



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 27 October 2015

Session 4

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# Scottish Parliament

*Tuesday 27 October 2015*

*[The Presiding Officer opened the meeting at 14:00]*

## Time for Reflection

**The Presiding Officer (Tricia Marwick):** Good afternoon and welcome back. The first item of business this afternoon is time for reflection. Our time for reflection leader today is the Rev Stephen Taylor, the minister of the Kirk of St Nicholas Uniting in Aberdeen.

**The Rev Stephen Taylor (Kirk of St Nicholas Uniting, Aberdeen):** Presiding Officer, members of the Scottish Parliament, in January this year, in front of 1 million people in Manila, a little 12-year-old girl, Glyzelle Palomar, asked Pope Francis an unscripted question. “Why does God let children suffer? Terrible things happen to children. It’s not their fault. Why does God permit it?”, she asked through tears.

Francis did not correct Glyzelle’s theology or attempt to pacify her. She had just told him that she scrounged food from a rubbish tip and slept outside on a mat made of cardboard. He embraced the crying child in his arms. He then took the crowd to task and told them to pay close attention because, he said, “She has just asked the one question with no answer.” To Glyzelle he said, “Only when we can weep for the things you have lived will we understand anything and be able to answer you.”

Then he taught the assembled, “The world needs to weep. The marginalized weep, the scorned weep, but we who are more or less without needs, we don’t know how to weep. We must learn. There are realities in this life you can see only with eyes cleaned and clarified by tears.”

When we see the suffering of children, the plight of the refugee, the economic injustice of our communities, and the anguish around us, and whenever we are asked the question with no answer, “Our answer must be a word born of tears.” That word is compassion and the essence of compassion is not just an attitude but action.

The longer I live, the more I am convinced that there are only two things that matter in this world: unrelieved suffering and unrelenting compassion—only these two are real. A compassionate life is one that suspends itself like a fragile bridge between those two things, willingly between the pain and the wonder, the shadow and the light.

It is not only the tears that we weep that determine real compassion but the values that we uphold in our everyday lives—by the honesty of our relationships, by the justice that we promote in our communities, by the respect that we express for others, by the hospitality of our welcome to the stranger and by using our financial blessings and our material resources to help those in need. Compassion is really about good values that should be lived out in every place, especially this place.

When we live out our compassion in the love we share, in the service we give, in the welcome we express and in the justice we promote, we personify compassion. Let us be the compassion the world needs. May you be the compassion that this nation needs.

## Business Motion

14:04

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of business motion S4M-14616, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revision to the business programme for today. I call Joe FitzPatrick to move the motion.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Tuesday 27 October 2015—

after

*followed by* Topical Questions

insert

*followed by* Ministerial Statement: The Future of the Scottish Steel Industry

delete

5.20 pm Decision Time

and insert

5.15 pm Decision Time—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Topical Question Time

14:04

### “NHS in Scotland 2015”

**1. Jim Hume (South Scotland) (LD):** To ask the Scottish Government what its response is to the Audit Scotland report, “NHS in Scotland 2015”. (S4T-01144)

**The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison):** Audit Scotland’s report mirrors our own assessment on the need for our national health service to evolve to meet the changing needs of Scotland’s people. The report recognises that we have increased health resource spending in real terms, and we will continue to increase the front-line NHS budget at least in real terms for the next session, too, should we be re-elected.

The NHS has made substantial progress under this Government, and Audit Scotland’s report highlights a record high workforce that provides a variety of high-quality services, support and advice, which have contributed to people living longer, along with continued advances in diagnosis, treatment and care.

In accident and emergency, the statistics for the last two full months show that Scotland is performing at above 95 per cent. That is not matched in any other part of the United Kingdom.

Hospital waiting times have been transformed and are at historically low levels under this Government. The median wait for hip replacements has reduced by 87 days; the median wait for knee replacements has reduced by 93 days; and the median wait for cataract operations has reduced by 44 days.

On patient safety, Clostridium difficile infections among patients aged 65 and over have reduced by 84 per cent, and MRSA has reduced by 88 per cent.

The Government has a clear vision for the future of our NHS and will take the right action to ensure that we continue to have an NHS that Scotland can be proud of now and in the future.

**Jim Hume:** I thank the cabinet secretary for an interesting reply. I think that most people were shocked to learn from Audit Scotland that the Scottish National Party has cut health spending in real terms since 2008, even though health spending in the rest of the UK has risen. That is a regressive agenda and is the exact opposite of what the Scottish Government has been telling us and still tells us. In trying to fix the back-door austerity from the SNP, will the Scottish Government address why nine of the 14 health

boards are still below their funding and why some are forced to request loans to meet their commitments?

**Shona Robison:** If Jim Hume had read the Audit Scotland report, he would have seen on page 10 that

“Between 2008/09 and 2014/15, the revenue DEL budget increased by 2.2 per cent”.

What Jim Hume referred to, of course, was the total with the capital budget included. His party was part of the UK Government that cut the Scottish Government’s capital budget by nearly 25 per cent. Of course that was going to have a consequence for health capital. However, the front-line spend for our hospitals, doctors and nurses has increased in real terms.

Audit Scotland clearly lays out challenges for us. As I said in response to the report when it was published, we recognise that we need to increase the pace of change, particularly in implementing the 2020 vision. I have made that clear. However, I hope that some Opposition politicians might be able to bring themselves to recognise that the Audit Scotland report says that the resource spend has increased in real terms. Will Jim Hume do that?

**Jim Hume:** The cabinet secretary does not recognise that spending has grown in the rest of the UK but fallen in Scotland, and she has not answered fully the question about funding for nine out of the 14 health boards. NHS Grampian remains at nearly £17 million short of its funding share.

The news is worse for mental health. In any month, half the boards do not meet the target. Mental ill health affects many people and deserves to be taken more seriously. Why has the mental health budget share fallen in each of the past five years?

**Shona Robison:** Jim Hume will be aware that Jamie Hepburn announced additional resource of £100 million for mental health.

Jim Hume mentioned Grampian. NHS Grampian received the highest level of increase of any mainland board. Perhaps if Labour and the Liberal Democrats had fixed the allocation formula for boards when they were in power, NHS Grampian might not have had the big distance to make up that it has had. We have made a commitment that all boards will be within 1 per cent of parity and we will keep it.

Jim Hume touched on the health resource consequentials from the UK Government. In every single year since 2010, every penny of that health consequential resource has been passed on. Indeed, in 2015-16, we added an additional £54 million. I accept that there are challenges in our

NHS, but I will not accept any inference that this Government has not given every penny of resource consequentials to health. We have protected the health budget; we have made sure that boards have had uplifts to enable them to take forward the improvements in patient care and safety that they need to make.

**The Presiding Officer (Tricia Marwick):** I am very conscious of time, which is extremely tight for the whole afternoon. To get in as many members as I can, I ask that members please keep to one brief question.

**Joan McAlpine (South Scotland) (SNP):** How has the health resource budget changed since the previous election? What has been the change to the Scottish Government’s resource budget from Westminster over the same period?

**Shona Robison:** I made it clear in my previous answer that every penny of health resource consequentials has been passed on, along with an additional £54 million. The capital budget to this Government was reduced by 25 per cent and it is absolutely clear that that would have an impact on our capital spend. As I said, every penny of resource spend has been passed on. I also add that health’s percentage share of the Scottish Government’s budget has increased every single year and is far higher now than it was under the previous Administration.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** We are all having difficulty with the figures, so it would be good to have them clarified. In the last two years of the previous Labour Government, there were increases in health spend of 6.2 and 5.2 per cent. To hear that there has been a reduction of 0.7 per cent, albeit that that includes a significant capital reduction, is extremely worrying. We need to have the matter clarified by an independent source.

One third of the NHS estate is not fit for purpose. The Government targets for the elimination of the high-risk maintenance backlog have not been reached. That is very worrying indeed, because the backlog covers significant elements of the estate. Will the cabinet secretary agree to place in the Scottish Parliament information centre a detailed interim report, before the next report in March 2016, from each health board on the progress that is being made on the backlog?

**Shona Robison:** I assure Dr Simpson that we keep a very close eye on the high-risk maintenance backlog. Of course, he and others must recognise that a 25 per cent cut to the capital budget has implications for all the capital spend across the Scottish Government, including on health. Surely he must recognise that page 10 of the Audit Scotland’s report says in black and white

that the resource spending for the NHS has increased in real terms? In 2015-16 prices, the increase will be 5.8 per cent up to 2015-16.

I accept that the capital budget has been challenging. Of course, each year the capital budget in health fluctuates, as do other capital budgets. I hope that Dr Simpson will take my assurance, because the figures are in black and white on page 10 of the Audit Scotland report.

**Nanette Milne (North East Scotland) (Con):**

The cabinet secretary knows that we all support an integrated health and social care system. However, the Royal College of General Practitioners says that general practice funding has fallen from 9.8 per cent of NHS spending in 2005-06 to 7.6 per cent in 2013-14, and that budget freezes this year have meant an inflationary loss of 1.2 per cent for general medical services. Audit Scotland and the RCGP highlight that more needs to be done to make an integrated health and social care system possible. What long-term action is the Government taking to reverse those trends and prevent the predicted repercussions in order to ensure that we achieve an integrated health and social care system?

**Shona Robison:** Nanette Milne makes a not unreasonable point. The reforms of primary care that we need to make in order to modernise require us to resource primary care appropriately. We have made a good start on that. We will invest £60 million over the next three years to kick-start the reform. We have announced that there will be a new contract based around a different set of principles that will move us away from the quality and outcomes framework from 2017. In the transitional year, we will dismantle large parts of the QOF to reduce bureaucracy. In addition, the First Minister has announced a substantial increase in the number of general practitioner training places.

All that should indicate to Nanette Milne and other members that we absolutely recognise the need to do more in primary care if we are to be able to keep people out of our hospitals and treat them safely in their own homes.

**Neil Findlay (Lothian) (Lab):** The children's ward at St John's hospital is under review and is struggling to recruit staff. Why is there a recruitment freeze at NHS Lothian, and will the cabinet secretary do anything about that? Will she also explain why there is a 53 per cent increase in the use of agency nurses?

**Shona Robison:** I am closely involved with NHS Lothian on St John's. As the member knows, the review is looking at a pan-Lothian approach, because of the difficulty in recruiting to paediatric specialties, not just at St John's but across many

parts of Scotland. Neil Findlay can be assured that I am keeping a close eye on the situation.

It is interesting that the member mentioned agency spend. I do not know whether he is aware that agency spend in the final three years of the previous Administration was greater than agency spend in the whole of our time in administration. In three years, the previous Administration spent more than this Government has spent in eight years. Indeed, in its final year in office, the previous Administration spent £2.5 million more than the amount that Jackie Baillie, in her press release, has attacked me for spending. Labour members ought to look at their history before they start throwing brickbats at our NHS.

