Parliament's best interests.

I have one more point to make. It is a long-standing convention in Parliaments that Governments do not whip on matters of conscience. The Conservatives will have a free vote today and I think that the Scottish nationalists will have a free vote. We should allow people to make their own judgments on matters of conscience. If it is true that the Executive is whipping on the matter that we are discussing—and I believe that it is true—that is deeply regrettable and will do the reputation of the Parliament no good at all. I did not campaign to have a Scottish Parliament; indeed, I campaigned against it. I accept that I lost that argument, but I cannot believe that those who campaigned to have a Scottish Parliament would have wanted to see a day on which the Executive is prepared to whip members on an issue of conscience that is important to people throughout the country. If members vote according to their conscience and against the amendments, the Parliament's stature will be enhanced in the eyes of the Scottish people.

Patrick Harvie (Glasgow) (Green): All of us can welcome what Hugh Henry said about increasing the resources that are available to support services—we all see the value of doing so. However, getting the resources right is one thing; overcoming the cultural barriers and attitudes in society that prevent people from taking up those services is another thing. We must get things right and ensure that the quality of all the services in question is first class. We must all sign up to that agenda because the earlier that people access those services—whether because they want to stay together and reduce their problems in doing so, or because they have decided that they want to separate but recognise that maintaining a parental relationship is in the best interests of the children—the better.

However, there is a fundamental disagreement that is perhaps not being fully articulated. One position is that marriage is simply better than anything else. Perhaps Stewart Stevenson came closest to that position when he said:

“marriage is the gold standard.”

The position is that marriage is a sacred act between man and woman and that civil, state arrangements should fall in line behind that. I fundamentally disagree with that standpoint. However, the policy position of those who support it should be the same as that of the Executive and the one that I will support when we press our buttons. People should be given the support that they need to make their relationships work when they are working. We should not say that we will increase the value of marriage, civil partnerships or any other relationships by locking people into relationships when they have gone wrong.

Margaret Mitchell: Will the member take an intervention?

Patrick Harvie: I am sorry, but all members have a short time to speak.

We should say that we will increase the value of those relationships in society by giving people time off work to spend with their kids and by giving them good homes to live in and good schools to go to. We should achieve that objective by getting our other jobs right in the chamber, rather than by locking people into relationships for a little bit longer when their marriage has failed and they have separated and decided to divorce. That seems to me to be utterly wrong. If members want to increase the value of commitment, love and relationships in our society, we should recognise that those come in many shapes and forms and we should support them on their own terms, rather than locking people into legal arrangements once their relationships have broken down.

The Greens are free to vote with their consciences on every vote; we do not have a disciplinary whip. However, I am happy to say that we will all support the Executive's position, because we believe in it.

The Presiding Officer: I said that this is an important debate, and I want the issue to be thoroughly debated. I therefore propose to use my discretion, under rule 9.8.4A(c) of standing orders, to extend the debate until 10.45. That should just about get everyone in.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I fully support amendments 8 and 9, in the name of Cathy Jamieson. I am concerned that the debate appears to be turning into a discussion of whether we value marriage and whether the bill undermines marriage. To my mind, we are required to ensure that the legislation exists to move the process on when a marriage is over.

No one enters into a marriage with the thought that it will end in divorce. I ask members who have not decided how they will vote to consider the impact of further delay on people who have decided that their marriage is over. I ask members also to consider that it is not always children aged under 16 who are involved; young adults are sometimes more affected than children are when their parents make the monumental decision to divorce. A young adult's education can be severely affected, as can their ability to deal with everyday issues and their own relationships.

I ask members to consider all those issues. I have certainly done so, and I have a wee bit of experience. My daughter was 17 when her father and I decided that divorce was our only option, after 25 years of marriage. Divorce is not an issue that any individual takes lightly. I ask members to

consider not just their religious beliefs but the impact that our decision will have on society. We have an opportunity to help our children and young people to establish themselves in stable, new relationships or in relationships of their own. It would be remiss of us to pass up that opportunity by asking people who have already decided to divorce to stay together or to delay the final process that would allow everyone—not just the two people who make the decision, but everyone in their family, including their extended family—to move on in their lives.

Mr Kenny MacAskill (Lothians) (SNP): I speak as an individual, not as an SNP front-bench spokesman, as this is a matter on which the party is not whipped. I do not agree with my colleagues who have spoken before me; I concur with the views of the minister and—as we are talking about legal issues—I adopt the points that were made by Jim Wallace.

Divorce is always a tragedy. Even if it is justified on moral or legal grounds, it is a tragedy for the individuals concerned, as there will always have been something that made them enter into a relationship. It also has a significant effect on others, especially dependent children and, as Margaret Jamieson has said, non-dependent children in due course. We must try to enable people to separate and go onwards, bearing in mind the good things that brought them into the relationship but allowing matters to proceed with as little acrimony as possible.

In an ideal world, we would make it harder to enter into marriage, rather than harder to get out, but we do not live in that society. We need to counsel people and provide not just mediation but aspects of reconciliation. Like others, I welcome the minister's earlier pronouncements. As Jim Wallace mentioned, this is a cultural matter, which is why there are differences between societies—it is not so much the legislation as the counselling that is important. We need to get across to the people of Scotland that marriage is a significant and serious matter that should not be entered into lightly or discarded on a whim or a fancy—not that I believe that people do that. However, there is a growing perception that marriage is only a minor impediment that people can get out of. Obligations and responsibilities go with marriage, but if it breaks down for whatever reason, our society will not be served well by a law that seeks to impose unnecessary impediments.

It would take the wisdom of Solomon to work out whether the separation period should be 12 months, 18 months or two years. It is difficult to find any tangible evidence for those periods. However, I concur with the minister because the matter has been considered by the Scottish Law Commission, which has not made its

recommendation on a whim or a fancy. It has given significant consideration to the matter by looking to those people on the front line who are regularly involved with divorce and separation, such as the judiciary, the shrieval bench and the Law Society of Scotland.

It might be that in due course we will seek to change the separation period again. At present, however, we need to bring our legislative process into the 21st century, we need to make changes, and we should have some trust in the Law Commission. We are not making it more difficult to get out of marriage, but we should simply remind the people of Scotland that marriage is to be valued—whether as a gold standard or whatever else—that it carries with it obligations and responsibilities and that the law is made to recognise that and to mediate.

Mike Pringle (Edinburgh South) (LD): When I got married 35 years ago, it was accepted that everybody got married. Luckily, I have a happy relationship and I am still married. However, society has changed and we have to change with it.

Murdo Fraser talked about whether the vote on this group was a whipping or a conscience issue. If we were discussing divorce alone, it would be a conscience issue and I would probably vote differently from some other people. Divorce is the conscience issue and not whether the separation period should be a year, 18 months or two years. As Kenny MacAskill mentioned, members of the Scottish Law Commission—better people than I—have looked at the length of the separation period. The Executive eventually said that setting the period at between one and two years was the right way forward. It is unfortunate that I was not present for the relevant part of the stage 2 debate; if I had been, I would have asked what the difference is between one year and 18 months. I think that somebody has climbed on the bandwagon and decided to change the period for the sake of change.

As Fergus Ewing said, when he was a solicitor people did not come to him 10 minutes after they had separated; it took them months. When representatives of Couple Counselling Scotland came to give evidence, they said that people speak to them and decide to get divorced only after many months in some cases and years in others. Therefore, once people have come to the decision to divorce, which they do not take lightly, surely we should be able to say to them, "Okay, if you've made the decision, we should now make the separation period easier."

I think that one year is the right length. People have jumped on a bandwagon of change for the sake of change, but extending the period to 18 months would be arbitrary. I support the

Executive's aim to reduce the period from two years to one year because that is the right thing to do.

10:30

The Presiding Officer: If John Swinburne can restrict his comments to two minutes, there will also be two minutes for Maureen Macmillan.

John Swinburne: It will not take me two minutes to put across my thoughts. I believe in the sanctity of marriage and am glad to say that I have been married for 52 happy years. Margaret Jamieson touched on the most important topic in today's discussion—the children. We are great at publishing consultations, but how do children reply to a consultation? Kenny MacAskill spoke about the wisdom of Solomon. It will take more than the wisdom of Solomon to get the correct answer on this issue. The question is whether children are damaged more by a short divorce or by a long divorce. In this case, I am inclined to come down in favour of the Executive.

Maureen Macmillan (Highlands and Islands) (Lab): I cannot quite match John Swinburne's record in marriage, but I have been married for 40 years. A good marriage and a happy family life are above price. I have been very fortunate, but some women have not been as fortunate as I have been. In last week's debate on domestic violence, Malcolm Chisholm spoke about having met a woman who had suffered the violence of an abusive husband for 40 years, which is almost unimaginable suffering.

What options for divorce are open to a woman who has been bullied and humiliated for the whole of her married life, has left her husband and is afraid of facing him again? I want to talk not about divorce with consent, but about divorce where there is no consent. There is not a church in this country that would not agree that divorce is acceptable to ensure the safety of one partner in a marriage. If a woman's husband says that he will contest the divorce in order to seek to continue to control her, she may be afraid to petition for divorce on the ground of unreasonable behaviour, in case she has to face him in court—just as a rape victim would fear her rapist. We should remember that the vulnerable witness legislation does not apply to civil cases.

A woman may be unwilling, for the sake of her wider family, to make public what went on in the marriage. That is one reason why I do not support the amendment that was agreed to at stage 2 and that proposes a separation period of three years, rather than two, for a contested divorce. I want abused women whose husbands will not let them go to be able to divorce in the least traumatic way possible. Three years is too long to wait to be free of such a relationship.

There is also a financial consideration that no member has mentioned. Women who are entitled to a proportion of their husband's pension have their share frozen when the separation takes place, but the husband's share continues to increase in value, so that the longer the divorce takes to be finalised, the greater is the financial imbalance between the wife's and the husband's shares.

I have set out two reasons why I support amendment 9, which would restore the original provision for a two-year separation period in cases of contested divorce, rather than a three-year period. As a corollary to that, uncontested divorces must be allowed to take place a year after separation. Very few couples reconcile after separation—by then, it is too late. Conciliation needs to take place before separation. I was very pleased to hear the Executive's announcement today of support for conciliation services within marriage and other relationships. Back benchers have been pressing the minister on the issue for a while and I am glad that he has come through.

The Presiding Officer: We can just squeeze in two minutes of Christine Grahame, if it is only two minutes.

Christine Grahame: You make that sound terribly exciting, Presiding Officer.

As I have said before, I practised as a family lawyer for 12 years. In my unfortunate experience, only one couple reconciled. The duty of a solicitor is to reconcile—it is not to rubber-stamp divorces. Divorces are always painful, personal and individual. However, the reality of life is that, when one party has decided that a marriage is at an end, it is at an end. I welcome the Executive's amendments, which I will support.

It is proposed that there should be a minimum separation period of one year in cases of uncontested divorce, but consent can be withdrawn at any time. If that happens, people will have to wait two years to divorce. There are also fault divorces. The problem has been with the five-year separation period that is currently required in cases of contested divorce. Over all my years as a family lawyer, my experience was that, the longer a divorce took, the more bitter disputes over children and property became and the messier the situation became. One partner may have moved on to a new partner and may have another family.

Margaret Mitchell mentioned the Faculty of Advocates, but these days it handles very few divorces. It handles only those divorces that involve complex, perhaps international, law, severe difficulties with children or vast numbers of complex property rights. It does not really deal with—I hate to call them this—the run-of-the-mill divorces that many of us have been through. Like

Margaret Mitchell, I divorced after 25 years of marriage. [*Interruption.*] I am sorry—I meant to say Margaret Jamieson. I assure members that divorce was not a step taken lightly, either in my experience or in that of the clients who came over my doorstep.

I welcome the position that has been adopted. I would add that no sheriff will grant a divorce of consent if they are not satisfied as to the welfare of the children. That is an important point to remember.

Hugh Henry: Murdo Fraser spoke about the primacy of committee decisions on this matter. Could that be a member of the same Conservative group that regularly votes against committee decisions when they come back to the chamber? He suggested that we should take the decision that was made at stage 2 as being the line that should be held and said that it would not do anything for the reputation of the Parliament if we ignored that. If we followed that argument to its logical conclusion, we would not bother with any votes at stage 3 at all. This is about Parliament coming to an informed decision and, on the basis of the discussion that we have had today, I believe that the decision that we will take will be an informed one. We have had a very good, measured debate from all sides.

I recognise the difficulties that many members face when contemplating the issue. John Swinburne made a valid point about how we can hear the views of children on this subject. That might be one of the matters that Scotland's commissioner for children and young people should consider when establishing what children think on a range of issues. Divorce, in common with all aspects of family law, is a sensitive issue. I recognise the range of views that exist. I emphasise yet again that our reform of family law is not intended to devalue the importance of marriage; it intends to reflect the changing shape of our society and to protect the interests of children.

I come from a tradition in which divorce is not recognised. When I grew up, I did not know anyone who had divorced and there was no one to whom I was related who was divorced. It was just not something that featured in our lives. Today, it is entirely different. The question for us, as legislators, is this: do we legislate for what we believe in, personally, individually or religiously, or do we legislate for Scotland as we find it? Do we legislate in the best interests of people, irrespective of what we individually think about the decisions that they choose to make in whatever way, shape or form? That is what we as legislators need the courage to do to reflect the best interests of Scotland and the rights of people, wherever they are in Scotland and whatever they believe. I

believe that it is also right to put children at the centre of our reform. We are confident that our approach strikes the right balance.

We want relationships to work and we recognise the special place that marriage holds for so many people in our society. That is why we will increase our support to those who help to resolve problems in relationships. I say this to those who believe so strongly in the value of marriage: if someone has decided that there is no longer any point in making a relationship work, if that person then meets someone else and wants to move on to a new relationship, and if that person believes fundamentally in the value of marriage, are we seriously saying that we will prevent them from marrying again and that we will force them to continue living with the same person? That would seem to fly in the face of everything that people argue if they believe in marriage. We should let people move on and live their lives to the fullest. Let us put some of the problems of the past behind us.

If two people are intent on divorcing, we believe that it is necessary for that to happen with the minimum possible bitterness and acrimony. Far be it from me to agree with Fergus Ewing on anything, but if I gave the impression that we believed that our proposals would remove acrimony, I apologise—they will not. They are about trying to reduce it and minimise it. We want that parting of the ways to take into account the best interests of the children, not the personal anger and animosity of the adults. Our proposals are based on long-held values that reflect the central role of children in family life. The amendments are based on the principle that is central to everything that we stand for as a country and as a society: the best interests of children.

The Presiding Officer: The final speech is from Brian Adam. You have until 10.45 exactly, Mr Adam.

Brian Adam: We do not have any proposals before us to abolish divorce or to extend the period of time following separation prior to divorce. Various speakers, such as Patrick Harvie, suggested that the proposals would lock people in for longer, but there are no such proposals. Others—I cannot remember who—suggested that there would be further delay but, again, there are no such proposals before us today.

There is a recognition that society has moved on since 1976. Sadly, we are having the debate against a background of little evidence, whether from Jim Wallace or from me, about the implications for the number of divorces. There is no evidence about whether the changes to separation periods will reduce—or otherwise affect—acrimony or about the impact on children. Sadly, that is the background that we have before us.

The Scottish Law Commission might well have come up with a set of proposals. Westminster has ignored the issue, although it was sitting waiting to be acted on. It has taken the Executive almost seven years to get to this point. I do not criticise the Executive for that, because the issue is contentious. I accept that there is a range of views, which are not necessarily as well informed as many of us would like, given the lack of evidence. It comes down to a judgment call.

On one side are those who parade the evidence of the Scottish Law Commission and the practitioners, but the great majority of those who took part in the most recent consultation did not agree with the commission's proposals.

It was suggested at some point—perhaps by Mr Wallace, who I think did the same at stage 2—that there could be an increase in the number of applications for divorce on the ground of unreasonable behaviour, but there is no evidence for that. If there were lots of concerns about a five-year separation period where there is no consent and a two-year separation period where there is consent being too long, surely there would have been a great increase in the number of applications for divorce on the ground of unreasonable behaviour or on the other grounds. There is no evidence for such an increase. Although we have had a challenging and, at times, heated debate about that, it seems that on the basis of the actions that they are taking there is not the groundswell of support from the public for the proposed changes that the proposers of the change to two years without consent and one year with consent would have us believe.

I do not take an absolutist position, as Mr Fraser suggested that I do. I am willing to change and recognise that five years is too long. An absolutist position would be to oppose divorce, which I do not. I believe that the choice is up to us all as individuals. Regardless of whether this is a conscience issue, there are a range of views in all our parties, with the possible exception of the Greens, who have said that they have all arrived at the same conclusion independently. It would have enhanced the debate if we had reflected those views by having a free vote on the issue. I do not think that whether the issue is one of conscience is particularly important.

I thank the Executive for lodging amendments 27, 28 and 54, which I failed to lodge. I commend amendments 35, 27, 28 and 54 and urge members to vote against amendments 8 and 9.

The Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As this is the first division of the day, there will be a five-minute suspension before we vote.

10:45

Meeting suspended.

10:50

On resuming—

The Presiding Officer: We will now proceed with the division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Mather, Jim (Highlands and Islands) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)

Jackson, Dr Sylvia (Stirling) (Lab)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLetchie, David (Edinburgh Pentlands) (Con)
 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) (Ind)
 Morgan, Alasdair (South of Scotland) (SNP)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Etrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Gallie, Phil (South of Scotland) (Con)

The Presiding Officer: The result of the division is: For 13, Against 111, Abstentions 1.

Amendment 35 disagreed to.

Amendment 8 moved—[Hugh Henry].

The Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)

McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Morgan, Alasdair (South of Scotland) (SNP)
 Muldoon, Bristow (Livingston) (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)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Cunningham, Roseanna (Perth) (SNP)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 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)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 91, Against 34, Abstentions 0.

Amendment 8 agreed to.

Amendment 9 moved—[Hugh Henry].

The Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)

McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Muldoon, Bristow (Livingston) (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)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
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 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Ewing, Mrs Margaret (Moray) (SNP)

The Presiding Officer: The result of the division is: For 93, Against 31, Abstentions 1.

Amendment 9 agreed to.

The Presiding Officer: Trish Marwick will now chair group 5. [*Laughter.*] Surprise, surprise—Trish Godman will chair group 5.

The Deputy Presiding Officer (Trish Godman): That was a Freudian slip.

Section 13A—Postponement of decree of divorce where religious impediment to remarry exists

The Deputy Presiding Officer: Group 5 concerns the postponement of a decree of divorce where a religious impediment to remarry exists. Amendment 36, in the name of Stewart Stevenson, is grouped with amendments 37, 38 and 10.

Stewart Stevenson: I hope that the minister will address the substance of amendment 36, which is a relatively technical, probing amendment. It seeks to remove the need to introduce additional secondary legislation describing the religions that might be affected by these provisions by using the list that has already been produced in secondary legislation made under the Marriage (Scotland) Act 1977. I understand that there may be some difficulties with my amendment on ECHR grounds, but it would be useful to confirm why it is necessary to have additional secondary legislation to cover the provisions of section 13A. That is what amendment 36 and consequential amendments 37 and 38 are about.

I will refer briefly to Mike Rumbles's proposal to delete section 13A entirely, but I will retain my main remarks for my closing comments at the end of the debate on this group, because I know that other members will develop lines of argument as to why section 13A is important. It is a matter that considerably taxed the committee. It is difficult and sensitive, and I hope that in our discussion now we will treat the matter with the appropriate care and attention.

I think that the argument against section 13A is misplaced and stems from a misunderstanding based on a secularist view that we are somehow interfering in religious matters. On the contrary, we are supporting people who are in religious marriages, and that is the important thing to bear in mind. Section 13A is in the bill to address inequality issues that exist in some circumstances and to protect the rights of women in some circumstances where the existence of a religious marriage can give the man some power to frustrate the decisions of the civil court in relation

to a divorce. Other members will develop the point and I will return to the issue when I sum up on the group.

I move amendment 36.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Section 13A was inserted into the bill at stage 2. It is there at the specific request of the Jewish community. It allows the court to postpone the grant of a divorce until it is satisfied that the religious divorce has been sorted out.

The committee took evidence on the matter for the stage 1 report, which was debated and approved earlier this year. The committee's conclusion, highlighted in bold in paragraph 70 of its report, was:

"The Committee also wishes to state that there are strong arguments that, as a matter of principle, the law should not conflate civil and religious divorces."

Hang on a minute. What happened in committee at stage 2? Suddenly there is a whole new section—section 13A—which does just that. The bill that the Executive introduced now includes section 13A, which gives the court the power, if it thinks it reasonable and just to do so, to block a civil divorce by postponement, with no time limit, until the religious divorce is sorted.

In my view, that is wrong. For all the best reasons, the advocates of section 13A have introduced it to tackle injustices within the Jewish community. I do not criticise Stewart Stevenson or Ken Macintosh, or anyone else who supports section 13A. Their motives, I believe, are absolutely honourable. What is not recognised, however, is the danger inherent in section 13A of conflating church and state in divorce proceedings. It is a danger that the committee warned us about in its stage 1 report. What is that danger? It is simple enough. Once we start legislating in civil law to accommodate the religious beliefs or practices of one faith community, how long will it be before other faith groups ask us to legislate for them? If we do not restore the Executive's original position, I believe that we run the real danger of opening up a Pandora's box.

Pauline McNeill: I should say a word about why the committee changed its view. I am sure that Ken Macintosh will speak at length on the matter, but the Jewish community apologised to the committee because it did not make it clear in its evidence for our stage 1 report what the specific problem was and how it could be fixed. What Mike Rumbles is saying is absolutely right and he should not think for a minute that members who voted for section 13A took that decision lightly. I voted for it because I believed—

The Deputy Presiding Officer: Ms McNeill, is this an intervention or a speech?

Pauline McNeill: I believed that there was no other way to resolve the problem, and we did not feel that section 13A was as dangerous as Mike Rumbles suggests. I just thought that I should clear that up.

11:00

Mike Rumbles: In fact, the Jewish community suggested other ways of resolving the problem, but we can perhaps talk about that another time. There are good reasons why we should always separate church and state in our laws.

Mr Wallace: Will Mr Rumbles give way?

Mike Rumbles: I have just given way. I want to make progress.

To argue that that separation does not matter in this case, or indeed to argue that we already conflate civil and religious marriage, is to miss the point entirely. In marriage, the law allows recognised ministers of religion to act for the state. That is entirely different from allowing an individual in the civil court to ask for a postponement of their divorce on religious grounds. The issue is clear-cut. Heaven knows why, without taking further evidence—

Stewart Stevenson: Will the member take an intervention?

Mike Rumbles: Mr Stevenson has already had two bites at the cherry.

The majority of Justice 1 Committee members changed their minds about what they said in the stage 1 report and agreed the amendment at stage 2. As Marlyn Glen, a member of the committee, said at the stage 2 meeting:

"At the time, the committee decided that it was a mistake to conflate the two laws and that it would be much better to leave them apart. ... The committee talks about evidence a lot and about why we should not move forward without it. However, we do not have the evidence from the English changes to consider properly before making what will be a fundamental change to our laws."—[*Official Report, Justice 1 Committee*, 2 November 2005; c 2227.]

I could not agree more. This is not a good way to make law. Earlier in the debate, on the issue of separation periods, Hugh Henry said on behalf of the Executive that there had been no consultation and no careful consideration of the committee's move to periods of 18 months and three years respectively. We have the same situation here. Hugh Henry should be using the arguments that he used previously, in the Executive response today. The proposal represents a fundamental change to our law. The committee reversed its view between stage 1 and stage 2. Why, when no new evidence was taken, did it do that? This is not the right way to legislate. There has been little, if any, scrutiny of the proposal. I urge members to

reflect on the bigger picture, to restore the bill to its original position and to remove section 13A.

Mr Kenneth Macintosh (Eastwood) (Lab): I refer Mr Rumbles to comments that I made in the Justice 1 Committee at stage 2 about the fact that much of the discussion on this matter has gone on outwith the bounds of the committee. That is unfortunate, but that is what happened. There was a great deal of discussion on that point. I recognise that some members still have anxieties about section 13A, but I believe that those anxieties are misplaced. I hope that I can offer some reassurance. The concerns, as I understand them and as Mike Rumbles has just outlined them, centre on three points: first, the principle that we should not confuse or conflate religious and civil law; secondly, that we should not introduce an unlimited delay to divorce because of religious beliefs; and thirdly, that we should not give one group—religious or not—special treatment. The bill does none of those things.

We are not amending, interfering, confusing, conflating or muddling civil and religious law; we are simply recognising religious divorce in exactly the way that we already recognise religious marriage. In fact, the wording used in section 13A is an exact copy of that used in the Marriage (Scotland) Act 1977. Section 13A does not prevent one partner from granting the other a divorce; quite the reverse. It merely builds into the formal civil process the ability for the sheriff to grant a delay, not an indefinite postponement. It treats the existence of a religious impediment to remarriage in exactly the same way as property or custody of children: as an issue that can create acrimony and upset and that needs to be resolved.

Although section 13A would in practice be used by divorcing Jewish couples who find themselves in the difficult position of not being able to remarry, the bill applies equally to any religious body as prescribed in the 1977 marriage regulations. Although Pauline McNeill said that I would speak at length on this issue, I will not repeat the many arguments in favour of section 13A that were discussed in some detail at stage 2, other than to highlight that section 13A was overwhelmingly agreed to by Justice 1 Committee members; it has the support of all the main party leaders, if not officially of the parties themselves; and it is a proposal that has been actively pursued by the Jewish community, with my support, since at least 1999.

Members should not think that section 13A is unimportant just because few people will be affected by it. Surely no one here believes that a man should be able to exercise control over his former partner after the two have separated. That is what happens in a few cases at the moment, and it will continue to happen if we do not retain the section.

This is about allowing Scottish families going through a divorce to reach a fair and just settlement just like any other Scottish families. I urge members to reject amendment 10.

Margaret Mitchell: I will not support amendment 36, in the name of Stewart Stevenson, which I do not think is necessary; nor will I support amendment 10, in the name of Mike Rumbles. Mike asks why the Justice 1 Committee changed its view after stage 1. There was not enough time to discuss the issue at stage 1, but various meetings were held after that and, as a result, the issue was properly considered at stage 2. I am content that section 13A will not open a Pandora's box and will not lead to unnecessary delays, because of religious considerations, in the granting of divorce. Section 13A will allow us to flush out a situation in which one party can deliberately use the terms and conditions necessary for the recognition of a religious divorce to delay the granting of a civil divorce.

Mike Rumbles mentioned conflation. It seems only common sense to me that, if both religious and civil aspects are considered when people marry, the same aspects should be considered when they divorce.

Mr Wallace: I wish to make three points, mostly to endorse what Ken Macintosh said. First, the fact that extensive evidence was not taken should not blind us to the fact that this issue has been widely aired. When, as Minister for Justice, I introduced one of the white papers on family law, I remember Ken Macintosh raising this issue in the chamber. It has been widely debated, and a very good debate took place in the Justice 1 Committee.

Secondly, on conflation, Mike Rumbles cannot really get away with the idea that when the Marriage (Scotland) Act 2002 allows a pastor, a rabbi or another religious person to act on behalf of the state, that is not conflation. I cannot think of any example that represents conflation more than having a religious person acting on behalf of the state. If Mike Rumbles were consistent, he would have lodged amendments to this bill in order to remove the religious parts of the Marriage (Scotland) Act 2002.

Thirdly, if we are talking about principles—and Mike Rumbles is always keen to do so—I would say that in a liberal democracy a fundamental principle is that the Parliament should take measures to safeguard the vulnerable and the weak. We have heard that there are situations—albeit very few—in which Jewish law can be used to overturn a decision of the civil courts on access or financial arrangements. I believe that that is an abuse of power and it is proper for this Parliament to tackle such abuse when it has the means to do so.

Donald Gorrie (Central Scotland) (LD): Jim Wallace has just made some of the points that I wanted to. Section 13A, introduced by Ken Macintosh, does not confuse church and state; we are keeping them apart.

It is our duty to legislate for the real world—a phrase that occurs in lots of cliché-ridden speeches, no doubt including mine. In the real world, some Jews are able to misuse Jewish religious law to ignore the will of this Parliament during a couple's divorce. As Ken Macintosh has said, we are talking about power being exerted by a man over a woman for what I believe are base motives. In the real world, we have to legislate for such situations, and section 13A is a reasonable way of doing so. The sheriff will take account of the section and, in the end, the divorce will go through as intended. If we remove section 13A, as amendment 10 seeks to do, we might prevent a woman from ever remarrying. It is a civil matter and section 13A is sensible. I strongly support Ken Macintosh's ideas on this, as I have done in the past.

The Minister for Justice (Cathy Jamieson): Many of the arguments have been eloquently made, so I will try to keep my speech brief. As Hugh Henry outlined clearly earlier this morning, an overarching aim of the bill is to ensure that, when marriages break down, acrimony can be reduced for all concerned, especially the children. We are obviously concerned about situations in which marriages have broken down completely, but the parties remain unable to make new lives for themselves. That is far from ideal and we have heard about the distressing consequences that can arise.

Section 13A was introduced at stage 2 as a result of an amendment that Ken Macintosh lodged in direct response to concerns that the Jewish community had raised. Jim Wallace has told us the history of the situation and how far back it stretches. We are well aware of those concerns and we believe that section 13A will provide a useful and practical solution. I put on record my thanks to the Justice 1 Committee for its deliberations on the matter.

Jeremy Purvis (Tweeddale, Etrick and Lauderdale) (LD): As the bill stands, it will not make it an offence for a Jewish man to deny his wife the get, but if a Jewish man denied his wife the get for financial purposes, for example, would that not be an offence of extortion?

Cathy Jamieson: I am sure that we could have an extensive debate about what that set of circumstances would constitute, but we must take a decision on the amendments that are in front of us. Amendment 10 seeks to remove section 13A from the bill, but I do not believe that, as an Executive, we should support an amendment that

would deny members of the Jewish community recourse to a useful and valuable remedy that is designed to combat the inequalities that can arise in such cases. As a result of what the committee agreed at stage 2, we have an opportunity to deal with the issue here and now.

I understand what Stewart Stevenson is trying to do with his amendments—they are designed to remove from section 13A the power to prescribe to which religious bodies the section applies; instead, the existing provisions in the Marriage (Scotland) Act 1977 would be relied on to define which religions were relevant for the purposes of the section. Although that approach may at first glance seem appealing, it would have further, more wide-reaching ramifications—Stewart Stevenson is nodding his head, so he has probably realised that. Amendments 36 to 38 would turn a provision that was designed to address the specific and discrete concerns of the Jewish community into one that would apply to the vast majority of religious bodies that have an authorised celebrant. I am sure that that was not Stewart Stevenson's initial intention.

I hope that we are able to find a resolution that deals with the specific issues that face the Jewish community, but does not have wider ramifications than were originally intended. In those circumstances, I invite Stewart Stevenson to consider withdrawing amendment 36 and not moving amendments 37 and 38.

The Deputy Presiding Officer: I give Mr Stevenson half a minute to indicate whether he intends to press or to withdraw amendment 36.

Stewart Stevenson: I say to Jeremy Purvis that the situation is complicated. In Jewish law, if coercion is involved in the provision of a get, it is invalid. That is why we cannot do what he suggests.

I have three points to make. We as parliamentarians should not interfere in the profession and practice of faith, but we should work with all people of all faiths in Scotland and the wider world and we should support people of faith when they require it. This is precisely such an occasion.

I have listened to what the minister has said about my amendments and I seek the Parliament's consent to withdraw amendment 36.

Amendment 36, by agreement, withdrawn.

Amendments 37 and 38 not moved.

Amendment 10 moved—[Mike Rumbles].

The Deputy Presiding Officer: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
MacDonald, Margo (Lothians) (Ind)
Martin, Campbell (West of Scotland) (Ind)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (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)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
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)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
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)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Glen, Marlyn (North East Scotland) (Lab)

The Deputy Presiding Officer: The result of the division is: For 7, Against 108, Abstentions 1.

Amendment 10 disagreed to.

After section 13A

11:15

The Deputy Presiding Officer: Group 6 is on the breakdown of communication between partners and the effect of that on children. Amendment 39, in the name of Margaret Mitchell, is grouped with amendment 52.

Margaret Mitchell: Amendment 39 is a probing amendment that focuses on situations in which there has been a breakdown in communication between spouses that has resulted in one or both parties indulging in hostile or obstructive behaviour to the detriment of any children of the marriage. The amendment seeks to concentrate both parents' minds on the needs of the children as opposed to any grievance that might be obscuring their ability to see the potential damage to children resulting from such behaviour.

The emphasis is therefore on trying to achieve a voluntary agreement as a result of which both spouses, despite the fact that they might be divorcing or divorced, will have quality parenting time and will remain united in being involved in their children's upbringing and future. Amendment 39 has at its heart the interests of the child and proposes that prior to the bill coming into force, there would be a campaign to cover those issues and promote the benefits of the excellent provisions contained in the parenting agreement and the grandparents charter, which are firmly focused on achieving agreements and arrangements for contact that are in the children's interests.

Amendment 52 is consequential to amendment 39.

I move amendment 39.

Stewart Stevenson: I welcome the Tories' commitment to spending public money. If we are going to do so, I suggest that it would be better if we simply increased the budget that Hugh Henry has announced for family mediation contact centres and conciliation.

Cathy Jamieson: I appreciate the sentiment that has prompted amendment 39, and I recognise that Margaret Mitchell said that it is a probing amendment. I hope that I will be able to give her the reassurances that will persuade her not to press the amendment. I do not believe that the provision should be on the face of the bill.

Amendment 39 suggests that a new provision would be required in statute so that we could take an information campaign to the public. I am sure that Margaret Mitchell understands that we already have the power to provide advice and information on any policy matter within our devolved competence.