### Clutha Vaults Helicopter Crash

**2. Sandra White (Glasgow Kelvin) (SNP):** To ask the Scottish Government, in light of the air accidents investigation branch report into the helicopter crash at the Clutha Vaults, what steps it can take to bring closure for the families involved. (S4T-01142)

**The Cabinet Secretary for Justice (Michael Matheson):** Our thoughts continue to be with the families and friends of those who lost their lives in the Clutha tragedy, and the Scottish Government again offers its deepest condolences to them. I share the families' disappointment that the AAIB report does not provide the closure that they sought and that, after two years of investigation, the AAIB did not reach a clearer conclusion. The report raises more questions than it answers.

The Crown Office confirmed last week that, as the incident involved deaths in the course of employment, a fatal accident inquiry is mandatory. The FAI will be held as soon as possible and will allow for wider reflection on some of the other issues that could have impacted on the events that evening.

What is clear, however, is that because there was no flight data recorder in the helicopter—something that was not required by regulation given the size of the helicopter—it will be very difficult to establish all the answers. The issue of helicopter safety is reserved to Westminster, so the Cabinet Secretary for Infrastructure, Investment and Cities and I have contacted the Secretary of State for Transport to seek reassurance from the United Kingdom Government that it will ensure that the report's recommendations are taken forward swiftly.

**Sandra White:** I welcome the announcement that a fatal accident inquiry will be undertaken. I hope that the inquiry provides the answers that the families deserve to have.

Previous AAIB reports, which stretch back over 10 years, have recommended that flight data



recording equipment be fitted to all aircraft, but the recommendations have never been implemented. I take on board what the cabinet secretary said about speaking to his Westminster counterparts, but is there something else that the Scottish Government can do to help the people who are suffering and who have no answers yet?

**Michael Matheson:** I am aware of the reports to which the member referred. She will be aware that there are two aspects to regulation in the area that we are talking about. There is regulation through legislation from the European Aviation Safety Agency, which is responsible for the pan-European approach to aircraft safety. There is also the domestic regulator, which is the Civil Aviation Authority.

We want the recommendations in the AAIB report, which fall to both the CAA and the EASA, to be taken forward swiftly. We want to ensure that all action that can be taken is taken forward as swiftly as possible, and that is why we are engaged with our counterparts at UK Government level to ensure that the regulators and also the European agency are considering these matters timeously and that they act on the recommendations quickly.

**Sandra White:** I thank the cabinet secretary for his support for the recommendations to be implemented and action to be taken. However, he will know that the manufacturers had been aware that operators were periodically returning defective EC135 fuel sensors and, after the tragic accident, have begun a series of modifications to the EC135 fuel system. Does he share my concerns that this potentially defective system could be apparent in other helicopters of the same design? Will he support calls for all similar helicopters to be examined for any such defects?

**Michael Matheson:** Yes, I share the member's concern on these matters. Public safety is of paramount importance, and I would expect all actions to be taken to address any issues, such as those that have been highlighted, that may prove to be defective around the operating systems within this and any other type of aircraft.

As the member will recognise, it is the regulators' responsibility to ensure that manufacturers and operators are adhering appropriately and taking action timeously to deal with any issues that may arise from modifications that are required.

Clearly, some of these issues can be explored further in the fatal accident inquiry once it has been constituted. I want to ensure that there is an opportunity for all these issues to be explored in that environment. Public safety is of absolute importance in these matters, and I would expect that all those who are stakeholders in safety are

taking forward appropriate measures to address any issues that are highlighted.

**The Presiding Officer:** I call Drew Smith. Briefly, please.

**Drew Smith (Glasgow) (Lab):** I thank the cabinet secretary for the answers that he has given. Is there any reason why operators of helicopters could not look to install recorders in advance of the regulation that he spoke about being brought into force?

**Michael Matheson:** Part of the distinction here is the nature of the regulation of different flights. For example, emergency medical flights are regulated by the legislation that is set by the European Aviation Safety Agency, whereas police helicopter flights are classed as state flights and are regulated by the CAA, so there are slight differences with the different regulators and their roles.

I assure the member that, as a Government, we are looking at every avenue that is open to us and at what further measures need to be taken in relation to those who operate in Scottish contracts to ensure that the recommendations that have been set by the AAIB are implemented swiftly.

## Steel Industry

**The Presiding Officer (Tricia Marwick):** The next item of business is a statement by Fergus Ewing on the future of the Scottish steel industry. The minister will take questions at the end of his statement and there should therefore be no interventions or interruptions.

I say to all members in the chamber that we are very tight for time this afternoon and I may well have to drop some people from being able to ask a question; we simply will not have the time. Therefore, if you wish your colleagues to be able to ask questions, please keep your question as brief as possible.

14:23

**The Minister for Business, Energy and Tourism (Fergus Ewing):** I welcome this opportunity to address the Parliament, albeit to talk about the extremely disappointing news from steel firm Tata that it intends to mothball its two production plants in Scotland. Two hundred and seventy workers could be directly affected if the plans go ahead—225 at the Dalzell plate-rolling works and a further 45 at the Clydebridge plant. Our thoughts are with them and their families as they go through this period of huge uncertainty. We also express our solidarity with the 900 employees at Tata's facility in Scunthorpe, who are facing a similar fate.

However, let me be clear from the outset that we will leave no stone unturned in our efforts to save the steel industry in Scotland. Our top priority is to secure an alternative operator to continue with commercial production. We are aware that that task is not an easy one and that there are significant challenges facing the continued production of steel in Scotland, but we are determined, as a Government, to use all our resources and, as ministers, to devote our individual time and attention, as required, to do absolutely everything that we can do to prevent the loss of steel making in Scotland.

The chamber is well aware of the long and proud heritage of steel work in Scotland. The Dalzell plant in Motherwell has been involved in the iron and steel industry since 1872 and the Clydebridge steelworks in Cambuslang opened in 1887. Their products have been used across the world in the construction, mining and energy exploration sectors, and their steel plates were formed into many of the most famous ships that were built on the River Clyde and around the world. However, even the reputation for quality that Dalzell and Clydebridge earned could not help them to battle the serious problems that the steel industry has faced in recent years. The price of

steel has fallen significantly as worldwide production has almost doubled since 2000. Cheap, subsidised steel is widely available in western markets, high energy costs particularly affect energy-intensive industries and a strong pound has hit export opportunities.

Tata's operations in Scotland and the rest of the United Kingdom have suffered greatly against that difficult trading background, as have those of other steel companies in the UK. Just last week, administrators were appointed to parts of Caparo Steel Products, with 1,700 jobs at risk. Last month, when Sahaviriya Steel Industries mothballed its Redcar steel operations, the Westminster Government called for a UK steel summit. The Scottish Government was represented at the UK summit and, yesterday, in discussions with Anna Soubry, the Minister for Small Business, Industry and Enterprise, we confirmed that we will co-operate with the UK Government and contribute fully to that work.

I wrote to Anna Soubry on 20 October, asking that the Prime Minister continue to urge the Chinese premier to take voluntary action to reduce capacity in the Chinese steel sector and to reduce the volume of exports. I urged the UK Government to help the steel sector with its energy costs by bringing forward the implementation of all the provisions of the energy-intensive industries compensation package from April 2016 to October 2015. I also asked the UK Government to put as much pressure as possible on the European Union to complete as quickly as possible an investigation into Chinese steel imports into Europe and whether they constitute illegal dumping. When I spoke to Anna Soubry yesterday, I stressed those concerns and assured her that we shall contribute fully to any negotiations.

I welcome the UK Government's confirmation that it will co-operate fully in relation to state aid clearance of any deal that may emerge, but it is disappointing that the UK Government did not agree to allow Scottish ministers to participate in crucial EU discussions that may affect Scotland's interests in the preservation of a key industry. However, I will not dwell on that today.

Following Tata's announcement on 20 October that the Clydebridge and Dalzell operations were to be mothballed, we moved immediately to establish a task force with the aim of retaining functioning steelyards employing as many of the staff as possible. The First Minister visited both sites last Thursday and met Tata Steel management, trade unions and the workforce to highlight our full commitment to the issue and to emphasise that the primary aim of the task force is to seek the continuation of steel making at Clydebridge and Dalzell. The First Minister specifically asked for Tata Steel's commitment to

maintaining the staff at both sites throughout the consultation period, as it is hugely important to keep the work of the plants going as we seek alternative operators.

Scottish Enterprise had already been working with Tata Steel to assist the Scottish sites, including by commissioning an energy review to identify savings and options for energy generation onsite, by producing tailored training packages and by providing Scottish manufacturing advisory service—SMAS—support with an efficiency review. I am chairing the Scottish steel task force, which includes representatives from both Lanarkshire councils, trade unions, the Scottish Government and its agencies and the Westminster Government as well as members of this chamber. I will also co-ordinate the development of a joint, multi-agency economic recovery plan to mitigate the economic impacts on the area resulting from Tata Steel's announcement. The task force will first meet on Thursday this week, and we already have Tata Steel's commitment that it will play a full part in the task force process and will work closely with us throughout the consultation period. We are very grateful for that co-operation.

The task force will also consider wider support for the workforce at this difficult time, including ensuring that the modern apprentices who are employed on site do not have their education affected. To that end, I am happy to confirm that, as an early step, the Scottish Government will guarantee that the modern apprentices who are employed at the plants will be able to continue with the off-the-job training that is required for them to complete their apprenticeships, should there be a gap in their employment.

In Lanarkshire, we have a highly skilled workforce. It is essential that those skills are not lost but put to productive use. Our primary focus remains on seeking an alternative owner for the plants, which we recognise will not be easy. Although I do not think that it is helpful to speculate on which individual commercial organisations may be interested, I assure members that we will work with all parties who could help with future investment in the plants.

I am sure that the chamber will recognise that any discussions in relation to potential alternative operators must be conducted in commercially confidential terms. The Scottish Government and Scottish Enterprise, with support from Tata, are developing an information prospectus that will allow our Scottish Development International offices worldwide to generate interest in the opportunity that this situation in Scotland presents.

I firmly believe that there can be a viable future for a steel industry in Scotland, and I assure Parliament that this Government will do everything in its power to seek a secure and sustainable

future for the Tata sites in Scotland. The Government will, of course, keep the chamber informed of further developments as they arise. For now, I am happy to answer any questions.

**The Presiding Officer:** Thank you. The minister will now take questions on the issues raised in his statement. I intend to allow around 20 minutes for questions, after which we must move on to the next item of business.

**James Kelly (Rutherglen) (Lab):** I thank the minister for advance sight of his statement.

There is no doubt that the mothballing of the Dalzell and Clydebridge plants is very serious, particularly for the workers and their families, and our thoughts are with them at this time. We must ensure that everything is done to ensure that those plants and those jobs remain in place.

Steel is an iconic part of the Lanarkshire economy and the Scottish economy, and it would be unacceptable and unimaginable if steel production were to cease at the plants. The Scottish Government rightly makes infrastructure one of the main platforms of its economic policy, and part of that is the production of steel.

Scottish Labour supports the setting-up of the task force, but we must ensure that it is not a talking shop. We need hard action. From that point of view, I have two specific questions for the minister. First, what financial assistance will the Scottish Government provide to ensure that the physical assets remain in place while the search for a buyer goes on and to retain the skills of the workforce?

Secondly, what work has the Scottish Government done in identifying the steel requirements in current and future public contracts in order that Dalzell and Clydebridge can bid and be successful in retaining the work for those projects, so that we can build a sustainable steel operation at the plants going forward?

**Fergus Ewing:** I thank Mr Kelly for his constructive approach and welcome him and other colleagues who are local representatives to take part in the work of the task force, which will have its first meeting on Thursday of this week.

To answer Mr Kelly's questions, our primary objective is to seek an alternative operator for the site. That is the primary task and, in the work that the task force carries out, we will consider extremely carefully whatever financial assistance is practicable and legally capable of being extended in order to secure that objective. We will apply that approach throughout our work on energy costs and business rates, and in all other areas.

Secondly, I entirely agree that the workforce is highly skilled. We will do exactly what was done in

Wales, where ReAct provided assistance for workers, and we will ensure that partnership action for continuing employment—PACE—support is fully extended. However, our primary objective is to continue steel production in Scotland, not to make provision for what happens after it is closed. Of course, we shall also in the task force consider very carefully the needs of the workforce—that will be done.

Finally, on public contracts, of course we are working extremely closely with all public procurement bodies in relation to what future projects could benefit from a Scottish steel supplier. Transport Scotland is already reviewing what future projects fall into that category and I am very happy to work closely with Mr Kelly on the detail of that as the work of the task force progresses.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I thank the minister for his statement and for advance sight of it.

It is a matter of the greatest concern that steel making not just in Scotland but across the UK is under such serious threat. We welcome the co-operation that there has been between the UK and Scottish Governments, and the establishment of the Scottish task force that the minister referred to. Unite the Union has identified five key issues that need to be addressed to help the industry: help with high energy prices; action on unfair imports; reform of business rates; fair implementation of regulations; and support for local content in major construction projects. I appreciate that in relation to some of those the minister's hands are tied, but business rates have been fully devolved since 1999 and he could act here if he wished.

Can the minister tell me what the annual rates bill paid by the plants at Clydebridge and Dalzell is? Secondly, what action will the Scottish Government now take on business rates, given that it has been identified as a key issue and is an area entirely under its control?

**Fergus Ewing:** Again, I welcome the general, constructive approach that we are hearing this afternoon from across the chamber. A very important and welcome message to send to everybody affected is that we are working hard to do everything that we can. Of course, I welcome the reference to the trades unions, with whom we are in extremely regular contact, and I share their analysis of the particular challenges—the five topics—that we are facing. I had a workmanlike discussion with Anna Soubry yesterday afternoon, in which I think that broadly we were coming at this from a shared desire. I mentioned our particular appreciation that the UK Government has already pledged to assist in state aid clearance of any offer that may emerge—that is a

very valuable offer that would be necessary in that event.

To answer Mr Fraser's specific questions, off the top of my head, according to my own arithmetic carried out earlier this morning, the business rates for the two plants combined are £823,000. The two plants had appeals against the rateable values at the most recent revaluation and both appeals were successful. That is how matters stand at the moment. We have, of course, obtained advice in relation to this matter and are looking at all possible ways in which assistance can be provided. We are constrained, however—I think it is only correct to say—by the state aid rules, because there is a maximum amount of assistance that can be provided to any steel company over a period of three years, and it is a relatively small amount of money. However, there are practical measures that may be applicable, depending on a future operator's wishes and requirements as regards space, by subdivision. There are a number of other possibilities that we are looking at and I am, of course, happy to share the details with Mr Fraser and all other members of this chamber as that work progresses.

**Clare Adamson (Central Scotland) (SNP):** I thank the minister for his statement and welcome the Scottish Government's immediate, swift approach in establishing the local task force. However, does the minister share my concern that that is in stark contrast to the response to the steel industry by the UK Government, which has largely ignored the warnings over the past few years and has yet to act in some of the areas that the Community union has detailed, especially fuel and energy costs for the companies? Does the minister share my disappointment that Scottish ministers will not be included in the European talks? What guarantee can he give us that the case for the high-quality, highly skilled workforce in both Dalzell and Clydebridge will be heard in Europe?

**Fergus Ewing:** Of course I fully understand that there will be considerable anger and frustration, especially among members of the workforce and their families, at the events that have taken place.

Forgive me, Presiding Officer, if I look forward rather than back, and focus on what we might do rather than on what might have been. It is important that I place on record our appreciation for the full support of Tata Steel in the work that we are doing, without which I suspect the situation would be even more challenging.

It is also fair to reflect on the fact that Tata Steel—as John Pentland will know—made a substantial investment of £8 million in a new plating operation at Dalzell in 2010 and invested the same amount in Clydebridge the following year.

I put that on record simply as a matter of fact, and highlight that we are working with Tata to seek a solution in an extremely challenging situation.

As I explained, I had a chat with Anna Soubry in which I sought representation for the Scottish Government. We have an interest in preserving our steel industry, and I felt that we had a constructive role to play—as we always seek to play—in such negotiations and discussions. I have in the past been involved in negotiations on such matters in other areas.

My request was rejected, but—as I said earlier—I will not dwell on that. Rather, I hope that today unity will emerge among all parties in the chamber. I hope that we will seek to do our very best and that we will, through the hard work of our agencies and our leadership, “leave no stone unturned”—as the First Minister pledged—in securing the continued future of the steel industry in Scotland.

**Willie Rennie (Mid Scotland and Fife) (LD):** I thank the minister for advance sight of his statement and I welcome the—by and large—constructive tone of members from all parts of the chamber this afternoon.

I understand that the two plants may be attractive to new buyers because some markets—not only flood prevention and port infrastructure, but defence—have not so far been fully exploited by Tata. Has the Government considered capital investment in the plants—if that is permitted—to allow Tata or a new buyer to enter those new markets?

Also, has the Government considered providing wage support to extend the 45-day consultation period so that we do not lose the workforce from these two important plants?

**Fergus Ewing:** Once again, I say that I am grateful for the constructive approach that we are hearing from all parties this afternoon. Mr Rennie has—not for the first time—raised two relevant and apposite issues.

Of course, we are fully considering the opportunities that may exist for the Scottish side of Tata—namely, the Dalzell and Clydebridge plants, which offer particular expertise and facilities. I am no expert, but I am told by experts that the plate mill there can carry out work that no other plate mill can do, and that it can produce steel plates of the thickest dimensions, which cannot be replicated in other plants. There may therefore be opportunities for the Scottish operations to carry out more profitable niche specialist work than has been possible in the past for various reasons.

The answer to Mr Rennie’s first question is yes: we are looking fully at those matters, as he would

expect, and we are taking expert advice on all aspects.

Secondly, the consultation period is now 45 days, which means that it will expire on 7 or 8 December, just before Christmas. We are in daily contact with Tata and we will discuss with the company the procedures and mechanism. It is important that there is sufficient time to enable a potential alternative operator to carry out due diligence and inquiries, so that will be part of our discussions with Tata as we move forward.

**John Pentland (Motherwell and Wishaw) (Lab):** The First Minister is on record as saying that

“nothing is off the table”

and that she would “leave no stone unturned” in her attempts to keep the Dalzell and Clydebridge steelworks open. That would include the option of public ownership, as was the case with Prestwick airport.

Given that public ownership is a possibility—and must, I believe, be given serious consideration—what is the Scottish Government doing to assess and prepare for such an outcome?

**Fergus Ewing:** I thank John Pentland for his question and I respect his experience in the industry over his lifetime. Of course we are considering all potential options. It is accurate to say that our preferred option is to identify a buyer—a commercial operator. Patently, that would be the best possible option. All other options involving an element of public state support would immediately risk difficulty with state-aid rules.

I assure Parliament that all options will, as the First Minister has confirmed, be considered. However, the task force’s main focus will be on securing another private sector operator for both sites.

**Chic Brodie (South Scotland) (SNP):** We appreciate the Government’s considerable efforts to do all the things that were mentioned in the statement to find a buyer for the steelworks at Dalzell and Clydebridge. However, I ask the Government to engage with Tata and the workforce to consider an employee buyout through a repayable loan from the Government. My experience is that in circumstances in which that option is exercised with capital investment, productivity increases and costs reduce, which leads to higher-quality results and the definition of new up-market opportunities. That can all be done very quickly.

**Fergus Ewing:** I confirm that I have had frequent dialogue with Tata, and that our senior officials have had daily dialogue with it. Yesterday, I had a discussion with Jon Bolton who will, with

Colin Timmins, attend the task force for Tata on Thursday.

I will say to Chic Brodie the same as I said to John Pentland. Sadly, this is an extremely difficult time for the workers. However, it is relatively early days in the task that we have set ourselves. We need a bit of time to work with colleagues to explore all possible options. At this stage, it would be premature and, indeed, foolish to rule out any option. Plainly, we are—as we always are—determined to ensure that we have input from the workforce; after all, who knows how to do things better than the people who are actually doing the job?

**Siobhan McMahon (Central Scotland) (Lab):**

The minister will be aware that Tata Steel has been increasing the capacity to build wind turbines at the Dalzell and Clydebridge plants. Further to that, the plants have the potential to repurpose steel from decommissioned oil rigs. Currently, 11 million tonnes of scrap steel leave Britain every year to be recycled in other parts of Europe. Any investment in the plants would help them to compete in that market. Have those two areas of potential production been discussed with the task force, and will the Government support any investment that is needed to make those things happen?

**Fergus Ewing:** Siobhan McMahon is absolutely correct to say that Clydebridge has expressed a close interest in the construction of wind turbines, as it has done in shipbuilding. I can confirm, of course, that we are looking at what opportunities exist in relation to the building of two ferries by Ferguson Marine Engineering Ltd.

We are looking at all options; the task force will consider all potential business sources. We need to identify, encourage and provide whatever appropriate support is sought by any potential alternative operator. We will do that informed by issues such as those that Siobhan McMahon raises.

**Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP):** High energy costs are cited as being one of the costs that are faced by UK industry operators. What has the Scottish Government done to help to tackle the problem, and does it agree that current UK Government regulation regarding energy pricing undermines not just the steel industry but all industry in Scotland?

**Fergus Ewing:** I will say two things in response to Christina McKelvie's question. First, when I visited Dalzell on 4 February, I instructed that a detailed energy analysis be carried out. That has been carried out by Mabbett & Associates. The purpose was to identify means by which costs could be reduced, and the report has been

completed. It is commercially confidential—at the moment, at least—but I hope that it will be made public in the course of the work that the task force does. It is reasonable to say that the report identifies a number of opportunities to bring down energy costs. That is why I instructed, back in February, that it be carried out.