We have heard a lot this morning from those who have experience as family law practitioners. Although I do not share that experience, I spent a considerable amount of my professional life working as an advocate for children whose circumstances, in some cases, had been brought about by that very breakdown—of communication and of the relationship between partners—that has caused so much concern to members. For the

children in the middle of those situations it can be a living nightmare to watch their parents battle over several years and to see that battle, rather than their interests, become their parents' focus. That has informed all the work that we have tried to do with this legislation.

As has been mentioned, we have been working on a parenting agreement for Scotland and on a charter for grandchildren. They are designed to help those families where there is a separation—and particularly the children in those families. The parenting agreement aims to encourage parents at or around the painful point of separation to agree on the arrangements for the future care and welfare of their children and to put that at the centre of their considerations. It also seeks to persuade parents of the importance of putting aside their differences and not allowing them to cause problems for their children. That would include information on the negative effects that a breakdown in communications between the parties could have on the children of a relationship. The grandchildren's charter also aims at highlighting the role that the wider family can play in supporting children, especially at the point of family separation. In doing that, it focuses on the effect that a breakdown in communication—not just between partners but also within the wider family—can have on children.

Those two documents, which have been generally welcomed, were drawn up with the involvement of people who have experience of the circumstances that we are discussing today. The Executive believes that they will provide parents and families—and children—with useful and practical tools to help them through difficult times. We intend to launch an information and communication campaign to raise awareness of family law, to inform people about the non-legislative options that are available to them, and to detail the many organisations that can offer support and advice at difficult times.

I hope that, with those assurances, Margaret Mitchell will not feel it necessary to press her amendment.

Margaret Mitchell: I will press my amendment. I welcome everything that the minister said, but the amendment is designed to tackle entrenched attitudes. It is designed to tackle situations in which there is no co-operation and in which either contact orders are not being enforced, or there are huge difficulties in enforcing them.

We agree that the parenting agreement and the grandchildren's charter are excellent documents. However, my amendment would give them more prominence and would, I hope, encourage a difference in attitudes.

Fergus Ewing: Have the Tories costed this commitment?

Margaret Mitchell: I would look to the money coming from the same pool as money for mediation and counselling services. It would be on the same basis as the successful campaigns to tackle domestic violence and drink-driving. For those reasons, I believe it to be an important and worthwhile step that the Parliament could take to promote the grandchildren's charter and the parenting agreement. Similar campaigns have made drink-driving substantially unacceptable and have highlighted issues of domestic abuse.

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Curran, Frances (West of Scotland) (SSP)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Mitchell, Margaret (Central Scotland) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 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)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 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)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 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)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 10, Against 95, Abstentions 8.

Amendment 39 disagreed to.

The Deputy Presiding Officer: I propose to invoke rule 9.8.4A to allow the debates on groups 7 and 8 to take place. The debate on group 8 must conclude by 11.38.

After section 15

The Deputy Presiding Officer: Group 7 is on special destinations. Amendment 11, in the name of the minister, is grouped with amendments 29 and 30.

Cathy Jamieson: The amendments originate from proposals by the Scottish Law Commission. They rectify an existing problem relating to the division of matrimonial property when a couple has divorced or when a marriage has been annulled.

It is common practice for spouses to take the title to their home in joint names, with the house passing to the survivor in the event of the death of one of the spouses. If, however, the couple divorces or the marriage is annulled, the provision for the house to pass to the surviving spouse must be revoked. In such situations, the solicitor who conveys the property to one of the spouses after the divorce will evacuate the destination when they convey the property to the person who will remain in the family home.

However, the Law Society of Scotland and others have pointed out cases in which that did not happen and the continued effect of a survivorship destination after divorce gave rise to substantial injustice. For example, if, on divorce, a husband transfers his half share of the matrimonial home to his former wife and she subsequently dies, her half share—if nothing has been done about the special destination—will pass to her former husband even though all parties intended her to be the sole owner of the house after divorce.

Amendment 11 rectifies that problem for married couples by ensuring that divorce or annulment has the effect of revoking any special destination. Amendment 29 replicates that for civil partners. Amendment 30 protects the Keeper of the Registers of Scotland from a claim by the deceased ex-spouse's executors, as the keeper cannot rectify the land register against a third party. Amendment 30 also applies to civil partners.

I move amendment 11.

David McLetchie (Edinburgh Pentlands) (Con): I rise not to bury the Scottish Executive, as is my wont, but to praise it for lodging at this late stage an amendment that will remedy a serious injustice that was suffered by one of my constituents. The minister is aware of the case to which I refer.

To put it briefly, on the death of my constituent's husband, whose will bequeathed to her the whole of their matrimonial home, a half share in the property passed, by virtue of a survivorship destination in the title, to her late husband's ex-wife, notwithstanding the fact that the ex-wife's half share in the property was bought out by the husband as part of their divorce settlement. In other words, notwithstanding the divorce, the survivorship provision in the title deed carried the husband's original half share in the property to his former wife. The situation could and should have been resolved at the time but, regrettably, it was not. That meant that my constituent, on the death of her husband, was forced to sell the house and split the proceeds with her late husband's ex-wife. She had no legal redress in respect of the situation in which she found herself.

As the minister indicated, my constituent's case is not unique; others have fallen foul of the same quirk in the law. Amendments 11 and 29 will ensure that that does not happen again, because they provide that such destinations are automatically revoked on divorce, annulment or the dissolution of a civil partnership. My constituent has campaigned for that change to the law, although she knows that it will not have retrospective effect and that it will not remedy the injustice that she suffered.

The change was first recommended by the Scottish Law Commission in its report on the law of succession, which was published in 1990. I have lobbied ministers on the matter and the change has the support of the Law Society of Scotland. I congratulate the ministerial team and thank it for taking the matter on board and including the provision in the bill. I urge members to support amendments 11, 29 and 30.

Pauline McNeill: I support the amendments, which make good sense. The Justice 1 Committee did not have a chance to consider the matter at stages 1 or 2. Given that the proposed change is a recommendation from the Scottish Law Commission, it would have been helpful to have had a chance to consider it a bit sooner. Today is the first time that I have heard the arguments. I have no difficulty with what I heard, so I will support the amendments, but, as a precaution, I ask the minister to assure me that, if any issues arise, there will be a further opportunity to consider the matter, particularly if we are to examine the law on wills and succession.

Christine Grahame: I, too, welcome the amendments. I share Pauline McNeill's concern about the lodging of substantial new amendments at stage 3. Nevertheless, the amendments have arrived and they are welcome. They remedy an injustice that is a consequence of people not realising what will happen on divorce—or,

sometimes, unfortunately, of a solicitor's negligence, if they have not looked carefully at all the documents. The amendments are welcome because they will ensure that the true intentions of the deceased are reflected.

11:30

Cathy Jamieson: I acknowledge on the record the work that David McLetchie has done. He wrote to the Executive about the matter; other members have dealt with similar cases.

I reassure Pauline McNeill that we will keep the matter under review. I recognise that the committee did not have the opportunity to examine the amendments in detail but, having considered all the facts of the case, I thought it better to resolve an injustice now, while we have the opportunity. We will of course keep the matter under review when considering any future legislation on wills and succession.

Amendment 11 agreed to.

After section 15A

The Deputy Presiding Officer: Group 8 is on payments towards the maintenance of children. Amendment 40, in the name of Phil Gallie, is the only amendment in the group. I ask Mr Gallie to be brief.

Phil Gallie (South of Scotland) (Con): I will be as brief as I can be.

Amendment 40 deals with an issue that constituents have raised with me many times over the years. When parents are absent for whatever reason, children are often best looked after by those who are closest to them, such as grandparents, brothers, aunts or uncles. Local authority social work departments throughout the country generally accept that. In many cases, parents can make provision for such care without the involvement of social workers or anyone else. On that basis, things can move along nicely.

However, when a situation develops in which grandparents take care of children, they do so late in life, when their incomes do not match their responsibility to look after the children. The shortfall in support for the children means that both grandparents and children can suffer considerably.

I apologise to Pauline McNeill for injecting the issue at a late stage and for not giving the committee the opportunity to debate it, but I felt that the bill, which I welcome, gave me the opportunity to raise the matter.

I have contacted the Executive about such payments. When Euan Robson was the Deputy Minister for Education and Young People, he was

extremely helpful. He emphasised that he felt that local authorities operated the existing legislation in different ways. They can choose whether to give a grant for the maintenance of children in such circumstances. Some authorities take a blanket approach and do not consider giving any support—they simply say no. That is wrong.

My amendment would place on local authorities a duty to make an offer. It would not set a level of offer; that would be left to local authorities' discretion. However, the amendment would remove a local authority's ability to ignore the Children Act 1975 and the Scottish Executive's guidance notes.

I hope that the Parliament will go along with me on the amendment. As far as I can see, it would have a more or less neutral effect on local authority budgets, given that benefits could result from saving fostering costs.

I move amendment 40.

Margaret Mitchell: I support the amendment, which would ensure that the financial contribution that grandparents and sometimes other relatives make in some circumstances was recognised.

Cathy Jamieson: I understand why Phil Gallie lodged the amendment and I have some sympathy with his arguments, particularly in relation to grandparents and other family members who take on the care of children. I am sure that he will appreciate that looking after children has a particular meaning in legislation.

Under existing legislation, local authorities have the discretion to pay allowances to such relatives when children are formally in their care and when relatives have stepped in before children have become looked after by local authorities. The legislation gives local authorities the flexibility to decide on types and scales of payment to foster carers according to local child care needs and circumstances. I recognise that Phil Gallie and other members have had constituency cases when that has caused some difficulty.

On the face of it, an element of compulsion on local authorities might seem an attractive proposition. However, as Phil Gallie recognises, the Executive is currently considering fostering allowances. Moreover, the Social Work Inspection Agency has commissioned research on looked-after children. That research will cover a study by Professor Jane Aldgate on kinship care, which is among the subjects that we are discussing. It is right and proper that ministers should consider that report and thereafter reach a view on the action that is required. In addition, the recent consultation exercise on the Executive's proposals to reform adoption indicated widespread support for a national system of fostering allowances.

As a result, we believe that kinship care would be better dealt with in another bill. The Executive is still considering responses on fostering allowances. I ask Phil Gallie to accept the arguments on why his proposal should not be included in the Family Law (Scotland) Bill and to accept that amendment 40 would not necessarily have the effect that he wishes it to have. I ask him to seek to withdraw amendment 40.

Phil Gallie: I saw the bill as an opportunity, but I hear what the minister says and am encouraged by it. If the Executive is prepared to address the issue in another bill that will be introduced not too far in the future, it would be irresponsible of me to press amendment 40. Given the minister's assurance, I therefore seek members' agreement to withdraw it.

Amendment 40, by agreement, withdrawn.

The Deputy Presiding Officer: I must now suspend the meeting until 11.40 am.

11:36

Meeting suspended.

11:40

On resuming—

Question Time

SCOTTISH EXECUTIVE

General Questions

Schools (Co-operative Principles)

1. Bill Butler (Glasgow Anniesland) (Lab): To ask the Scottish Executive what action is being taken to promote the teaching of co-operative principles in schools. (S2O-8475)

The Minister for Education and Young People (Peter Peacock): The Executive's determined to succeed team is working with the Co-operative Education Trust Scotland on the development of a comprehensive co-operative enterprise in education project in schools.

Bill Butler: I welcome the minister's encouraging response. Does he agree that there is more to enterprise than individual entrepreneurship? Does he recognise the need to encourage enterprise education in which more emphasis is given to the co-operative model of common ownership and which teaches young people not only about the benefits that enterprise can bring them as individuals, but about the benefits that can accrue to their local community and the wider world?

Peter Peacock: I support the principle behind what Bill Butler says. He is quite right that there is more to enterprise than individual entrepreneurship, although we want to see all sorts of enterprising activity in our schools. A lot is going on in that regard, some of which I mentioned in my first answer. In addition, 10 schools are active in the young co-operatives pilot scheme and 30 schools have co-operative businesses. On Monday, I visited a school in which young people are organising a series of enterprise projects and, a couple of weeks ago, I visited a school in which there was a similar range of activity. Schools now undertake a range of initiatives and our focus on citizenship education is adding to young people's belief in the importance of co-operation in a general sense as well as in an enterprising sense.

NHS Western Isles

2. Rob Gibson (Highlands and Islands) (SNP): To ask the Scottish Executive what conclusions have been reached by NHS Scotland about concerns raised at public meetings in Stornoway on 30 November and 1 December 2005 in respect of the financial and clinical governance of NHS Western Isles. (S2O-8426)

The Minister for Health and Community Care (Mr Andy Kerr): I conducted the annual review of NHS Western Isles in public in Stornoway on 12 September. At that time, the board's chairman gave me his personal assurances in relation to action to restore financial balance as quickly as possible and to maintain safe, high-quality and sustainable services for Western Isles residents. It is now for the board to deliver on the assurances that were given to me and for everyone to work together in the best interests of patient care in the Western Isles.

Rob Gibson: I wonder whether the minister understands what is behind the widespread public disquiet and fears about the future of NHS Western Isles. Does he recognise the underlying staff concern that the chairman and chief executive are not the appropriate officers to deal with the 90-page dossier that was put together by the Institute of Healthcare Management, as that would place those gentlemen, Messrs Currie and Manson, in the role of judge and jury? Will he help the people of the Western Isles to achieve a breakthrough by setting up an external inquiry to restore staff harmony and a common purpose in the delivery of high-quality health services based in the Western Isles?

Mr Kerr: Judging by your ill-informed and ill-advised comments, we are much more in touch with the issue than you are. Moreover, you have come somewhat belatedly to the matter. I have been focusing on the issue for a number of months, unlike you, who have been focusing on it for a matter of weeks. I will take the side of patients and not any interests—vested or otherwise—on the board. Your misplaced comments inappropriately seek to bolster one side of the debate. I advise you very strongly to take cognisance of other voices in the Western Isles in relation to these matters, including some very senior councillors who have written to their colleagues about the conduct of those meetings. Are you aware that, although members of the health board were invited by the organisers to attend those meetings, they were unable to do so?

Phil Gallie (South of Scotland) (Con): On a point of order, Presiding Officer. Surely the minister should know by now that “you” means the Presiding Officer. He has used the terms “you” and “your” throughout his answer. Surely it is time that the minister recognised the procedures of the Parliament.

Mr Kerr: With respect, Presiding Officer, the comment was directed at me around the issue raised by the member about my role and his and my knowledge of the matter.

Mr Alasdair Morrison (Western Isles) (Lab): During a recent visit to the Western Isles, the minister saw for himself the first-class care that is

experienced by patients in the islands. However, he will be aware of the concerns of some members of staff about their continued employment. Will he reassure me and my constituents that any redesign of services will not result in a diminution of services or job losses?

Mr Kerr: That has been a continuing concern, but the board has made its view clear. As recently as 15 December, the hospital manager pledged that there would be no staff redundancies and no effect on the quality of care. We are focusing on the wrong place for this debate. NHS Western Isles recently got renal dialysis facilities, it has retained and improved maternity services and it has an efficiently run hospital with redesign under way. Moreover, radiography services and telemedicine have improved and joint working with the local authority is going well, as is the dental practice that I visited. Therefore, I suggest to Alasdair Morrison that the services not only are safe and secure, but are being developed positively for patients.

Mr Jamie McGrigor (Highlands and Islands) (Con): It has been reported that NHS Western Isles failed to report costs accurately and made late adjustments to its accounts. In that light, what will be done to strengthen financial management in NHS Western Isles? Will the minister reassure the public that the health board will not go down the same path as NHS Argyll and Clyde, which, as we know, lost £80 million of public money?

Mr Kerr: I can reassure the member through you, Presiding Officer, that I do not equate those two boards when it comes to financial and mismanagement issues. In the Western Isles, financial systems are now in place to support financial recovery. The board officials will meet the Health Department either today or tomorrow to discuss the financial recovery plans. I am absolutely certain that the board will continue to deliver high-quality services and that the Health Department will support it in doing so. I am confident about the future outlook for NHS Western Isles.

Green-belt Land

3. Donald Gorrie (Central Scotland) (LD): To ask the Scottish Executive what action it is taking to monitor the amount of green-belt land being rezoned for housing in new structure plans. (S2O-8459)

The Minister for Communities (Malcolm Chisholm): Structure plans do not allocate sites for development. The allocation of specific sites for development is a matter for local plans. The Scottish Executive does not actively monitor the amount of green-belt land that is allocated for housing in local plans.

Donald Gorrie: Does the minister accept that it would be helpful to have more factual information when he prepares the bill to improve the planning system? It would help to know the extent of the invasion of the green belt, which concerns many people, so that he could decide what sort of inducements should be offered to councils to make more use of brown-field sites or to jump over the green belt and develop in the communities beyond it. Some factual information would also be a helpful start in considering when some intrusion into the green belt should be allowed.

Malcolm Chisholm: In general, the amount of green-belt land has increased in most relevant places over the past 20 years, with the big exception of Aberdeen. We take the green belt seriously, which is why we issued a draft Scottish planning policy on it in the summer. We have received 170 responses, which we will look at carefully before we issue the final SPP. The SPP aims to strengthen and enhance the role of the green belt and to encourage greater stability to increase its effectiveness. That will improve the quality of life for local people and manage land carefully to guide growth of our settlements.

There should continue to be a strong presumption against development in the green belt. Where it is considered necessary, the proposed release of green-belt land should be developed as part of a long-term strategy in the development plan. In that way, local people can engage closely with the process at an early stage in view of our proposals for involvement in development planning.

Robin Harper (Lothians) (Green): Has the minister consulted the Minister for Education and Young People on the impact of the roll-out of the public-private partnership schools programme, which will result in the loss of green amenity space as well as sports fields?

Malcolm Chisholm: That matter is being looked at in the context of specific planning applications. As I said in my previous answer, we take the green belt seriously. The new SPP will ensure that a long-term view is taken of the green belt and that local people are involved in decisions at an early stage.

Racial Discrimination (Public Sector Agencies)

4. Pauline McNeill (Glasgow Kelvin) (Lab): To ask the Scottish Executive what lessons public sector agencies can learn from recent cases of racial discrimination upheld by the Court of Session. (S20-8494)

The Minister for Communities (Malcolm Chisholm): Although significant advances have been made in the past few years to tackle race discrimination, those cases provide a stark

reminder to all employers, not just those in the public sector, of the need to ensure that they are not unlawfully discriminating. The statutory duty on the public sector to eliminate race discrimination and to promote race equality came into force shortly after those cases were brought and is designed to prevent discrimination from happening before it occurs.

Pauline McNeill: The minister will be aware that the two cases to which I referred are the first cases in which the burden of proof has shifted to the employer, which must show that it has race equality procedures in place. The cases happen to have been in the public sector, but they could have been in the private sector. Does he agree that more work needs to be done in both sectors to remind all employers of their responsibilities in respect of race equality? Crucially, does he agree that the Executive should work with employers, the trade unions and the Commission for Racial Equality to get better outcomes?

Malcolm Chisholm: I agree absolutely with Pauline McNeill. In our recent review of race equality work, we produced a series of recommendations to drive up public sector performance on race equality. The new public sector duty will help in that regard and is actively monitored by the Commission for Racial Equality. As Pauline McNeill reminds us, the private sector also has responsibilities. We recently set up a group to examine the issue of race equality and employment. The first meeting of the group will take place soon and both Allan Wilson and I will attend it. We are determined to drive forward action in the private sector, as well as in the public sector.

Ms Sandra White (Glasgow) (SNP): Does the minister agree that, despite the obligations that the Executive has placed on public bodies, especially local authorities, and the promises that have been made, the recent racial discrimination rulings strengthen the case for having statutory inspection bodies monitor and audit fully the duty to promote racial equality? Will he give a commitment to that today, to ensure that public bodies adhere to equality legislation?

Malcolm Chisholm: There is already a statutory body that monitors the public sector duty—the Commission for Racial Equality. I am sure that Sandra White agrees that it will be actively involved in ensuring that the duty is enforced. There are no grounds for complacency. The cases that we are discussing arose a few years ago, before the public sector duty was introduced, but we know that there is still a great deal to do.

Schools (Truancy)

5. Mr Frank McAveety (Glasgow Shettleston) (Lab): To ask the Scottish Executive what plans it

has for further reducing truancy rates in schools. (S2O-8490)

The Minister for Education and Young People (Peter Peacock): The Scottish Executive is committed to working in partnership with education authorities and schools to ensure good practice in all aspects of monitoring attendance and absence and tackling truancy.

Mr McAveety: I recognise the obvious importance of the enforcement role of attendance officers, but the critical issue is why so many young people feel disengaged from schools in the first place. In my constituency, there have been improvements year on year, largely because of innovation in the curriculum choice that is available to students, to ensure that they can feel comfortable attending school. What is the Executive's attitude towards encouraging further flexibility in the curriculum review, so that we make education as relevant as possible to young people in Scotland?

Peter Peacock: Frank McAveety is right to highlight the importance of making learning for young people, especially boys in secondary 1 and 2, much more engaging and relevant, with more pace and challenge, in order to capture their interest in education so that they turn up for school because they want to be in school and are finding it productive. Sadly, too many young people are disengaging at that point in school life. That is why we are taking forward our reforms of the curriculum. We are trying to ensure that there is more choice and flexibility and that schools have more freedom to determine what they teach, when they teach it, what exams young people sit and when they sit those exams. We are creating more space in our education system for drama, sport, arts activity and the like. That is part of a process of improving education and, therefore, reducing truancy.

Fiona Hyslop (Lothians) (SNP): Does the minister acknowledge that truancy rates remain persistently high? Does he recognise the success of the automatic messaging service that many schools have introduced? What plans does he have to roll that out? In seeking to have parents take up their parental responsibilities, does he see a role for any reformed school board or new parent council in developing policy for parental responsibility with regard to truancy rates?

Peter Peacock: I think that there were three questions in that. On the general point, I have made it clear that I think that levels of truancy are too high. Any time lost from learning is a lost opportunity for young people that has a profound implication for the rest of their lives. However, we have been collecting the statistics for only the past two years and the increase from last year to this year was 0.1 per cent. The current figure is too

high, which is why we are doing all the things that we are doing. I have already referred to curriculum reform. We are also installing automated call systems in more than 300 schools to catch truancy early and to try to nip it in the bud, ensuring that we catch the people who are trying to truant for the first time and discourage them from doing it in the future.

I agree that parents have a role to perform. Ultimately, parents have a legal responsibility to get their children to school, as well as a wider moral responsibility for their children. Under the new arrangements for parental involvement in schools, one thing that ought to be discussed is how parents can impact on truancy and support their school and their children more effectively.

Ms Rosemary Byrne (South of Scotland) (SSP): I welcome the more flexible curriculum, but does the minister agree that one way of reducing truancy and engaging young people in the education system, so giving them access to that more flexible curriculum, would be to reduce class sizes dramatically to no more than 20? In that way, the Executive would get the engagement that it desires.

Peter Peacock: There is mixed evidence about the impact of class size reductions at certain stages in school. Through an Executive programme, we are recruiting more teachers than we have ever recruited in the past and our universities are bulging at the seams with new teachers in training. It is always our intention to reduce class sizes at key stages in primary and secondary school. Beyond the question of class size reductions, however, the key is to make learning more engaging for young people, so that they want to be in school because they see the benefit of that. That is why we are driving forward other reforms.

Social Rented Housing (Overcrowding)

6. Euan Robson (Roxburgh and Berwickshire) (LD): To ask the Scottish Executive whether it will review the statutory definition of overcrowding in social rented housing. (S2O-8457)

The Minister for Communities (Malcolm Chisholm): We have no plans to review the statutory definition of overcrowding.

Euan Robson: The minister will be aware of cases in which overcrowded households are unable to move to a house with more accommodation that has become available because that house does not technically fulfil the needs of the family concerned. For example, two-bedroomed or three-bedroomed accommodation could become available, but four-bedroomed accommodation is required. Is there any bar on

housing associations allowing moves to accommodation that, although it would still technically be overcrowded, is better than the accommodation in which a family might currently reside?

Malcolm Chisholm: I do not think that changing the statutory definition of overcrowding would help in that situation. I believe that there is sufficient flexibility in the current system to prevent the problem that Euan Robson highlights from arising. I know that Communities Scotland would be critical of any landlord that knowingly placed a family in overcrowded accommodation if accommodation that better met the family's needs was available. Communities Scotland, which I mention because it is the regulator, would also be critical of a landlord that did not offer partial or interim relief from overcrowding by rigidly adhering to a policy of knowingly overcrowding when no accommodation that met the family's needs would be available in the near future. In other words, it should be possible for families to be moved in the situation that Euan Robson describes. Indeed, Communities Scotland would welcome that.

Osteoporosis

7. Linda Fabiani (Central Scotland) (SNP): To ask the Scottish Executive what guidance has been given to national health service boards in respect of the identification and prevention of osteoporosis. (S2O-8508)

The Deputy Minister for Health and Community Care (Lewis Macdonald): NHS boards can draw on good practice guidelines on the prevention and management of hip fractures in older people and on the management of osteoporosis. Both those sets of guidelines were produced by the Scottish intercollegiate guidelines network.

Linda Fabiani: I think that the minister would agree that there is variation in services across the country in the identification, treatment and management of osteoporosis. Will he consider drawing up a national strategy to combat osteoporosis? Does he recognise that, in the long term, that would give a better quality of life to those with the condition, as well as creating both time and cost savings for the health service throughout Scotland?

Lewis Macdonald: NHS Quality Improvement Scotland recently produced a useful report, of which I am sure Linda Fabiani is aware. I know that the National Osteoporosis Society is holding a series of workshops around Scotland to help NHS boards with the implementation of the SIGN osteoporosis guidelines, which are clearly intended as good practice advice, rather than as instructions to boards. It is appropriate that boards should take all that advice into account in

determining how to proceed with the management of osteoporosis and related conditions in their respective areas.

First Minister's Question Time

12:00

Cabinet (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-1999)

The First Minister (Mr Jack McConnell): At the next meeting of the Cabinet, we will discuss many important issues. I have given notice to the other party groups of one such issue, which is that the bid from Scotland and Glasgow to host the 2014 Commonwealth games enters a new phase today when the chairman of the Commonwealth Games Council for Scotland submits formally the intention to bid to the Commonwealth Games Federation. I am sure that all members of all parties would want to welcome that step. [*Applause.*]

At the games we will seek to showcase Glasgow and Scotland and demonstrate the level of support for the bid throughout the whole of Scotland. Hosting the games will provide the opportunity for Scots to show their pride in their country and their history and the warmth and welcoming nature for which they are rightly famous. It will also provide the opportunity for them to show that if we work together, there are few limits to what our small nation can achieve.

Nicola Sturgeon: I wish Glasgow, my home city, every success in its bid to host the 2014 Commonwealth games. I am sure that those games will be a resounding success.

I remind the First Minister of an exchange that we had around this time last year. I asked him to allow councils to keep the money that they saved through efficiency measures and use it to keep council tax down. In the spirit of consensus that always marks these occasions, he said no. Now that the cross-party Finance Committee of the Parliament has recommended exactly the same thing, will he reconsider?

The First Minister: It is important that the local authority budgets of the Executive—we contribute 80 per cent to local authority spend in Scotland—should make their contribution to the savings targets that we have met. That, in turn, finances the expansion in education and other vital local services that are funded by our Scottish Government. It is also important that councils have an incentive to save in order to keep some of the money for themselves and reinvest it in local services or in keeping council tax down. For both those measures, we have set realistic, sensible targets for local government in Scotland, which councils are perfectly capable of meeting. I hope that they will do so.

Nicola Sturgeon: I asked the First Minister whether councils could keep all the money. He clearly still thinks that the answer should be no. I point out to him that, according to the Finance Committee, the Executive cannot specify what the money is being spent on. He talks about front-line services, but the Finance Committee said:

“it cannot be demonstrated to Parliament that growth in frontline service has been delivered as a direct result of ... savings”.

The question is why councils cannot keep the money to lower council tax. Councils in England keep the money to do so. The Finance Committee also said that without that money, council tax will have to rise by 6.6 per cent next year, or front-line services will have to be cut.

Will the First Minister now concede what everyone else in Scotland knows to be the case, which is that his commitment to keep council tax rises to 2.5 per cent next year is, as things stand, pie in the sky?

The First Minister: I have every respect for the committees of this Parliament, for their place in our arrangements and, normally, for the content of their reports, but if what Nicola Sturgeon reports is accurate, in this case the Finance Committee is wrong. The reality is that even our councils, which normally predict much higher rises at this time of year than eventually occur when the budgets are set in February or March, estimate currently that rises will be significantly lower than the figure to which she referred.

We have not only the efficiency savings, which are essential to our central Government expenditure and local government expenditure, but significant additional expenditure on new teachers; school buildings; new equipment; new arrangements for our schools; new opportunities for our young people; our social services; our health service; and the many other services for which this Parliament and local government in Scotland are responsible. We will continue to make that investment and increase expenditure by above the rate of inflation, but we will improve the situation by demanding efficiency savings at the same time. That is the right course of action. Anything else would be irresponsible.

Nicola Sturgeon: I note that the First Minister did not, anywhere in his answer, use the words, “2.5 per cent increases”. I assume that that is because the only people who think that council tax increases next year will be as low as that are the same people who think that Scotland made a profit out of the G8 summit. It is, frankly, delusional.

A Labour colleague of the First Minister, Pat Watters of the Convention of Scottish Local Authorities, summed it up best when he said:

“Jack is speaking in a vacuum.”

Isn't he just? The Minister for Finance and Public Service Reform will not say that there will be an increase of only 2.5 per cent, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business says that the increase will be at least 4 per cent and now the Finance Committee has blown the First Minister's comment out of the water.

Will the First Minister finally take his head out of the sand and address the harsh reality that council tax payers are facing next year?

The First Minister: The contribution from central Government to local services through local councils in Scotland has increased by about 50 per cent in the past six years. That is a substantial increase in expenditure that local councils have been able to use to improve their local services in communities across Scotland. In addition to that, it is important that we make savings as we continue to invest. It is absolutely essential that local councils keep their council tax increases to the minimum. There will be those that can go below the target figure that we have set. I hope that others aim for that target figure and make it.

I must say that, if the Scottish National Party seriously seeks ever to hold positions of Government in Scotland, it is not a sensible option for it to have an absolute free-for-all for local government, with no targets and no savings, as part of its national expenditure plans. That is not a sensible approach to the use of public money and would certainly not lead to the improvements in local services that we wish to see and which it claims it wishes to see.

I hope that, rather than castigate an independent report on the economic benefits of the G8, Ms Sturgeon will take seriously the issues of national budgeting, of ensuring that local services have the investment that they need and of ensuring that those services are partly financed by efficiency savings that every level of government and organisation involved in government in Scotland can and should be delivering.

Nicola Sturgeon: I want local councils to make savings but I want those savings to go into the pockets of council tax payers. Let me tell the First Minister what has gone up by more than 50 per cent: council tax, which has more than doubled since 1997. Does he not understand that hard-pressed families and pensioners cannot cope with another inflation-busting increase? The Finance Committee makes clear that, if he does nothing, that is exactly what they will get.

I suggest to the First Minister that, if he does not understand what the Finance Committee has spelled out in black and white, he ask his colleague Wendy Alexander for advice. She is a member of the Finance Committee; perhaps she can explain it to him.

The First Minister: Members of all parties are perfectly at liberty to disagree with my analysis, but I hold firmly to it. I believe that local authorities in Scotland should keep their council tax increases down. In pursuing that policy, we have been successful in recent years in comparison with any other part of the United Kingdom and in comparison with every one of the final years of the last Tory Administration. No matter how often Ms Sturgeon tries to compare the last Tory rise with that in any year since the Labour Government took office in 1997, she is not going to be able to do it. In every year since devolution, council tax rises in Scotland have been lower than they were in England and lower than they were in the last five years of the last Tory Government.

We are proud of that record, but it is not sufficient simply to be proud of it; it is important that we keep the pressure on. It is also important for Opposition parties not to call for a free-for-all. It is absolutely essential that our local authorities deliver good, quality services that are efficiently run and that they get the additional investment that is delivered as a result of that efficiency. That is what we will achieve.

Ms Wendy Alexander (Paisley North) (Lab): I think that the leader of the SNP misrepresents the Finance Committee's all-party report when she suggests that it implies that there would be a 6.5 per cent council tax increase this year. What the Finance Committee argued—

The Presiding Officer (Mr George Reid): You have to put a question, Ms Alexander.

Ms Alexander: The Finance Committee argued for an equal approach to services. I think the Minister for Finance and Public Service Reform—

The Presiding Officer: Question, please.

Ms Alexander:—and indeed the First Minister might want to look in detail at what the all-party report has to say—

The Presiding Officer: Question, please.

Ms Alexander:—and not rely on what the leader of the Opposition says.

The Presiding Officer: We will move to question 2.

Prime Minister (Meetings)

2. Miss Annabel Goldie (West of Scotland) (Con): I, too, endorse the First Minister's comments about the city of Glasgow's bid for the Commonwealth games. My party certainly extends its very best wishes to the city in its endeavours.

To ask the First Minister when he will next meet the Prime Minister and what issues they will discuss. (S2F-2000)

The First Minister (Mr Jack McConnell): I do not expect to see the Prime Minister before Christmas, but if I do I will wish him a very merry Christmas and a happy new year.

Miss Goldie: I am sure that that message will be received with far more accord than any discussion of education policy.

Perhaps when the First Minister next meets the Prime Minister he might raise with him the Scottish Executive's homicide statistics, which were published yesterday. They disclose that the figure for 2004-05 was an appalling 10-year high, and show that the single biggest category of killings involved the use of a sharp instrument—in other words, knife crimes. Another very disturbing statistic is that 29 per cent of all those killings happened in Glasgow. How have things in Scotland got so bad after six and a half years of Labour-Liberal Democrat Government?