Secondly, as Christina McKelvie suggested, the UK Government has sought to bring in support for energy-intensive industries. That has been debated for quite a long time. I discussed it with Anna Soubry yesterday, when we had a productive and workmanlike conversation. I believe that she is doing all that she can to bring the support forward from April to an earlier time. She is undertaking to keep in regular contact with me and my officials in order to secure that objective, which would make a solid contribution to the capacity to continue to have a steel industry in Scotland—and, indeed, in the UK.

**Michael McMahon (Uddingston and Bellshill) (Lab):** I thank the minister for his statement and for the swift creation of the task force. Although it is absolutely right, in this critical phase of the situation, that the task force is looking in particular at Clydebridge and Dalzell, will the minister confirm that the wider steel manufacturing sector in Scotland needs to be considered by the task force? In particular, the Vallourec Mannesmann Oil & Gas UK plant—the Clydesdale works at Mossend—which has undertaken two rounds of redundancy in the past year, has been adversely affected by the downturn in the North Sea oil sector. Again, it is a plant that produces a high-quality product—

**The Presiding Officer:** We need a question.

**Michael McMahon:** —and it is the only heat-treatment plant in the whole UK. It must also be included in the wider picture so that it does not become a critical consideration in the near future.

**Fergus Ewing:** I agree that that is relevant. That plant will probably not be the primary focus of the task force's work, but it is certainly related and relevant. Also, there is a large number of businesses—as Michael McMahon well knows—in the sector in Scotland and south of the border, which are all anxious about the future of the industry in Britain. The Deputy First Minister and I know that from direct discussions that we have had with some of those companies. The member is absolutely correct to raise the issue; it will form part of our deliberations.

**Mark McDonald (Aberdeen Donside) (SNP):** I welcome the minister's confirmation that apprentices will be able to continue with their qualifications. Will the Scottish Government look to put in place support to help those apprentices into employment at the end of their qualifications,

should they be unable to find employment directly in the steel industry?

**Fergus Ewing:** Yes. I am happy to provide that confirmation.

## **Greenhouse Gas Emissions (Annual Target Report and Interim Target Progress Report)**

**The Presiding Officer (Tricia Marwick):** The next item of business is a statement by Aileen McLeod on “The Scottish Greenhouse Gas Emissions Annual Target Report 2013” and “The Scottish Report on Progress Towards Meeting the Interim Target”. The minister will take questions at the end of her statement, so there should be no interventions or interruptions.

After the previous statement, I unfortunately had to drop three members who wished to ask a question, because we ran out of time. Can members bear that in mind when asking their questions?

14:52

**The Minister for Environment, Climate Change and Land Reform (Aileen McLeod):** In 2009, the Parliament acted unanimously to enshrine world-leading climate change targets in legislation. We were supported by huge numbers of people across Scotland—in business, in the public sector, in academia, in non-governmental organisations, in schools, in trade unions, in communities and in homes. Through that collective high ambition, we established world-leading targets of a 42 per cent cut in emissions by 2020 and an 80 per cent cut by 2050. The Scottish Government was also the first national Government in the world to establish a climate justice fund.

I am proud of those actions and of Scotland’s ambition. Continued ambition and action are required from all of us if we are to tackle the environmental harm and social injustices that climate change causes. Through the recent Scottish leaders climate change pledge, we have again, as political parties, shown our collective commitment to tackle the challenge. Across Scotland, many people are doing the same thing and are taking action as individuals, as families, as communities and as organisations.

The Scottish Government is committed and is leading by example. Our Cabinet sub-committee on climate change demonstrates our commitment to tackling the issue at the highest level in Government. We have pledged about £1 billion of funding over 2014-15 and 2015-16 for climate change action. We have a comprehensive package of measures in place to meet our climate change targets to 2027. By taking action on climate change, we are investing in our people, our environment and our economy and creating a fairer and more prosperous Scotland.

We are reducing the amount of energy that people use. We are already below the consumption level that is required to meet our 2020 12 per cent target—that happened seven years ahead of schedule.

We are reducing levels of fuel poverty. Since 2009, we have allocated more than £500 million to a range of fuel poverty and energy efficiency programmes and we have a budget of £119 million for the current financial year. In June, I announced that the issue would be a national infrastructure priority for the Government.

We are reducing our dependence on fossil fuels by scaling up renewable energy. Scotland now generates from renewables almost half the electricity that is needed to meet demand. In 2014, the amount of heat that was generated by renewables in Scotland grew by 36 per cent.

We are focused on community and locally owned energy. Last month, five years early, we reached our 2020 target of 500MW of community renewables. Across Scotland, nearly 45,000 people are employed in the low-carbon economy and its supply chain. In taking action to reduce emissions from transport, we have increased investment in active travel by more than 80 per cent in comparison with 2013-14. We are committed to rail electrification and we are working with partners to deliver our electric vehicle road map. More electric vehicles are being sold in Scotland than ever before.

We are encouraging waste reduction, extending recycling and reducing the amount of waste that goes to landfill. In 2014, 42.8 per cent of Scotland's household waste was composted, recycled or reused. For the first time, the rate of landfilling of household waste fell below 50 per cent.

Scotland is taking action locally and being recognised globally. Christiana Figueres, the head of the United Nations climate body, has cited Scotland's ambition on renewables and low carbon as a "shining example" to other countries. We have set the bar high with our world-leading targets.

Scottish ministers have sought to push up global ambition since 2010. For example, while in Lima last year, in my first days as a minister, I signed the compact of states and regions, which is an international reporting platform for sub-national Governments that represent 12.5 per cent of the world's gross domestic product and more than 325 million people. This year, when attending the world summit climate and territories in Lyon, I signed the under 2 MOU, or memorandum of understanding, which is another initiative between sub-national Governments that is aimed at promoting high ambition ahead of the Paris summit.

In this milestone year, if the Paris summit is to produce a truly effective global response to climate change, the international community will have to match Scotland's commitment. We hope that the Paris summit will be a big step forward. It is crucial that we push further to limit global warming to 2°C or less if we are to avoid the worst impacts of climate change falling on the world's poorest and most vulnerable people.

Although Scotland's targets are challenging and there is much still to do, I emphasise that we are making good progress. This morning, I laid before Parliament "The Scottish Report on Progress Towards Meeting the Interim Target", which shows that, in each year from 2010 to 2013, the percentage reductions that we achieved exceeded those that were set out along the trajectory to meet the 42 per cent reduction in 2020. In fact, Scotland's emissions have fallen by 38.4 per cent from the 1990 baseline, which leaves just a further 6 per cent reduction over seven years to meet the 2020 target.

Scotland is clearly on track to meet its interim 2020 target. We should focus on that message, as it is a fantastic achievement. Of course, we know that the Climate Change (Scotland) Act 2009 requires even greater reductions to meet the 2050 target. There is no room for complacency, and we will not fail to recognise the challenges of meeting Scotland's annual targets.

I recognise that the other report that I laid today shows that Scotland's 2013 annual target has been narrowly missed, by 1.7 megatonnes. Once again, that is because of revisions to the baseline since the fixed targets were set. I highlighted that in my statement to Parliament on the publication of the 2013 Scottish greenhouse gas statistics in June this year. At that time, I explained that changes to the methodology for calculating emissions have added 10.6 megatonnes to the 1990 baseline, which makes it harder to meet the annual targets.

Despite that, Scotland's emissions have fallen by 38.4 per cent from the baseline, which is far greater than the 31.7 per cent reduction that was envisaged when the target for 2013 was set. Had it not been for successive increases to the baseline, Scotland would have met and exceeded its targets for 2013 and the three previous years, so Scotland is making significant progress towards the 2020 and 2050 targets.

However, we must continue to lift the pace of our actions against our fixed annual targets. That is why, in June, I announced further measures on energy efficiency, the environment and transport that are aimed at reducing Scotland's emissions. As I also indicated in June, we will ensure that climate change is a top priority through a Cabinet



agreement to embed it in the autumn budget process.

I remain determined that we will make up for the cumulative shortfall that has resulted from Scotland's missed annual targets. We will do that by ensuring that the third report on proposals and policies—RPP3—addresses the matter, as well as by setting out measures that are required to reduce emissions out to 2032, which will fulfil our statutory requirements under sections 35 and 36 of the 2009 act.

However, this is not just about the Government; it will take continued commitment and action by all of us if Scotland is to achieve the required emissions reductions. That is why the production of RPP3 will be a wide and participative process that builds collective ownership and responsibility.

We will have a conversation with people across Scotland in which we listen to their views on climate change and on the actions that we must collectively take. We have started that conversation, and events are planned with community groups in the new year. Given the impact that decisions that we make now will have on future generations, we must give a voice to the next generation of Scottish leaders by involving the 2050 climate group. Engaging the Scottish Parliament will be a key element, and opportunities are being developed to get involved alongside regular parliamentary business.

Those are just a few of the plans that are being put in place to ensure that RPP3 is a truly collective endeavour. I call on the Parliament to agree that commitment and action are required from all of us if Scotland is to continue to lead by example in tackling climate change. I want us to take that message to Paris to demonstrate Scottish leadership and encourage others to step up and embrace the climate change challenge that we all face.

**The Presiding Officer:** The minister will now take questions on issues that were raised in her statement. I intend to allow no more than 20 minutes for questions, after which we must move on.

**Sarah Boyack (Lothian) (Lab):** I thank the minister for advance notice of her statement. Failure in the past four years means that 18 megatonnes of carbon are now in our atmosphere that would not have been there had the targets been met. That is equivalent to the whole Scottish energy sector's output for one year.

Progress on renewables is nowhere near enough to compensate for failure on farming, transport, housing, buildings and infrastructure. The minister mentioned £1 billion of spending in the budget. Is that new money and will she publish details of the projects now?

Given the rise in public sector emissions and the failure on housing, surely the national infrastructure project must be brought forward to start now. Will the Scottish Government sign up to the existing homes alliance's asks?

Section 36 of the 2009 act requires ministers to detail how we will make up for missed targets in the early years. Where is that report?

Today's reports confirm that there has been no reduction in household emissions. The Climate Change (Scotland) Act 2009 enables householders to get discounts on their council tax for energy efficiency measures but, last year, only two households in the whole of Scotland benefited. Is the minister proud of that? Her predecessor, who is sitting beside her, correctly stated that failure to sort out our leaky, draughty homes was

"a regular vulnerability"

that required

"efficiency and decarbonising electricity and heat generation"—[*Official Report*, 10 June 2014; c 31980-1.]

but we are not seeing that. Pride in renewable heat shows a staggering lack of ambition, given the low targets that are set.

I am glad that the minister is going to Paris but, without radical action, today's statement and our 2009 act are meaningless. The statement reeks of complacency.

**Aileen McLeod:** Our long list of achievements demonstrates the good progress that we are making. Our target was to reduce energy consumption by 12 per cent by 2020, and consumption was already at the required level in 2013—it was down by 13.3 per cent from the 2005 to 2007 baseline.

On heat, the amount of heat that is generated by renewable sources in Scotland grew by 36 per cent during 2014.

On housing, we have allocated more than £500 million since 2009 to a raft of fuel poverty and energy efficiency programmes. We continue to focus on increasing the energy efficiency of homes in order to tackle fuel poverty, with a budget of £119 million for 2015-16.

On renewables, our provisional annual statistics for 2014 show that the equivalent of 49.6 per cent of Scotland's gross electricity consumption came from renewables. That is just short of our interim target of 50 per cent by 2020.

On community and locally owned energy, we announced on 17 September that, five years early, we have reached our target of 500MW of renewables capacity by 2020.

On transport, compared with 2013-14, we have increased investment in active travel by more than 80 per cent, from £21.35 million in 2013-14 to £39.2 million in 2015-16. That is at a time when our overall capital budget has decreased by 26 per cent.

On the section 36 report, as Sarah Boyack will know, producing a credible package of proposals and policies to make up the shortfall of 17.5 million metric tonnes of CO<sub>2</sub> equivalent from previous annual targets and to get back on track to meet future annual targets will take time. As I said, we intend to set out detailed proposals and policies to compensate for the excess emissions from previous annual targets, and we plan to lay a draft of RPP3 for scrutiny by the Parliament towards the end of 2016.

We are making significant progress. We have cut our emissions by 38.4 per cent and are more than three quarters of the way towards meeting, ahead of schedule, our target of a 42 per cent emissions reduction by 2020.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I thank the minister for the advance copy of her statement, which I say with the best will in the world seems to bear a remarkable similarity to last year's statement. Among all the good stuff—I do not deny that there is good stuff in the statement—it is deeply disappointing that, for the fourth year in a row, the Government has yet again missed its target. The Government has never actually met its target. That begins to get much more than just deeply disappointing because, every time that a target is missed, the gap between where we began and where we want to get to increases.

The minister blames baseline revision, and the Government did so last year, as well. As the annual targets and the basis of policy are considered, why do allowances not appear to be made for the baseline revisions that we all know are coming?

The minister says that she will fulfil section 36 of the 2009 act, and she indicated in her answer to Sarah Boyack that she will do so through RPP3. However, I do not believe that RPP3 fulfils section 36. Sarah Boyack asked where the section 36 report is, and I repeat that question.

Forestry planting has a major role to play in emissions reductions. Thousands of hectares have been felled to make way for wind farms in the past few years, and they are supposed to be replaced by compensatory planting. How many hectares of compensatory planting have taken place over the past three years and what percentage does that make up of the total area of timber that has been felled for wind farm development? I quite understand that the minister

might not be able to give me those figures today, but will she undertake to write to me with them?

**Aileen McLeod:** The fixed annual targets were established on the basis of the 1990 to 2008 inventory in order to meet an emissions reduction target of 42 per cent by 2020. Since then, the baseline has risen by 10.6 megatonnes. Given the effect of cumulative upwards revisions to the inventories since the targets were established, the percentage reductions that are required to achieve the fixed targets are now out of line with the 42 per cent reduction target. As I said, if it had not been for successive increases to the baseline since the targets were established, Scotland would have met and exceeded its annual target for this year and the three previous years. We have missed our fixed annual emissions targets because of changes in how the data is calculated as a result of methodological improvements.

The progress that Scotland can make in reducing emissions also depends on the policies and actions of others—especially the United Kingdom and the European Union. The UK Government's cuts to energy efficiency and renewables measures are creating a worrying climate of uncertainty for low-carbon policy in the UK. In his letter of 22 September to the Secretary of State for Energy and Climate Change, Amber Rudd, Lord Deben, chair of the Committee on Climate Change, said:

"The uncertainty created by changes to existing policies and a lack of replacement policies up to and after 2020 could well lead to stop-start investment, higher costs and a risk that targets to reduce emissions will be missed."

I am happy to answer Alex Fergusson's point about forestry in full. RPP2 was clear that the target of 10,000 hectares a year was an average over the period to 2022. We are reversing the historical decline in woodland planting rates and protecting that important carbon sink.

In 2013, forestry was the only sector in which there was a net emissions sink. Planting rates increased to an average of 8,000 hectares a year during the period from 2011-12 to 2014-15, which equates to about 16 million trees a year. With the launch of the new Scottish rural development programme, we aim to raise the planting rates from 2015.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** I am sure that the minister will join me in welcoming the third peatland forum and conference, which starts in my constituency today. Methane levels have been increasingly marked up in the greenhouse gas inventory. In what ways have the measurement of methane emissions from deep peat, such as that in the flow country in Caithness and Sutherland, helped to meet our stretching Scottish climate change targets?

**Aileen McLeod:** The new international reporting requirements, which came into force for the 2013 inventory, have increased the potency of methane as a greenhouse gas and made it harder to meet our fixed annual targets. Measurement of methane in deep peat is not currently required under the greenhouse gas inventory under international reporting requirements. However, work is under way to estimate emissions that are caused by the human influence of the drainage and rewetting of peatland. Those emissions are intended to be included in the greenhouse gas inventory once research has been completed. While that work continues, we have been supporting restoration through the Scottish Natural Heritage-led peatland action initiative and the new SRDP.

**The Presiding Officer:** Before I call Claudia Beamish, I point out that Ms Beamish has hurt her foot. She has my sympathy but, more important, she has my permission to stay seated for her contributions.

**Claudia Beamish (South Scotland) (Lab):** In the lead-up to Paris, climate justice will be at the heart of Scottish policies. What is the Scottish Government doing to ensure that a just transition strategy is in place to support communities likely to be affected? How is the minister working with other ministers to ensure that transferable skills, leading to new local jobs, will benefit those in the fossil fuel industries who are losing their jobs now, as well as jobs in the longer term?

**Aileen McLeod:** We strongly recognise that the poor and the vulnerable at home and abroad are the first to be affected by climate change and will suffer the worst, yet they have done little or nothing to cause the problem. The injustices in that are very clear, which is why the Scottish Government is championing climate justice.

We want to ensure that we see a just transition to a low-carbon economy, with the burdens of climate change and the benefits of that economy shared equitably. The Scottish national action plan on human rights commits Scotland to continue to champion climate justice and ensure that we develop a co-ordinated approach to climate justice at home and abroad, and to embed climate justice in the national performance framework and align it with the UN's post-2015 sustainable development goals.

We also have our innovative £6 million climate justice fund, which is supporting 11 water adaptation projects in four sub-Saharan African countries—Malawi, Zambia, Rwanda and Tanzania. Since 2012, £3.8 million from our international development fund has gone to community energy projects in Malawi.

I have also been championing climate justice in my international engagements. I had the

opportunity to do so during a plenary session at the world climate summit in Lyon.

**Graeme Dey (Angus South) (SNP):** One in every four of Dundee City Council's cars and vans is now electric. In conjunction with Transport Scotland, it is now investing a further £1 million in EV infrastructure across the city, contributing to one in 15 of the taxis there being electric and Dundee boasting one of the largest and fastest-growing fleets of electric car club vehicles. Is that progress being mirrored across the other 31 local authority areas, or do we need greater buy-in from our councils if we are to get transport emissions down to something resembling an acceptable level?

**Aileen McLeod:** Backed by £2.5 million of funding from Transport Scotland's switched-on fleets initiative, Scotland's local authorities are leading the way in the adoption of electric vehicles. In a 2014 survey of 433 councils in the UK on how many electric vehicles they had in their fleets, four of the top five were from Scotland. Dundee City Council came top, with South Lanarkshire Council, Glasgow City Council and Fife Council placed in second, third and fifth respectively.

Dundee City Council is the only Scottish local authority on the shortlist for the UK Government's electric taxi scheme and the go ultra low city scheme. If successful, those bids will be worth more than £20 million to Dundee City Council and its partners. I am sure that we would all want to wish Dundee every success with its bids. We will obviously share learning from the Dundee work across the country to enable the city, and ultimately Scotland, to be globally recognised as a leader in innovative electric vehicle deployment.

**Tavish Scott (Shetland Islands) (LD):** I thank the minister for the advance copy of her statement. She told Parliament just now that the RPP will not be produced and laid before Parliament until the end of 2016, but my reading of the Climate Change (Scotland) Act 2009 is that a section 36 report should be produced

"As soon as is reasonably practicable."

That is in the law. Is the end of 2016 as soon as is reasonably practicable?

**Aileen McLeod:** I would say to Tavish Scott that we also have to go through a very thorough consultation process and to lay the report in time for Parliament, as well as the parliamentary committees, to give it the proper scrutiny that it deserves.

**Gil Paterson (Clydebank and Milngavie) (SNP):** It is clear that action on climate change requires to be taken at every level and by all. What

will the Government do to encourage individuals and organisations to play their part?

**Aileen McLeod:** A wide range of action on climate change is already being taken by individuals, families, communities, businesses and other organisations right across Scotland, but we need to continue to do more. Our national ambitions to tackle climate change will be realised only by people across Scotland taking action.

The pace of the transition to a low-carbon society will be determined by how we as individuals, as well as households and communities, adapt and change our behaviours. That is why in the new year, as part of the development of other measures to tackle climate change between now and 2032, we will be asking people across Scotland for their views on climate change and on what action we can collectively take. All of us, including businesses, the public sector, communities and individuals, have a vital role to play.

**Patrick Harvie (Glasgow) (Green):** There has been much talk of baseline revisions, but the Government has the power under the 2009 act to come back to the Parliament and ask to revise its targets itself. It has not done so—in my view, quite rightly—but surely we must draw from that fact that the annual targets remain reachable and that the commitment is still there to reach them.

Therefore, would today not have been a good day for the minister to come to Parliament and tell us how much money is attached to the national infrastructure priority on energy efficiency and when that work will begin? Has the minister been told by the Cabinet Secretary for Finance, Constitution and Economy how much money is available?

**Aileen McLeod:** When the Committee on Climate Change published the Scotland progress report back in March, it said that inventory changes had made our legislated targets much harder to reach. It also said:

“We will work with the Scottish Government to address the issue: Further inventory changes are pending. We recommend that the Scottish Government should continue to investigate further abatement from measures that go beyond current policies. We also propose to agree a process and timeline with the Scottish Government to advise on the implications for Scottish targets of significantly improved inventory data that is expected later in 2015 and again in 2017.”

We will continue to work with the Committee on Climate Change on that.

On the progress that we have been making on improving the energy efficiency of Scotland's homes and non-domestic building stock, the detail of that programme is being developed, but it will be a truly national programme, providing support

for all buildings across Scotland. We will work closely with stakeholders to design and develop the new programme over the next two years.