The First Minister: A whole range of factors has influenced this matter. From all the expert comment that we heard yesterday and, indeed, that we have heard in the past, it is clear that a serious problem exists in the culture in parts of Scotland and among certain groups, especially young men. That problem is the combination of attitudes to alcohol and, in particular, knives—one police officer yesterday suggested that knives have replaced medallions as the mark of manhood among some young men in certain parts of Scotland—and an inability to resolve even the most minor arguments by any means other than violence.

The high incidence of knife crime is the main reason why we are introducing legislative proposals to double the maximum sentence for knife crime; why we are ensuring that police officers are able to stop and search people who they think might be carrying offensive weapons; why we are raising the age at which people can buy knives; and why we are consulting on introducing further restrictions on shops and commercial premises that sell knives and other things that can be used as weapons.

However, although action is being taken in all those areas, those measures alone will not solve the problem. Not only do we need to change the culture—indeed, we recently instituted a change in our drinking laws to reduce binge drinking and levels of drunkenness—but we need a change in the attitudes of young men, in particular, and how they conduct themselves not just on Saturday night but during the rest of the week.

Miss Goldie: Nothing can obscure the fact that this unhappy and tragic situation has unfolded over six and a half years of Government from Labour and the Liberal Democrats. Yesterday's figures show that knife crimes account for more than 50 per cent of all killings.

The First Minister referred to provisions to increase sentences in the Police, Public Order and Criminal Justice (Scotland) Bill, which is currently before Parliament. However, the tragic thing is that certain convicted criminals who are already out of prison under automatic early release have contributed to the very figures that I have just highlighted. The same discredited practice will apply to any increased sentences that are introduced as a result of the bill. In other words, two years will mean one year and four years will mean two. As a result, does the First Minister accept that, as long as automatic early release prevails for long-term and short-term prisoners, there is no sentencing deterrent?

The First Minister: I certainly suspect that the legislation on automatic early release that the Tories introduced in Scotland, which allows people to leave prison early automatically and without any conditions attached to their release, has contributed in recent years to the situation in Scotland. That is precisely we are committed to ending the current law and replacing it with a far more rational and effective solution.

Over the year, we have consistently said that we expect the independent Sentencing Commission for Scotland, which we established, to report by the end of the year on these matters in a way that I hope all parties will take seriously. We expect to receive that report and will, as soon as possible thereafter, bring forward legislative proposals that will change that Tory legislation and will mean that we have better legislation in Scotland to ensure that sentencing means what it says and is more effective in stopping people committing crimes in future.

Miss Goldie: I will not flinch from criticism where it is merited. The Tories in Government repealed that legislation, recognising its deficiencies, eight years ago, but the incoming Labour Government refused to implement that repeal. That is why we are where we are today. Even worse, this Executive shower has compounded the problems by refusing on four occasions in this Parliament to end that discredited practice. How many more murders have to be committed and how many more families have to be decimated before this blockheaded Administration faces the inevitable? Six and a half years of blunder, bluster and inertia have brought us to where we are, and if the First Minister is still going to drag his feet on ending automatic early release, will he and the Lord Advocate review the whole basis on which knife crime is charged to ensure that far more of those crimes are prosecuted on indictment in our higher courts, where our judges have much stiffer sentencing powers available to them?

The First Minister: I have to say that, at a time when corrections to previous mistakes in

sentencing policy are being implemented by the Labour and Liberal Democrat coalition Government to ensure that sentences in this country are more effective and that they mean more to members of the public and to the individuals sentenced, so that our prisons and community sentences can provide more effective programmes to stop people reoffending and to cut Scotland's disastrous rate of reoffending, it does not fit well with Miss Goldie's new consensual image for her to exaggerate and to refer to bluster and delay.

I can absolutely assure Miss Goldie, as I assured her predecessor, that this Administration will end automatic early release. We shall do so not in the cack-handed way in which Michael Forsyth tried to do it, but properly. We shall do it in such a way as to ensure that judges who have to implement the policy understand it, are involved with it, agree with it and therefore implement it effectively. We shall do it in such a way as to ensure that our prisons can implement the policy and cut reoffending at the same time. We shall do it in a way that I hope will secure cross-party support in this Parliament and which will therefore stand the test of time. We will not do it either in the way in which the Tories did it when they introduced the legislation in the first place, or in the cack-handed way in which Michael Forsyth tried to amend it, simply to create an election gimmick rather than to solve the problems of Scotland.

Phil Gallie (South of Scotland) (Con): Pure waffle.

The Presiding Officer: Mr Gallie.

Colin Fox (Lothians) (SSP): Given the terrific news, announced this morning, that City of Edinburgh Council tenants have voted overwhelmingly to reject stock transfer plans, will the First Minister accept that the result is, first of all, a hammer blow to plans to privatise Scotland's public housing stock and, further, that he is now morally and politically obliged to ensure that the £1 billion carrot dangled in front of a yes vote is now made available to tenants in the city of Edinburgh to write off the debt, to invest in improved housing and to build publicly owned rented accommodation for city tenants?

The First Minister: I enthusiastically support community ownership of housing in Scotland. I do so because, as a socialist all my life, I believe that people should have more control over their own affairs. I also believe that a fundamental principle of our socialism is that people should have that democratic control over their own lives and the places in which they live. They would get that through community ownership and housing stock transfer. It is tragic that, probably because of misrepresentation by people such as Colin Fox,

the tenants of Edinburgh have voted down a proposal that would have led to 10,000 new homes in the city, significant improvements in the quality of the housing stock and stability in rent levels. As the council leader said yesterday, it is likely that the decision—following misrepresentation by Colin Fox and others—will lead to substantial rent increases, a cutback in new housing in the city and deterioration of the housing stock. That is a tragedy for Edinburgh, and I hope that those responsible will reflect on it today.

Secretary of State for Scotland (Meetings)

3. Robin Harper (Lothians) (Green): To ask the First Minister when he last met the Secretary of State for Scotland and what issues were discussed. (S2F-2005)

The First Minister (Mr Jack McConnell): I met the Secretary of State for Scotland recently. We discussed a number of issues that are important to the people of Scotland.

Robin Harper: I add my voice and that of my party to the considerable joy that the Commonwealth games bid has been lodged and wish Glasgow the very best of luck in a process that will require a great deal of support from the people of Scotland and the Executive.

On a less salubrious aspect of international affairs, the First Minister will be aware that the Council of Europe has considered the evidence available so far that rendition flights pass through European airports, including Scotland, and has concluded that that evidence is credible and justifies a thorough inquiry. There is considerable concern in Scotland that crimes under United Nations and European Union law have been committed on Scottish soil. Given that the evidence is credible, does the First Minister think that those allegations should be investigated?

The First Minister: The Council of Europe is perfectly free to investigate. I hope that if it investigates, any investigation that it conducts will be thorough. We and all citizens of Europe will consider its report with interest. The Lord Advocate and others have said clearly in the chamber in the past that it is simply not possible to issue search warrants in Scotland or to prosecute in Scottish courts without the necessary evidence. If anyone has evidence, in relation to this or any other matter, of an alleged crime taking place on Scottish soil, they should put that evidence into the hands of Strathclyde police or the Lord Advocate, and the necessary action will result.

Robin Harper: I am well aware that the First Minister cannot issue instructions to the police or to the Lord Advocate, but what we are calling for is an investigation. The rapporteur to the

Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights yesterday asked whether all European Governments will co-operate with an investigation into exactly what is going on. Will the First Minister give a commitment to play his part in helping with that investigation?

The First Minister: If we had any reasonable request from the Council of Europe to provide information or to assist with any investigation that it was carrying out, that is what we would do. We are rational human beings who are willing to assist any international organisation in that way. However, I reiterate that for any allegation of a crime on Scottish soil to be substantiated, for any search warrant to be issued or even for a court to be approached, it is vital that the appropriate evidence is given to Strathclyde police, to one of the other police forces in Scotland, or to the Lord Advocate, so that he can make inquiries. That is the right way for us in Scotland to run an independent police and judiciary system, and we do that with the absolute best of intentions. We are of course concerned about the debate around this issue and the other concerns that have been expressed, but we must also ensure that our system operates independently. That is one of the reasons why we are one of the best small countries in the world.

Fresh Talent Initiative

4. Maureen Macmillan (Highlands and Islands) (Lab): To ask the First Minister what impact the United Kingdom Government's adoption of a similar scheme will have on Scotland's fresh talent initiative. (S2F-2010)

The First Minister (Mr Jack McConnell): The UK Government has announced proposals to increase the number of overseas undergraduates and postgraduates who can remain in the UK for one extra year. Those proposals do not change our fresh talent working in Scotland scheme but they give us an even greater pool of people who may choose to live in Scotland.

Maureen Macmillan: I am sure that the First Minister is aware of the significant number of migrant workers and their families who are moving into the Highlands, mostly from eastern Europe. He will recall my interest in language support in school for the children of those migrant families. I thank him for his recent letter outlining the work that has been commissioned on that. However, does he agree that the growing number of children of migrant workers needing specialist English language support at school may not have been fully recognised in the funding for additional support for learning? Will he undertake, along with the Minister for Education and Young People, to monitor the increasing need for such specialist

English language support in areas under pressure, such as the Highland Council area, to see whether there may be a need for extra funding for the education service, such as that which was made available to Glasgow City Council to support the children of asylum seekers?

The First Minister: I agree that the issue is serious and that the benefits that workers who come to our country bring to our economy and society are to be welcomed. The issues that Maureen Macmillan raised in her recent letter to me are, of course, of concern. I am sure that the Minister for Education and Young People will be happy to discuss them with her in detail.

Childhood Obesity and Social Deprivation

5. Christine Grahame (South of Scotland) (SNP): To ask the First Minister what research has been undertaken by the Scottish Executive into establishing any links between childhood obesity and social deprivation. (S2F-2003)

The First Minister (Mr Jack McConnell): Analysis of information on childhood obesity collected by the information and statistics division of NHS National Services Scotland suggests that levels of obesity are associated with social deprivation but that the association is not strong and that obesity is a problem affecting all social classes.

I personally suspect that the association is greater than is suggested by that analysis; we would welcome further research on the issue. We are currently involved in a study at the University of Dundee that is investigating the role of family characteristics, health knowledge and beliefs, patterns of food buying, cooking and serving in determining the diet of disadvantaged children. That more positive look at what can be achieved and what might be going wrong could make a significant contribution. It is intended that the study will report in February 2007.

Christine Grahame: I thank the First Minister for that very full answer and I welcome the steps that have been taken. He talks about patterns of food buying in deprived areas, but we know that people in such areas do not always have the luxury of choice. They may need to buy cheap foods, which often have poor nutritional value and may lead to ill health and obesity.

Does the First Minister agree that until poverty, which is the root cause of deprivation and ill health, is dealt with, his Government's efforts, no matter how laudable—and we applaud them on this side of the chamber—will not tackle childhood obesity and deprivation? Until this Parliament has the power to deal with low pay and unemployment, we will be firefighting rather than resolving the underlying problems.

The First Minister: Where do I start, Presiding Officer?

First of all, I believe that there is a direct link between poverty and ill health. That is why we will ensure that we take targeted action in the areas most affected by poverty. We hope that we will have the support of the Scottish National Party and others as we seek to make our action effective.

Secondly, I believe that obesity and many other health problems are widespread and are more related to the nature of today's society than to deprivation and disadvantage. Our solutions therefore have to cover a wide range of people, and that is why we have such comprehensive programmes in place.

I turn now to the final point that Christine Grahame raised. Yesterday it was recorded that Scotland's International Labour Organisation employment rate rose again, to the highest level ever recorded—75.2 per cent. Christine Grahame says, the day after, that this Parliament is somehow failing in its actions with the United Kingdom Government to tackle unemployment and to increase employment in Scotland. That is the sort of negative stuff about Scotland that we hear from SNP members all the time. Why do they not talk up their country for a change, instead of talking it down?

G8 Summit (Security Costs)

6. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the First Minister what discussions the Scottish Executive has had with Her Majesty's Government in respect of payment of security costs for the G8 summit at Gleneagles. (S2F-2002)

The First Minister (Mr Jack McConnell): Our Scottish Government had extensive discussions with Her Majesty's Government, at both official and ministerial level, in respect of payment of security costs, leading to an agreement in advance of the G8 summit in July 2005.

Murdo Fraser: I am aware of the Executive's claims about the economic benefit of the G8 summit, but those claims will be of little comfort to many businesses in Perthshire that, in effect, had to write off the whole of July, suffering severe losses. In his discussions with Her Majesty's Government, has the First Minister raised the issue of compensation for those businesses for their losses?

The First Minister: Yes, and Her Majesty's Government decided to retain the policy that it had before the summit—that it was not possible to have a general policy of compensation, or even to make exceptions for individual businesses, but that it was of course possible for both the United

Kingdom Government and us to compensate local authorities if they were to decide to compensate businesses—perhaps through the business rates system or otherwise. Mechanisms were in place, but the choices had to be made locally.

In decisions that we have made this week, we have fully compensated the local authorities for the costs that they had agreed for arrangements to do with the G8 summit. In addition, we have compensated Scotland's police forces and other public institutions. The fact that we have done so contradicts the claims that we would not, which were made regularly by both main Opposition parties. We have made sure that the compensation is properly financed.

Yesterday an independent report—not Scottish ministers—claimed that even in the weeks immediately around the summit, Scotland made a profit on that event. [*Laughter.*] I have to say—especially to those mean-minded characters in the Scottish National Party who are laughing—that the G8 summit was about much, much more than the profit and loss to Scotland. It was about the future of Africa and climate change in our world. Those issues are bigger than the sort of political debate that takes place among the Tories and the SNP, and I am really glad that the G8 leaders came here, discussed them and made some progress.

Roseanna Cunningham (Perth) (SNP): What a disappointing response from the First Minister. Does he not acknowledge the incredulity of ordinary members of the public—whom he would no doubt categorise as being mean minded as well—that it is principally the Scottish taxpayer who is picking up the cost of a party to which, in effect, they were not invited, and the cost of which was felt disproportionately by small businesses, especially those in the Strathearn area? He said that Her Majesty's Government would refuse to do anything for those people who have been left out of pocket by the G8, but will he commit to doing something for them?

The First Minister: I do not want to be too mean spirited, but I have to say that when Roseanna Cunningham was invited to the party at the summit, she did not hesitate to accept the invitation and come along. We need some consistency.

The decisions on the provision of relief for small businesses in Scotland are a matter for local authorities, not for national Government. If the SNP members of the local councils in the area affected want to decide to provide such relief, they should make the necessary decisions, rather than send Roseanna Cunningham along to the Parliament to try to get someone else to make those decisions for them.

The summit was about much more than the profit and loss to Scotland. Scotland made money

out of the summit and will continue to do so for years to come. Although individual businesses and local communities were put under pressure at the time, our police forces defended them well and should be praised for that. However, the G8 was about a much bigger agenda and for Scotland to be able to host a summit at which such important international issues were discussed should be a source of pride to our small country. The SNP claims that it wants a seat at the top table, but it does not want the top table to come anywhere near us.

Excess Winter Deaths (Greater Glasgow)

The Presiding Officer (Mr George Reid): The next item of business is a member's business debate on motion S2M-3482, in the name of Paul Martin, on excess winter deaths in greater Glasgow. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes this year's Scottish excess winter death figures, which show that the NHS Greater Glasgow area has the largest number of excess winter deaths in Scotland; expresses great concern that the number of excess winter deaths in Glasgow among older people has increased from 410 to 460; supports the Scottish Executive's fuel poverty programmes; believes that the Executive should continue to commit to the programmes and its pledge to eradicate fuel poverty by 2017, and supports the work of the Scottish Gas Help the Aged Partnership and its call to the Executive for a holistic approach to address the problem of excess winter deaths, including looking at nutrition, regular exercise, flu jab uptake, appropriate clothing, maximising incomes, proper insulation and heating systems for homes, extending the gas main where it is economically viable and providing greater face-to-face support and practical help for older people.

12:35

Paul Martin (Glasgow Springburn) (Lab): First, I thank the 45 members from all parties who have supported the motion in my name. I also thank Help the Aged, and particularly Richard Meade of that organisation, for providing a helpful briefing and for campaigning so effectively on winter deaths of the elderly.

The statistics speak for themselves. More than 2,760 people in Scotland—2,550 of whom were elderly—died of winter-related illnesses in the past year. In the Greater Glasgow NHS Board area—which covers the Springburn constituency that I represent—there were 450 winter-related deaths, of which the majority were of elderly people. The tragedy that lies behind those statistics is that with the right strategy and effective action plans, those numbers could be drastically reduced.

I do not want to use my speech to applaud the Executive, the Parliament and the utility companies for the very good work that they have done so far; that would be an opportunity missed. The briefing document describes the good work that has been done. Instead, I will make the point that more has to be done to tackle the statistics. If all was right, the figures would not be at their current levels.

What action can we expect from our utility companies? Their collective profits come to £6.7 billion. I do not grudge any public limited company the opportunity to make its profits, but I want the

utility companies to do more to target those who are most at risk. Direct payments should be made to those whom we can identify on a postcode basis as being most at risk. I welcome several of the initiatives that have been made by some of the utility companies, but I want there to be more direct targeting of subsidies to those who are in most danger because they live in fuel poverty.

For far too long, public limited companies have discriminated in favour of those who are economically active and who have the most disposable income. That is true of banks and many other PLCs. Here is an opportunity for our utility companies to set an example by discriminating in favour of those who are most at risk because they live in fuel poverty. I want those companies to lay out their plans for discriminating directly in favour of those who live in fuel poverty and I would welcome the minister's response to that possible initiative.

From various initiatives, we have seen that community action plans can make a difference, and I would like local communities to set out such plans. Consider the success of many organisations that are in regular contact with the elderly. For example, the alive and kicking project, which is based in the Red Road area of my constituency, provides a range of opportunities to target those who are most in need as a result of fuel poverty. The project provides benefits advice and ensures that people take up their council tax benefits. It also provides advice on healthy living; the Help the Aged briefing makes it very clear that such advice can reduce winter-related illnesses. The project puts on concert parties and members take trips to Spain, Ireland and many other parts of the world as part of the healthy living and active lifestyle that the project encourages for the elderly.

I commend another excellent project—the north of Glasgow good morning project—in which direct contact is made with those who are most vulnerable in the local community. We live in an age in which we have to deal with unwanted calls from call centres. In that project, the reverse happens: the workers make direct contact with the elderly. We should consider doing that in a more concentrated and sophisticated manner; I would like initiatives such as the good morning project to be rolled out to other parts of Scotland to ensure that those who are most at risk are contacted and that their needs are met.

We have missed an opportunity to take advantage of the advances in information technology throughout the world in recent years. Some time ago, I spoke to an 83-year-old constituent who advised me that she wanted me to contact her by e-mail. She was offended when I registered surprise that she had an e-mail address—she was very proud of being a silver

surfer. That made me realise that IT could be a very effective way of getting information to the elderly and of communicating with them. Advances in IT could provide a more targeted approach to delivering health advice and information about activities in their communities to the elderly. I look forward to hearing the minister's response to that suggestion.

Sometimes in the chamber and in committee we hear calls for research to be done into a particular subject. I am not always happy with that approach, because it can be used as an excuse to introduce a stopgap and to defer the setting in place of action plans. However, I recognise that on this issue there is a need to clarify the challenges that we face. We must also recognise the contribution of all those who help the elderly—the unsung heroes such as home helps, concierge staff and the many other workers who are in contact with the elderly and who play a crucial role in tackling fuel poverty and ensuring that people are given effective advice. We should conduct research into the effective work that those people do in tackling the number of excess winter deaths.

It would be wrong not to applaud the good work that goes on. We should recognise that there are partnerships, but also that there is a need for a more holistic approach to them. We need to look at the statistics and at targeting those who are at greatest risk on a postcode, street-by-street basis. After all, many credit card companies target people on such a basis—let us use such methods to target those whom we believe to be most in need. I would like to see a more effective partnership between the utility companies, the Executive and everyone else who has a role to play. That would ensure that we could reduce the appalling statistics on deaths during the winter months.

12:43

Ms Sandra White (Glasgow) (SNP): I thank Paul Martin for securing the debate. I also thank Help the Aged for producing such excellent documents; I spoke at the organisation's annual general meeting just a few nights ago. I thank, too, Age Concern and all the many voluntary groups whose members give of their time and expertise to help our elder people throughout the year, but particularly during the winter months.

The debate is timely, given that the predictions are that we will have the worst winter for 40 years. That is very concerning, given the excess winter deaths that that would cause throughout Scotland and in Glasgow in particular. A study that was done by Energy Action Scotland and the University of Strathclyde found that most pensioners in Glasgow were at risk and that the over-65s in Glasgow were more at risk of dying in

the winter months than over-65s anywhere else in Scotland. We must take that very seriously. I hope that the minister and others will look at that issue.

Like Paul Martin, I recognise the work that the Parliament is doing; we should be grateful for that work and welcome it. However, when one in 36 of Glasgow's over-65s dies every winter, it is obvious that not enough is being done. There are benefits to the work that the Parliament is doing, but there are also barriers.

Elderly people find it very difficult to access benefits, and I would like the minister and the Parliament to look at the forms that have to be filled in. Pensioners are very proud people and sometimes they do not want to access benefits. However, that is an argument for another day. Filling in forms is very difficult. I have difficulty when I am helping elderly people to fill in forms and I know that they find it difficult too. We must put more emphasis on providing advice on what people can claim and how they should fill in the forms.

I agree with what Paul Martin said about the utility companies. That relates not just to fuel poverty, but to the multiple deprivation that is creeping in. Despite what the First Minister said earlier, there is multiple deprivation and it accounts for the excess winter deaths in the Glasgow area. The Scottish index of multiple deprivation, which is published by the Scottish Executive, names Glasgow as the worst region in terms of multiple deprivation. We need a holistic, joined-up approach. We have to target the agencies that target the pensioners. Those agencies link health, housing and social issues. We should not consider fuel poverty and benefits in isolation.

I ask the Scottish Executive to examine "The Strategy for Older People in Wales" of the Welsh Assembly Government, which led to the establishment of a Cabinet sub-committee that considers older people's needs and experiences and what it is like to be an older person. The strategy, which highlights the issues that affect older people in Wales, is an excellent document and I ask the minister and the Executive to emulate it. The Welsh Cabinet sub-committee considers the issues in a co-ordinated way and takes a holistic approach. It considers not just present needs, but changing demography and the ever-changing needs of elderly people in Wales. The strategy forms an important part of the Welsh Assembly Government's plans.

We have heard that one of the huge post offices in Glasgow is to close down and we are looking at similar closures throughout Scotland, including in rural areas. One item that is included in the action plan in the Welsh strategy is:

"Develop Post Offices as community economic development centres."

Instead of being closed, post offices are being opened up so that people can access not just their pensions but community facilities. I ask the minister to look carefully at the Welsh strategy. She might not be able to commit herself today, but I ask her seriously to consider producing a similar strategy for older people in Scotland.

12:47

Bill Aitken (Glasgow) (Con): The Parliament should be grateful to Paul Martin for bringing this important issue to the chamber today and he is to be congratulated on providing a comprehensive motion. The basic concern in that motion is the fact that, at 460, the number of excess winter deaths in Glasgow is at an all-time high. Surely that must concern us all.

The joint survey by Energy Action Scotland and the University of Strathclyde to which Sandra White referred states that fewer elderly people die from cold weather in Siberia than in Scotland. It is clear that we have lessons to learn. The report states that deaths can be prevented if measures are taken to keep pensioners warm in their homes during the winter months. However, that is only part of what we need to do. As Paul Martin said, in addressing the worrying increase in excess winter deaths we must consider the matter under a number of headings, including general health care, nutrition, insulation and improvements to heating systems.

What has been done, and what is being done, to address the problems? It is not all bad news. I am not about to excoriate the Executive, but it is worth while underlining the fact that the 1999 Labour manifesto stated that Labour aimed to eliminate fuel poverty over two terms of the Parliament. By 2002, that commitment had changed to the effect that the Executive would

"ensure, as far as reasonably practicable, that people are not living in fuel poverty in Scotland by November 2016."

In other words, the commitment was watered down.

Praise is due to the Scottish Executive under a number of headings. The central heating scheme and the warm deal programme, which replaced the previous Conservative home energy efficiency scheme, have increased the grants that are available and they have undoubtedly been successful. I welcome the Executive's recent decision to continue with the central heating programme, but there have been no groundbreaking initiatives. Perhaps that needs to be looked at.

Of course, the biggest contributor to the reduction in fuel poverty has been privatisation of the utilities. The introduction of competition into the market meant that domestic energy prices in Scotland fell significantly. From 1991 to 1996—just five years—the number of fuel-poor households in the United Kingdom fell by at least 1.5 million. That is part of the good news story.

What is to happen in the future? I fully welcome the continuation of schemes for heating and housing insulation. As I said, the Executive is due credit for that. However, health care problems must be dealt with. As we know, the national health service in greater Glasgow inevitably faces increasing pressure during winter. The NHS has a major role to play in combating excess winter deaths, but we must examine how it operates and consider whether lessons can be learned from what is happening down south.

The risk of an avian flu epidemic has been out of the spotlight in recent weeks, but it still hangs over us. The Executive, working with the UK Government, must ensure that tested measures are in place to deal with any outbreak. If they are not, the elderly and those who live in urban areas such as Glasgow will suffer most.

We have seen some progress, but until we have cut excess winter deaths, we will not have made the progress that we all wish to have.

12:51

Euan Robson (Roxburgh and Berwickshire) (LD): I congratulate Paul Martin on securing the debate. Before he wonders why a Borders representative is speaking, I say that my mother is a born and bred Glaswegian, so I have some qualification for entry into the debate.

Bill Aitken mentioned Siberia. When the phenomenon of excess winter deaths was first understood in Scotland, the Scandinavians were asked for their opinion. They had no knowledge of an excess winter deaths phenomenon, although their climate is generally much harsher than Scotland's.

I will comment on three issues that are mentioned towards the end of the motion: insulation, appliances and extensions to the gas main. For many years, I was the head of the professional staff of the Gas Consumers Council in Scotland, so I have considerable experience of dealing with such matters. Things have moved on in six years but—depressingly—some of the issues remain as they were when I left the council in 1999.

Insulation is of course essential. We still need to do more on insulation, although the warm deal programme is effective. We must understand that

insulation standards in the past proceeded in what was perceived to be the right way at the time. For example, insulation in roofs was limited to a certain depth, whereas we now understand that the depth should be greater. Therefore, it is not fair to say that we have effectively dealt with a number of properties. We might have done so in years gone by, but we must revisit many properties to ensure that they have higher, better and more modern insulation levels.

It is fine to have insulation in a house, but if someone has no effective means of heating their house, they are at risk of cold-related diseases. The appliance population, particularly in the gas industry, is aging. The traditional warm-air unit that is found in social housing and in some private sector housing has largely reached the end of its natural life, as have some traditional units that can be found in properties, such as the famous Baxi Bermuda. Replacing such appliances, particularly in social rented housing, is a huge problem. The Executive must develop its central heating programme to cope with that phenomenon.

For example, if I remember my experience correctly, excess winter deaths are most prevalent in properties that have partial central heating. People may move between cold and warmer parts of a house because the central heating system is inadequate. When appliances in general are reaching the end of their natural lives, much work must be done on identifying what is to be done to install better and more efficient appliances that heat whole houses.

In that regard, it is important to understand that the replacement of a partial central heating system with a full central heating system may actually result in a house having higher levels of energy consumption. That is because, with the increase in comfort levels, the household will take advantage of the ability to use the system to heat the whole house such that the fuel bill rises. For that reason, the installation of insulation must go hand in hand with the replacement of appliances that provide only a partial central heating system.

I will mention briefly extensions to the gas main.

The Presiding Officer: You must be very brief.

Euan Robson: Over the past 10 years, the extensions to the gas main that should have taken place have not happened. Such opportunities exist but their economic viability is assessed by a regulator that does not understand, and has not understood, the advantages that could result from using systems of extending the gas network that are different from the traditional methods that have been used in the past 10 years.

There is a great need for energy industry regulators to focus their attention in a different way by concentrating less on competition and more on

dealing with practical issues such as excess winter deaths and security of supply. Until we have the new regulatory focus for which I have argued publicly today as on previous occasions, the measures that we need to combat the phenomenon of excess winter deaths will not be advanced across Scotland or the United Kingdom.

12:56

Patrick Harvie (Glasgow) (Green): I congratulate Paul Martin on securing the debate on his motion. From the copy that I have before me, I see that my name is missing from the list of supporters of the motion. I assure him that that is due to oversight rather than for any other reason.

Perhaps what pleases me most about the content of the motion is that it takes an holistic approach. The motion acknowledges that a range of factors, including nutrition, exercise, and clothing, need to be taken into account. However, all members will recognise that fuel poverty, although not the only factor, is of central importance.

The reasons why we need to reduce demand for energy are many and varied, but they include fuel poverty. We have some level of control over, and some ability to influence, energy efficiency but that is really the only factor by which we can influence fuel poverty. We cannot do much about energy prices, which we know will continue to rise throughout this century as the period of cheap energy—the fantasy of cheap energy—comes to an end. We will see much higher energy prices for all types of energy demand, but fuel for the home will certainly be affected. If we do nothing to reduce energy demand, fuel poverty will continue.

Other reasons for reducing energy demand include climate change, security of supply and, of course, the fact that controversy accompanies virtually every form of energy generation. Whether energy is generated by, in my view, aesthetically beautiful wind farms or nasty ugly nuclear power plants—whatever side of the line members fall on in that debate—energy generation is, we all recognise, a difficult thing to get support for.

Given all those reasons for reducing energy demand, how can we do that? There are many ways of reducing demand, some of which the Executive is working on. Having been accused by the Deputy Minister for Communities of lacking Christmas spirit in yesterday's debate because I would not applaud the work that is being done, let me say that this Tiny Tim is full of Christmas spirit and is happy to agree that much of the Executive's work is heading in the right direction. The reasons for my criticism yesterday were that progress should be faster and greater and is currently too slow.

If we are to put in place the housing and energy supply that will enable people to live without fuel poverty and to heat their homes properly in a period of high energy prices, we need to get that stuff physically in place as soon as possible. We need to do that before the problem becomes extreme, but that is already starting to happen.

On that note, I commend to members Shiona Baird's proposal for a member's bill on micro-renewable power. Her proposals would offer individual householders a rebate from their council tax for the installation of the kit, and, over the years, they would contribute to the energy supply for our country and see a reduction in their household fuel bills. Although the Executive is talking about a pilot scheme including some form of micro-renewables alongside the central heating programme, that pilot will take some time to establish what we already know—that micro-renewables are a necessary part of the solution. Shiona Baird's proposal for a member's bill goes much further. I encourage all members to read the consultation and to contribute positively to it.

I was interested to hear Paul Martin's remarks on street-level targeting of local areas. That is an important aspect not just with regard to this issue, but in a wide range of public services and Government spending. We are not getting the maximum bang for the bucks that we are spending, which we could get if we targeted that spending at the level of individual streets.

13:01

Tommy Sheridan (Glasgow) (SSP): Twenty years ago at this time of year, I was employed as a field supervisor working from the Pollokshaws Salvation Army building on behalf of Strathclyde Regional Council. I was employed on the hypothermia programme. Our job was to chap on doors and identify whether there was a pensioner living in a household. If there was, we would offer advice, including a pack with a leaflet and a wee thermometer. We became known as the blue thermometer brigade because we told the pensioners that they should attach the thermometer to somewhere in their home where they spent a lot of time and, if the indicator ever reached the blue level, they would know that they had a problem. The difficulty was that, if the indicator ever reached the blue level, it was probably too late for them to do anything.

That was 20 years ago. Strathclyde Regional Council developed the hypothermia programme because of the scandal of excess winter deaths across the Strathclyde region and particularly in Glasgow. Strathclyde region is no more; the community programme is no more; however, I am afraid that excess winter deaths are still very much alive and kicking. The grim reaper that means that

Glasgow is top of the unenviable league for winter deaths is poverty. Places such as Aberdeen and Dundee, and countries such as Norway and Sweden, have a colder climate. Why does Glasgow top the league for excess winter deaths? The common denominator is poverty.

That is why I welcome Paul Martin's motion. It is a good motion and I am glad that he has secured the debate. I welcome the holistic approach that is suggested in the motion and recognise the many issues that it raises. However, I hope that Paul Martin will accept that one feature that he mentions—"maximising incomes"—must be the priority if we are serious about tackling excess winter deaths. Poverty is the fundamental factor that determines the life chances of our pensioners during the winter months.

It is regrettable, but we do not have control over fuel prices. Is it not a pity that the £6.7 billion of profit that is made by the utility companies goes into private pockets instead of the Exchequer, when those companies should be publicly owned as they used to be? Perhaps Paul Martin, as a socialist, agrees with me about that—I think that he was nodding there, but perhaps he has to think of his future career so cannot nod furiously.

However, we control some elements that could lead to an improvement in the life chances of our pensioners. One of those elements is energy efficiency, which Patrick Harvie spoke about. It is a pity that during the progress of the Housing (Scotland) Bill, motions and amendments from the Greens and the Scottish socialists that proposed to set real targets for energy efficiency and improve the ability of our elderly to keep their homes warm were rejected by the Executive. The other aspect that we control is the ability to improve incomes, although we cannot do that in the way that we would like. Let us be clear that, as a small country that is rich in natural resources, we should be able to introduce a higher pension for our pensioner citizens.

It is within our control to improve the disposable income of our pensioners and Paul Martin, as a member of the Local Government and Transport Committee, is more aware of that than anyone. We could replace the unfair council tax with an income-based system that would allow pensioners to keep more money in their pockets so that they could purchase the fuel that they require to keep them warm and alive during the winter months.

I support the motion in Paul Martin's name. It is right that we are having this debate. However, instead of warm words, we need action and more of it to address maximising the income of those pensioners who are most at risk of hypothermia and premature death.

13:07

Mrs Margaret Ewing (Moray) (SNP): I join others in congratulating Paul Martin on securing this timely debate. We have such debates every year, but this year it is, because of the prospect of a severe winter, even more important that we address the issues and consider how we can resolve matters.