Obviously, I cannot pre-empt any discussions on spending, but the Cabinet sub-committee has agreed that we will embed climate change in the budget process.

**Michael McMahon (Uddingston and Bellshill) (Lab):** I thank the minister for her statement.

I note that the minister congratulated herself on reducing the levels of fuel poverty. Does she accept that almost a third of Scots remain in fuel poverty and that that is completely unacceptable? Does she recognise that only 30 per cent of privately owned or rented homes achieve an energy performance certificate with a C rating and that 65 per cent achieve D and E rates? Will she commit to giving the same emphasis and investment to the private housing sector that her Government currently directs towards the social housing sector?

**Aileen McLeod:** We have already allocated over £0.5 billion since 2009 on a raft of fuel poverty and energy efficiency programmes. Nearly one in three of our households—more than 700,000—have now received energy efficiency support. Tackling fuel poverty remains a priority for the Government, and we are spending unprecedented amounts on fuel poverty and energy efficiency this year, with a record budget of £119 million for 2015-16.

**The Presiding Officer:** I apologise to the four members I have been unable to call. We need to move on to the next item of business.

## Apologies (Scotland) Bill: Stage 1

**The Presiding Officer (Tricia Marwick):** The next item of business is a debate on motion S4M-14297, in the name of Margaret Mitchell, on the Apologies (Scotland) Bill. I call Margaret Mitchell to speak to and move the motion. Ms Mitchell has no more than 10 minutes.

15:21

**Margaret Mitchell (Central Scotland) (Con):** I am pleased to open this debate on my Apologies (Scotland) Bill.

I thank the Justice Committee, the Finance Committee and the Delegated Powers and Law Reform Committee for their considered scrutiny of the bill. In particular, I thank the Justice Committee for supporting the legislation's general principles and recognising that it could have a role to play in changing cultural attitudes towards apologising.

I also thank the Minister for Community Safety and Legal Affairs, Paul Wheelhouse, and his officials for the constructive discussion about my bill. I am encouraged that the minister supports its aims, and I look forward to working with him in the future in the event of my bill being supported today.

My initial interest in seeking to introduce apologies legislation stemmed from my work as convener of the cross-party group on adult survivors of childhood sexual abuse. Approximately five years ago, Professor Miller, the chair of the Scottish Human Rights Commission, came to speak to the CPG and told its members that some Parliaments had passed legislation to ensure that an apology could be given without fear of its being used as a basis for establishing legal liability. He spoke about the benefits that can flow from giving an apology and explained that apologies are more readily given when there is protection from apologies being used in future legal proceedings.

It was with adult survivors of historical childhood sexual abuse in mind that I undertook further research on apologies legislation. There is absolutely no doubt that those incredibly brave individuals deserve to have every effective remedy possible to help them gain access to justice.

The aims of the bill are twofold: to encourage the use of apologies by providing legal certainty that an apology cannot be used prejudicially against the person who gives it; and to encourage a change in attitudes towards apologising and a cultural and social change in relation to giving apologies.

At this point, it is important to stress that the aim of the bill is not, as the personal injury lawyers

mistakenly seemed to think, about tackling any perceived increase in litigation; instead, it seeks to address the very real problem of the reluctance and failure to offer apologies for fear of litigation.

At some point, every member in the chamber will have had the experience of a constituent coming to them about a problem or something that has gone wrong and all that the person wants is, quite simply, an apology. Having established the aims of the bill, it became evident that its application should not be restricted to survivors of childhood abuse, but that it should have a wider application.

In his annual report 2013-14 "Transforming Scotland's Complaints Culture", the Scottish Public Services Ombudsman encouraged public officials to resolve

"things early at the frontline, including ensuring apologies are given freely and action taken where things go wrong".

The bill supports that aim, and its wider application is exemplified in the same report, where the SPSO reveals that, in 2014, the total number of complaints received was 4,456, of which 1,750 were related to the local authority sector and 1,379 were related to the health sector. When combined, those two sectors made up 70 per cent of the total.

There is a reasonable expectation that the bill, by providing certainty about the legal consequences of offering an apology, would help to prevent complaints from being made in the first place. However, it is important to emphasise and understand that the protection offered by the bill would not prevent the recipient of an apology from going on to pursue legal redress.

Essentially, the bill would apply to all sectors and civil proceedings, but not to criminal proceedings. It would provide legal protection to an expression of apology so that it could not be used as evidence in certain civil proceedings.

The bill would apply to all types of apology, including those that contain an admission of fault, a statement of fact and/or an undertaking to look at the circumstances to prevent a recurrence. Under the bill as introduced, any or all of those elements would be deemed to be part of the apology.

I thank the Justice Committee for its scrutiny and careful consideration of the views both for and against the bill, which it gathered from written submissions and oral evidence. I also welcome the minister's support for the bill in principle.

Although I am a member of the Justice Committee, I was not part of its deliberations on the bill. However, when I gave evidence to the committee, and subsequently in discussion with the minister, I indicated that I was happy for the bill

to be developed further where there is a reasonable case for doing so.

I have listened closely to the witnesses' arguments, including those of the minister, about whether the effect of parts of the definition could possibly prevent an individual from securing compensation, particularly if a statement of fact in an apology was the only evidence available. I included statements of fact to try to encourage the fullest possible apology, but I am aware that their inclusion in the definition goes further than any other apology legislation. I have reflected on witnesses' concerns and can confirm that I am persuaded that the definition in the bill should be revised to exclude statements of fact.

On the inclusion of the protection of an admission of fault in the definition, it is important to recognise and understand that an admission of fault is not the same as an admission of liability. Nonetheless, there has been a lot of confused thinking on the issue. However, given the concerns raised, I am, as I have indicated, happy to look at the matter again at stage 2.

On the legislative context of the Apologies (Scotland) Bill within the United Kingdom, Scotland does not have a statutory framework that deals specifically with the effect of apologies on civil or criminal liability. In England and Wales, section 2 of the Compensation Act 2006 offers a degree of apology coverage. It states:

"An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty."

Under the proposed duty of candour procedure for health and social care professionals in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, which the Health and Sport Committee is scrutinising, an apology does not of itself amount to an admission of negligence or a breach of statutory duty. However, an apology could subsequently be taken into account in court proceedings. In effect, the wording in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill reflects that used in the Compensation Act 2006.

The Justice Committee found it difficult to see how the provisions in the Apologies (Scotland) Bill could co-exist with the duty of candour provisions in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill without some form of exception for health matters. Although I am reluctant for such an exception to be made, I accept the committee's reasoning.

Witnesses raised a range of other exceptions in oral and written evidence. I do not have time to expand on those in detail; suffice it to say that I accept the committee's view that there are strong arguments for other exceptions to be made, including in relation to children's hearings, public

inquiries and arbitration, tribunal and pre-action protocol proceedings. However as the committee noted, if the definition of "apology" is amended during the bill's passage, some of the suggested exceptions might not be required.

Since the Justice Committee published its report I have had a useful meeting with the minister, at which he expressed concern that the bill might inadvertently disadvantage pursuers. He suggested that the solution might be to omit the provision that would prevent an apology from being admissible in evidence, thus bringing the bill closer to the Compensation Act 2006 model.

Following the meeting, I sought a further view from Professor Alan Miller, and I am encouraged that he remains decidedly of the opinion that making an apology inadmissible as evidence is central to making apology legislation effective. I have written to the minister, attaching a copy of Professor Miller's letter. I hope that other members have had a chance to see the letter.

I look forward to working with the minister to refine my bill as it progresses. If there is goodwill on all sides, I am confident that we can deliver apologies legislation that is workable and makes a difference, while addressing some of the concerns that were raised during stage 1.

I move,

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

15:31

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I apologise—no irony intended—for the state of my voice.

I welcome the opportunity to speak to the stage 1 report on behalf of the Justice Committee; I will also reflect on amendments that are promised or likely at stage 2.

I thank everyone who took the time to provide evidence to the committee, which shaped our thinking on the bill. Apologies and how they are used in law is not an area that has crossed our desks before, so we very much valued the views of legal, human rights and mediation experts, local authorities, insurance lawyers and health professionals on how the proposed legislation would affect individuals and groups.

The committee spends so much of its time dealing with criminal law that it was refreshing to cover some civil law for a change—I am looking at the Cabinet Secretary for Justice and the Minister for Community Safety and Legal Affairs. It was good that one of our own committee members introduced the bill, and it was quite fun reprimanding Margaret Mitchell when she started

to give evidence instead of asking questions of witnesses. It was good to have some power over her for a change.

In our stage 1 report, the committee broadly supported the general principles of the bill in encouraging the use of apologies in circumstances in which something has gone wrong. We acknowledged that there seems to be a lack of empirical evidence on the success of apologies legislation in various jurisdictions, but on balance we concluded that legislation might have a role to play in changing the culture and people's attitudes towards apologies—alongside, of course, measures such as guidance and training.

However, we thought that further work is required at stage 2 to ensure that the measures in the bill can work effectively with professional medical standards—which are reserved—and the Government's proposed duty of candour, which is a provision in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. More important, the committee wanted to be reassured that individuals who want to pursue fair claims will not be disadvantaged by the measures in the Apologies (Scotland) Bill. We made a number of recommendations in our stage 1 report, which aim to improve the bill in that regard.

As we heard, the policy objective of the bill is to encourage the use of apologies by providing that an apology is inadmissible in certain civil proceedings as evidence of liability and cannot be used to prejudice the person who made the apology. The bill also has the broader purpose of encouraging a cultural and social change in attitudes towards apologising.

Although there was general support among witnesses for encouraging the use of apologies, we heard a range of views on whether legislation is the best way to facilitate the cultural and social change in attitudes that is envisioned. Although we received little evidence to convince us that there is a serious compensation or blame culture in Scotland that needs to be addressed, it appeared from the evidence that we received that there is a fear of litigation in certain sectors, which might hinder the use of apologies.

There was also little evidence on the success of comparable legislation in other jurisdictions, which made it challenging for us as a committee to assess the potential impact of the bill.

I think it is fair to say that the definition of "apology" in the bill, which Margaret Mitchell commented on, attracted some concern. Most witnesses felt that it is too wide and that it might have unintended consequences. It covers

"an express or implied admission of fault ... a statement of fact"—

Margaret Mitchell addressed that—or

"an undertaking to look at the circumstances ... with a view to preventing a recurrence."

Some witnesses said they would have preferred the wording that is used in the Compensation Act 2006, which simply provides that

"An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty."

There were also concerns about the inconsistency between the definition in the bill and the duty of candour provision in the Scottish Government's Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, which adopts the approach in the 2006 act.