I have one of the blue thermometers that Tommy Sheridan mentioned. I check it regularly and because my husband, Fergus, is a bit of a hothouse plant, he makes sure that it does not go to blue. It is ridiculous that people in Scotland still have to measure the temperature in their homes. It is often difficult for confused elderly people to understand how to measure the temperature in their homes.

As always in such debates, I register my non-pecuniary interest as the vice-president of Energy Action Scotland, which has already been referred to, and as the founding member of the warm homes group in Westminster. I advise colleagues who have stayed for the debate that in March next year the warm homes group, headed by my successor convener, Alan Simpson MP, will visit our Parliament. It is important that we give the group a good welcome because, given our limited powers, we have to work closely with Westminster. Many of the issues, such as the citizen's pension, improved bonuses or whatever we want to call them for our elderly and vulnerable people, are still very much in the hands of Westminster. That is not according to my wishes, but I always try to deal with the realities of the situation as best I can.

You will remember, Presiding Officer, because you were a colleague of mine on the benches of the House of Commons at the time, that when I started asking questions in the 1970s about deaths from hypothermia and about excess winter deaths, I was told that people died from hypothermia only if they got lost on mountains and that there was no such thing as excess winter deaths resulting from fuel poverty. I was derided and laughed at by many people; I remember radio programmes on which every other political party attacked me and said that I was scaring pensioners about putting on their fires.

We have come a long way from that. Every political party now regards fuel poverty as a subject that must be addressed. I have applauded every initiative that the Executive, Westminster and voluntary organisations have taken to improve the lot of the 250,000 households in Scotland that still exist in fuel poverty. In my constituency of Moray, 21 per cent of households are in fuel poverty and in Grampian last year, there were 320 excess winter deaths. This is a Scotland-wide issue and although Paul Martin's motion

concentrates on greater Glasgow, I know that he will not be selfish and insist that, as we should under Parliament's regulations, we deal only with a particular geographical area. The issues are the same throughout the country and, indeed, throughout the United Kingdom.

We have rightly concentrated, as always when debating this matter, on elderly people, who are most vulnerable. I always take as my starting point for consideration of fuel poverty the housing condition survey of 2002, because it allows us easily to identify areas where there is a need for changes in housing systems, insulation and so on. It makes it quite clear that elderly people are most vulnerable and that we should concentrate on them.

We should also consider households in which a family member is disabled and lacks mobility, because mobility is one aspect of keeping warm. We have not extended our consideration to households with young children. Several members who are present attended a meeting of Energy Action Scotland at which the point was made that the warm deal should be extended to include other vulnerable groups.

Every 10 per cent increase in fuel prices brings another 60,000 houses in Scotland into fuel poverty. I say to Bill Aitken and Tommy Sheridan that that is the case regardless of whether the utilities are privately or publicly owned. Instead of allowing the situation to deteriorate, we should fight and argue for more control over fuel prices and for the powers to ensure that vulnerable people are not caught in yet another poverty trap.

13:12

John Swinburne (Central Scotland) (SSCUP):

I thank Paul Martin for bringing this essential debate to Parliament. He concentrated on Glasgow, where last winter the number of excess winter deaths rose from 410 to 460. The total number of winter-related deaths in the past three years in Scotland is 8,000. That is totally unacceptable.

People ask how there can be winter-related deaths. Tommy Sheridan hit the nail on the head—they are caused by poverty. In 2002, I listened to Andrew Smith present his green paper on the magnificent new method of topping up pensions. However, the green paper admitted that the Government was budgeting for uptake by only two thirds of pensioners, because the benefit is means tested. Means testing is the most depraved way of taking money out of pensioners' pockets that was ever devised. People may not apply for pension credit because they object to means testing; one third of pensioners do not apply for it. However, people can get a magnificent—I am not

being sarcastic when I call it magnificent—free home heating system installed only if they are on pension credit. Means testing automatically excludes one third of the pensioner population of the country from accessing that free system. It should be open to all.

When people apply for a new system, the threshold is far too high. If they have a 40-year-old storage heating system in their house with an electric fire in another room, they do not qualify because they have two sources of heating. If people are over 80, they get the benefit automatically, but an awful lot of poor pensioners will not reach 80 years of age because of winter-related death.

It is about people's fear of turning on their heating. They wonder whether they can afford it. We live in the fourth richest society in the world, but we are telling people that they cannot turn on their heating—they are afraid that they will be unable to pay their bills. There have been swingeing increases across the board for all fuel sources and pensioners are being deprived. Until such time as the Executive upgrades the system, removes means testing and changes the eligibility threshold, we will have more and more winter-related deaths in this country.

For the 21st century, it is Dickensian to ask people to live in homes that they cannot afford to heat. I know that Patrick Harvie does not like this idea, but people had coal fires in days gone by. Coal was cheap—it lay underneath much of Scotland. Now, we need to pay more for our fuel and many older people cannot afford to do so. Poverty is the problem, not winter-related deaths. Until the Westminster Government tackles the pensions problem, we will never get out of the situation.

I thank Paul Martin for securing the debate, in which there have been many sincere and genuine speeches. I emphasise that the heart of the problem is that pensions are not sufficient for pensioners to heat their homes, and they live in fear of being unable to pay their bills.

The Presiding Officer: Finally, I call Christine Grahame.

13:16

Christine Grahame (South of Scotland) (SNP): I am beginning to feel as if "Finally, I call Christine Grahame" is my tune for the day. I had thought that you were going to say that I could "squeeze in two minutes"—that could have been your other line, Presiding Officer.

This has been an interesting debate. I say to Paul Martin that my father is 90, and he has internet access—there are plenty of them out

there. I thank Euan Robson for telling me that there is something called an appliance population. I will bear that in mind.

The subject of the debate is of course serious. Tommy Sheridan and others hit the nail on the head in saying that the root of the problem is poverty. It is as simple as that. I am afraid that this Parliament is very limited in respect of what it can do about poverty. The measures that have been taken are, however, to be commended, including the warm deal and the central heating programme, although it could be improved and extended. At the moment, people are excluded from it if they have two working radiators in their house. That is wrong. In harsh financial terms, if we keep people warm, we save money through their not suffering ill health.

Some of the statistics are absolutely disgraceful for an energy-rich nation, and there has not really been an improvement in the number of excess winter deaths. According to a parliamentary written answer that I received, there were 2,310 excess winter deaths in 1994-95. In 2003-04, that figure had gone up to 2,840. Nothing has happened to improve the situation; it is getting worse. In the peak years of 1998 to 2000, when there was an influenza epidemic, the figure doubled to 5,000 excess winter deaths a year. As has already been said by Margaret Ewing and others, with the current threat of a flu pandemic combined with a severe winter, it is not scaremongering to say that the figure might rise considerably again.

The reality is that one in five pensioners in Scotland lives in poverty. John Swinburne was quite right to mention that a third of people who are entitled to pension credit simply do not apply for it. I once brought the form into Parliament. It has about 68 pages, and people need a PhD in form filling to get the credit. That is a bar to pensioners' receiving the credit. Four out of 10 of those who are entitled to council tax benefit do not apply for it. If we consider other statistics for elderly people, we find that 37 per cent of them are living in fuel poverty. If we add to that the 10 per cent who are on the cusp of being in fuel poverty, half of pensioners cannot afford to heat their homes. That is not the case in Finland or Denmark. In Finland, there is only a 10 per cent excess in winter deaths; in Denmark, it is 12 per cent. In Scotland, it is 16 per cent. We are top of the wrong league.

The Scottish Gas and Help the Aged partnership recommended that a lead be taken on commissioning research into the many contributory factors to excess winter deaths. I know that that is not being done, because I asked a parliamentary question about research and was told that no study in those specific terms was being undertaken. That was a year ago, and there has not been an update.

We need to be honest and to examine what can be done with our limited powers. We have to conduct research on what can be done about poor insulation, on the fact that people are not getting their benefits, and on the facts that people have old appliances that do not work properly and they do not know how to maintain an even temperature in their homes. Some people think that switching all the heating off and then putting it on in quick blasts is an efficient way to bring a room up to a decent temperature, but exactly the opposite is the case.

As with my question to the First Minister about childhood obesity and deprivation, the answer is always about poverty. It is as simple as that.

13:20

The Deputy Minister for Communities (Johann Lamont): I congratulate Paul Martin on securing the debate and on the way in which he highlighted clearly the challenges and provided a great deal of food for thought with the creative solutions that he identified. I acknowledge that everyone who participated in the debate approached the subject seriously. Important contributions were made, on which I will reflect.

The issue of excess winter deaths is complex and many factors come into play. Although the causes are not fully understood, the Executive is working to address the needs of Scotland's vulnerable older people and other vulnerable groups in a number of ways. I take Paul Martin's point: I am always anxious that when someone says, "Let's do a bit of research," it provides an opportunity to put a brake on action.

We have to consider what is happening in relation to excess winter death. It is not simply—or even predominantly—about hypothermia, because other factors come into play. It is about identifying vulnerable people and ensuring that there is support for them. It is important to put the Glasgow figures in the context of Glasgow's ill health. The issue of excess winter deaths relates more broadly to health inequalities, what we are prepared to do to address them and how money is invested throughout the Executive to do so.

Sandra White mentioned the importance of the index of multiple deprivation—poverty of place has an impact. We have to accept the consequences of targeted decisions, and although we have general spend in relation to older people, we also need targeted spend if we are to meet the needs of vulnerable groups. That is a difficult argument and a difficult balance to strike. It is particularly evident that we have to get the balance right in relation to pensioner poverty and fuel poverty.

I was particularly interested in Paul Martin's comment about IT. We have understood the issue

of IT in relation to isolated, rural and remote communities and investment has been made in helping people connect to computers and so on. We might need to reflect further on how we deal with people who are isolated in their communities because of their age and we need to be much more imaginative about how we get information to them. We provide information, but do we provide it in a way that allows people to benefit from it?

We need to put the issue in the context of our broader policy. When members were talking about the levels of winter-related excess deaths and the cold, I remembered that when I was a child our house was cold except when we were near the fire, but I also remember that older people were part of a community where people round about them were willing to go and find out whether they were okay. I do not think that I am just looking back to a golden age when communities felt safer. Our programme is about community safety and making people feel safer is part of that.

Recently I was involved in a housing project in the Gorbals, where the people understood that supporting an older person is not just about managing their care, but about considering the things that make them feel more alive and more involved in the community, such as being taken to church. The broader context of identifying vulnerable people and having a community response is important.

I acknowledge the issue of pensioner poverty and poverty more generally. It is certainly my driver in relation to a range of issues, particularly those that are to do with multiple deprivation. The Executive is tackling pensioner poverty in Scotland in partnership with the UK Government. I thought that the Scottish National Party might have congratulated the Chancellor of the Exchequer on his willingness to tax the oil companies to invest in public services.

There are almost 190,000, or almost three quarters, fewer pensioners living in absolute poverty and 100,000, or more than one third, fewer living in relative poverty than there were in 1997.

The Executive is providing free central heating. I say to John Swinburne that it is open to all—people do not have to be on pension credit to get it—because we accept that there is a balance of spend on that. We are also providing free local off-peak bus travel, which we are extending to make it a national scheme, and free personal and nursing care.

We are helping to improve benefits uptake through a range of measures, which include our benefits health checks under the central heating programme and funding for the Scottish helpline for older people. However, I acknowledge that

more has to be done and that we must use the avenues for giving information more imaginatively than we have in the past, and that we must use fora such as the older people's consultative forum.

Those measures complement benefits that the UK Government provides, such as pension credit, council tax and housing benefit, the winter fuel payment, free television licences and the £200 council tax refund. Overall, the tax and benefit measures that have been introduced since 1997 are worth an extra £30 per week to Scottish pensioner households, with the poorest 20 per cent getting about £40 a week extra. More pension reforms are planned.

We acknowledge the points that Margaret Ewing and other members made. The issue remains one with which we must wrestle. We have to get down to the practicalities of delivering measures. We are all aware that, in many cases, our older citizens struggle to pay their fuel bills, which is why we have invested more than £200 million so far in the central heating programme and the warm deal. I appreciated Patrick Harvie's kind comments on that matter. I am glad that he has caught up with the Christmas cheer, if belatedly. As the Housing (Scotland) Bill made its passage through the Parliament, we debated energy efficiency. We did not agree absolutely on that, but the issue was acknowledged. The Scottish Green Party engaged with the debate at every stage of the bill's consideration, but it is perhaps a little disingenuous of Tommy Sheridan to suggest that the Scottish Socialist Party pressed anyone on the matter, because its members were absent from the debate in committee and in Parliament they piggybacked on an amendment from the Greens.

We have put central heating systems into more than 60,000 homes and we have insulated more than 218,000—almost one tenth of Scotland's housing stock. Those programmes represent the biggest investment ever in a home energy efficiency programme in Scotland and they are aimed at Scotland's most vulnerable households, which include people—specifically older people—whose health or general well-being may be at risk from cold and damp housing. The programmes also offer advice. Not only do they make people's homes warm and comfortable, but they help them to save money on fuel bills, too.

As Bill Aitken said, we are committed to our target of eradicating fuel poverty as far as is reasonably practicable by 2016. However, that is only one part of our approach. The results on benefits uptake are encouraging, because benefits can make a difference.

Paul Martin made an important point on the energy companies. It appears that, currently, they reward people who are more prosperous and charge more to those who are already in poverty.

We are working closely with them to address that and we have been pressing them to introduce special social tariffs for their most vulnerable customers in order to protect them from the impact of recent fuel price increases. We are pleased that all the companies have taken steps in that direction, but we want far more progress, because we realise that recent fuel price increases make it more important than ever for more companies to go further.

Euan Robson: I acknowledge the efforts that the Executive is making to talk to energy companies. In those discussions, will the minister discuss the profile of appliances in the marketplace? That will help to inform development of the central heating programme and to target it where it will have most effect.

Johann Lamont: I am happy to pursue that point.

I highlight to members the home heat helpline, which has been organised by a group of energy companies that want to give information to older and poorer clients so that they do not suffer from the cold of winter. It is also important that agencies across the board work in a joined-up manner, examine what is happening in our communities and address those issues.

I am happy to confirm to Sandra White that we are developing an older people strategy. We want to take an integrated approach to all aspects of supporting older people, which is why we are developing a strategy for an aging population. Malcolm Chisholm chairs an external advisory group on which Help the Aged and Scottish Gas are both represented, because we recognise that we cannot sort things out by talking to ourselves. Government needs to understand and to track those who identify need and establish solutions and must work with them to make progress.

A strategy that will be launched next year will set out a framework for giving older people access to opportunities to allow them to make a continuing contribution; for ensuring an effective integrated service for older people; for promoting and maintaining health and well-being; and for supporting people to live in accommodation and environments that continue to meet their needs and wishes as they age. I stress that this is not about managing a problem that affects older people, but about supporting people so that they get what they need. In that respect, the most fundamental need must be good health in a safe and warm environment.

I take very seriously the challenging points that members have made. As I have said, by developing the central heating programme and other Executive initiatives, I will continue to ensure that those points are addressed.

13:30

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Enterprise, Lifelong Learning and Transport

Forth Road Bridge

1. Lord James Douglas-Hamilton (Lothians)

(Con): To ask the Scottish Executive whether it will provide an update on the future of the Forth road bridge. (S2O-8428)

The Minister for Transport and Telecommunications (Tavish Scott): At present, we are examining several issues in relation to the Forth road bridge: the operation and management arrangements in terms of the tolled bridges review; the Forth Estuary Transport Authority's plans to introduce a road user charging scheme; and the implications of the cable corrosion findings. That work is evolving and I will keep the Parliament advised of progress at the appropriate time.

Lord James Douglas-Hamilton: The Forth Estuary Transport Authority has suggested that the current road bridge should be closed or torn down in 2019 on safety grounds. Bearing in mind that building a new road bridge will take at least 11 years and will cause major disruption at Queensferry, will urgent consideration be given to appropriate planning for the future? Something should be done now.

Tavish Scott: I assure Lord James Douglas-Hamilton that urgent consideration is being given to emerging findings from the bridge master and FETA. I have commissioned an independent analysis from the Flint and Neill Partnership, which is one of the United Kingdom's leading consultants on bridges and cable-supported bridges. It is inappropriate to prejudge that analysis. It is important that we obtain that analysis and then assess the exact position. It is important to look at every issue. No motorist would forgive us if we got it wrong, so we should wait until the analysis is complete before we make any final decisions. I assure the member that we will ensure that Parliament is fully involved in that process.

Scott Barrie (Dunfermline West) (Lab): The minister will be aware of last month's members' business debate on the subject, which I initiated. Given the strategic importance of the Forth road bridge not just to the east of Scotland but to the wider Scottish economy, will he assure us that he is taking seriously the suggestion that heavy goods vehicles may be banned from using the

bridge from 2013? Is he also taking seriously the devastating effect that that would have on the economy not only in Fife but in Scotland as a whole?

Tavish Scott: I was sorry not to have participated in that debate. I acknowledge Scott Barrie's point about heavy goods vehicles. I am sure that he is aware that the prediction that has come from FETA and the bridge master is the worst-case scenario. That is why we commissioned the independent study, which we hope will report to us by the end of January 2007. I assure Scott Barrie that his point about the importance of the bridge and the Firth of Forth as a strategic corridor in Scotland is well recognised. That is why we will proceed with this issue.

Bruce Crawford (Mid Scotland and Fife)

(SNP): Obviously, the minister is aware that, by 2013, heavy goods traffic will be an issue and that, by 2019, we face the closure of the bridge unless remedial action is taken. In those circumstances, I hope that he accepts that the window for doing anything is closing fast. Indeed, some might say that the window has closed already, as some commentators say that it would take 13 years to build a new bridge. Given that the window is closing, what is the latest date by which a decision to build a new bridge has to be made to ensure that it opens by 2019?

Tavish Scott: I have yet to see in the public domain the independent analysis of the position of FETA and the bridge master, but we know what their emerging findings are. As Mr Crawford has also looked at the matter in detail, I am sure that he knows that those findings were based on a 5 per cent analysis of cables. I am sure that we agree that a fundamental decision on strategic investment in Scotland's road and rail network could not be made on such an analysis. That is why we are doing independent work. I do not wish Parliament to think that we had already accepted those dates. As I said to Lord James Douglas-Hamilton and Scott Barrie, we will be in a better position to inform our decision-making process when the independent work has been completed. I assure Bruce Crawford that I am acutely aware of the planning and construction horizons for this project. It is self-evident that it is important that we get it right.

Helen Eadie (Dunfermline East) (Lab): Has the minister seen the presentation by the Forth Estuary Transport Authority? If not, will he make arrangements to do so? If he does that, will he make sure that all the MSPs for the constituencies surrounding the Forth bridgehead are invited to that presentation, which is quite alarming? I share the views of my colleagues who have said that the lead time for a new bridge will be at least 20 years, if we take into account how long it took from the

drawing board to the opening of the Forth road bridge and the Kincardine bridge. The minister is correct to say that we should be well informed, but we should be informed about all the studies. I thank the minister for his interest in the matter.

Tavish Scott: I would be happy to make sure that the presentation that I saw towards the end of November—I forget the exact date—is available to all members. It has rightly been made available to the board of FETA and I am sure that the bridge master will be more than happy for it to be made available to members. I will ensure that that happens.

Tertiary Education (Links with China)

2. Iain Smith (North East Fife) (LD): To ask the Scottish Executive how it supports the tertiary education sector in making links with China. (S2O-8461)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen): We are working hard to build links with the Chinese ministry of education to support Scottish interests. In January, we signed a memorandum of understanding with the Chinese ministry setting out our intention to strengthen co-operation. In October, we hosted a highly successful visit from the Chinese minister for education, Zhou Ji. In November, I visited both Fudan and Tongji universities in Shanghai to encourage further development of the already strong and growing links with Scotland.

Iain Smith: I am sure that the minister will agree that China presents a huge opportunity for links with the further education and university sectors in Scotland. I am sure that he is also aware of the links that Elmwood College in my constituency already has in China. I would be grateful if he could talk about how those links could be developed further and the extent to which the Scottish Qualifications Authority can market Scottish qualifications in places such as China.

Nicol Stephen: When I met the Chinese education minister, he explained to me that he is responsible for more than 280 million young people in China. Every year, 5 million young people start university and take part in freshers week. Massive expansion of the universities sector is taking place in China; currently there are more than 2,000 universities in China. Fudan University is one of the top three or four universities and it is very interested in developing links with Scotland. We have a great opportunity.

Elmwood College is already doing great things. I met some of the Chinese students who are involved in Elmwood's golf course management curriculum at Tongji University. I am pleased to say that the Scottish Qualifications Authority, which is

also very active in China, has invited Elmwood College to take part in a pilot project to assess students in Chinese. If that is successful, it should have a major effect on the interest in golf-related courses at Elmwood and in Scottish education in general.

Edinburgh Tram Scheme (Costs)

3. Mr Kenny MacAskill (Lothians) (SNP): To ask the Scottish Executive what its estimate is of the total cost of the Edinburgh tram scheme and what proportion of such cost the Executive will fund. (S2O-8449)

The Minister for Transport and Telecommunications (Tavish Scott): In September, the promoter reported to Parliament that the estimated cost of the Edinburgh tram scheme is £634 million plus an allowance for optimism bias of a further £46.4 million. That gives a total of £714.7 million. The Executive was prepared to consider a grant of £375 million, subject to receipt of a robust business case. Indexation of that is under consideration.

Mr MacAskill: Given that the total amount for the tram scheme would allow for the renewal of the entire bus fleet in the Lothians and for the current city bus service to be operated for free for seven years, does the minister agree with the Secretary of State for Transport, who is an MP for the city, that in many cases a well-designed and promoted bus-based system is likely to provide a more cost-effective solution? That is why the secretary of state rejected trams for Leeds. Would it not be better for us to do likewise for Edinburgh?

Tavish Scott: It is interesting to hear the Scottish National Party oppose the trams for Edinburgh. I am aware as, I am sure, is Kenny MacAskill, that Parliament endorsed the general principles of the two tram bills at stage 1. Questions relating to tram schemes in other parts of the United Kingdom should probably properly be pursued by MPs at Westminster.

Mr David Davidson (North East Scotland) (Con): In discussing the comparisons between trams and light rail in Edinburgh, does the minister have an estimate for the cost of reopening the Edinburgh south suburban line and does he have any plans to consider that as an alternative to trams?

Tavish Scott: I am sure that the Edinburgh south suburban line will continue to be part of the City of Edinburgh Council's overall transport strategy, which it is for the council to implement. I have no proposals in relation to that issue. We are currently considering the measures that are before us. David Davidson is usually keen to point out that we are investing too much in public transport. I note this heartening change of emphasis on the

part of the Conservatives towards encouraging spending on public transport.

Sarah Boyack (Edinburgh Central) (Lab): Does the minister agree that our thinking on these issues has to be consistent and long term and that, if we were simply to take the individual pitches that were made around the chamber, that would be no way to solve our transport problems in Edinburgh and the Lothians? We need long-term investment.

Will the minister work with the regional transport partnership to ensure that we deliver on issues such as the trams and the south suburban railway and that we invest in buses, which I remember that Kenny MacAskill once described as being the mode of transport for the last century? We need to be modern, radical and strategic. Will the minister give that commitment?

Tavish Scott: I am happy to agree that we need to be modern, radical and strategic about transport policy—that is what our two parties in the partnership Government are on these issues. Sarah Boyack is right to talk about the importance of regional transport partnerships and what they can do to ensure that strategic investments are made in Edinburgh and the rest of the country. One of the concerns that have been fairly expressed about some of Scotland's great cities is that they have been unable to look 15 or 20 years hence, to ask what investments need to be made to deal with the situation then and to stick with their plans to ensure that they happen.

I hope that the two tram bills continue to make steady progress through Parliament and that we can take these issues forward.

Regional Transport Partnerships

4. Mrs Mary Mulligan (Linlithgow) (Lab): To ask the Scottish Executive how regional transport partnerships are developing public transport in Scotland. (S2O-8498)

The Minister for Transport and Telecommunications (Tavish Scott): The four voluntary regional transport partnerships have been delivering public transport improvements in their regions over the past few years. We are building on their success by developing the seven statutory regional transport partnerships that were established on 1 December 2005. The new partnerships have a statutory duty to prepare a regional transport strategy setting out how they will improve transport in their region.

I am pleased to announce today a two-year funding arrangement for the new statutory regional transport partnerships. The £70 million that we are allocating to them over two years will allow them to deliver a range of transport improvements in their regions and build on the successes of the

voluntary RTPs and Strathclyde Passenger Transport.

Mrs Mulligan: I welcome the minister's announcement of the additional finances that will be available. Does he agree that such finance could be significant in allowing progress to be made on the upgrading of roads such as the A801 Avon gorge road, which is currently the responsibility of West Lothian Council and Falkirk Council? Buses and heavy goods vehicles find it difficult, if not impossible, to use that road and such an upgrade would allow people from the north and south of my constituency to travel more safely—maybe even by bus.

Tavish Scott: That route is exactly the kind of route that could benefit from the capital allocations that we have announced today, as it is a strategic priority for the regional transport partnership in that area, and I hope that it will. This seems like a good opportunity to take that project forward. I hope that the package of work and the funding can be brought forward, as the route is an important one not only for Mary Mulligan's constituency but in a strategic sense across the region.

Stewart Stevenson (Banff and Buchan) (SNP): Is the minister aware that Grampian is 2 per cent more rural even than Highland and that, in parts of Grampian, such as the constituency in which I live, there is no realistic prospect of sensible access to train services? Will that part of Scotland receive additional investment to support the development of public transport, which will benefit constituents such as me who have a 6-mile walk to the nearest bus?

Tavish Scott: I am not familiar with the 2 per cent statistic. We might want to look closely at that. However, I recognise the point about the integration and availability of public transport, and about ensuring that there are alternatives to the car in areas where, as Stewart Stevenson fairly points out, there are no train services. We need to find a better balance. I am aware of the good work that Aberdeenshire Council does in its part of Scotland on initiatives such as demand-responsive transport. I can only encourage the council in that work through the capital allocations that we have made today for transport.

Stewart Stevenson: On a point of order, Presiding Officer. I am being disingenuous—I wanted to clarify that I meant Aberdeenshire, not Grampian. I apologise.

Bus Compliance Officers

5. Ms Wendy Alexander (Paisley North) (Lab): To ask the Scottish Executive whether there are sufficient bus compliance officers to monitor the enforcement of bus registration in Scotland. (S2O-8470)

The Minister for Transport and Telecommunications (Tavish Scott): From January 2006, the number of bus compliance officers in Scotland will increase to six. Four of them will be funded by the Scottish Executive as part of our commitment to improving bus services in Scotland. That level of resource will enable the Vehicle and Operator Services Agency to adopt an increasingly effective and proactive approach to monitoring and enforcing bus registrations.

Ms Alexander: The minister may be aware that there have been difficulties in west central Scotland, particularly in Inverclyde and Renfrewshire. I understand that some bus companies are still not complying fully with the regulations and are not running after 6 pm, although they are contracted and required to do so until 9 pm or 10 pm. When the new bus compliance officers take up their posts in the new year, I would be grateful if the minister would use his good offices to encourage them to pay particular attention to communities where such things are happening.

Tavish Scott: I am more than happy to take up Wendy Alexander's suggestion. I ask her and any other members who have concerns about particular operators to bring them to the attention of the Scottish Executive Enterprise, Transport and Lifelong Learning Department and the appropriate regulatory bodies, so that we can ensure that the services that we all seek for our constituents are the best they can be.

Concessionary Fares (Mature Students)

6. Robin Harper (Lothians) (Green): To ask the Scottish Executive what its position is on providing concessionary fares to mature students and what action it plans to take on this issue. (S2O-8510)

The Minister for Transport and Telecommunications (Tavish Scott): The Executive has no plans to provide concessionary travel to mature students. It provides help with travel costs for mature students under further and higher education funding. Student discounts for travel are commercial decisions made by travel operators.

Robin Harper: I thank the minister for repeating the answer that he gave to Mary Scanlon last month. However, the question is about a particular operator. Scottish ministers have the power to set frameworks within which concessionary fares are granted. Given that Lothian Buses is the only company in Scotland to discriminate against mature students, and given the Executive's commitment to lifelong learning, does the minister agree that that behaviour is totally inappropriate? Students who are over 25 should be supported in the same way as students who are under 25. Will

he use his powers to demand that public transport services stop discriminating against mature students?

Tavish Scott: There has been a consistent policy on this matter for many years—as far as I am aware since 1999, when we were all first elected to the Parliament. It has not changed in that time and we have no plans to change the position. If Mr Harper wishes to pursue the issue with Lothian Buses, he can do so, but he seems to miss the point that we invest considerably in travel support for students—not just mature students but students generally—with the funding that we apply through my colleagues in the Scottish Executive Enterprise, Transport and Lifelong Learning Department. That has always been viewed as the appropriate way to deal with such matters and we have no plans to change that position.

Justice and Law Officers

High Court (Reforms)

1. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Executive what evaluation has been carried out of its action to reform the operation of the High Court. (S2O-8503)

The Minister for Justice (Cathy Jamieson): Initial evidence shows that our reforms of the High Court are having a real impact. Current projections are that as many as 50,000 fewer witnesses may need to be called to the High Court in the 12 months since the reforms were implemented.

Karen Whitefield: Will the minister assure me that lessons will be learned from the evaluation of the High Court reforms and that the same rigorous and radical action will be taken to guarantee that our district and sheriff courts enjoy similar benefits of reform? Will she ensure that victims' and communities' needs are central to any such reform proposals?

Cathy Jamieson: I give an absolute assurance on that. Our overall aim has always been to deliver a faster, more efficient and more responsive system in all criminal justice services, but particularly in our courts, and to ensure that we have a better service for victims and witnesses. Our evaluation of the High Court reforms is at an early stage, but the results so far seem positive and we want to learn from them. We will produce proposals for the summary courts in due course.

District Courts (Clerking)

2. Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): To ask the Scottish Executive what plans it has to review the clerking of district courts. (S2O-8463)

The Minister for Justice (Cathy Jamieson): District courts are currently run by local authorities. As part of the summary justice reform programme, to which I referred, district courts will be unified under the control of the Scottish Court Service, so the recruitment and training of legally qualified clerks will be managed nationally.

Mr Stone: It will come as no surprise to the minister that I wish to bring to her attention the recent rather astonishing and, I believe, unprecedented incident in Caithness district court in which, for whatever reason, the clerk decided to walk out, thus bringing a case to a surprising and sudden halt. The case has subsequently been relaunched in the sheriff court, but the incident flew in the face of the public's perception of the smooth administration of justice and the public's confidence that such administration leads to a right solution. What action will the Executive take to reassure me that a similar incident will not happen again in a district court in Scotland?

Cathy Jamieson: I reassure Jamie Stone that the matter has been investigated. The individuals involved were, as I said, employees of the local authority. As I have conveyed to Jamie Stone in a letter, the matter has been thoroughly investigated. However, I put on record once again my view that our court service should run efficiently and smoothly and should not impede justice being done and being seen to be done in local communities. I will keep in touch with Mr Stone to keep him up to date on our proposals. If further issues arise, I am sure that he will draw them to my attention.

Class A Drug Offences

3. Mr Adam Ingram (South of Scotland) (SNP): To ask the Scottish Executive how many class A drug offences have been reported this year and how this compares with previous years. (S2O-8453)

The Deputy Minister for Justice (Hugh Henry): The available recorded crime statistics do not include a breakdown by class of drug. However, figures show that 4,307 seizures were made of class A drugs in 2003, which is the most recent year for which data are available.

Mr Ingram: It is interesting that the Executive does not produce the same information as is produced in England, where the latest figures show a 16 per cent rise in class A drug offences. That is worrying, particularly if the same has happened in Scotland. I am sure that the minister shares my concern about the grip that drug abuse and drugs-related crime are gaining, even in the small Ayrshire towns and villages that Cathy Jamieson and I represent. A graphic example of that is the recent find by children in Muirkirk of a drugs stash, with a street value of £300,000, and a

handgun. What new initiatives or resources are being put in place to stem the misery that is brought about by the evil drugs business?

Hugh Henry: We have expanded the operations of the Scottish Drug Enforcement Agency significantly and given it new powers. Its work is significant. I am impressed not just by its work within Scotland, but by its increasing number of international links. The SDEA has identified a challenge that faces society as a whole and it in particular. It must have access to expertise that matches the expertise of the major criminal gangs. We are funding and supporting the development of expertise in financial operation matters and in information technology. I am not complacent, because I realise that, because of the profits involved, every time that we make progress, the criminals seek other opportunities. Nevertheless, I am heartened by the excellent work that the SDEA is carrying out.

Her Majesty's Prison Inverness (Female Unit)

4. Mrs Margaret Ewing (Moray) (SNP): To ask the Scottish Executive what long-term plans it has for the female unit in HM Prison Inverness. (S2O-8446)

The Minister for Justice (Cathy Jamieson): The Scottish Prison Service has no plans to change the female unit in Inverness. The unit will remain an integral part of the prison, which serves the courts of Highland and Moray.

Mrs Ewing: There is a desperate need for female prisoners to be close to their family and friends. However, I believe that the latest annual figures show that about 290 females were sent to prison for fine default, which means that they are removed from their family—in particular their children—and friends. Is there no mechanism for reducing the number of women who are sent to prison for fine default?

Cathy Jamieson: I agree with the member on that issue. We have debated and discussed the matter in the chamber on several occasions. We are keen to try to ensure that there are appropriate alternatives. For example, we have piloted the option of supervised attendance orders. I give the member an assurance that we will continue to do what we can, but we must also try to ensure that people do not end up in our criminal justice system in the first place.

We are aware that many women who end up in prison also have some of the problems that my colleague Hugh Henry has mentioned, such as drug misuse, debt, financial difficulties and so on. If we can deal with those issues, that will help us in our efforts to reduce offending and reoffending behaviour.

The Deputy Presiding Officer (Trish Godman): Question 5 is not lodged.

Antisocial Behaviour

6. Richard Baker (North East Scotland) (Lab): To ask the Scottish Executive how it is encouraging local authorities and police forces to make full use of their powers to address antisocial behaviour. (S2O-8472)

The Deputy Minister for Justice (Hugh Henry): Local antisocial behaviour strategies and outcome agreements include clear targets against which the Executive monitors performance. Ministers regularly meet local delivery agencies and communities—for example, the First Minister was in Aberdeen earlier this week. We also produce publications, such as “Standing up to Antisocial Behaviour: First Anniversary Report” and our regular community newsletter. Those give examples of positive action being taken in communities throughout Scotland in the fight against antisocial behaviour.

Richard Baker: Does the minister agree that, as well as taking other measures, it is vital that councils make full use of their new powers to protect communities? I welcome the fact that Aberdeenshire Council has recently employed those powers to counter antisocial behaviour in Westhill, but it is surprising that that appears to be only the second time that the council has applied for an antisocial behaviour order in recent years. Will the minister reassure me that the Executive supports and encourages councils in using their new powers and that there are no political reasons for their not being employed?

Hugh Henry: I cannot speak for the handful of Scottish councils that have used either no or only one or two antisocial behaviour orders in the past two years. Councils must make decisions about the circumstances that pertain in their local areas. I would be disappointed if any local authority set its face against using the significant powers for political reasons. We have given the powers to local delivery agencies because people throughout Scotland were yearning for action to be taken to tackle insidious antisocial behaviour. I am encouraged that we are—slowly but surely—seeing the effective application of those powers. However, I acknowledge that some areas are more active in using the powers than others. One of the reasons why we produce a regular newsletter is to let people—not only local authorities but local agencies and communities—throughout Scotland know what is happening. If nothing is happening in their area, they can point to good examples elsewhere and ask why such action is not happening in their locality.

Roseanna Cunningham (Perth) (SNP): Does the minister agree that ASBOs on conviction are

an extremely useful tool and way of using the new regime? He will be aware that in some parts of Scotland, for example Dumfries and Galloway, ASBOs are already being used extensively. Has he any specific plans to encourage their much wider use?

Hugh Henry: It is not for politicians to determine the use of ASBOs on conviction, but we are ensuring that people across Scotland are aware of the powers that are available. We want people to be aware of the application of ASBOs on conviction and we want to promote and encourage examples of good practice so that others can take confidence.

On a number of occasions, we have discussed in the chamber some of the excellent initiatives that have given respite to communities across Scotland. I am heartened that people are now beginning to see the benefits of the legislation that we have passed.

7. Margaret Smith (Edinburgh West) (LD): To ask the Scottish Executive whether the use of antisocial behaviour orders has been effective in reducing nuisance and distress to communities and individuals. (S2O-8468)

Hugh Henry: As part of a package of measures that includes prevention, diversion and early intervention, antisocial behaviour orders are a very useful tool in bringing respite to hard-pressed communities and in dealing with people who persistently refuse to change their behaviour. More ASBOs are being applied for and granted; there was a significant increase between 2003-04 and 2004-05. That shows that agencies are finding them an appropriate and valuable form of intervention.

Margaret Smith: I welcome the minister's comments on the range of approaches being undertaken, and I commend the work that is being done in my constituency, particularly in the Parkgrove, Clermiston and Muirhouse areas. What plans does the Executive have to reduce the number of breaches by offenders? Does he agree that such breaches must be dealt with quickly and effectively by the courts and other agencies if ASBOs and the other approaches that he has mentioned are to command public confidence?

Hugh Henry: We need to be careful when discussing breaches because in some cases there are multiple breaches and we do not know how many people are directly involved. We are looking into that.

We are at an early stage, but I am heartened that the majority of ASBOs are being complied with and that a pattern is emerging of breaches being dealt with quickly. Once the message gets out that breaches of ASBOs will be dealt with quickly—Margaret Smith is right to emphasise the

importance of that—I am sure that people will think twice about breaching them. The word is now getting out that ASBOs are not just useful but effective.

Transportation of Prisoners (Reliance)

8. Phil Gallie (South of Scotland) (Con): To ask the Scottish Executive what advantages have been gained from the Reliance contract for the transportation of prisoners. (S2O-8424)

The Minister for Justice (Cathy Jamieson): The contract with Reliance Custodial Services has resulted in greater efficiency in prisoner escorting. That has allowed a significant number of police resources to be redeployed to front-line duties.

Phil Gallie: I thank the minister for her excellent answer and I applaud her for her courage in sticking with the contract in the difficult times when the contract was introduced. Now that the minister has adopted that Conservative policy—which was produced before the 1997 election—and has used it successfully, will she listen a bit more closely to members in the Conservative ranks, especially on the subject of automatic release? Will she do something about that now?

Cathy Jamieson: I am getting a bit worried, Presiding Officer: that is twice in one day that Phil Gallie has—I think—tried to be complimentary to me. That does not usually happen and I always take it as a bit of a warning.

I recognise what Phil has tried to do in supporting us on this matter, but there are other issues on which I see no common ground between us and the Conservatives. He knows my views on early release well, because I have expressed them in the chamber before. In the run-up to the 2003 election, we made a commitment in the Labour manifesto to ending automatic early release. The Executive intends to introduce an appropriate scheme to do that—we have made that commitment on a number of occasions. I look forward to having Phil Gallie's support as we take that particular bill through the Parliament.

Chief Constable of Dumfries and Galloway Constabulary (Meetings)

9. Alex Fergusson (Galloway and Upper Nithsdale) (Con): To ask the Scottish Executive when the Minister for Justice last met the chief constable of Dumfries and Galloway constabulary. (S2O-8441)

The Minister for Justice (Cathy Jamieson): I last met the chief constable of Dumfries and Galloway constabulary on 14 November 2005.

Alex Fergusson: I think that I also meant to ask what matters the minister discussed with him. That might have hinted at my next question, which is

whether she discussed antisocial behaviour in some of our smaller rural communities. I am receiving a growing number of letters from members of rural communities right across my constituency which draw my attention to the increasing incidence of antisocial behaviour, which is usually committed by a very small number of disruptive youngsters. As the minister will be aware, such behaviour can cause mayhem and a considerable amount of stress in small communities.

What further measures could and will the Executive take to address that problem because, in spite of Roseanna Cunningham's remarks about Dumfries and Galloway and what the Deputy Minister for Justice has said in his replies to several questions, the current measures are simply not working in many of our small rural communities?

Cathy Jamieson: It is for local agencies to work together closely to ensure that all the tools that we have put at their disposal are utilised appropriately. I am certainly aware of the keen interest that the chief constable of Dumfries and Galloway constabulary takes in working with young people to ensure that preventive work is done and that the law is enforced when crimes are committed. I know that excellent examples of work that has been done in small rural areas exist, because I have had the opportunity to meet some of the young people involved. As Mr Fergusson's constituency borders my own, I am familiar with the particular difficulties that are experienced there. The Parliament has legislated in this area and we have provided the resources for the necessary work to be undertaken. Therefore, I would expect every agency to seek to use the tools that it has at its disposal to tackle what can be a very real problem for people.

Alasdair Morgan (South of Scotland) (SNP): The minister will be aware that Dumfries and Galloway is one of the few areas in which most of the agencies—the national health service, the police, the fire service, the local council and the enterprise company—have coterminous boundaries. Even the Scottish Parliament constituencies in that area share the same boundaries. Coterminous boundaries offer great scope for inter-agency working. Will the minister reassure us that the police in Dumfries and Galloway will continue to enjoy such boundaries in future?

Cathy Jamieson: Coterminosity can present an opportunity to achieve close working relationships, but we must ensure that people are able to look further afield than their own area. For example, under the proposals for the new community justice authorities, part of Ayrshire will join up with Dumfries and Galloway to ensure that we have an

opportunity to manage sentenced offenders better throughout the south-west of Scotland.

I think that it has been stated before that, at present, we have no plans to examine the restructuring of police forces. However, I am sure that Alasdair Morgan, and other members, would agree that the most appropriate way of dealing with the issue is to ensure that the services that get the best outcomes are provided for local people; logically, the structures should follow that.

Phil Gallie: I note that Rosie Kane is absent from the chamber. Have there been any cases in Dumfries and Galloway in which the police have been used to remove asylum seekers? Are the police used to trace those people who deliberately avoid removal from this country?

Cathy Jamieson: I cannot give Phil Gallie the relevant figures off the top of my head, but I can tell him what I would say in my reply to Rosie Kane if she was present to ask the next question. The nature, the timing and the extent of any police involvement in the removal of failed asylum seekers are operational matters, which are decided on by the chief constables in conjunction with the United Kingdom immigration service.

The Deputy Presiding Officer: Rosie Kane is not here to ask question 10, so I suspend the meeting for one minute before the next item of business.

14:54

Meeting suspended.

Family Law (Scotland) Bill: Stage 3

Resumed debate.

Section 15B—Abolition of status of illegitimacy

14:55

The Deputy Presiding Officer (Murray Tosh): We resume our consideration of amendments to the Family Law (Scotland) Bill. Group 9 is on the abolition of the status of illegitimacy. Amendment 12, in the name of the minister, is grouped with amendments 13, 14 and 32.

Hugh Henry: Amendments 12, 13, 14 and 32 deal with the representations that we received in the wake of amendments to the bill at stage 2 that were designed to abolish the concept of illegitimacy.

Many commentators have expressed their desire to see the concept of illegitimacy removed from Scottish law. However, as illegitimacy impacts on two reserved areas—succession to hereditary titles and the granting of arms—it is not within the competence of the Scottish Parliament to abolish the concept in its entirety. I will leave it to members' imagination as to who might still be classified as illegitimate.

The provisions that were introduced at stage 2 attempted to achieve the retrospective abolition of illegitimacy from Scots law with a saving provision that the abolition does not affect those reserved matters. However, since the amendments were made, a couple of points have been brought to our attention that require further consideration.

The first concerns new section 1(4) of the Law Reform (Parent and Child) (Scotland) Act 1986, as introduced by section 15B of the bill. It has been argued that the provisions in subsection (4), which explains how references to enactments and deeds that were passed prior to the commencement of section 15B are to be read, are too narrow and run the risk of missing out people who are currently regarded as legitimate. Although the risk is small, it is unacceptable. Amendment 12 provides that the changes made by the bill will not affect enactments or deeds that were passed or made before the commencement of section 15B. Although that represents a shift in policy from a retrospective to a prospective abolition, it provides much-needed clarity and ensures that the position is both straightforward and unambiguous. Amendment 32 is an additional repeal that is made necessary by that change.

Secondly, questions were raised about the relationship between the removal from the law of declarators of legitimacy, illegitimacy and

legitimation and the reserved matters of succession to or devolution of hereditary titles. It was drawn to our attention that, although the existing saving provisions in the 1986 act refer to the titles and the way in which they may transmit on death, they do not extend to the means by which a person may establish whether there is any entitlement to such transmission. Amendments 13 and 14 allow for the retention of such actions in the limited circumstances that there is a connection with the succession to or devolution of a title, coat of arms, honour or dignity that is transferable on the death of the holder.

I move amendment 12.

Amendment 12 agreed to.

Amendments 13 and 14 moved—[Hugh Henry]—and agreed to.

After section 17

The Deputy Presiding Officer: Group 10 is on court orders concerning parental responsibilities and the role of wider family members. Amendment 41, in the name of Rosemary Byrne, is the only amendment in the group.

Ms Rosemary Byrne (South of Scotland) (SSP): The purpose of amendment 41 is to highlight the positive role that grandparents or other family members have in children's lives and to ensure that that role is widely recognised. Although the bill does not confer legal rights on grandparents and other family members, the development of the charter for grandchildren will go some way towards ensuring the recognition of the positive effect that grandparents and wider family members can have.

Amendment 41 would ensure that one of the key aims of the charter—that, in making decisions, courts should consider whether grandparents can play a role in children's lives—is enshrined in legislation. The amendment would ensure that the role of grandparents and other family members is not overlooked and that the best interests of the child are taken fully into account.

I move amendment 41.

15:00

Christine Grahame: Although I have a great deal of sympathy with amendment 41, I will not support it. Anyone who can show an interest in a child can make an application to the court at present—I use the word “interest” in its legal sense. Grandparents, aunts, uncles or associates who have been involved in the life of a child may already seek a contact order, residency or some role in a child's life. Children—often surprisingly young children, perhaps eight or nine—can be questioned by a sheriff if it is felt that they can

express themselves about what they want to happen in their lives. There are many good sheriffs on the bench who specialise in the sensitive area of family law.

Grandparents often play a supportive role in relationships, although, as I learned in my 12 years of practice, some grandparents can be mischief makers when a couple are trying to reach a divorce settlement—they may pitch parents one against the other by saying things such as, “I wouldnae let him have access to the weans.” Grandparents are like everybody else: a mixed crowd.

It is good to bring the issue of wider family members to the chamber and sheriffs should take cognisance of it. However, we should not enshrine it in statute.

Donald Gorrie: I support the involvement of members of the wider family. I accept Christine Grahame's point that there are bad grandparents just as there are bad parents, bad MSPs and bad anyone else. However, the concept of the wider family can be extremely positive.

Grandparents have been lobbying intelligently on the issue for many years, but they are not the only people who would be covered by the amendment. Step-parents often have a long relationship with the child and help him or her to grow up, yet they are given no legal status. Similarly, an uncle or an aunt may occupy that important position. The courts should recognise that a well-meaning, useful and intelligent relation could be involved in looking after the future of a child in a much better way than at present. At the moment, some sheriffs may be managing well to involve members of the wider family. However, the Parliament should give guidance to all sheriffs to say that the law must recognise the wider family.

We could learn from the extended families of the east. Today, our concept of family focuses too much on two plus two in a wee box. That is wrong. We should widen the concept of family. Therefore, the amendment is well worth supporting.

Margaret Mitchell: I totally sympathise with the sentiment behind the amendment, but I do not believe that it would have the outcome that Rosemary Byrne desires. The amendment would give an almost automatic right of contact to grandparents and other relatives. The best way of ensuring contact is to leave the matter to the discretion of the court, where appropriate, or to work hard behind the scenes to ensure that everyone, including the parents, focuses on the needs and interests of the child. In that way, the place of grandparents and other meaningful people in the life of a child is assured and the child is afforded contact time with those people.

Mrs Mulligan: I will make a couple of points on behalf of the Justice 1 Committee. We took evidence on the issue from grandparents groups and we recognise the strong role that grandparents can play in the upbringing of children. However, we feel that it is important that we do not make that role into a statutory responsibility—the difficulties involved have been mentioned already.

Responsibility for children rests with parents. To give statutory rights to grandparents could further confuse an already complicated situation. The committee believes that the grandchildren's charter will tilt the balance towards the children's right to benefit from the relationship that they can have with their grandparents and, as Donald Gorrie said, with the wider family. However, the committee felt that that relationship should not be put on a statutory footing.

Sheriffs who regularly deal with such cases assured us that grandparents act as a stabilising influence. We have recognised that and the grandchildren's charter will go some way towards recognising it, too. Therefore, the amendment should be rejected.

Mr MacAskill: It is clear that there is agreement in the chamber that wider family involvement is beneficial. However, I concur with the points made by Christine Grahame, Mary Mulligan and Margaret Mitchell. To enshrine contact between grandparents and grandchildren in law would be fundamentally wrong. What matters, and what must always be paramount, is the best interests of the child. There is no doubt that the involvement of a loving grandparent, aunt or uncle is beneficial and will add to a child's life, but to force the involvement of grandparents on the child would be counterproductive.

As has been pointed out, there is already an opportunity for any interested party—regardless of whether they are a blood relative—to apply for a contact or residence order. Sometimes, tragedies occur when sons and daughters fall out with their parents, but they should work towards reconciliation. It would be fundamentally wrong to enshrine in law the opportunity to make an order for access to a grandson or granddaughter, except in the most unusual circumstances in which part of the family is deceased. We should accept what Mary Mulligan said. We must take cognisance of the grandparents charter, but fundamentally we must trust in the good sense of our judges and sheriffs, who, in the main, tend to get it right. These are difficult matters and decisions must be made on each individual case. We should not force the issue in any particular circumstance.

Phil Gallie: I was persuaded by Rosemary Byrne's argument. She made the point that the amendment would allow the courts to consider the

role of grandparents. Christine Grahame said that the courts can already do that, but amendment 41 seeks to ensure that the grandparents charter is recognised in the bill. Kenny MacAskill and others said that they have a great deal of respect for the grandparents charter. To my mind, there is value in recognising the charter in the bill.

Hugh Henry: I point out to Phil Gallie—this is also relevant to what Donald Gorrie said—that Rosemary Byrne's amendment does not mention a grandparents charter. The amendment deals with the charter for grandchildren and looks at the matter from the child's perspective. Some members have concentrated on grandparents, but the amendment focuses on grandchildren.

Phil Gallie: I accept the minister's comment. He is absolutely right, but perhaps that gives greater emphasis to Rosemary Byrne's argument. The fact is that everyone in the chamber is interested in the protection of children and in doing what is best for them. As Donald Gorrie said, the wider family may well be the best option for the child. The amendment does not seek to mandate the judge; it simply asks the judge to consider the matter. On that basis, I support the amendment.

Karen Gillon (Clydesdale) (Lab): I had some sympathy with Rosemary Byrne's amendment but, having considered it further, I think that it goes one step too far. Grandparents continue to play a valuable role in their grandchildren's lives. If grandparents are excluded, that is often because the parents have failed to work out their relationship. Loss of contact with the grandparents is a by-product of problems in the parents' relationship. If the bill helps the parents to sort out their acrimony in taking forward a divorce, it will go some way towards resolving some of the issues for grandparents.

As a child, I experienced an acrimonious divorce, but I had full contact with my grandparents on both sides and I appreciate the stability and support that they gave me in working through that difficult situation. Where such contact is appropriate and possible, it should happen. However, if the bill helps mums and dads to move forward, grandparents will benefit as well.

Hugh Henry: Rosemary Byrne's amendment 41 seeks to ensure that the court has

“regard to the charter for grandchildren”.

It is important to keep emphasising that we are taking the child's perspective. We have emphasised that throughout the bill. Kenny MacAskill was right to say that we need to consider the child's best interests. Christine Grahame explained in detail how the courts examine the broader range of issues and consider the contribution that members of the wider family can make in a child's interests. Margaret Mitchell

is right: the amendment would not achieve the desired outcome.

We started by developing a grandparents charter but, as discussions progressed, it became clear that we had to shift the focus back to grandchildren. It would have been wrong to consider an adult's interests ahead of those of a child. The charter is one of several packages of non-legislative projects that we are undertaking, including the parenting agreement and a public information campaign.

A range of organisations supported the drafting of the charter. We involved people from organisations such as the Association of Directors of Social Work, the Family Law Association, Parenting Across Scotland, Family Mediation Scotland, the Grandparents Apart self-help group, Stepfamily Scotland, Children in Scotland, Scottish Women's Aid and Families Need Fathers.

To avoid doubt, given that we are talking about grandchildren and not grandparents, it is useful to put on record our recognition of the tremendous role that many grandparents play. Christine Grahame is right: some grandparents play an inordinately invaluable role, although others may be quite obstructive. In general, we know that grandparents do a huge amount throughout the country.

When we debated financial support this morning, Cathy Jamieson said that we are considering a range of measures. We know that many grandparents step into the breach when parents have failed for whatever reason—whether it is medical, social or personal problems. Grandparents may be left with the burden at a time when they should, in a sense, be winding down. We need to examine how to support them far better and we are doing that.

Phil Gallie: I go along with much of what the minister says, especially in relation to the debate this morning. He knows the bill better than I do. Is the charter for grandchildren mentioned elsewhere in the bill? If so, I could well be satisfied.

Hugh Henry: The charter is not mentioned elsewhere. Kenny MacAskill and other members spelled out why neither the charter nor the parenting agreement is mentioned in the bill. Those documents are non-legislative and are designed to help people; they will not be legal documents. The court will take into account many factors, such as anything that a parenting agreement says. It will listen to children and consider the contributions from other family members. However, the charter was never designed to be a legal document.

As Margaret Mitchell said, Rosemary Byrne's proposal would not achieve the desired outcome. I have tremendous sympathy with what Rosemary

Byrne seeks and I have put on record our appreciation of the work that grandparents do throughout Scotland. The charter was drawn up to recognise the value that grandparents can add to their grandchildren's lives but, in practical terms, it does not serve any real purpose.

In considering orders that relate to children, the courts will take into account current arrangements for a child, parents' views and, as Christine Grahame said, the views of other family members such as grandparents, if appropriate. The charter says nothing about the relationship between children and their grandparents, so to compel sheriffs to have regard to the charter when they consider the granting of a contact order would at best be inappropriate. If the amendment were agreed to, it could also reduce the flexibility for revision in future.

The intention is honourable and right and we sympathise with it. However, the practical effect would not be achieved. I ask Rosemary Byrne to withdraw her amendment.

15:15

Ms Byrne: First, I welcome the charter for grandchildren as a good move in the right direction. However, my reason for lodging amendment 41 is that there is no mention in the bill either of the charter or of the role of grandparents or other family members. Given that grandparents often play a tremendous role in children's lives and hold things together—for example, they provide child protection in circumstances of drug and alcohol misuse—it is surely time to ensure that they have some recognition. I do not ask that grandparents be given parental rights and responsibilities; I am just asking that they be given recognition.

Christine Grahame and others pointed out that the role of grandparents can be recognised by due process through the courts, but over the past two or three years I have spoken to many grandparents who have found the court process to be not only costly but, in some cases, extremely destructive and stressful. Amendment 41 provides another opportunity to recognise in the bill the role that grandparents play. As Phil Gallie said, grandparents are asking only for recognition of their role. I ask members to support amendment 41, which would provide that recognition.

It is interesting that many, although not all, members who have spoken in support of amendment 41 have been grandparents themselves. Some of us know full well how important that role is. I ask members to support amendment 41.

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

Members: No.

The Deputy Presiding Officer: There will be a five-minute suspension, after which I will put the question again before moving to the vote.

15:17

Meeting suspended.

15:22

On resuming—

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Martin, Campbell (West of Scotland) (Ind)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)

Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 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)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 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)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
Johnstone, Alex (North East Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 21, Against 96, Abstentions 2.

Amendment 41 disagreed to.

The Deputy Presiding Officer: Group 11 is on court orders relating to parental responsibilities and so on. Amendment 42, in the name of Pauline McNeill, is grouped with amendment 15.

Pauline McNeill: Going to court is an indication that there is conflict over or disagreement about contact with children. The parental agreement should provide an important starting point for separating parents. I originally wanted the parental agreement in the bill, but I have accepted ministers' assurances that it is a valid document to present to the courts.

The Children (Scotland) Act 1995 requires a court to consider contact and residency in the interests of the child. Indeed, the context of the 1995 act is that there should be joint decision making about children, whether or not they are resident with one parent. More work needs to be done on the 1995 act to ensure that parents understand that we are trying to achieve joint decision making.

When there is conflict, procedures can be protracted. I am familiar with cases in which the court has taken four, five, six or even seven years to reach a decision. There is a special procedure for family contact cases, but they are not always speedily conducted. Glasgow Sheriff Court has two specialist sheriffs, and I believe that they make a difference because they can press individuals when there are difficult issues and emphasise the role of both parents. However, when those cases go to court, they are costly and children are involved. We must impress on people the fact that it is the duty of both parents to consider the interests of their children.

The Executive has not yet acknowledged the extent of the problem, although it has shifted significantly in two important areas—the first is research and the second is access to justice. My amendment 42 requires the Executive to regulate for a shorter, speedier process. At issue is access to civil justice. We have heard in the chamber of cases that have cost ordinary individuals £30,000, £40,000 or £50,000 and rising, just to get access to the civil courts in order to see their children.

Although amendment 42 is a probing amendment, I emphasise my concern that we must do better to reduce the cost and length of such cases. My primary concern is about cases in which people argue for contact and the costs continue to rise significantly. In addition, parties

who defend a position might claim legal aid, so the cost to the public purse must also be considered.

The debate on the previous group of amendments was about grandparents, who also have to use the 1995 act. They too might have problems with cost in order to get into court to argue their point of view.

The Executive's amendment 15 concerns the enforcement of contact orders. There are many cases in which the court grants an order that is frustrated or refused by the parent who has residency. I make it clear that, although I recognise that both parents must adhere to contact orders and I support action to deal with both parents, I refer to cases in which there is no suggestion of domestic violence. I supported the Executive's strengthening provisions to ensure that sheriffs have regard to both women and children when making such determinations and I do not argue for parents to be jailed or fined. However, the operation of contact orders is a genuine concern and it would be wrong simply to acknowledge and condone that contact orders are not complied with in some cases. Although it is difficult to find a solution—Hugh Henry has always said that—it would be wrong to give the impression that because we cannot find a solution, we therefore condone parents who refuse to abide by contact orders. It is not in the interests of children to do that.

Where do we go from here? I accept that there are flaws in the committee's position, which is now in section 17B of the bill and which does not achieve the desired effect. I support the Executive amendment for those reasons. However, I hope that the Executive will think further about what we do about the difficult cases because we do not know how many there are. I welcome the Executive's commitment to research that matter. We need to make a proportionate response. We need a mechanism that at least attempts to recognise that when the court has made a decision in the interests of the child, as it is required to do, we can do more—in a family-friendly way—to effect that decision.

I move amendment 42.

Hugh Henry: Amendment 15 removes section 17B, which was inserted into the bill by an amendment from Sylvia Jackson at stage 2. Section 17B seeks to compel the courts, when making or varying a contact order, to attach to it a notice warning of the consequences of failing to comply with the contact order.

I understand what drove Sylvia Jackson to lodge her stage 2 amendment and what was behind some of the other issues that she raised at that stage. Indeed, both Sylvia Jackson and Pauline McNeill have been diligent in pressing an issue of

genuine injustice at times when one parent is denied access to their children. As a parent myself, I could not begin to imagine what it would be like not to have access to my child, despite having a court order to support me. Pauline McNeill was absolutely right to outline some of the implications, of both cost and the significant time that it takes to resolve such issues.

I sympathise with what Sylvia Jackson attempted to achieve to improve the quality of contact between children and their separated parents. However, section 17B as constructed could be unhelpful. It could be unduly intimidating to warn parents, before either of them had done anything wrong, of the consequence of non-compliance. At worst, it could encourage one parent to seek opportunities to threaten the other with consequences, for even the slightest breach. Our main motivation for lodging amendment 15 was the unintended consequences of section 17B. If it achieved simply what Sylvia Jackson was seeking to achieve, we might have been able to live with it. Unfortunately, it affects each party differently. The resident parent could face harsher consequences than the non-resident parent. Having listened and spoken to Sylvia Jackson, I do not think that she intended that.

15:30

Stewart Stevenson: I am listening carefully to what the minister says. Can he explain how there are any new consequences because of the existence of section 17B? I accept that there is potential for psychological pressures, but the minister is suggesting that there could be further consequences.

Hugh Henry: The warning will be effective only if there are sanctions to back it up. The sanctions to back up the warning affect the parties differently. One party faces far graver sanctions for non-compliance than the other. I have already mentioned the potential for people to feel intimidated.

Christine Grahame: I, too, am listening carefully to the minister. He is simply informing us of the existing position in law. Parents must understand that a court order is not made lightly and that it is contempt of court to breach it. All that will be given is information—nothing substantive is changing.

Hugh Henry: However, it remains for the court to determine how issues should be raised, whether warnings should be given and what action should be taken. We are attempting to deal with issues that are best left to the rules of court. We do not think that section 17B is the best way of proceeding, which is why amendment 15 has been lodged.

We are concerned that the issues raised by both Sylvia Jackson and Pauline McNeill are substantial, and we intend to move on two fronts. First, we want to determine the extent of the problem. When Sylvia Jackson drew attention to it, we found that there was a lack of accurate information and statistics. Some of the information was not particularly pertinent to Scotland. At stage 2, I gave the commitment that we would undertake research into post-separation contact arrangements. We need to scope the extent and shape of the problem, to understand what works and does not work and to examine the durability of the arrangements. Once we have a clear understanding of the problem in Scotland, we can start to design specific solutions. If it transpires that court-based solutions are needed—we do not know for certain that that is the case—and that the issue cannot be addressed through changes to the rules of court, we will seek a suitable legislative vehicle to introduce those solutions. I hope that the civil justice review that we intend to carry out will offer us scope to do that.

My second point is that, in direct response to what Sylvia Jackson, Pauline McNeill and others have said, we propose a pilot project to explore issues relating to contact enforcement. I will give members an outline of the proposals. It will be an outline only, because much remains to be developed with key partners, including the judiciary and the Scottish Court Service. We propose to establish a contact compliance officer, initially in one or two courts. The overall purpose of the post will be to contribute to local resolution of disputed contact cases, to provide data and analysis for wider research into the causes of breach of contact and to contribute to developing ideas for options for reducing the incidence of such breach and securing the parties' continued exercise of their parenting role.

The proposals are very much in the early stages, but we will work up a fully developed project plan that will establish a framework for the role of contact compliance officers and their interface with the court and the parties involved. The officers' functions are likely to include early and protracted involvement in cases in which a contact order has been breached; becoming a point of contact between the parties; supporting and giving the parties practical advice, including information about relevant services; explaining to parties the consequences of failure to obey the court order; and calling on mediators' skills, if appropriate. That goes some way to realising what Sylvia Jackson is trying to achieve with her amendment, but it also recognises the concerns that she and Pauline McNeill have.

Cost is an issue when one party has access to legal aid and the other does not. I will have further discussions with the Scottish Legal Aid Board

about how the rules are applied and whether changes need to be made. It cannot be right that one party can use legal aid to thwart another party's access to justice without further consideration. We will negotiate with sheriff principals to explore the structure of the role of contact compliance officers and how they could add value to the current family court system. We will also explore the possibility of either using the existing rules of court or making new ones to make provision for the referral of appropriate cases to the contact compliance officer.

Amendment 42, in the name of Pauline McNeill, seeks to speed up court procedures. She has recognised the Executive belief that the amendment is unnecessary because the existing court rules are sufficient. The rules direct the court, in appropriate cases, to set a child welfare hearing for the next suitable date, allowing 21 days between the lodging of the notice of intention to defend and the hearing. Amendment 42 also cuts across the existing provision for making rules of court either by acts of sederunt or by rules of the Court of Session. The judiciary, rather than ministers, should determine court procedures. That maintains the independence of the judiciary. I hope that with those assurances, Pauline McNeill will withdraw her amendment.

The Deputy Presiding Officer: Too many members wish to speak, and I will not have a chance to call everyone. I will restrict speeches in this group to two minutes.

Dr Sylvia Jackson (Stirling) (Lab): I will speak quickly. I support the sentiments behind amendment 42, in the name of Pauline McNeill, and I turn quickly to amendment 15. At stage 2, I lodged three amendments dealing with the enforcement of contact orders. One related to warning notices and was agreed by the committee, resulting in section 17B. The other two amendments, which dealt with introducing additional measures, such as community service orders and compensation for financial loss, gained some support, but they were not agreed.

Since stage 2, I have become aware of the different legal interpretations of the warning notice statement. Rephrasing the statement so that it applies to both parents has proved difficult. The amendments that I moved at stage 2 built on the research and consultation that is associated with the Children and Adoption Bill in England and Wales, which is passing from the House of Lords to the House of Commons, and I am sure that there will be a lot of discussion about the non-enforcement of contact orders and other points.

The Family Law (Scotland) Bill will be law shortly. On balance, the minister's suggestion that the lack of enforcement of contact orders should be addressed is constructive, even at this late

stage—as long as there are no delays. Research will be important to provide the kind of data that at the moment exist only in England and Wales. More important is the Executive's proposal for a pilot project to investigate the role of a contact compliance officer. It is essential that that person works centrally in the court system and is more permanently involved than the existing curators.

It is vital to act quickly once a court order has been breached. A constituent of mine, who has campaigned for a long time on this issue, knows that long court proceedings—eight years in his case—can be not only financially costly, costing up to £50,000, but emotionally costly. Contact with his children has now stopped. I ask the minister to consider—

The Deputy Presiding Officer: I must hurry you.

Dr Jackson: —that the views of individuals, such as my constituent, and groups that have been most directly involved with non-compliance with contact orders, are important. They should be consulted as part of the on-going work. I hope that the Justice 1 Committee will take an active interest in this and other issues with which the bill is concerned. Can I take the opportunity to thank the convener of the Justice 1 Committee—

The Deputy Presiding Officer: No. That is not reasonable. We are very short of time.

Mr Wallace: I will keep this brief. I want to underline the concerns that Pauline McNeill and Sylvia Jackson have reflected in the debate and in committee. During my time as a member of Parliament and then a member of the Scottish Parliament, I recall a number of occasions on which a parent, usually a father, came to me to express concern that access to his children was being withheld and that the court proceedings were dragging on and on.

That in itself can change the dynamic. If a child has not seen his or her father—it is usually the father—for a number of months because the court has not had a hearing or taken action, that can change the outcome. The court might decide later that the circumstances have changed so much that it will not enforce an order. That is why I believe that speed is of the essence in dealing with these matters.

I welcome what Hugh Henry said about legal aid. I have seen cases where a father or mother has been frustrated in pursuing a legitimate interest in getting contact, simply because they cannot afford their costs, because the other party is going back to court time and again.

In welcoming the steps that Hugh Henry has taken, I ask that the situation be monitored carefully and that the Executive be prepared to

come back to the Parliament with proposals for different action if the pilot that he is proposing shows that there is a problem that is not being addressed adequately in existing law.