I will give an example of the possible unintended consequences. We heard colourful evidence—as we might—from David Stephenson QC with respect to whether, if someone apologises and includes a statement of fact, they could prohibit evidence. This was his example:

"A husband writes a letter to his wife: 'Dear Senga, I'm sorry I broke your nose last night and beat the kids on the way out. Genghis.' Does anybody seriously believe that because that letter starts with the words "I'm sorry" it should be inadmissible in legal proceedings relating to the matrimonial situation, the care of the children and the protection of that woman from her husband?"—[*Official Report, Justice Committee*, 9 June 2015; c 16.]

Trust a Queen's counsel to give an example that tells us the problems with the way something is drafted. I note that Margaret Mitchell has reflected on that, and we will see what comes forward.

On the legal proceedings that are covered in the bill, the committee is content that fatal accident inquiries and defamation proceedings should be excluded from its scope, but we heard in evidence that a number of other proceedings should also be exempted. Again, Margaret Mitchell is addressing that. However, it may be that, if the definition of "apology" is amended in the way that some witnesses suggested, some of the proposed exemptions would no longer be required.

We also heard from a number of health professionals who questioned how the bill would interact with their UK-wide professional standards. The British Medical Association, in particular, suggested that there is a real risk that, regardless of the status of an apology in Scots law, the General Medical Council could consider an apology as an admission of fault or evidence of poor performance when pursuing individual cases. We hope that that can be addressed at stage 2 should the general principles of the bill be agreed to at stage 1 tonight.

The committee broadly supports the general principles of the bill, but we have concerns about how it might work in practice, some of which I

have highlighted and some of which Margaret Mitchell is already addressing. I am sure that other members of the Justice Committee will pick up on some areas of our stage 1 report that I have not had time to cover. I look forward to hearing other speeches in the debate.

15:37

**The Minister for Community Safety and Legal Affairs (Paul Wheelhouse):** I thank Margaret Mitchell for her opening speech and the work that she has put into the bill. I commend her for her dedication to the topic and I share her wish to enable a cultural change to encourage the giving of apologies, as I understand that that can be of great psychological benefit to those who feel that they have been harmed.

We should not underestimate the positive impact of a person receiving an apology when they have been wronged. The apology can be a way of showing acknowledgement, respect and empathy for the other person, and although in itself it cannot undo past harms, if it is done sincerely and effectively it can provide some form of redress.

The Scottish Government supports the aim of promoting and encouraging the giving of apologies by individuals and private and public bodies in order to achieve better outcomes for victims. However, I believe that the bill may have a role to play in changing the culture in terms of the prevailing attitudes to apologising more generally.

I highlight the important work that is undertaken in this area by the Scottish Human Rights Commission, which Margaret Mitchell mentioned. It is clear from its work with survivors of historical abuse and from the action points in the SHRC action plan that full consideration should be given to the merits of an apologies law. With that in mind, I am pleased that the Scottish Parliament is giving the Apologies (Scotland) Bill such full consideration. I met Professor Alan Miller last week to discuss the reasons behind his support for the bill and to explore the areas of concern that are raised in the Justice Committee's report, and I welcomed the opportunity to hear the commission's views directly.

As we have just heard, the Justice Committee has taken evidence from a range of experts and key stakeholders and it has concluded that it broadly supports the general principles of the bill. I share its view and I confirm my support for the general principles. Having said that, I believe that a fine balance needs to be struck between promoting the general use of apologies in the public interest and protecting individuals' access to justice, and I share the committee's concern that the bill, as it is currently drafted, does not strike

the correct balance. I welcome Margaret Mitchell's willingness to work with me, and I look forward to working with her on her bill. I also note the committee's recommendations for improving the bill at stage 2, which Margaret Mitchell has indicated she has taken on board.

The most important consideration is that individuals who want to pursue justice should not be disadvantaged by measures in the bill. I therefore echo the Justice Committee's concern that making apologies inadmissible in civil court proceedings could disadvantage pursuers, who would be unable to draw on potentially important evidence to support their case as a consequence of the bill's drafting. As the committee's report indicates, that is particularly relevant to survivors of historical child abuse, who often face difficult evidential challenges. As members will be aware, the Scottish Government has set out its intention to remove the three-year limitation period—commonly known as the time bar—for cases of historical child abuse that took place after 26 September 1964. Should the bill be passed, that will remove a significant barrier to justice for a number of survivors. However, I recognise that that would remove only one barrier and that survivors will still face significant evidential hurdles. Removing the ability to use the evidence provided in an apology by rendering such an apology inadmissible may deprive a pursuer of an effective evidential remedy. Legal certainty about the status of apologies is a highly admirable aim, but it should not be achieved at the cost of restricting access to justice for potential pursuers in actions for damages.

The key question in my mind is about how we can promote a climate of open, full and frank apologies—I share Margaret Mitchell's intention—without disadvantaging individuals who want to pursue a fair claim. I see the merit in the alternative approach that I discussed in my evidence to the committee, which would put the common law in Scotland on a statutory footing along the lines of section 2 of the Compensation Act 2006 in England and Wales, to which Christine Grahame and Margaret Mitchell referred. I will not read out section 2 of that act, but it makes it clear that an apology, in and of itself, might not amount to an admission of negligence or breach of statutory duty. However, although an apology might not, in and of itself, amount to an admission of liability, it may be admissible in court proceedings and, importantly, can be considered by the court alongside other evidence. That enables the court to take into account all evidence when determining liability but does not place undue weight on any apology that is given. Moreover, I propose that, in addition to the terms of section 2 of the 2006 act, a definition of an apology be retained in Margaret Mitchell's bill,



which would thereby go further than the 2006 act. Putting the common law on a statutory footing would provide greater clarity around the law on apologies in Scotland, while raising awareness of the fact that an apology could not, in and of itself, be used to prove liability may encourage more apologies to be made.

I share the Justice Committee's concern about how the bill will work effectively with the provisions relating to the duty of candour in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, which is currently being considered by the Parliament. The duty of candour provisions in that bill create a statutory requirement on health and social care organisations to have effective arrangements in place to demonstrate their commitment to the disclosure of instances of physical or psychological harm. The approach that is taken to apologies in that bill also mirrors section 2 of the Compensation Act 2006 in England and Wales, but the Apologies (Scotland) Bill, in its current form, risks substantially undermining those proposed duty of candour provisions. As the Justice Committee notes, apologies that are made within the context of the duty of candour would likely have to be excluded from the scope of the Apologies (Scotland) Bill.

The issue of what we will have to exclude from the bill is an important one. As the bill is currently drafted, fatal accident inquiries—to which Christine Grahame referred—and defamation actions are excluded from its scope. However, as was highlighted during stage 1 evidence, the list of exclusions would likely have to extend to court proceedings under the children's hearings system, public inquiries, arbitration and tribunals in addition to apologies that are made in the context of the duty of candour, which I just mentioned. In my view, such a long list of exclusions would muddy the waters in understanding the application of the bill and would not provide the clarity and legal certainty that the bill aims to achieve. The alternative approach, of putting the common law in Scotland on a statutory footing, would not require exclusions from the bill's scope and would make the legislation easier to understand.

Having noted those important concerns, I reiterate the Scottish Government's support for the general principles of the bill. I recognise the value of apologies and would warmly welcome the change in culture that Margaret Mitchell seeks, which would promote the effective giving of apologies. However, my support and that of the Scottish Government is conditional on satisfactory amendments being made to the bill at stage 2. I welcome Margaret Mitchell's comments in that regard and hope that we will be able to address the concerns that I have outlined, but I must make it clear that, if the bill is not amended in a satisfactory way, the Scottish Government will

have to reconsider its position on the bill. I am keen to work with Margaret Mitchell to ensure that I can continue to support the bill, and I am hopeful—given what has been said today—that we will be able to find a suitable compromise.

15:45

**Elaine Murray (Dumfriesshire) (Lab):** On behalf of Scottish Labour members, I thank the clerks to the Justice Committee and the witnesses who gave evidence on the bill, and I congratulate Margaret Mitchell on bringing her bill to this stage. In particular, I congratulate her on her recognition of the importance to survivors of historical child abuse of a meaningful apology that recognises the harm done to them. Her bill is supported by the Scottish Human Rights Commission, which considers that an apology can provide significant psychological and emotional benefit to victims, who do not necessarily wish to pursue an action through the civil courts but wish to have the wrong that they have suffered acknowledged.

The bill provides that an apology is not admissible as evidence in civil proceedings other than fatal accident inquiries and defamation actions, and that it cannot be used prejudicially in such proceedings against the person who makes the apology. As we have heard, the bill's intention is to change cultural and social attitudes towards making an apology, and in the longer term it seeks to reduce litigation, as many pursuers only seek recognition of the damage that has been done to them and a sincere apology for it. No witnesses questioned the value of an apology in such cases, and many expressed their support for the general principles, but there were several areas of disagreement with aspects of the bill and between witnesses. As we have heard, Ms Mitchell has expressed her willingness to consider amendments at stage 2.

Some witnesses did not feel that there is a particularly litigious culture in Scotland. The Association of Personal Injury Lawyers and the Forum of Insurance Lawyers argued that there is a declining level of litigation in the civil courts in Scotland. In the Law Society of Scotland's view, the bill does not necessarily add anything to what already exists, and it argued that there was a lack of clarity about how the bill would achieve its aims.

The definition of an apology, which includes in section 3(b) the term "a statement of fact", was problematic for a number of witnesses, as we have heard. It is possible that that provision could remove the rights of pursuers to be able to rely on admissions of fault or fact in court, and it could even mean that making an apology that includes a statement of fault or fact could be used deliberately in order to prevent that evidence from being able to be used in court. Even the Scottish

Human Rights Commission, which was generally highly supportive of the bill, in evidence to the committee expressed some concern that there might be unintended consequences of the definition as it currently stands.

Part 2 of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, which is currently undergoing stage 1 consideration by the Health and Sport Committee, contains a duty of candour in health and social care situations that is based on section 2 of the Compensation Act 2006, which applies only in England and Wales. That act has a narrower definition of an apology that does not include admissions of fault and does not prevent apologies from being admitted as evidence.

There were differences in opinion on the merits of the broader definition, which was supported by the Scottish Human Rights Commission, but which the Faculty of Advocates considered to undermine the duty of candour in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. The British Medical Association and the Medical and Dental Defence Union of Scotland also raised concerns about how the bill would interact with the UK-wide professional standards. An apology might not be admissible in court, but if it included a statement of fact, the General Medical Council might still consider the evidence to be an admission of fault or poor performance. The GMC confirmed that it would not consider an admission of fault to be inadmissible in fitness-to-practise and tribunal proceedings.

If fault is not removed from the definition, other exemptions in addition to fatal accident inquiries and defamation proceedings could be considered. Pre-action protocols in personal injury cases are to become compulsory and will apply to all sheriff courts as well as the personal injury court. Therefore, as it stands, the bill could provide a loophole for defenders. If admissions of fault are to remain in the bill, it should be amended so that it does not apply to pre-litigation protocols where they provide for binding admissions of fault.