Margaret Mitchell: I feel strongly that amendment 42, in the name of Pauline McNeill, and section 17B, should be in the bill. Amendment 42 seeks to speed up the agreement and enforcement of contact orders. That is in the best interests of children and, importantly, seeks to prevent unnecessary aggravation and trauma for both parties in emotional and financial terms. I do not believe that section 17B is unduly intimidating; it merely ensures that there is a clear warning that contact orders are serious and should not be ignored on a whim. I certainly want amendment 42 to be agreed to and section 17B to be retained in the bill.

Mr MacAskill: I am opposed to both amendment 42 and amendment 15. I accept the minister's point that these matters are best left to the court, but it is important that we bring home to people that court orders are not granted on a whim. I do not think that doing so is intimidatory. Of course there is a problem with instances of mothers not granting contact to an absent father, but there is a bigger problem with fathers who apply for contact and then do not take it up; that is why we should ram home the importance of orders. That is a far more complex situation and it arises far more often. We should tell people that if they apply for contact and the court grants it, it is important to take it up. We should say to them, "You should not be watching the football live on television; you should be undertaking the obligation to your child. You should not be seeking to go away with your new girlfriend; you should be undertaking the obligation that you applied for."

Hugh Henry: The problem is that the same force would not come down on the father who did not turn up because he was watching the football, as would come down on the resident parent. We would be warning people about consequences that are completely and utterly uneven. That is the problem.

Mr MacAskill: We require not simply to warn of the consequences, but to stress the importance of the order. Having contact is an obligation that should be treated responsibly and with respect—the buzzword that is flying around this chamber and others. If someone applies for contact, the order should be adhered to. There should be a warning to mothers, but equally, there should be a warning to fathers. They would have the opportunity to take legal advice on the matter. It is important that we maintain an opportunity to make it quite clear that the contact order is important, not simply in the legal process, but in how we view parents' obligations to their child.

Patrick Harvie: I seem to be developing an unhealthy habit of standing up to support the Executive's position. I will need to think about that a little.

Pauline McNeill outlined clearly and powerfully why the issue is significant and why the Executive needs to provide an answer to people in the situation of not having contact orders enforced. However, the enforcement mechanisms that have been proposed during the bill's progress are not appropriate, so I will support the Executive. I ask the minister to say a little more about the timescale. Clearly, if research is being commissioned, it seems unlikely that we will get around to anything concrete in this session of the Parliament. When does the minister expect the outcome to be delivered? I hope that all members will bear in mind the necessity of keeping this issue on the agenda if nothing can be brought forward before the next election.

15:45

Marlyn Glen (North East Scotland) (Lab): Perhaps we should not be discussing something like this in such great detail at stage 3; we really should have dealt with this earlier. Again and again, people have said that the Family Law (Scotland) Bill is so big and complex that we needed more time to enable us to take it in sections and debate it properly in committee before we brought it to the chamber.

I want to bring some context to the debate. We are talking about only a small number of difficult cases. In more than 70 per cent of cases, contact arrangements are agreed between parents without reference to the courts at all. Of the remaining 30 per cent, the courts refuse only about 1 per cent.

I agree with the sentiments that Kenny MacAskill expressed, but I underline the minister's point that section 17B would not meet that requirement because it would not impact evenly on resident and non-resident parents.

I urge a note of caution about the idea of contact compliance officers. That sounds like a good idea but I would have thought that it required a lot of work. The part of the bill that is most important relates to the safety of the child. We are talking about safe contact. We must not forget that.

I am relieved that Pauline McNeill will not press her amendment. Although it is desirable to minimise delay in court processes, that must not be to the detriment of decisions taken. Time must be given to investigate closely all matters that impact on the child's safety, including domestic abuse, prior to making any contact order. That includes giving the child the chance to voice their views and giving proper consideration to those views. It could be absolutely counter-productive to have an expedited procedure.

The Deputy Presiding Officer: My regrets to the members who wished to participate in this debate but could not. I ask Hugh Henry to respond only to those specific points that he has to address.

Hugh Henry: On the question about the timescale, research will take some time. We will start that as early in the new year as we can. I give the chamber a guarantee that the compliance officer will start work as soon as we are able to scope the job and to recruit. The funding will be made available before the end of this financial year and the work will probably start in the next financial year.

The Deputy Presiding Officer: I ask Pauline McNeill to wind up as briefly as she can.

Pauline McNeill: As I indicated earlier, I will not press my amendment, for the reasons that I gave.

On Marlyn Glen's point, I recognise that the court needs time in which to make important decisions. However, it should not cost an ordinary citizen the sale of their house to go to court to argue for contact with their children.

I welcome what has been said about research, which is important because we must have the facts. I acknowledge that a lot of work needs to be done, but I think that the announcement that there will be at least a couple of pilot schemes marks a significant and welcome shift in the Executive's position. I urge the minister to conduct one pilot in a large city and one in a rural area—I am sure that that would have been considered in any case.

I seek leave to withdraw amendment 42.

The Deputy Presiding Officer: Pauline McNeill has asked leave to withdraw amendment 42. Is that agreed?

Members: No.

The Deputy Presiding Officer: The question is, therefore, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 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)
 Fabiani, Linda (Central Scotland) (SNP)

Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (North East Scotland) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Martin, Campbell (West of Scotland) (Ind)
 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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 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)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
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 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 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, Etrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 45, Against 74, Abstentions 0.

Amendment 42 disagreed to.

The Deputy Presiding Officer: Group 12 is on family relationship support services. Amendment 44, in the name of Stewart Stevenson, is grouped with amendment 53.

Stewart Stevenson: The context of the debate has changed in light of the minister's announcement this morning of £300,000 to aid capacity building in the various family relationship services around Scotland. However, we must be conscious that there are 30 such services, therefore if the funding for capacity building were divided evenly—I recognise that it will not be—the amount given to each would be limited to £10,000. Of course, that would not secure the long-term future of the services. I am particularly interested to hear what the minister has to say about that.

I did not make a sufficiently accurate note of the minister's announcement this morning, so I am not 100 per cent clear whether it covers all three of the proposed subsections in amendment 44, which are on relationship counselling services, family mediation and contact centres. I recognise that, in

many ways, contact centres might be the most costly service, but they enable the kind of contacts that we have just discussed—those that result from contact orders—to be facilitated and mentored by a third party. I suspect that contact centres strongly support the initiative that the minister adumbrated in discussing the contact officer pilot in group 11.

I do not think that I speak separately from the Justice 1 Committee on this subject, which the committee discussed again yesterday. The minute of the meeting records:

“The Committee agreed the importance of proper provision of family support services and to consider this matter at a future meeting following the passage of the Family Law (Scotland) Bill.”

We assume that the bill will be passed—it is a widely held assumption—but we have not exhausted the subject by any means.

The minister has an opportunity to compare and contrast what might be happen in Scotland with what the Justice 1 Committee found is happening in Australia. Even I might agree that it is going over the top a bit to spend 300 million Australian dollars—if I recall the figure correctly—on the matter in a country that has twice our population. However, that puts into context the £300,000 that the minister announced this morning. Australia's system of dealing with matters is a three-stage process that is similar to ours. First, a court order is made. Secondly, if the court order is breached there is a fallback. Thirdly, people are sent to jail. Of course, Australia never sends people to jail.

Amendment 53 is consequential and I will say no more on it.

I move amendment 44.

The Deputy Presiding Officer: Before I call the next speaker I advise members that, all the interested parties having—I think—been consulted, under rule 9.8.4A I propose to extend the next deadline set out in the timetabling motion. The debate on group 13 will conclude at 4.10 pm. That does not mean that we have a lot of time. There will be two-minute speeches.

Mrs Mulligan: I am pleased to speak to amendment 44, but I make it clear that I will not support it, because the bill is not the appropriate place to put such measures. However, the discussion on the issue has shown that we need more information and research on which family support services we want and which services actually work. The Justice 1 Committee now understands the differences between the services that are provided, but I am not sure that everybody else understands them. Even Stewart Stevenson missed out one service that we discussed: pre-marriage advice. The other services are reconciliation services, mediation and family

contact services, which all work differently, but which all have a contribution to make when relationships break down.

As we approached the end of stage 2, more and more information came before the committee. I thank Scottish Marriage Care for the information that it provided. It is clear that services exist that can be built upon, but it is also clear that there should be local responsibility for those services and that decisions on which services should be made available and how they should be provided should be taken locally. The Executive has already had discussions with the Convention of Scottish Local Authorities on the issue, but I press the deputy minister to take those discussions further. Some local authorities, such as South Lanarkshire Council, are innovative, but others do not make the efforts that they need to make for their local communities, which will ask searching questions of their councils.

We have often said that we want to know how legislation that we pass is implemented. As Stewart Stevenson said, the committee will consider the issue further. The committee can have a strong role in ensuring that services are available to support the legislation, which I am sure the Parliament will pass today.

Margaret Mitchell: I appreciate the sentiment behind amendment 44, but I will not support it because, rather than channel funds for family support services through local authorities, we should give voluntary organisations such as Family Mediation Scotland and Scottish Marriage Care, which have representation throughout Scotland, the opportunity to bid directly for funding.

Christine Grahame: In answer to Margaret Mitchell's point, I comment that local authorities can commission the services of the voluntary sector. Amendment 44 tries to ensure a duty on local authorities to provide family support services, the provision of which, as Mary Mulligan made plain, is patchy throughout Scotland. That is particularly true of mediation services, which can remove many difficulties and shorten the amount of time that divorcing couples spend in court.

I want to return to an issue that I raised this morning on contact centres. I am worried that, if we do not put a duty on local authorities to provide such centres, the present situation will continue—in some areas, solicitors can make referrals to contact centres but, in other areas, solicitors simply do not have that facility. A contact centre can be important at the abrasive stage of a broken-down relationship, as it can allow the parents, on neutral ground, to work their way to a civilised method of contact with their children. The sooner we get parents who are in such circumstances to a contact centre, the better.

Finally, I ask the minister whether compliance officers will have a role with regard to contact centres.

Hugh Henry: To answer Christine Grahame's final point, we will scope that, but it is for the court to determine what is best and to try to resolve problems. The purpose of compliance officers is contact enforcement. They will report to the court, after which it will be for the court to determine exactly what happens.

We are committed to the delivery of high-quality public services, which is why we give a huge amount of support to local government through grant-aided expenditure, the changing children's services fund and other funding sources. Under the way in which we operate in Scotland, it is then a matter for local government—the democratically elected local councils—to deliver services locally. I recognise that it is for local authorities, working with partners, to determine their local service priorities based on local need. In that way, they can secure the outcomes that matter locally. Therefore, it would be wrong for us to build an infrastructure in which local services were funded directly from the centre.

16:00

However, I also acknowledge the point that Mary Mulligan made and that other members made in the committee, which is that local councils must be held to account locally, given that there are huge gaps in provision across Scotland. Stewart Stevenson also made that point. The question is whether it is for us to determine what happens in a local area or whether that is a matter for the council. The money that we put in will go towards trying to encourage the development of local services. As we have not quite finalised the arrangement, at this stage I would prefer that we put more effort into looking to help people to work through relationship problems by using counselling and conciliation services. We already spend money on mediation, which also has a contribution to make. We are not talking about a universal service that everyone should have; people need the service at certain times in their lives and in different ways. This is about local needs being responded to locally by those responsible.

I said this morning that I am arranging a meeting with COSLA to discuss concerns about patchy service delivery. Mary Mulligan mentioned the excellent way in which South Lanarkshire Council uses the changing children's services fund. Why have other councils not done the same? We give the money to local government to use as it sees fit in local areas. Why is it that the arrangement can work very well in some areas but not in others? I want to explore that issue further. I know from talking to the convener of the Justice 1 Committee

that the committee may well come back to the issue.

A statutory obligation on local authorities to provide services in a specific way would have significant financial implications, as they would come straight back to us to ask for more money. This morning I heard SNP members shout to Conservative members about what was, in comparison, a relatively modest financial proposal. The SNP members asked, "Where will the money come from? Have you costed the proposal?" We could say exactly the same about this proposal, which would involve a huge financial burden, for which there is no blank cheque.

I know exactly what Stewart Stevenson is trying to do. We sympathise with his aim and we will work to try to improve service delivery locally in an appropriate manner. We want new models of working. We want joint working and better integration of services such as counselling, mediation and conciliation throughout the country. We want more effort to be put in at the start of the process rather than at the end. That is why we announced the funding this morning.

Stewart Stevenson's amendments are well intentioned, but they would have completely the wrong effect. I worry about what the consequences would be if they were agreed to. Therefore, if he does not withdraw amendment 44 or moves amendment 53, I ask Parliament to oppose them.

The Deputy Presiding Officer: I ask Stewart Stevenson to make the briefest of responses and to indicate whether he will press or withdraw amendment 44.

Stewart Stevenson: I do not read amendment 44 as determining a specific way in which services must be delivered, but as stipulating merely that they shall be delivered. I also believe that amendment 44 would mean that the services would need to be delivered not by the local authority but through it. I will press amendment 44 precisely because of the excellent services that I see in my area and the benefits that accrue to my constituents and people in neighbouring constituencies. A travelling caravan could be used to provide contact centres in rural areas—just as there are travelling banks and travelling libraries. Councils could consider providing services in a variety of innovative ways.

I press amendment 44 and encourage other members to support it.

The Deputy Presiding Officer: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 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

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
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 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 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)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 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)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 28, Against 87, Abstentions 0.

Amendment 44 disagreed to.

Section 17A—Orders under section 11 of the Children (Scotland) Act 1995: protection from abuse

The Deputy Presiding Officer: That brings us to group 13, on the definition of conduct constituting abuse. Amendment 45, in the name of Stewart Stevenson, is the only amendment in the group.

Stewart Stevenson: I will be extremely brief. Amendment 45 is simply a probing amendment. During the passage of the Criminal Justice (Scotland) Bill, when discussing the physical chastisement of children, we discussed what might constitute abuse. We concluded, for example, that

shouting at a child constituted abuse. Amendment 45 would simply add, after the word “speech” in the definition of conduct in section 17A, a range of other types of conduct. I want them to be included in the bill, unless the minister can assure us that they are already covered legally. If he can reassure us, I will not press amendment 45. However, I will move it pro tem.

I move amendment 45.

Hugh Henry: I have some sympathy with Stewart Stevenson on this, but I will not say too much about the scourge of domestic abuse. It could be argued that a more descriptive definition of conduct would be helpful, but we believe that the bill as drafted is sufficiently wide in scope to include the behaviour described in amendment 45. However, if we were to be as prescriptive as amendment 45, there would be a danger that some forms of threatening or abusive behaviour might not be considered by the courts because they were not listed in the bill. We need to avoid that situation.

We think that section 17A strikes the right balance. The drafting of subsection (7B)(d) quite deliberately mirrors the definition of abuse that is contained in the Protection from Abuse (Scotland) Act 2001. Without a complementary change to the provisions of the 2001 act, there would be the potential for considerable confusion. We do not want to move away from a position of clarity and consistency, so we hope that Stewart Stevenson will withdraw amendment 45.

Amendment 45, by agreement, withdrawn.

Section 17B—Contact orders: warning notices

Amendment 15 moved—[Hugh Henry].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)

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 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

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 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)

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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 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)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 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)
 White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 78, Against 39, Abstentions 0.

Amendment 15 agreed to.

Section 18—Meaning of “cohabitant” in sections 19 to 22

The Deputy Presiding Officer: Group 14 is on the meaning of “cohabitant”. Amendment 16, in the name of Fergus Ewing, is grouped with amendments 17, 18 and 18A.

Fergus Ewing: I start by quoting the minister from the stage 1 debate on the general principles of the bill. He said that the package regarding cohabiting couples was

“perhaps the most complex and controversial aspect of the bill”.

He went on to say that the aim was

“to protect the legally vulnerable when a relationship ends.”—[*Official Report*, 15 September 2005; c 19116.]

At stage 2, Brian Adam and I argued unsuccessfully that the whole of section 18 should be deleted, and I will vote against the bill because it contains provisions that I believe are unworkable. We decided not to bring the argument back to the chamber today because it attracted only one vote in committee. We feel that there is no purpose in trying again because there is no realistic chance of getting an amendment through. We determined to try to make the provisions less unworkable—if that is not an oxymoron. The

starting point is the definition, because we will create in Scots law a new status that will belong to a group of people called “cohabitants”. The first question that a court will have to determine is whether the parties in a couple are cohabitants.

Let us consider what the Executive has said about its aim. In the policy memorandum, the Executive states that the bill focuses not on all cohabitants, but on people who are in long-term and enduring relationships. If we look at the definition in the bill and the definition that is proposed in amendment 18, which will change the original definition slightly but not fundamentally, we find that no attempt has been made to include provisions to that effect. No reference is made to commitment or to an enduring relationship and no length of time is specified. In theory and perhaps in practice, it is quite possible that one could become a cohabitant after living with someone for a few weeks.

In the interests of fairness and clarity, I suggest that there should be an objective definition. It is difficult to define legally concepts such as loyalty and the commitment to share one’s life with someone else because any such test would be subjective. It would be an objective test simply to say that no one could be a cohabitant until the cohabitation had lasted for a period that was consistent with the Executive’s criteria for an enduring relationship. In my view, one year is a reasonable starting point. If a couple had not lived together for a year, it is unlikely that the two partners could be said to be involved in an “enduring” relationship.

However, I lodged amendment 18A to offer Parliament an alternative approach, as I signalled to Hugh Henry at stage 2 that I would. I know that the Executive will argue that it would be arbitrary to impose a strict time limit of one year. A couple who had lived together for 11 months and who had a child might be regarded as cohabitants just as might a couple who had lived together for 13 months. That is why I have offered an alternative that I hope will be attractive to the many members who would be concerned about difficult cases arising. Amendment 18A provides that if the cohabitation period had not reached 12 months, there would be a presumption against the partners being defined as cohabitants. However, that presumption would be rebuttable—it would be open to the pursuer who had gone to court to argue that he or she was, in fact, a cohabitant.

I will listen with interest to the responses of the minister and other members before I decide whether to put both options to Parliament. I suspect that the option of the rebuttable presumption that is contained in amendment 18A might command more support. I urge members to think carefully whether they want the £11 million

that it is suggested will be spent on legal aid to be used on disputes about whether people are cohabitants. In determining our approach to the bill, we should reflect on how popular such expenditure of £11 million would be among members of the public.

I move amendment 16.

Phil Gallie *rose—*

Fergus Ewing: I think I am out of time; perhaps I will take an intervention from Phil Gallie later.

Cathy Jamieson: Fergus Ewing has reminded Parliament of comments that I made early in the process, when I said that we were tackling one of the most complex and difficult areas with which the Executive and members of the Justice 1 Committee had had to deal. Before I discuss the amendments, it is important that I describe briefly what we sought to achieve by introducing a package of legal safeguards for cohabiting couples whose relationships break down.

16:15

At the outset of the process, we made it clear that we were not talking about introducing marriage-equivalent rights and responsibilities, or about equating cohabitation with marriage, although we recognise that, in some senses and for some people, our proposals go too far and that, for others, they do not go far enough.

We always sought to ensure that, when a relationship breaks down, the fundamental principle is the protection of vulnerable adults and children. That principle is central to the bill and in establishing a package of safeguards, we have borne it in mind. We have also borne in mind the fact that it is as right and proper to try to protect the right of an adult to live unfettered by financial obligations towards a partner as it is to protect vulnerable people. We believe that we have achieved that balance.

We want to bring greater certainty, fairness and clarity into the law through the establishment of a firm statutory foundation for disentanglement of the shared life of cohabitants on the ending of their relationship. It is important to remember that some of the provisions are in place at the moment—I refer to provisions on tenancy rights, damages and occupation of the marital home. The distribution of cohabitants’ property on the breakdown of a relationship or on the death of a partner is not prescribed, however, and we believe that the legal vulnerability that arises from the current absence of systematic regulation sits uncomfortably alongside the increasing number of cohabiting couples and, indeed, the significant number of Scotland’s children who are part of cohabiting-couple relationships.

Some people may not want the situation that we are providing for; nonetheless, it is the reality of what is happening in Scotland today. We believe that we must have modern laws that reflect what is happening in our modern Scotland. The bill therefore provides a set of basic safeguards that relate to sharing of household goods, money and property; to financial provision on relationship breakdown; and to discretionary provision for the surviving cohabitant when a partner dies without a will.

From the outset, our intention was to create legal safeguards to protect cohabitants who are in long-standing and enduring relationships, but not to cater for short-term cohabitation. Our focus therefore was on relationships that offer evidence of the partners' commitment to a joint life. Section 18 therefore defines the term "cohabitant" and, at section 18(4), describes the factors that the courts will take into account when determining whether a person is a legally relevant cohabitant for the purposes of sections 19 to 22.

I acknowledge that much discussion about how we should describe the factors took place in the Justice 1 Committee at stage 1 and, again, at stage 2. In giving evidence to the committee, Hugh Henry said that the Executive would lodge an amendment at stage 3 that would put it beyond doubt that what we are asking the courts to do is to take account of the time that a couple lived together as if they were husband and wife or civil partners, but not the whole relationship. Amendment 18 is designed to do that.

I will turn briefly to Fergus Ewing's amendments in the group. As I said, when we tried to consider the issue and decide what to do, one of the thorniest issues that the Executive and the committee had to resolve was duration. We want the courts to focus on longer-term committed relationships; the length of time that a couple has been together is one of the most significant aspects of that consideration.

Again, although the proposition to put a time period on the face of the bill may at first seem attractive, if the matter is considered carefully—as the Executive has done—one sees, as we do, that more would be lost than gained. The provision would be arbitrary, rigid and unresponsive to individual cases. It would not only create problems of proof and destroy people's behaviour, but lead to especially harsh outcomes in respect of discretionary awards on the death of a partner.

The example that I will cite was also referred to by Fergus Ewing. If a qualifying time period is set and one partner were to die a few days, a week or a month before the qualifying time was reached, surely it would not be right and proper for the surviving partner to be more disadvantaged than someone whose partner died after the qualifying

period. Surely a surviving partner should have a right to ask the court to consider whether they were entitled to a discretionary award in those circumstances.

In his amendments in the group, Fergus Ewing proposes provisions which, if taken together, would mean that a couple would not be considered to have been cohabitants for the purposes of an award under sections 19 to 22 unless they had lived together for at least one year. In addition, amendment 18A would create a presumption that two people are not cohabitants except where the applicant can prove the contrary. We do not believe that that would be helpful in the circumstances in which people find themselves. I have outlined some of the reasons why we think that would cause problems.

A 12-month period would not be a magic solution—we could find ourselves in a situation in which people believed that they had rights only to find that they did not. Fergus Ewing's amendments would simply give courts a strong signal that Parliament might consider 12 months to be the trigger point for access to safeguards. However, the amendments could lead to courts finding themselves unable to give discretionary awards. Why would we give courts discretion to take account of the length of a cohabitation only to tie their hands with the presumption of 12 months that the amendments suggest?

We considered all the ramifications very carefully before concluding that the outcome should be dictated by the facts and the circumstances of individual cases that concern the lives of real people who are going through traumas. Section 18 gives a clear signal that duration should be an aspect of courts' consideration, while allowing them sufficient discretion to judge what is fair and reasonable, given all the circumstances. Those principles and concepts are familiar to the courts.

I urge Parliament to reject amendments 16, 17 and 18A.

The Deputy Presiding Officer: I am going to have to apply a time limit to speeches. We will start with three minutes and see how we go.

Donald Gorrie: I would like to explore the business of who is a cohabitant. I have been approached, as I am sure other members have over the years, by sisters who live together, by brothers who live together and by brother and sister who live together. They may have lived in a deep and settled relationship for many years—such relationships can often be deeper than most marriages or cohabiting relationships.

The one thing that such people do not have is an active sex life together. Are we so obsessed by sex that it is the only criterion for choosing who

gets support from the law and who does not? Those very worthy people suffer—they have a worse deal on intestacy than cohabiting couples have. I am all for protecting cohabiting couples and for rewarding proper relationships, but such couples might have very good arrangements for sorting out their affairs, so why do we militate against brothers and sisters who live together in an harmonious and public-spirited manner by giving them a raw deal on intestacy? That is very foolish.

Is it possible to extend the definition of cohabiting to cover couples who cohabit but who are not in a sexual relationship? Could legislation be introduced to do that? The alternative is to drive people to deceit. Some couples who are not involved in such a relationship could claim that they want to be recognised as being in a civil partnership. However, if they said that they were, they would qualify for the benefits that are set out in the bill. A law that is an inducement to deceit is a bad law. What we are doing for cohabitants is good, but what we do for brothers and sisters who live together is bad. We should sort that out.

Brian Adam: At the risk of appearing absolutist—that accusation was made against me earlier in the day—I support the amendments in the name of my colleague, Fergus Ewing. The absolutist position is that people need to be living together as if they were man and wife. I point out to Donald Gorrie that section 18(2) says:

“A person falls within this subsection if the person is (or was) living with another person as if they were husband and wife.”

It is possible to amend section 18 by deleting the reference to living together as man and wife. If Donald Gorrie was so concerned about the issue, why did he not lodge an amendment that would do that? I share his view that we should not always determine our legislation on the basis of sexual relationships, but given that the bill deals with family law, to do so is probably not unreasonable in this case.

A year is a sensible period. It is not easy to argue that a relationship is enduring or long-lasting if it is shorter than that. Our giving sheriffs the opportunity to exercise a rebuttal presumption will protect the small number of people who are involved in the unusual cases that Mr Ewing and Cathy Jamieson referred to.

By including a definition of “cohabitant” in the bill, we will give cohabitation a new status. We already recognise it in some other laws, but we will now give it a particular status. People have to do certain formal things in order to become civil partners or to get married; that should also apply to cohabitants, so we should specify the length of time for which people must have lived together before they are considered to be cohabitants.

I urge members to consider supporting amendment 18A. In my view, members ought to support amendments 16 and 17 as well.

Margaret Mitchell: I do not support Fergus Ewing’s amendments. The policy intention of our giving cohabitants the discretionary right to make a claim in the event of the death of a partner, or in a dispute following the breakdown of the relationship, is just, fair and equitable. The claim will be limited to determining of settlements as regards joint assets or financial contributions to the joint budget during the relationship.

It is not necessary to define a period of time in order to establish whether a relationship is cohabitation. It is clear that the two people must have a joint commitment to spending their lives together and that a brief or experimental relationship will not be covered. It is for the courts to determine whether the relationship qualifies as a cohabitation. I will therefore support amendment 18.

Stewart Stevenson: I was surprised that the minister got things slightly wrong—in my humble opinion—when she used the words “is a cohabitant”. The bill will not create the status of cohabitant. Things will happen as a result of the bill’s provisions on cohabitation only post hoc—in other words, after the relationship has ended. No rights are to be conferred on people during their cohabitation. That is an important point when we are trying to understand what the bill will do. It will not create a status of cohabitation, so the comparisons with junior marriage, junior civil partnership or whatever are somewhat misplaced.

Pauline McNeill: I agree with the member, but does he agree that sheriffs should be free to make decisions under section 18 without having to set precedents on the length of cohabitations?

Stewart Stevenson: Pauline McNeill will be delighted to hear that I agree with the Executive line on that.

We must take cognisance of the fact that the existence of benefits that can be derived after cohabitation has ended will create prospective benefits that might modify the behaviour of cohabitants. However, we cannot escape from that consequence.

I remind the minister of a proposal that I made at stage 2. I would have liked to bring it back at stage 3, but I got no support for it in committee. With cohabitation, civil partnership and marriage, there is an escalating set of commitments that partners can make to each other to strengthen, deepen and improve the status of the relationship. The birth of a child is a golden moment—the minister has heard me say that before. As people are given information about their options when they go to register a death, I would like people to be given

information about their options and the implications for their relationship when they register the birth of their child. However, that is not to be.

I support the Executive's line. I think that, on this one occasion, my colleagues have perhaps got it rather wrong.

16:30

Susan Deacon (Edinburgh East and Musselburgh) (Lab): As is understandable and right in a family law debate, we have heard much about marriage. However, it is important to redress the balance a little and say a bit more about cohabitation; after all, more than 160,000 couples in Scotland live in cohabiting-couple family households and more than 60,000 of those households have one or more dependent children. As has been said, almost half of all the children who are born in Scotland are born outside marriage. In this modern and forward-looking Parliament, it is essential that we give proper recognition, proper legal rights and proper protection to those individuals and—crucially—to their children.

I declare something of an interest in the matter: I have listened to many members talking about the longevity of their marriages, but I have lived with a partner for 17 long—long but good—years. We share two children, a home and a mortgage. We have shared many life experiences good and bad, and many cross words, some of which I suspect some members have overheard. Such relationships deserve no less recognition or protection than a marriage that has lasted a similar time. However, it is not only a matter of time, as some people have suggested, but a matter of commitment. Many cohabiting relationships demonstrate not only the financial characteristics and longevity, but the commitment, love and concern that many marriages demonstrate.

The end of a relationship raises specific issues. I well recall someone who had separated from a partner of 14 years recounting the number of people who had said, "Oh well, it's okay—at least you weren't married." I suggest that the emotional distress of separating from a partner whom one has loved, cared for and shared a life with while living together can be every bit as great as it is when people have been married. In fact, the situation can be made even worse by the fact that people have not had proper legal protection or recognition because they have cohabited.

Cohabitation may not have status in the law, as Brian Adam said, but it should have. I would have liked many aspects of the bill to go further, but I am more than happy to accept the Executive's position in detail and in general, because it will be

a significant step forward in recognising and protecting tens of thousands of cohabitants and their children throughout Scotland. It is not before time.

Christine Grahame: Susan Deacon eloquently described what I, too, would have liked the bill to do, which is to give cohabitants even more protection than is being offered. We know that many people in society think that they have established what they call a common-law marriage—a marriage by cohabitation with habit and repute—but by the fact that they say that they live together there is no repute, so they have no protection. The bill is not before time.

I support the Executive's amendment 18 and oppose the amendments that my colleague lodged. Fergus Ewing made it plain from his speech that picking one year as an arbitrary time is nonsense. If people had stayed together for 11 months and 30 days, they could not establish that they were cohabitants, but if they had stayed together for 12 months and one day, they would automatically have the right to be cohabitants. That is ridiculous. I can imagine the court disputes that would arise over when cohabitation started in order to squeeze in extra days and weeks, so Fergus Ewing's amendments would not reduce litigation.

We must keep the bill flexible, as the minister's amendment is. One must always consider the facts and circumstances of a relationship. I will give an invented example. Two elderly people have known each other for years, their spouses have died and they are on their own. They remain friends and decide to move in together—to cohabit and to live together as man and wife. Regrettably, one of them dies two months into the relationship. In all those circumstances, we could see that they had made a commitment, but lack of time took away their opportunity to establish that they were cohabitants under the criteria that Fergus Ewing tries to set.

The presumption that would be provided for by amendment 18A is equally nonsensical. If we accepted such a presumption—which is Fergus Ewing's plan B—in the case of the couple in the plot that I related earlier, the surviving cohabitant would find that the presumption operated in his or her favour if the couple had been together for 12 months and a day but not if they had been together for 11 months and 30 days. We should not handicap sheriffs in that way. Sheriffs are perfectly capable of considering the facts and circumstances, as they do in cases of matrimonial breakdown. In the circumstances of the elderly couple in my example, the sheriff would be able to say that they were cohabitants and that the surviving partner was entitled to certain legal rights. In other circumstances, the sheriff would be able to decide otherwise.

I support Executive amendment 18 and I reject the amendments in the name of my colleague, Fergus Ewing.

The Deputy Presiding Officer: If the minister needs to respond to any points that have been made in the debate, I can give her a couple of minutes to do so.

Cathy Jamieson: Briefly, the debate on group 14 has perhaps shown that, as I have heard it said before, whenever a number of lawyers get together in one room, there will be a number of different opinions. The debate has shown that that applies even when the lawyers concerned are members of the same political party.

On a serious note, it is important that we recognise the points that members from around the chamber have raised, which I hope will be reflected in the vote. As Susan Deacon eloquently outlined, people who are in long-term committed relationships need the same protection when things go wrong as is enjoyed by people in long-term married relationships. I hope that members will support amendment 18, which will ensure that the courts have the flexibility to provide that protection where it is needed.

The Deputy Presiding Officer: In making a brief summation of the debate, Fergus Ewing should indicate whether he will press or seek to withdraw amendment 16.

Fergus Ewing: I have listened with interest to all the speeches. Very few members agreed with me, but that is not a unique experience. However, some members ranged far beyond the specific scope of my amendments—the amendments in the next group are perhaps rather more important—which I lodged in an attempt to provide clarity for the courts. We should remember that it is our job to make law that is clear and certain. If we fail to do that, we might end up asking the courts to achieve the impossible.

That said, I believe that we have had an interesting debate that has been mostly on topic. Having achieved that, I seek, with the leave of members, to withdraw amendment 16.

Amendment 16, by agreement, withdrawn.

Amendment 17 not moved.

Amendment 18 moved—[Cathy Jamieson].

Amendment 18A not moved.

Amendment 18 agreed to.

Section 21—Financial provision where cohabitation ends otherwise than by death

The Deputy Presiding Officer: Group 15 is on the matters that a court may take into consideration in making financial provision when a

cohabitation ends. Amendment 22, in the name of Fergus Ewing, is grouped with amendments 46, 23 and 24.

Fergus Ewing: The intention behind the setting up of the provision for financial claims of former cohabitants is set out in the Executive's explanatory notes to the bill, which state:

“On the break up of a ... cohabiting relationship, one party may find themselves in a position of financial vulnerability”.

Like other members, I was struck by the eloquence and passion of Susan Deacon's speech in the debate on group 14, but we need to go to the nub of the issue. What does the Executive claim will be achieved if the current words on the page remain in the bill when it becomes law?

In the stage 1 debate, the Deputy Minister for Justice said:

“We need to introduce greater certainty, fairness and clarity to the law, and to protect the legally vulnerable when a relationship ends.”—[*Official Report*, 15 September 2005; c 19116.]

The aim of the bill is to protect the legally vulnerable. However, paragraph 193 of the Justice 1 Committee's stage 1 report points out that the committee, after doing its job thoroughly, could find no reference in the bill to financial vulnerability. The bill does not do what it says on the tin—it does not contain any provision to the effect that vulnerability is to be the justification for a financial claim.

Instead, the bill makes it clear that equity is to be the justification for a financial claim. Indeed, sections 19 and 20 provide the only two classes of rights that cohabitants will have, which relate to household goods such as furniture and furnishings and money or property that is derived through a housekeeping allowance.

It is important—especially in the light of what Susan Deacon said a moment ago—to clarify what protection will not be afforded to cohabitants. That was covered by Hugh Henry at stage 2. A vulnerable woman who splits from her partner after 10 or 20 years, with children, will have no claim whatever against the matrimonial home if it is in her partner's name. Under the provisions of the bill, she will have no claim whatever to the pension of her male partner, if he has a valuable pension right; she will have no claim whatever to any car, caravan or other vehicle; and she will have no claim whatever to any securities—any stocks or shares. She will also, perhaps, have no claim to her male partner's domestic pet.

Members may argue—as Susan Deacon did with great passion, and I agreed with her sentiments—that we are providing protection for vulnerable women; however, we are not. We are doing the exact opposite. The minister admitted to

the committee that there will be no protection for the female partner and that she will have no claim against a house in the male's name; no claim against the male's pension; no claim against stocks and shares; and no claim against money except in very limited circumstances. How much would a claim for the average household furniture be worth? Second-hand furniture is worth little—we are talking about a sale value of a few hundred pounds.

I agree with the sentiments that Susan Deacon expressed and I admire the aplomb with which she expressed them. I agree also with the sentiments that Pauline McNeill, Mary Mulligan and others expressed at stage 2. However, the bill will not protect the vulnerable. It will not safeguard the children and it will not do what it says on the tin. There is no reference to vulnerability: the word "vulnerable" does not appear anywhere in the bill.

My amendments do not address those fundamental criticisms. I am afraid that, if members agree that the bill will take away rather than confer protection, their only option is to vote against the bill. That is what I will do later, with sadness. My amendments are intended to make it clear that it is the vulnerable partner and the children who should be protected to the limited extent that they can be protected under the bill. Ironically, if the bill is passed it will allow a wealthy member of a formerly cohabiting couple to make a claim. It will give each partner rights; therefore, the wealthy male with the job, the house, the pension and the car will also have a claim to half the furniture and the household goods.

Pauline McNeill: I hear all that the member is saying and do not disagree with his analysis. Is he suggesting that we should extend the rights for cohabitants in the bill?

Fergus Ewing: No, I am not. However, the committee said that a claim could be made by a wealthy person—that was the committee's conclusion. I mention that because it may not be obvious to members who were not able to attend all the committee meetings.

I move amendment 22.

16:45

Pauline McNeill: I may not agree with Fergus Ewing on anything else, but I agree that we must provide clear law for the courts. We are discussing the most significant provisions in the bill, because they are new law that sheriffs have not dealt with before. That is why I have lodged some probing amendments. We are giving wide discretion to sheriffs, so we must be clear about how we want to guide them.

At first sight, the provisions are not that easy to understand. We discussed section 18, which

determines whether someone is in a cohabiting relationship. Every case will be different and any determination will depend on the circumstances, the nature and extent of the financial arrangements and the length of the relationship. The length of the relationship should not define a de facto cohabitation; rather, it should be the combination of all those circumstances. That is what section 18 tries to achieve.

I want to clarify how the provisions should be used. Fergus Ewing was not quite right to suggest that the interests of children would necessarily be affected if they were born of cohabiting relationships. I am in favour of ensuring that when it comes to children's rights, it does not matter whether the parents are married or cohabiting. However, there will be differences, which we need to balance, between the rights of cohabitants, married couples and civil partners. The Executive is right to identify hard cases in which one partner has simply walked away from a relationship after a long period and the courts are unable to grant the remaining partner any kind of award, and to balance that against the rights of the partner who does not want to make a lifelong commitment to the relationship.

The financial provisions for when cohabitation ends otherwise than by death are contained in section 21(3), which refers to the economic advantage derived by the defender

"from contributions made by the applicant",

and to economic disadvantage suffered by the applicant in the interests of the defender or any children.

How will the provisions be used once the sheriff, using their discretion, has made the decision that someone is a cohabitant? It is clear to me now that the provisions are meant to be used by the sheriff to establish the economic advantage or disadvantage to the person who applies for a discretionary payment.

To that extent, the provisions will protect vulnerable people. I am now satisfied that we are not dividing wealth, that the sheriff is expected to find out the exact circumstances of a case and, if a child is involved, to ask the partners, "Did you stay at home and look after that child? Did you give up your career?" Sheriffs will be asked to look at those issues in arriving at their decision.

At the end of the day, I want to make clear the nature and extent of any financial arrangements that exist between the parties. That is the crucial element. If we are to make those new provisions, they must be clear. I will not move amendment 46, but I want an answer to my questions so that we can be clear about how sheriffs are expected to deliberate on the provisions.

Mr MacAskill: I am diametrically opposed to my colleague Fergus Ewing on this matter—I much prefer the substantive law. Pauline McNeill's point that we are in uncharted waters is clearly the case and matters will have to develop.

As the minister correctly touched on earlier, we must recognise the new world in which we find ourselves in this 21st century. People choose not to marry and that is a matter for them—some people disagree with that and others do not. It would be fundamentally wrong if money and access to legal rights that we think are important were available only on the basis of hardship—an agreement and obligations have been entered into and that would therefore be inappropriate.

We are talking about creating rights. That takes us back to the corollary that with rights come responsibility and obligations, not simply when one party faces hardship, but when both parties have signed up to and entered into a relationship. If that relationship breaks down, the outcome should not simply be that someone should face economic hardship—they have broken the relationship that they made. They might not have taken marriage vows before a minister or a priest, but they entered into that arrangement so its breakdown must be dealt with.

I disagree fundamentally that some funding should be required to protect a child's welfare. At the end of the day, the child was born of a relationship and whether or not it was born in wedlock, the parents have a responsibility. Simply to say that payment will be made only if there is some question of vulnerability or hardship on the part of either parent is entirely unacceptable.

That applies especially to males, who must take responsibility for the child they have fathered. Whether or not the mother has a well-paid job, we expect the father to contribute financially to the child because it is their responsibility to do so—that touches on the points that were made about contact. Fathers have fatherly obligations that are not simply monetary and that is why we should leave the provisions as they are in the bill.

Margaret Mitchell: I support the current provisions in the bill, which go some way towards ensuring that a just and equitable settlement, which recognises what they have put into their relationship, is available for cohabitants either on the break-up of that relationship or on the death of their partner.

Cathy Jamieson: As I have indicated, in trying to establish the provisions for cohabitants whose relationship breaks down other than by death, the Executive has been at pains to ensure two things: first, that any financial award that the courts make to an applicant addresses the net economic disadvantage that that person may face as a direct

result of joint decisions that were made by the couple during the relationship; and secondly, that the economic burden of caring for a child that cohabitants have had together is shared until the child is 16. Those points were picked up by Pauline McNeill and Kenny MacAskill.

I want to speak about Pauline McNeill's amendment, in particular, because I understand that in amendment 46 she was seeking to put matters beyond doubt. We looked at the amendment very carefully and have reached the conclusion that it could restrict the discretion of the court, such that a capital sum could be awarded only in respect of the two matters that are specified in section 21(2). Although those are important matters that we would want the court to take into account, we also want the court to be able to consider any and all relevant factors when deciding whether to make an award under section 21(2)(a), particularly the tests of economic advantage and disadvantage that are outlined in section 21(3)(a) and (b).

I will comment briefly on Fergus Ewing's amendments. In my view, the member has misunderstood what the package is intended to achieve. It is not about protecting one partner who is or has been economically weaker than the other. It is not about seeking to replicate the financial arrangements that apply to spouses or civil partners. I accept that some members may wish that to be the case, but the bill does not do that. Cohabitants are under no legal obligation to aliment each other during their relationship, so there is no reason why we should seek to ensure that they do so when the relationship is over. However, it is important to achieve fairness. That is why we have adopted the provisions that are set out in section 21. Those provisions will ensure that one partner compensates the other for any net economic disadvantage that has resulted from the relationship that they formed together and that they will share the cost of caring for their children. We believe that that offers fairness to both parties, while respecting their rights to live as they choose without the Government imposing other financial obligations.

I urge the Parliament to reject amendments 22, 46, 23 and 24.

Fergus Ewing: I understand fully the minister's position; I have understood it all along. The debate has been useful because it has allowed some clarification of just how minimal the so-called protection that will be afforded to vulnerable females, in particular, will be. I did not state that there could be a payment only when there was hardship. Amendment 23 states that there could be a payment in two circumstances: when there was hardship or where there were children. The Child Support Act 1991 provides an obligation for

alment that will continue irrespective of the provisions of the bill—and rightly so. Those who argued that amendment 23 would somehow affect that are entirely wrong and confused about the amendment.

If there is confusion in the chamber about what the bill will do and what protection it will provide, how can we expect people in the country to be aware that, when they are told that they will get legal protection—the minister has repeatedly used the word “safeguard”—that protection will probably relate to a few sticks of furniture and a small amount of cash, rather than the full rights that are afforded to man and wife through the institution of marriage, which, if I were a feminist, I would certainly support? In Scotland, marriage fully protects the vulnerable female, whereas the provisions that we are debating would cause great uncertainty and confusion. If any of us went to any street in Scotland and asked people whether they were aware that we are doing this, I suspect that fewer than one in 100 of them would have the slightest idea.

I seek leave to withdraw amendment 22.

Amendment 22, by agreement, withdrawn.

Amendment 46 not moved.

The Deputy Presiding Officer: Group 16 concerns the financial provision for an artificially conceived child where cohabitation ends. Amendment 3, in the name of Marlyn Glen, is the only amendment in the group.

Marlyn Glen: Amendment 3 relates to section 21(2)(b), which deals with financial provisions, separation of cohabitants, and the future economic burden of caring for a child of cohabitants. The current policy is that the financial provision should be limited to children whom the cohabitants have had together, rather than to a child of one partner and a third party. However, the bill does not deal with female cohabiting couples who have a child together. It is not unusual for female couples to have a child via artificial insemination by donor. That may be done through a licensed clinic or through private arrangements with a donor. If it is done through a licensed clinic, the partner who bears the child will be its legal mother, and the child will have no legal father. If it is done privately, that donor will be the legal father.

However, in both cases the two female partners have decided together to take on the responsibility of having and caring for a child. They decided that in the same way as a man and woman who cohabit and have a child. Where women are civil partners, section 9(1)(c) of the Family Law (Scotland) Act 1985 allows the court to make financial provision for the cost of caring for such a child after the dissolution of that partnership. However, without amendment 3, if women cohabit

and are not civil partners, their responsibilities for the child are not recognised and their child is not protected. I do not seek to change their legal status, regardless of whether the second partner is a parent, nor do I want to change legislation that should be more properly considered in the UK Parliament. I want to ensure that children in Scotland are protected.

Amendment 3 is drafted to ensure that it covers only cases in which both women cohabitants jointly took the decision to have the child. That is the same-sex equivalent of a mixed-sex cohabiting couple deciding to have a child. In short, this is one of those situations in which ensuring equal treatment of the families of mixed-sex and same-sex couples requires a specific provision in the bill, rather than simply using the gender-neutral term “cohabitant”.

I move amendment 3.

The Deputy Presiding Officer: Under rule 9.8.4A, I propose to extend the next deadline as set out in the timetabling motion. The debate on group 16 must therefore conclude by 17.08. I ask members to make only very brief speeches.

Mike Pringle: I agree with everything that Marlyn Glen said. I supported her amendment at stage 2, and I continue to do so. That is because the bill is about one thing: better facilities and opportunities for children. The bill is about children and giving them better rights. As Kenny MacAskill has said many times, the bill is also about people taking responsibility for their lives in a changing society. Today’s society is entirely different, and Marlyn Glen described many of those differences.

Amendment 3 addresses a specific issue and a particular type of couple, that is, a lesbian couple. We have to acknowledge that many couples live in that type of relationship in our modern society. I do not believe that the bill protects the person who bears the child and who will often rear the child while the other partner earns the salary and gets the pension. If that person then disappears, the woman who has had the child is left in a vulnerable position. I do not think that that is right and I ask the minister to give us undertakings about it. Many things will remain to be addressed after the bill has been passed—I do not doubt that it will be passed—and this is one of the issues to which we will have to return to get some sort of resolution. If amendment 3 is not agreed to, we must try to press our colleagues in London to change the Human Fertilisation and Embryology Act 1990.

Nobody has said anything to me that suggests that we could not include in the bill the provision that is proposed in amendment 3.

17:00

Stewart Stevenson: At the risk of stating the obvious, maternity is a matter of fact and paternity is a matter of evidence. In this case, that is the difficult issue. How are we to know that the non-child-bearing partner agreed to the conception?

I would be astonished if any couple—two ladies—out there who were proceeding along these lines thought that rights would result from that kind of act. A deliberate act to create a child should be accompanied by a deliberate act to protect its future. Even amendment 3 would not do enough; it would do much less than would a deliberate act to protect a child's future. The provision that is proposed in the amendment is unlikely to be able to be implemented meaningfully.

Cathy Jamieson: This matter has to be set in the context of what we discussed earlier in relation to section 21, which provides for two related but distinct awards—the award to cover the net economic disadvantage that resulted from the breakdown of a relationship and the future child care costs. That is, of course, separate from children's alimentary needs, which are addressed fully and adequately by the Family Law (Scotland) Act 1985 and the Child Support Act 1991.

In the case of future child care costs, the Executive is applying the principle that cohabitants who have a child together should remain jointly responsible for meeting expenses that are incurred by the adult who cares for the child after separation. That includes cohabitants who have a child as a result of treatment licensed under the Human Fertilisation and Embryology Act 1990.

We are setting out not to introduce additional alimentary provisions for children, but to reflect the principle defined in section 9(1)(c) of the 1985 act that any economic burden of caring after divorce for a child of the marriage under 16 years should be shared fairly by the parties. The intention has always been to limit that provision to children of whom the cohabitants are the parents. The reasons for that distinction have been well rehearsed in the policy memorandum and in a number of subsequent exchanges with the Justice 1 Committee.

We recognise that the provisions exclude certain circumstances, such as when children are conceived by artificial insemination by couples using a sperm donor from an unlicensed clinic. I heard the arguments that Marlyn Glen has made around amendment 3. However, it could well be argued that people who choose to have a child together in whatever circumstances owe a moral responsibility to one another and to the child. I certainly would not argue with that principle. However, amendment 3 seeks to impose an on-

going legal responsibility on someone who has no legal relationship with either the parent or the child concerned, which we do not think is appropriate. If a couple use a sperm donor in an unlicensed arrangement, only the person who carries and gives birth to the child is legally a parent; the other member of the couple is not the child's parent as a matter of law.

The question of establishing a new legal relationship between adults and children is not for the bill. In the particular circumstances in question, we believe that the remedy lies in legislation on human fertilisation and embryology, which is a reserved matter and would therefore be considered by the Westminster Parliament. At present, the definition of a parent in such circumstances is defined under the act to which I referred.

The Department of Health at Westminster, which has recently ended a consultation on the 1991 act, is considering the status of same-sex couples with regard to children who are conceived by assisted means. Any change to the legal status of such couples will be dealt with in any change to the reserved legislation, as it should be. Such changes would apply in Scotland.

We believe that the time to make any changes such as those that have been proposed by Marlyn Glen would be if the status of a parent were to be redefined in the legislation on human fertilisation. It may well be that no amendment to Scots law would be necessary, depending on the terms of that legislation. However, we cannot necessarily say that at this stage.

Given the existing provisions, I reiterate that we do not believe that we should make such a change to the law at this time or in this bill. Therefore, I ask Marlyn Glen to withdraw her amendment.

Marlyn Glen: I realise that the matter is complex, but I do not agree at all with the idea that United Kingdom legislation is needed to do what I propose. There is no intent in the amendment to change the legal status of parents. The amendment seeks to protect children by ensuring that, if a cohabiting couple split up, the on-going expenses of the child would be covered. I am disappointed that the Executive will not support the amendment, but I hope that I can get some assurances that the issue will be considered in an on-going way and that the situation will be sorted out. We are talking about children who are living among us and who need protection as much as anyone else does.

I seek leave to withdraw amendment 3.

The Deputy Presiding Officer: Marlyn Glen has sought leave to withdraw amendment 3. Is that agreed?

Members: No.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 Maclean, Kate (Dundee West) (Lab)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sturgeon, Nicola (Glasgow) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)

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)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Glen, Marlyn (North East Scotland) (Lab)
 Pringle, Mike (Edinburgh South) (LD)

The Deputy Presiding Officer: The result of the division is: For 22, Against 91, Abstentions 2.

Amendment 3 disagreed to.

Amendments 23 and 24 not moved.

Section 22—Application to court by survivor for provision on intestacy

The Deputy Presiding Officer: Group 17 is on provision for a cohabitant dying intestate. Amendment 47, in the name of Pauline McNeill, is grouped with amendments 48 and 49.

Pauline McNeill: Amendment 47 is designed to ensure that we are clear about how section 22 should be applied by the courts when estates are divided up.

There is no doubt that this is a complicated area—it is probably more complicated than the issues that we have previously discussed. The committee got itself into all sorts of knots trying to understand the provisions. The situation is straightforward if there is only the cohabitant to think about. However, if there are husbands, wives and children in the scenario, it becomes harder to understand how the provisions will work in law. Under section 22(11), debts and liabilities and the rights of the spouse are disposed of first. Normally, the children's legal rights would be disposed of next, leaving the rest to the free estate. However, section 22 gives the sheriff the discretion to consider the existence of other rights when deciding what sum to award to a cohabitant.

Amendment 47 tries to draw out whether the court should be required to take account of the length of the relationship for the purposes of determining whether it is a cohabiting relationship, which it has to do under section 18. The sheriff must take into account the size and nature of the deceased's estate, any benefit received by the survivor and the nature of any other rights and any other matter that the court considers appropriate.

The lesson for all of us is that we need to ensure that our constituents realise the importance of drawing up a will in every case, so that they do not die intestate and can avoid arguments and determine where their estate goes. However, where a will does not exist, we need to be clear. I am not arguing that the length of the relationship per se should be included in section 22, but I want to note where sheriffs are expected to take it into account. Section 22(3)(d) refers to "any other matter". If I am told that sheriffs are meant to consider the length of the relationship under that provision, I will be a lot happier. I realise that the consideration will not always apply, but I am concerned about the sheriff having total discretion in the situation in which the cohabitation was short and there are children. I would be concerned if no account was taken of the length of the relationship and a large capital sum was awarded to the cohabitant, but the children received nothing from the estate.

Amendment 48 seeks to avoid doubt. Once the sheriff has done all that, there is the Succession

(Scotland) Act 1964, which states the order in which the free estate has to be divided, starting with husbands and wives, children, brothers and sisters and so on. Given that cohabitants are not mentioned in the 1964 act, I want to ensure that any decision that is taken by a sheriff under section 22 cannot be challenged using the 1964 act. I think that the answer from the Executive will be that that is not the intention, which is what I want to hear for the purposes of clarity. It would be wrong if, in giving discretion to the sheriff, we enabled children and brothers and sisters who were concerned about the decision to use the 1964 act. I should make it clear that I understand that the legal rights concerned are common-law rights and that we are talking about the remainder of the estate and nothing else. If I hear the answers that I am looking for, I will not press amendments 47 and 48.

I move amendment 47.

Stewart Stevenson: Section 22(6), to which amendment 49 applies, states:

"Any application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died."

Therefore, on intestacy, a cohabitant must apply within six months of the death. Amendment 49 would change "deceased died" to

"death of the deceased was established".

That seems like a small change, but it covers the situation where the cohabitant is a fisherman whose boat is presumed lost with all on board, but there is still hope. The death might not be established for seven months or seven years. The rights of the surviving cohabitant would be lost because the person would not be legally dead until more than six months from the actual date of death had elapsed. Amendment 49 aims to protect people who are in the position where death is established on a date that is significantly distant from the date on which the death is determined to have happened.

I accept that the minister wrote to the Justice 1 Committee on that point to explain that, notwithstanding what section 22(6) says, everything is okay. I confess to the minister that on that occasion I was unable to award a clear English award for the Executive's response—I did not understand more than three words and they were "Dear Stewart".

Fergus Ewing: I always thought that Stewart Stevenson was numerate.

Does the minister consider that the fact that cohabitants' rights upon death will apply only where there is no will is consistent with the Executive's aim of protecting the vulnerable? Especially if two cohabitants have fallen out in the

period shortly before one of them dies, there is a great incentive for one to exclude the other from their will. The bill will not provide the necessary protection, because a cohabitant could be excluded entirely by a will. That is completely different from the situation between a husband and wife—a surviving spouse has indefeasible legal rights, which take priority under the Succession (Scotland) Act 1964, which Pauline McNeill mentioned. The wife has the protection of being entitled to a house, up to a fairly substantial value, and to a cash sum, but a surviving cohabitant will have no such right.

The current system for winding up estates has clear rules on intestacy, with various benefits. The law sets out a scheme under which estates are wound up. However, the bill will create a discretionary award, not a rules-based payment, which means that the sheriff will have to determine how much is payable, which will introduce uncertainty. Where uncertainty arises in the winding-up of an estate, it has at least the potential to encourage and generate acrimony. I take this brief opportunity to point out yet again that the bill does not do what it says on the legal tin.

17:15

Margaret Mitchell: I welcome amendment 48, which seeks to clarify the bill on the important point of prior legal rights. I also welcome amendment 49, in the name of Stewart Stevenson, which raises an important issue about the need to establish a recognised date of death when the actual date is difficult or impossible to determine.

Hugh Henry: In establishing a right for a cohabitant to apply to the court for a discretionary award when their partner dies intestate, we will introduce a degree of fairness into an unhappy situation, with provisions that are just and equitable. We have tried to ensure that any surviving spouse's or civil partner's position will remain intact and that the total award to a cohabitant will be limited to the amount to which they would have been entitled had they been a spouse or civil partner of the deceased. Beyond that, the courts will be expected to decide what is fair and reasonable in the circumstances of each case, within the rules that are set out in section 22.

The court will first of all refer to the definition of "cohabitant" in section 18. The applicant will have to satisfy the test that is set out there before the court considers the application for an award. The court will then consider the factors that are set out in section 22(3), which include

"the size and nature of the deceased's net intestate estate" as well as

"any benefit received, or to be received"

by the surviving cohabitant from the estate and

"the nature and extent of any other rights against, or claims on, the deceased's net intestate estate".

Amendment 47 seeks to introduce an additional factor for the court to consider in determining the award: the length of time that the cohabitants lived together. That displays a wee bit of misunderstanding of the discretion that will be available to the court. Section 18 will determine whether the applicant is eligible to be considered for an award. Once that has been established, the discretion that will be available to the court will relate to the circumstances of the individual estate. Therefore, the court will not carry out an exercise in determining who is more worthy or deserving or whether someone who lived with their partner for 10 years is entitled to more than they would have got if their partner had died six years earlier; instead, the court will examine the size and nature of the estate and the other legitimate claims that can be made on it. A cohabitant who lived with someone for 10 years where the deceased had no surviving spouse or children might get a different outcome from a cohabitant who lived with a partner for 10 years but whose partner remained married and had children with the spouse and/or another previous partner.

Amendment 48 seeks to make matters clear by putting it beyond doubt that the calculation of any children's legal rights should be postponed until the discretionary award that is to be made to the cohabitant has been satisfied. However, that would fetter the discretion of the court in such matters. The issue is more complex than amendment 48 suggests; it is not simply an either/or situation. Among other matters, a child's claim on the estate would be taken into account in the decision on the award. In certain circumstances—for example if the cohabitant was entitled to a large pension settlement from the deceased's estate—the court might wish to set aside a sum to meet the child's legal rights in their entirety before deciding on the award to the cohabitant. In other cases, the circumstances described by the amendment would be appropriate. The matter must be left to the discretion of the court, which will take into account all the facts and circumstances.

Pauline McNeill: I hear what the minister says. Would he expect sheriffs to consider the length of the relationship?

Hugh Henry: Clearly, that would be one of a number of factors that would need be taken into account; it is not appropriate to specify one factor.

I move to amendment 49, in the name of Stewart Stevenson. I am sorry that he understood only the three words "Dear Stewart". I will try to

clarify the issue; I will write again to see whether we can provide more clarity.

As Stewart Stevenson said, he seeks to address an unusual situation in which there has been some time between the person dying and a declarator of death being made. We are satisfied—this is the nub of the letter, although the legalese may not have been understood—that the terms of section 22 are sufficiently wide and give the court sufficient discretion to ensure that all the circumstances that he raises can be covered. I urge Parliament to reject amendments 47, 48 and 49.

Pauline McNeill: Having heard what the minister said, I take it that the length of the relationship is one of the factors that could be taken into account. I recognise that it is not the only factor and I am not saying that it should be taken into account in every case. I wanted that to be made clear.

I am happy with what the minister said on amendment 48. I am trying to ensure that there is no legal challenge once a sheriff makes a decision. I will seek to withdraw amendment 47 and not move amendment 48.

Amendment 47, by agreement, withdrawn.

Amendment 48 not moved.

Amendment 49 moved—[Stewart Stevenson].

The Deputy Presiding Officer (Trish Godman): The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 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)
 Fabiani, Linda (Central Scotland) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 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)
 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)

Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 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)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, 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)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 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)
 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)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 85, Abstentions 0.

Amendment 49 disagreed to.

The Deputy Presiding Officer: I am minded to accept a motion without notice, under rule 9.8.5A of standing orders, to extend the total debating time for amendments by 10 minutes to five hours five minutes.

I inform members that if the motion is agreed to, I will not use my power under rule 9.8.5B to move forward decision time—it will stay at 6.30 pm.

Motion moved,

That the debate on group 20 be concluded no later than 5 hours 5 minutes after proceedings begin.—[*Ms Margaret Curran.*]

Motion agreed to.

Section 24—Cohabitation: domestic interdicts

The Deputy Presiding Officer: Group 18 is on the definition of “child” in relation to family interdicts. Amendment 50, in the name of the minister, is grouped with amendments 51 and 4.

Hugh Henry: Amendments 50 and 51 are technical. We are amending the definition of “child” in section 18(3) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 to follow more closely the definition that is used elsewhere in the act. As section 24 of the Family Law (Scotland) Bill is adding new provisions to the 1981 act, for the sake of consistency it makes sense that “child” has the same definition throughout.

I turn now to amendment 4. Section 8 of the bill amends the Matrimonial Homes (Family

Protection) (Scotland) Act 1981 by extending matrimonial interdicts to include not only a matrimonial home but any other home occupied by the applicant, the applicant’s place of work and the school attended by any child in the applicant’s permanent or temporary care. Section 24 of the bill makes similar provision for domestic interdicts for cohabiting couples in relation to their family home.

Those changes are replicated for civil partners in schedule 1. However, the wording that is used at section 8(2), new paragraph (b)(iv), to describe schools attended by children in the care of an applicant spouse, has not been mirrored exactly in the drafting of the equivalent provision for applicant civil partners, which is new paragraph (b)(iv) under schedule 1 (6)(a), which will become part of section 113(2)(b) of the Civil Partnership Act 2004.

I understand that amendment 4 aims to bring the drafting of the relevant interdict provisions in schedule 1 into line with that for matrimonial interdicts in section 8 and domestic interdicts in section 24. I am therefore happy to support amendment 4, which is very useful.

I move amendment 50.

Marlyn Glen: Amendment 4 extends protection to cover all children, whatever the gender mix of the adults who are bringing them up. As such, it is a very important amendment.

Stewart Stevenson: I have a little factual question about the use of the word “attended” in new paragraph (b)(iv). I am not clear in law what tense is applied there. If it were the past tense, it would cover a very wide range of schools. Possibly a wide range of children in care might apply. It is just a clarification.

Hugh Henry: I am sorry, but I am not able to give that specific clarification. Do we want to delay proceedings till I find it? I am actively searching for the provision among my papers—I am not sure of the tense. As well as being a mathematical expert, Stewart Stevenson is clearly a language expert.

Amendment 50 agreed to.

Amendment 51 moved—[Hugh Henry]—and agreed to.

After section 26A

The Deputy Presiding Officer: Group 19 is on the termination of power of attorney on dissolution of civil partnership. Amendment 25, in the name of Cathy Jamieson, is the only amendment in the group.

Hugh Henry: If you will bear with me, Presiding Officer, I am still seeking that word. I believe that “attended” means “going to”, but I do not know what that then does.—[*Laughter.*]

The effect of amendment 25 is to amend the Adults with Incapacity (Scotland) Act 2000 at section 24 to include civil partners, as well as married people, in the provisions relating to the termination of a power of attorney, thus ensuring that civil partners are treated in the same way as spouses in the legislation.

I move amendment 25.

Amendment 25 agreed to.

Section 34—Short title and commencement

Amendments 52 and 53 not moved.

Schedule 1—Amendments of the Civil Partnership Act 2004

Amendment 26 moved—[Hugh Henry]—and agreed to.

Amendment 4 moved—[Marlyn Glen].

17:30

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)

Ingram, Mr Adam (South of Scotland) (SNP)
 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)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 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)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 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)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Robison, Shona (Dundee East) (SNP)
 Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Lochhead, Richard (North East 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)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 92, Against 10, Abstentions 11.

Amendment 4 agreed to.

Amendments 54, 27 and 28 not moved.

Amendments 5 and 29 moved—[Cathy Jamieson]—and agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment 30 moved—[Cathy Jamieson]—and agreed to.

Schedule 3

REPEALS

The Deputy Presiding Officer: Group 20 is on the Lord Advocate's role as party to proceedings in actions for divorce or the dissolution of civil partnerships. Amendment 31, in the name of the minister, is grouped with amendments 33 and 34.

Hugh Henry: Amendments 31, 33 and 34 seek to add three minor repeals to schedule 3. Section 19 of the Court of Session Act 1988 makes provision for the Lord Advocate to enter into any actions of declarator of nullity of marriage or for divorce. Section 38B of the Sheriff Courts (Scotland) Act 1907 makes equivalent provision for actions that are brought in the sheriff court. Section 129 of the Civil Partnership Act 2004 makes corresponding provision for actions of declarator of nullity of a civil partnership or for dissolution of a civil partnership. That was done to ensure equal treatment for civil partners. However, the power is outdated and has rarely been used in the past 20 years. Persuasive arguments have been made that there is no clear need or justification for the retention of the statutory provision in question.

I move amendment 31.

Amendment 31 agreed to.

Amendments 32 to 34 moved—[Hugh Henry]—and agreed to.

Family Law (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-3628, in the name of Cathy Jamieson, that the Parliament agrees that the Family Law (Scotland) Bill be passed.

17:35

The Minister for Justice (Cathy Jamieson): We come to the final stage in a process that started some 15 years ago with the groundbreaking work of the Scottish Law Commission. As we have seen throughout the consideration of the bill, family law is a serious topic. Because of the wide and deep impact that family law has on society and individuals, the subject deserves a measured, well-tempered and open debate, and that is what the Parliament has given it. Not only today but throughout proceedings on the bill, the Parliament has shown that it is more than capable of conducting debate and discussion on this complex issue.

I thank the Justice 1 Committee and its staff. Following the introduction of the bill last February, the committee was responsible for progressing it and for giving it careful scrutiny. I also place on record my appreciation for the contribution that Hugh Henry, the Deputy Minister for Justice, made to the Executive's handling of the bill. [*Applause.*] Along with members of the bill team and the Justice 1 Committee, he worked to improve the bill. He also tried to build agreement in areas where there was clear consensus, to iron out any difficulties, to deal with some of the complex issues and to allow the debate to take place in an open and constructive manner.

I thank all the individuals and organisations who commented, first on the Executive's proposals and then on the bill at its various stages. I say to them that we welcome their participation in the process and admire their commitment to good law—we benefited from their insights into the ways that the law affects people's lives and the bill is all the better for all their contributions.

The Executive has a clear and broad vision for children and families in Scotland. Above all, we are committed to safeguarding the best interests of children and to promoting and supporting stable family relationships. We try to express that vision across all our policies, whether in health, inclusion, education, youth justice, services and support for families, work-life balance or a range of other areas.

The bill proposes realistic and measured reforms that uphold our core values and recognise the special place that marriage has for many people in Scotland and the fact that stable family

life gives children the best opportunity in which to reach their full potential. The bill also recognises the reality of the Scotland in which we live today. It addresses the need to update the safeguards that are available to vulnerable people when relationships break down and when families change shape as a result.

The bill is wide ranging. It covers the rules that regulate divorce and parental responsibilities and rights for fathers. It offers protection against domestic abuse and introduces new legal safeguards for cohabiting couples and their children. Its provisions are more wide ranging than the issues that caught the public and media attention. It completes a process, which began with the Children (Scotland) Act 1995, to develop a body of family law that would deal with the reality of modern family life in Scotland. I recall when the 1995 act was going through. Then—in another life—I was working to secure changes that would benefit children and young people. Since that time, others, including my predecessor Jim Wallace, have moved the agenda on.

The bill is the product of possibly the most extensive and intensive consultation process that has yet been mounted for a bill that has come before the Scottish Parliament. There have been three consultations since 2000 and a further consultation by the Parliament itself. The Parliament has scrutinised and adjusted the provisions in the bill in useful and positive ways. Again, I pay tribute to all the members who were involved in the process.

The bill takes account of both national and international evidence on family law and its impact on people's lives. The Parliament showed a strong interest in the approaches that other countries take and in how those work. That is exactly as it should be: many jurisdictions are grappling with similar issues and we can learn from each other.

We need to go beyond legislation of itself; in isolation, it can be a blunt tool. That is why, from the outset, we sought to develop non-legislative measures alongside the bill. I refer to the parenting agreement for Scotland, the grandchildren's charter, the new investment in family support that will encourage integrated services, the pilot project on contact compliance that will inform future policy development in this difficult area and the major public information campaign that will begin in spring 2006 when the legislation comes into effect. All that complements, reinforces and supports the bill. We will consider family justice issues in more detail in the context of our work on the broader civil justice system. Our commitment to family justice does not end with this bill.

The bill provides a principled, fair and sensible framework for regulating family relationships in the

Scotland of the early 21st century: it is a modern law for a modern Scotland. The bill is anchored in principles that have commanded wide support—the best interests of children and stable families—and which are central to what we have done all the way through; the bill is fair in that it does not intrude unnecessarily in family life and provides a sensible framework for resolving disputes and enabling individuals and families to move on; and the bill is sensible in acknowledging the realities of family life today and in reaching judgments that balance freedoms and obligations.

The bill is supported by practical measures to help people to use the law where they need it, which will help them to avoid recourse to the law if there are other means of resolving problems. They will help the law to work well.

Our vision is ambitious and our commitment to families is unshakeable. We believe that the bill will deliver sensible change in a changing world. I am happy to endorse the bill and I commend it to the Parliament.

I move,

That the Parliament agrees that the Family Law (Scotland) Bill be passed.

17:41

Stewart Stevenson (Banff and Buchan) (SNP): At this stage in the progress of a bill, it is always interesting to look around the chamber to see who are the few hardy chieftains who have managed to survive, awake and engaged.

I conclude from today's debate and from debates in committee and elsewhere that no one in the Parliament wishes to do anything that would damage relationships of whatever nature or adversely affect the children of Scotland. At our core, each and every one of us shares a common set of values. We continue to differ on the detail and on whether the bill supports or degrades progress in that respect. However, we are likely to pass a bill tonight, and I will vote for it. We have heard that not all my colleagues will necessarily do so, and we may hear from them later.

I will start with matters outside the bill, to which the minister made reference, by paying tribute to the work that former sheriff Alan Finlayson did on the parenting agreement. It is a most impressive document that was produced by a very impressive process. Alan Finlayson's engagement with the committee and his willingness to interact, respond and adapt as a result of that interaction is an interesting model for extra-legislative ways of dealing with some of the complex issues that arise when one deals with matters such as those that the Family Law (Scotland) Bill encompasses.

I welcome the abolition of marriage by cohabitation with habit and repute and its

replacement with something that I hope will be rather clearer and which provides a range of objective tests, although there remains some disagreement about their nature.

We have reformed the waiting times for no-fault divorces. Everyone in the Parliament accepted that we had to reduce by some degree some of the waiting periods under that heading. Anyone outside the Parliament who suggests that members were holding a line and seeking to abolish divorce or to restrict access to it by obstructionism is entirely mistaken. We have differed in degree and in detail, but not, by and large, in principle.

We have addressed an historic wrong in relation to the power of some Jewish men—a very small number—over Jewish wives, and that is welcome.

We have addressed the issue of contact orders to some degree. The minister must continue to work with members to convince us that contact orders will be complied with, given that there are cases in which severe hurt is inflicted through what appears to be wilful disregard of the judgment that the court hands down. By the same token, the minister made some useful moves on support services, but she should not take her hand out of her wallet yet. There is more to do and we will be watching her carefully.

I continue to regret that the Parliament did not respond to my invitation to ensure that information is made available to people about the effects of the various choices—and, indeed, about the effects of their not making certain choices, particularly when children are involved.

We have changed the law of succession in Scotland, but I am worried that we have done so in a relatively non-systematic way that might have unintended consequences. For many years, under a number of Administrations, there has been a desire to reform the law of succession more generally. That is one of the most difficult and technically complex projects that we could consider, but that must not be a reason for further delay. I am worried about the matter and I know that others are too.

We have been told that children are at the core of the bill, but I have to say that it mentions children relatively infrequently and its effects on children are rather imprecise. Nonetheless, I have been persuaded that there will be benefits to children and to vulnerable people who leave a relationship or whose relationship ends due to a death, so I will support the bill.

17:47

Margaret Mitchell (Central Scotland) (Con): The Family Law (Scotland) Bill is a hugely important bill. Its provisions have the potential to affect almost everyone in Scotland because it covers such a wide range of relationships. It addresses a huge number of complex issues. I pay tribute to the convener of the Justice 1 Committee, Pauline McNeill; to the committee's adviser, Professor Norrie; to the committee clerks; and to the Scottish Parliament information centre advisers. They have all done an outstanding job in supporting the committee in its deliberations.

I had better take this opportunity to set the record straight in relation to Christine Grahame's contribution this morning. I assure the chamber that I was not divorced when I woke up this morning and, despite the Parliament having reduced the separation times for divorce, I will not be divorced when I go home this evening—a fact that will, no doubt, elicit mixed emotions from my husband.

On a more serious note, I am disappointed that the compromise separation times of 18 months and three years were not agreed to. In the absence of any hard, empirical evidence, I hoped that members would agree that those times were a reasonable compromise. I now seek an assurance that the Executive will take steps to record statistics on the effects of both the current separation times and the new separation times. That information was not available to the committee when it scrutinised the bill, but I hope that it will be available when the Parliament reviews the bill.

I do not have enough time to cover all the provisions in the bill but I will make some comments on marriage. I support the various comments that were made during the day on the need to recognise the special status of marriage. Marriage has a special status in society because it is a legal and public lifelong commitment by a man and a woman to spend a shared life together to the exclusion of all others—to quote the Christian definition. As such, it is the most stable relationship and it provides the best framework within which children can be brought up.

Having said that, I fully take on board Susan Deacon's comments. I recognise that, for some cohabiting couples, the commitment will be a lifelong one, but the fact is that cohabitation remains an open-ended relationship. That is why marriage automatically attracts rights that are not available to cohabitants. It is regrettable that Patrick Harvie, who I am sure considers himself always to be fair minded, has doggedly refused to accept that fact.

Without doubt, some provisions in the bill will not only clarify the law but—importantly—address gaps or unintended consequences left by previous legislation. On that basis, I will vote for the bill, especially given the minister's assurance about the measures that will be put in place to strengthen the enforcement of contact orders and to encourage a child-centred approach.

17:50

Mike Pringle (Edinburgh South) (LD): I, too, acknowledge the enormous amount of work that the Justice 1 Committee's convener, Pauline McNeill, got through. I also thank the committee's clerks.

The bill is intended to improve the law for children, to support stable relationships and stable families and to update the law in our modern society. In future, the Executive must acknowledge that more time is needed to deal with such complex legislation. We have all seen that, and it was shown in the debate when we heard about the many matters that we will have to consider after the bill has been passed. I will support the bill, but we will have to follow up several issues as a result of it.

One issue that we did not discuss in great detail today is the abolition of illegitimacy under Scots law. When I joined the Justice 1 Committee and heard that discussed, I was very much in favour of abolition. In a modern society, it is time for that; illegitimacy has no place in our modern society. However, as the minister said, we in Scotland cannot abolish it. The committee's stage 1 report says:

"Although the abolition of the status of illegitimacy may be largely symbolic and have little ... impact, the Committee believes that it is right in principle to take this opportunity to do so and requests that the Executive explore with the UK Government ways in which the remaining statutory obstacles ... can be removed."

I accept that the bill introduces several provisions that go towards abolition. I urge the Executive to talk to the United Kingdom Government about removing the remaining obstacles.

I will talk about two or three issues. The first is parental rights and responsibilities for step-parents, which I have pursued and which have an impact on children. If the committee revisits issues from the bill, I intend to reconsider that matter. I lodged an amendment—which Jim Wallace pursued, because I did not attend the committee meeting when it was discussed—about giving step-parents parental rights and responsibilities. The committee did not see its way to supporting that amendment, which was withdrawn. After considerable discussion with the minister, I was persuaded not to pursue the amendment at stage 3.

I am delighted that we have reduced the separation periods before divorce from two years to one and from five years to two. Again—unfortunately—I was not at the committee meeting when that was discussed, because I was dealing with another bill, but I am delighted that we have brought the bill's provisions back to the Executive's line.

Although I am a member of the Justice 1 Committee, because the debate was oversubscribed I did not have the chance to speak about fathers and the question that Sylvia Jackson pursued. I am delighted that the minister announced several measures to address the situation. It is beyond me that some people can ignore court orders, which cannot be right. People cannot be allowed to ignore court orders, yet Sylvia Jackson has shown that people have done so for a long time. I understand why—people do not want to fine mothers or put them in prison. I am delighted that the minister has announced the contact compliance officers in courts and the other measures.

I support the bill. I believe that it is a credit to the Executive and the Parliament that we have been able to introduce such a hugely complex piece of legislation, which, as Margaret Mitchell said, will change the life of almost every person in Scotland. I commend the bill to the Parliament.

The Presiding Officer (Mr George Reid): As we move into the general debate, time is very tight. I think that I will manage to have only four speakers, who will have three minutes each.

17:55

Pauline McNeill (Glasgow Kelvin) (Lab): As other members have said, the Family Law (Scotland) Bill has been a marathon bill by reason of not only its contents but the number of people that it is likely to affect. I cannot remember scrutinising a piece of legislation that is likely to affect more people.

Like other members, I put on record our thanks to our adviser, Ken Norrie. Without him, we—or at least I—could not have understood many of the issues. I also give special thanks to Hugh Henry, who not only listened a lot but did so with good grace. I am grateful for the hard work that he and his officials have done. Other members will vouch for the lever arch folder upon lever arch folder of notes and advice that went back and forwards between the committee and the minister's officials on an almost daily basis. The bill required hard work on everyone's part, but I particularly thank our clerks, Dougie Wands and Callum Thomson, who ensured that all that information flowed backwards and forwards and who set up our

meetings. I also thank the SPICe researchers who remained with us throughout the process.

Committee members from across the parties have made their mark on the bill. I certainly saw some proactive thinking. Although we had disagreements, I know that members thought hard about where they wanted to be in relation to the main positions on the bill.

The bill will deal with void marriages, simplify interdicts, abolish illegitimacy, create a legal framework for cohabitants, reduce time limits for divorce—despite our disagreements—provide domicile rules and even save a wee bit of marriage by cohabitation with habit and repute for foreign marriages. Thus, the bill contains a lot of things, but it will probably be more noted for what it does not say, so I want to say a word about that as well. I agree with Stewart Stevenson and others that the parenting agreement, which was created by Alan Finlayson and others, will be a useful tool. A great deal of work went into that and I believe that it will be well used.

As has been demonstrated in other countries, reforming family law often ends in dissatisfaction on all sides, so I suppose that we will hear only after tonight whether we have achieved a consensus. However, other work is on-going, including research on contact orders and on access to justice. The pilot projects that were announced today will also have a role and the money for family support services will be very welcome indeed.

Another 10 years might pass before we have a chance to legislate again in the area of family law, but members must ensure that they are proactive in the intervening period, because family law affects not only justice but every other portfolio. Marlyn Glen has been particularly dogged about ensuring that equal rights are provided under the bill. I pay tribute to her and to the officials who ensured that all aspects of the law—including, believe it or not, the Anatomy Act 1984 and the Land Reform (Scotland) Act 2003—will be reformed to ensure that equal rights are provided for those who are in a civil partnership.

In conclusion, there is more work to be done, as we will need to debate the consequences of European legislation on family law. I hope that members are listening, as there is more work to be done.

The Presiding Officer: I am sorry to hustle members along, but I can give members only three minutes.

17:58

Brian Adam (Aberdeen North) (SNP): The temperature in the chamber—not only the actual

temperature but the way in which we engage in debate—has dropped a lot, but I must tell Pauline McNeill that we will not end up with a consensus on the bill. However, we will have a degree of respect, as I certainly respect the position of those with whom I have disagreed. I will also respect the decision that the Parliament is likely to take later this evening.

I am very much aware of how long it has taken for the proposals in the Scottish Law Commission report to reach this stage. The Executive has made many courageous decisions, not all of which I have agreed with. In half an hour or so, I will show my disagreement by voting against the bill, but I will do so with perhaps a heavy heart, as the bill contains some good elements.

I accept that the Executive has approached the issue in a spirit of trying to recognise all the different kinds of relationship that exist in Scotland today. However, I am disappointed that the Executive has not shown leadership in saying that some relationships should be valued to a greater degree than others. I know that that view will not be universally accepted. I am not saying that any relationship is not valid. However, the evidence will show that marriage and bringing up children within marriage are the most successful ways of allowing people to fulfil their potential.

It is absolutely true that we do not know what will happen in life. Margaret Mitchell said that, as far as she is aware, she is not divorced and hopes not to be divorced when she goes home. Whether we are in a marriage or a civil partnership or are cohabiting, we do not know what is before us—I am not making any predictions. We have to deal with these things, and I recognise that addressing the realities is what motivates those who have taken a different view from mine. What I have found more difficult to accept is the fact that, although the motivation is good, the execution in a number of areas—especially cohabitation—is not going to deliver the results that people want. One of the most helpful things has been the fact that, after stage 2, we received a letter from Hugh Henry that clearly delineates the differences between the different relationships.

I am disappointed with the outcome of today's debates and the votes, and I am not going to vote in favour of the bill.

18:01

Patrick Harvie (Glasgow) (Green): Various members have reflected on their own family relationships. The only such reflection that I can make as a single man is that the long succession of civil partnership receptions that I hope to attend over the coming year will provide excellent opportunities for a little harmless self-indulgence

and perhaps even opportunities not to be single for much longer.

The issue that Brian Adam has addressed, and to which Margaret Mitchell has referred, is the perceived primacy of marriage. The view was expressed by representatives of the Christian Institute, at a briefing here, that marriage is simply superior and more effective at providing a family home and a relationship within which children can thrive. I reject that view fundamentally. The love, the commitment and the emotional investment that parents make are about the people, not their legal status.

Even if I accepted the Christian Institute's position, I would say to people who believe that marriage is just better—superior because of its legal status—that the policy response from the state should be the same for people in my position as for married people. If it is not, it would be like an employer who, considering that the people who work in their office have a range of different abilities—some of them being good at their jobs and some of them being less good—starts to take away annual leave from the less good employees, give them inferior equipment to work with and make them sit on seats that give them back pain. We should be asking our employees how we can best support them to do the best job that they can do. That support will be different for different people, based on their various skills, abilities and qualities. Similarly, as we design family law for the 21st century, Government should be asking people in family relationships how it can best support them—on their terms—to be the best families that they can be for each other's benefit, for their own benefit and for their children's benefit.

The bill goes a long way towards achieving that and towards recognising the equal dignity of all types of families. I congratulate the Justice 1 Committee on its work and I congratulate the Executive on the bill.

18:04

Marlyn Glen (North East Scotland) (Lab): We should enjoy a great sense of achievement at the end of this stage 3 debate. However, as the minister has said, this is not the end of the work. Even the Justice 1 Committee will have a follow-up discussion on its agenda in the new year. That may seem amazing, but it is a fact.

Families in Scotland are not particularly open to the idea of outside help, so a great deal of work needs to be done to promote mediation, counselling and early intervention—particularly counselling, such as that available through Scottish Marriage Care's FOCCUS service, which is aimed at those who are planning a long-term relationship.

Couples need to be aware of their responsibilities towards each other and their rights and—most important—their responsibilities towards any children and those children's rights. However, we cannot realistically expect young couples to focus on possible break-up or bereavement at the beginning of their relationships. We can at least promote information, education and knowledge about relationships and the legal responsibilities and rights that come with them. I therefore welcome the minister's announcement of additional funding for services and I add my voice to the call for on-going information campaigns.

It is a frightening statistic that only one third of adults take the trouble to make a will. People do not realise how vulnerable they make themselves and their families when they do not make a will. The Family Law (Scotland) Bill is, in part, an attempt to protect all families in circumstances that young people starting out rarely contemplate. Part of any information campaign must give out the message, which Pauline McNeill also mentioned, about the importance of making a will.

I mention specifically the detailed amendments on domestic abuse and contact orders that were made to the bill at stage 2. There was a good deal of negotiation with the recognised expert in the field, Scottish Women's Aid, which drove the call for safe contact and for courts to take domestic abuse and safety issues into consideration before making a contact order. Women and children fleeing domestic abuse have often been tracked down via the courts and forced to comply with orders. Given that, on average, two women every week are killed by a partner or ex-partner in the United Kingdom—the most dangerous time being when a woman and her children try to leave—protective provisions are a must, and section 17 is a great step forward in enhancing the safety of women and children.

I am really pleased by the progress that has been made towards equal treatment by the law of same-sex couples and their families. We have not as yet removed all the inconsistencies, but I recognise that there has been a fundamental change to the approach of legislation. I look forward to the necessary further changes in both UK and Scottish legislation.

I support the bill.

The Presiding Officer: My regrets to Mary Mulligan and Fergus Ewing, who were not called to speak.

18:07

Mr Jim Wallace (Orkney) (LD): As others have remarked, much of the origin of the bill goes back to the work of the Scottish Law Commission in

1989. Those who campaigned for a Scottish Parliament said that one of the things that it would do would be to ensure that that work of the Scottish Law Commission was put into legislation. I welcome the fact that that is happening today.

I had some involvement with the bill along the way. I published one of the white papers and the consultation paper. I pay tribute to Cathy Jamieson and to my erstwhile deputy and current Deputy Minister for Justice, Hugh Henry, who has put so much work into the bill. As I had the opportunity to serve as a substitute member of the Justice 1 Committee and was able to take part in three meetings at which the bill was debated at stage 2, I equally acknowledge the work that Pauline McNeill and her committee have done in dealing with some complex issues.

We need only look at the bill to see its wide range. For example, we are abolishing marriage by cohabitation with habit and repute, except for the saving provision that Pauline McNeill introduced earlier today; as far as we can in this Parliament, we are removing the stigma of illegitimacy; and we are abolishing the action for declarator of freedom and putting to silence. I am sure that we have all wanted to use that from time to time, but we never knew how to, and now we cannot.

When Hugh Henry replied to the debate on the length of time before divorce proceedings could commence, he said that each and every one of us is a product of our upbringing and the choices that we have made about our beliefs. It is inevitable that that shapes the way that we think; it makes us the people and the politicians we are, with the political views that we have. However, it is important that when we legislate, we take into account the life circumstances and approaches of people who do not share our values and beliefs.

We are dealing with relationships of marriage, civil partnership and cohabitation. The bill clearly tries to recognise that Government cannot legislate for everything. Heaven help us: we do not want Government to legislate for that most basic thing—people's relationships.

However, the role of Parliament is to ensure that, where relationships exist, we try to buttress their stability and to give protection to people who are in them but may be vulnerable or subject to abuse. Crucially, we must give protection to children within relationships. I believe that the bill does that by reducing the waiting period for divorce with and without consent and by making provision for enforcement of contact orders, which is important for children.

As Cathy Jamieson said, we must remember that legislation can take us only so far. Important issues have arisen that do not require legislation.

The grandchildren's charter, parenting agreements and the support that will be given to family support organisations are crucial. We cannot legislate for them but, in tandem with the bill, they indicate that we are trying to discharge our responsibility to ensure that, whatever relationships people are in, we make them stable. When people find that their relationships no longer work and have broken down, we should enable them to move on, so that their relationships can be wound up in a fair and just way.

I support the bill.

18:11

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

There is much in the bill that is worth supporting. Among the provisions that I believe are very worthy are the improved protection against domestic abuse, the ending of the problem of non-evacuated survivorship destinations in title deeds and the granting of additional parental responsibilities and rights. So the list goes on.

Those of us who have concerns about bills that contain a mixture of good provisions and provisions with which we are uncomfortable face the challenge of deciding how to proceed. I have serious concerns about some of the provisions in the bill. In the stage 1 debate, I flagged up some of my concerns about the new rights that will be granted to cohabiting couples. That debate has had a good airing this afternoon. People have the right to cohabit, if they wish, but by cohabiting they have taken a conscious decision not to enter into the legal contract that is marriage, with all its attendant rights and responsibilities. As someone who practised law for many years, I see it as perfectly obvious that, if people want to have the rights and legal protections that come with a relationship, they should get married. We have civil marriage on the statute book because it was created as an alternative for those people who, for whatever reason, do not want to go through a ceremony of religious marriage.

I am concerned that the bill creates rights for cohabiting couples, but only in certain circumstances—where the sheriff is persuaded that a case has been made. I listened with great interest to the speech of Susan Deacon, who is unfortunately no longer with us. She made an eloquent case for more rights to be granted to cohabiting couples. I do not agree with her argument, but in my view it makes much more sense to say that cohabiting couples should have rights similar to those of people who are married, rather than the halfway house that the bill proposes, which will do nothing but create confusion and send out mixed messages. I am a lawyer and have examined the bill carefully, but I am confused by its provisions regarding cohabiting

couples. I cannot imagine how the general public will be able to understand it.

My more fundamental concerns relate to the divorce provisions. When looking at family law, we should start from the clear point that marriage is good for society. I accept that society orders itself in different ways. People are perfectly entitled to order their lives as they wish and to enter into different forms of relationship. Other relationships can be just as stable as marriage and can provide homes for children that are just as loving for children as those that marriage provides. However, in general marriage is a good thing and should be supported by public policy. On that point, I disagree with Patrick Harvie. I suspect that my views are more in line with public opinion than his are.

For me, the test for the bill is, are its provisions good for society? Do they support marriage? Will they help couples to stay together? I welcome the announcement this morning of additional sums for counselling and mediation, but that does not outweigh my concerns regarding the separation periods. I do not intend to rehearse all the arguments from this morning, as there is not time for that. However, it is a pity that the Parliament did not accept the middle way that was proposed by my colleague Margaret Mitchell and accepted by the Justice 1 Committee. That was a compromise between two different positions. It is a pity that the committee, which considered the matter carefully and looked at all the evidence, was not listened to. It is a pity that the Executive did not allow a free vote on what should be a matter of personal choice and conscience. Whatever careful arguments are heard in the chamber, the bill will be seen by others as support for quickie divorces, even though public opinion is substantially against that.

The Conservatives will have a free vote on the bill. I will vote against it, but some of my colleagues, including Margaret Mitchell, will vote in favour. I will vote against it because I am not convinced that the bill meets the important test of building a better and stronger society in our country.

18:15

Mr Kenny MacAskill (Lothians) (SNP): It is difficult to sum up when there is no party line to follow—as the Scottish National Party has a free vote, I am speaking as an individual. I support the bill; indeed, long before it was published, I said to the minister that I would fully support it.

We must respect the fact that the issues that the bill raises clearly divide not only political parties but households and Scotland in general. I take cognisance of what my colleague Brian Adam

said. Although he opposes the bill, to his credit he correctly acknowledges that change has to occur and that he will respect the Parliament's decision.

Marlyn Glen said that the bill should give us a great sense of achievement. I hope that she will not take this as a criticism, but I think that she meant to say that significant progress has been made. I accept that many aspects of the bill will make Scotland a better place. However, some aspects will make us vote with a heavy heart. Some members will vote against the bill, but it is likely that the majority will vote in favour of it.

Some members mentioned their time as legal practitioners, which takes me back to the 20 years during which I practised family law. Apart from the odd instances of buffoonery and bluster, I do not remember anybody celebrating their divorce. Divorce was always tinged with sadness. No matter whether the divorce was clearly justified—perhaps there had been a fundamental breach or violence—there had always been something that had brought the couple together in the first instance. Aspects of the relationship could never be taken away.

Although we normally celebrate stage 3 debates and the passing of legislation, we will do so today in the knowledge that there are some aspects of family law on which we would rather not legislate. However, we live in the real world, which is why I support the bill. The minister correctly said at the beginning of the debate that our society has changed. Indeed, Scotland has irrevocably changed. Many of those changes have been for the better, although much of our economic progress has come at a severe social price, which is paid in divorce and the dislocation of families. We cannot hide from, ignore or refuse to recognise that fact; we have to accept it and deal with the changes.

Whether people prefer to cohabit is a matter for them; I do not judge them. I have been married for many years, but another type of relationship now exists. There have been clear cases of hardship when rights or moral obligations were not met. I do not see the two kinds of relationship as mutually irreconcilable, which is why I am happy to support the bill. In recognising a new situation, we do not seek to exclude the position of marriage; it is accepted that marriage has a position in society. Like others, I disagree with Patrick Harvie. I believe that it is important to recognise that marriage is the cornerstone and foundation—

Patrick Harvie: Can the member point to one occasion when I have criticised the institution of marriage or proposed some way of undermining it? I have always valued it, but I also value other relationships. That is the only difference.

Mr MacAskill: I did not suggest that Patrick Harvie criticised marriage. However, the majority of parties recognise that marriage has a special position; it is a pinnacle and should be treated as such, although that does not mean that it is necessarily deified or sanctified. It is special when people come together. As I mentioned earlier, marriage is not something that one enters on a whim or a fancy in the same way as some American pop stars enter salons in Las Vegas. That kind of behaviour fundamentally detracts from what marriage means.

We should recognise that, because marriage brings with it obligations, it should have a special position. That does not mean that people should not be allowed to choose not to enter into marriage and should not be given rights when they choose not to enter into marriage but to regulate their affairs in a different manner. However, we have to recognise that marriage is pivotal in our society and we should seek to protect it.

Given those circumstances, I will be voting in favour of the bill. I recognise that progress has been made on a variety of other issues—those issues will not be touched on in tomorrow's press, but they represent a significant change for the better in our society. Progress had to be made. That has been difficult and it is to the Executive's credit that it chose to introduce the bill. With power comes responsibility. We had to recognise the change in our society and I will be supporting the Executive and the bill.

18:20

The Deputy Minister for Justice (Hugh Henry): I start by clarifying a point that arose when we were dealing with amendments. Stewart Stevenson asked about the tense of a word in the bill. I apologise for any confusion about the meaning of "attended" in schedule 1, paragraph 6, new paragraph (b)(iv). We mean the school that is being attended; the word is used in the present tense. I hope that that puts the matter to rest.

I join others in thanking a number of people. I thank the Justice 1 Committee for its work, which has been a good example of the Executive and a committee being able to work together. There has been give and take on both sides and we have had to listen. I understand the pressures on the committee. The bill is complex and it took a long time to get through. I recognise that the committee was working to deadlines. Committee members, supported valiantly by their clerks and others, did a fantastic job in getting us to where we are today.

I also thank the Executive's bill team: Carol Duncan, Moira Wilson, Alex Mowat, Neil Robertson, Kirsty Finlay, Anne Cairns and David McLeish. Not only have they been tremendous in

supporting Cathy Jamieson and me, but they worked with committee members and attempted to support them where further clarification was needed. They have helped us through an enormously difficult job.

I agree with what Marlyn Glen said about having a great sense of achievement, although I hope that it is not too churlish to say that I also feel a great sense of relief now that we have got to this stage. There have been achievements and it is right to put the bill in context. It will not resolve every failure or every problem in our country. In a sense, we need such a bill only because problems exist. If everybody got on well together and was able to resolve their difficulties without any aggravation or dispute, there would be no need for the bill. However, human nature being what it is, with people not being able to agree, we have had to build in certain degrees of protection. That is why there is a huge sense of achievement. We have righted a number of wrongs that it has taken some time to address. As Jim Wallace said, one of the benefits of having the Parliament is that we have been able to do that.

I hope that, on reflection, people will recognise the significance of what we are doing. We are legislating not for the Scotland of our personal beliefs, not for the Scotland in which we grew up and not for the Scotland of the church or group in society to which we belong, but for Scotland as we find it—a Scotland in which people make decisions in their own way. We are legislating to address not just the wrongs but the problems that existed. For many years, there were myths about the rights of unmarried fathers in relation to their children. Those rights just did not exist, but now we have introduced parental responsibilities and rights. It is right to talk not just about the rights but the responsibilities that parents have to make a difference to their children. It is a disgrace in many respects that many men in particular walk away from their children, turn their back on them and do no more for them. It is right that we give them rights but also responsibilities.

It is right that we have done away with the wrong in relation to the concept of illegitimacy. It is right that we should examine how to help parents to do what is a difficult job. Alan Finlayson has done tremendous work in developing a parenting agreement that will be of enormous value and benefit over the coming years. It is right that we had the opportunity to discuss the difficulties that many grandparents faced in trying to maintain contact with their children. It is right that we were able to give recognition to the fantastic job that grandparents do across Scotland. I hope that the bill will help to create a better context in which grandparents can be seen as valuable parts of an extended family. We should have a sense of pride in being able to address a problem—[*Interruption.*]

The Presiding Officer: Order. This is an important speech on an important bill. There is far too much noise in the chamber.

Hugh Henry: It is right that we were able to address an anomaly that existed for certain people in the Jewish faith. I am proud that we were able to do something about that. It is right that we were able to address the myth that, in so-called common-law marriages, women had certain rights and protections. They did not and we have recognised that there is a need to protect people—usually women—who find themselves in a vulnerable position in a relationship. It might disappoint Susan Deacon and others but, by doing that, we have not extended the same rights to those people as are available to people who are married. Marriage still has a certain status in our society that we value. Nevertheless, that should not prevent us from trying to right the wrongs that many people who live together have experienced. It is right that we addressed some of the problems that fathers had in getting access to their children. I am pleased that we have introduced measures that will, we hope, help to make contact orders more effective. We have righted a number of wrongs and can take great pride in that.

After this debate, I will also be left with the words of Murdo Fraser ringing in my ears. He said: “I am a lawyer and I am confused.” What is new about that?

The Scottish Parliament has much to be proud of in passing the bill. Being a member of the Parliament is a privilege. It is a privilege to be allowed to make a difference for the people whom we represent across Scotland. Sometimes that means making difficult decisions, falling out with people and perhaps not pleasing everyone. Sometimes, however, we simply have to do what is right; I think that, in the bill, we have done what is right.

The Presiding Officer: That concludes the remarkably tolerant, compassionate and well-argued debate on the Family Law (Scotland) Bill.

Animal Welfare Bill

18:28

The Presiding Officer (Mr George Reid): The next item of business is consideration of motion S2M-3741, in the name of Ross Finnie, on the Animal Welfare Bill, which is United Kingdom legislation.

Motion moved,

That the Parliament agrees the principle of reciprocal recognition of court orders in relation to animal welfare and agrees that the relevant provisions of the Animal Welfare Bill, introduced into the House of Commons on 13 October 2005, so far as they relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.—[*Rhona Brankin.*]

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

I suspend the meeting until 6.30 pm.

18:28

Meeting suspended.

18:30

On resuming—

Business Motions

The Presiding Officer (Mr George Reid): The next item of business is consideration of three business motions—S2M-3725, S2M-3726 and S2M-3729—in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out timetables for legislation.

Motions moved,

That the Parliament agrees that the Justice 2 Committee reports to the Environment and Rural Development Committee by 13 January 2006 on the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006.

That the Parliament agrees that the timetable for consideration of the Environmental Levy on Plastic Bags (Scotland) Bill at Stage 1 be extended to 27 October 2006.

That the Parliament agrees that consideration of the Human Tissue (Scotland) Bill at Stage 2 be completed by 20 January 2006.—[*Ms Margaret Curran.*]

Motions agreed to.

Parliamentary Bureau Motion

18:31

The Presiding Officer (Mr George Reid): The next item of business is consideration of a Parliamentary Bureau motion. I ask Margaret Curran to move motion S2M-3738, on the establishment of a committee.

Motion moved,

That the Parliament agrees to establish a committee of the Parliament as follows:

Name of Committee: Interests of Members of the Scottish Parliament Bill Committee;

Remit: To consider the Interests of Members of the Scottish Parliament Bill at Stage 2;

Duration: Until the Bill is passed, or falls or is otherwise no longer in progress;

Convenership: The Convener will be a member of the Scottish National Party and the Deputy Convener will be a member of the Labour Party;

Membership: Susan Deacon and Margaret Jamieson (Labour), Mrs Margaret Ewing (SNP), Mr Jamie McGrigor (Conservative), Mike Rumbles (Liberal Democrat).—[*Ms Margaret Curran.*]

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

Decision Time

18:31

The Presiding Officer (Mr George Reid):

There are three questions to be put as a result of today's business. The first question is, that motion S2M-3628, in the name of Cathy Jamieson, that the Family Law (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)

Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
 Scott, John (Ayr) (Con)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)

Goldie, Miss Annabel (West of Scotland) (Con)
 Matheson, Michael (Central Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 104, Against 12, Abstentions 6.

Motion agreed to.

That the Parliament agrees that the Family Law (Scotland) Bill be passed.

The Presiding Officer: The second question is, that motion S2M-3741, in the name of Ross Finnie, on the Animal Welfare Bill, which is United Kingdom legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Frances (West of Scotland) (SSP)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (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) (Ind)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Canavan, Dennis (Falkirk West) (Ind)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Martin, Campbell (West of Scotland) (Ind)
 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)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Presiding Officer: That concludes decision time.

Meeting closed at 18:34.

The Presiding Officer: The result of the division is: For 94, Against 1, Abstentions 26.

Motion agreed to.

That the Parliament agrees the principle of reciprocal recognition of court orders in relation to animal welfare and agrees that the relevant provisions of the Animal Welfare Bill, introduced into the House of Commons on 13 October 2005, so far as they relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.

The Presiding Officer: The third and final question is, that motion S2M-3738, in the name of Margaret Curran, on the establishment of a committee, be agreed to.

Motion agreed to.

That the Parliament agrees to establish a committee of the Parliament as follows:

Name of Committee: Interests of Members of the Scottish Parliament Bill Committee;

Remit: To consider the Interests of Members of the Scottish Parliament Bill at Stage 2;

Duration: Until the Bill is passed, or falls or is otherwise no longer in progress;

Convenership: The Convener will be a member of the Scottish National Party and the Deputy Convener will be a member of the Labour Party;

Membership: Susan Deacon and Margaret Jamieson (Labour), Mrs Margaret Ewing (SNP), Mr Jamie McGrigor (Conservative), Mike Rumbles (Liberal Democrat).

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