The committee also heard evidence supporting the exclusion of children's hearings, as the reporter could be inhibited from establishing grounds for a referral, or admission of an offence against a child might be inadmissible. Public inquiries could be exempted for the same reason as fatal accident inquiries, and arbitration proceedings generally take a case-by-case approach to what evidence can be admitted. Tribunals could also be excluded, as they are designed to focus on points of fact rather than points of law and they require consideration of all relevant facts. However, as the committee report records and others have said, those exemptions would not be necessary if section 3(b) were removed from the bill.

The bill's policy memorandum suggests that the Scottish Government might issue guidance on how to use and respond to the legislation. The committee received little evidence on that during our evidence taking, so the committee therefore suggested that the member in charge should discuss with the Scottish Government the possibility of guidance being issued.

Scottish Labour members are supportive of the bill's policy intentions in seeking to make it easier for victims of civil offences to receive an apology for actions that have caused them harm. However, our view, like that of the committee and the Scottish Government, is that the bill requires amendment at stage 2. We will support the bill this evening in order that such amendments can be considered further.

15:50

**Gavin Brown (Lothian) (Con):** I, too, congratulate Margaret Mitchell on bringing forward the bill and pursuing it so effectively for a couple of years. I know that the consultation took place in 2012, but there was clearly a fair degree of heavy lifting both before and after that. As a substitute member of the Justice Committee, I acknowledge the excellent written and verbal evidence that was given to the committee, and the work of committee members, who I think genuinely tested the bill's provisions pretty effectively.

The what of the bill is fairly straightforward, because it is a short bill that runs to a mere page and a half and has a pretty straightforward aim—the hope that we get more apologies such that an expression of apology would not amount to an admission of liability and would be inadmissible as evidence for the purposes of certain legal proceedings. There are hopes that such an apology would lead to an acknowledgement that something has gone wrong, an undertaking to address what has gone wrong and, at least in some cases, closure for the recipient.

It is worth noting that apologies legislation can be found in several jurisdictions, such as a number of US states, Canada, Australia, and England and Wales. However, the legislation varies in scope across those jurisdictions and there does not appear to be a magic formula for the perfect apologies legislation.

It is worth reflecting on the Justice Committee's report on the bill. First—perhaps the minister can address this point in his closing remarks—it would be useful for all members to see the Government's official written response to the committee report. The minister has given an outline of some of his thoughts, which was quite helpful, but in the seven minutes that he had for his speech and in the shorter time that he will probably have for his

closing speech it is impossible to do justice to what I think is a pretty comprehensive 27-page report. It would be helpful to see the written response to the committee's report.

**Christine Grahame:** It is simply a procedural matter, but I would have thought that because the member is acting like a minister—it being a member's bill—it is the member who should have provided a written response to the report. However, perhaps I have got that wrong.

**Gavin Brown:** In terms of procedure, the member may be right. However, it would be helpful for members of the Parliament to know the Government's view in response to the bill, because ultimately it is the Government's view on the bill that will determine whether the bill becomes law. It would be useful to know the exact points of issue. The minister outlined two such points quite clearly, but does that mean that the Government now accepts everything else in the bill, or are there other areas in which there are still issues of disagreement between the Government and the member promoting the bill?

I agree that legislation is not a magic formula but I think that it has a role to play in this case. Its effect might not be overnight or dramatic, but I am persuaded by the evidence that I have read that the bill will have an effect and a positive impact. It is worth reflecting that the empirical evidence said very little in either direction. Given the amount of apologies legislation that exists and the fact that some of it has been in place for over a decade, it is slightly surprising that there is not, as far as I can see, much empirical evidence out there in either direction. It is difficult to say just how much the bill will improve matters, or whether it will turn out to be problematic.

It sounds as though all members agree with the bill's principles, but it is clear that stage 1 is the easier part and that stages 2 and 3 will probably be the more complex parts as the bill proceeds. The bill's definition of apology is fairly wide, and it could change slightly as a result of comments made by Margaret Mitchell a few minutes ago. However, there are still a couple of outstanding issues that need to be resolved, and I have to say that there are no simple resolutions for them.

There are difficult issues around how we treat health. If we remove that aspect from the bill entirely, we remove a huge slice of apologies. However, it is clear that complications could arise as a result of interplay with the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill and from the fact that health professionals are regulated at a UK level.

A number of members have raised the important point that a balance must be struck so that we do not end up passing a meaningless bill simply for

the sake of it. However, we must ensure that no one is denied access to justice and that no complications arise that no one—including the member who introduced the bill—intended.

Regardless of which exceptions are made and which aspects are agreed on, it is pretty clear that a great deal of training and guidance will be required as we move forward, but such guidance can probably be put together. I support the principles of the bill and I hope that it is passed at decision time today.

**The Deputy Presiding Officer (Elaine Smith):** We move to the short open debate. Members may have been advised that speeches should be four minutes long, but if possible shorter speeches would be appreciated.

15:55

**Roderick Campbell (North East Fife) (SNP):** I refer to my entry in the register of members' interests as a member of the Faculty of Advocates.

I belong to the school that believes that the bill as it is currently drafted, whatever the good intentions of the member who introduced it, may create more problems than it solves. David Stephenson of the Faculty of Advocates posed a question in oral evidence, stating:

"If enacting the bill would disadvantage certain people, where is the balancing advantage and how confident can we be that there would be a benefit from depriving people of rights that they currently have?"

Many individuals who suffer some calamity, a minor infringement to their life or a minor injury are looking only for someone to say sorry, and a failure to acknowledge that can be a source of endless frustration to them.

As Ronnie Conway of the Association of Personal Injury Lawyers—a pursuers' organisation—suggested in evidence, a proposal seeking to build on the common-law position in statute and following the general line of section 2 of the Compensation Act 2006 in England and Wales would have had attractions.

That view was supported by the Forum of Insurance Lawyers, which is, in contrast, a defenders' organisation. Graeme Watson of the forum suggested that

"straightforward legislation that made it clear that an act of apology, of itself, did not amount to an admission of liability would have great merit".—[*Official Report, Justice Committee*, 9 June 2015; c 8, 6.]

However, we have moved on. The member promoting the bill has already conceded the position in relation to statements of facts and also seems lukewarm—with good reason—on the question of excluding fault from the definition. It

cannot be right to remove the rights from those who want to rely on admissions as they can at present, particularly when the empirical evidence on the point is limited.

In addition, given the introduction of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, is it sensible to embark on two approaches to the problem? As the minister noted in evidence, the duty of candour provisions sit more easily with legislation that follows section 2 of the Compensation Act 2006.

What of the insurance industry's response to the bill? In my experience of professional indemnity insurance policies, there is never a problem with an insured person suggesting, "I am sorry—there is an issue here" but there would be a problem if an insured person said, "Sorry—I didn't behave as a competent accountant might have done" or "Sorry—I fell below the standard." That is a completely different issue. Saying sorry per se is in itself not at present an issue in relation to insurance.

Paragraph 94 of the committee's report says it all. It states in reference to the ABI's evidence to the committee that

"if 'fault' and 'fact' are taken out, the ABI will be perfectly happy with what remains, which it seems will be the essence of section 2 of the 2006 act."

If an apology is inadmissible in evidence, it will undermine the pre-action protocol for personal injury to which Elaine Murray referred.

In the time I have available, I turn to a couple of other matters. Would the bill as currently drafted improve matters for victims of sexual abuse? A survivor of historical abuse might decide to seek damages in court for the harm that was the subject of an apology. As a result of the bill, they would not be able to rely on that apology and would have to find other evidence. That might, as the minister suggested, be extremely difficult, especially with the passage of time.

In response to that issue, Bruce Adamson of the SHRC implied that such a situation might be rare. He said:

"I am not sure that the bill would take away evidence that would otherwise have been available to found a civil case on, because I am not sure that people would voluntarily disclose that evidence but for the protection that is provided."—[*Official Report, Justice Committee*, 9 June 2015; c 30.]

Bruce Adamson may be right, but I am not sure that the alternative scenario posed by the bill would assist victims and would change the position to the victim's advantage. Although I greatly respect the views of Professor Miller, the evidence that was presented to the committee on that point was rather limited.

With regard to the position on medical complaints, we would be wise to reflect on the evidence of those who point out that the regulation of medical professions remains a reserved matter. We should have particular regard to the views of the GMC and others, and to the GMC's current joint guidance with the Nursing and Midwifery Council, which makes it clear that apologising to a patient does not mean that someone is admitting legal liability.

The GMC suggested in its supplementary written submission that the bill as drafted "may have unintended consequences".

**The Deputy Presiding Officer:** I am afraid that the member must come to a close.

**Roderick Campbell:** In conclusion, I welcome the general principles of the bill, but it needs substantial amendment.

**The Deputy Presiding Officer:** I call Margaret McDougall. I will call Alison McInnes, but I am afraid that she will have only three minutes.

15:59

**Margaret McDougall (West Scotland) (Lab):** Sometimes "sorry" is the hardest word to say—more so if one has the threat of litigation hanging over one's head. I am supportive of the Apologies (Scotland) Bill, which Margaret Mitchell has introduced. However, although I support the bill's general aims, as did 86 per cent of consultation respondents, I see some issues with the bill in its current form, which I will discuss in my speech.

I note from the policy memorandum that two of the reasons for introducing the bill are that

"There appears to be an entrenched culture in Scotland and elsewhere that offering an apology when something has gone wrong is perceived as a sign of weakness. There is also a fear that an acknowledgement of fault can, in some circumstances, lead to litigation."

I agree that in the public sector and in organisations in other sectors there is definitely fear of litigation, but I am not sure that the bill will provide the required cultural change.

The Medical and Dental Defence Union of Scotland argued:

"An apology ... carries little weight in civil litigation proceedings"

and the Faculty of Advocates wondered whether such a simple change in the law would achieve a dramatic effect. I have to say that I have the same doubts. However, my view is that we have to start somewhere, and that although the bill will make a relatively small change, it would be a mistake to judge its outcomes before we can measure its practical effects in law. Although the bill alone

might not lead to the desired change, it can play its part.

The fear of litigation is a much greater concern. The committee heard in evidence that in a survey of 500 Medical Protection Society members, 67 per cent said that there is a culture of fear in healthcare and that many people would not apologise due to fear of reprisal.

The Scottish Public Services Ombudsman found that many front-line staff fear apologising because of the risk of litigation or because they have been advised against it by senior staff. Clearly, that situation cannot continue. Although that may not be widespread in other sectors, the bill could help to give those staff peace of mind, if it is developed.

That said, I have some concerns that making an apology inadmissible may affect an individual's rights. That is a particular concern in cases of historical child abuse. As it stands, the bill may have unintended consequences. I agree with the committee's recommendation that there needs to be a better balance in the bill: it must ensure, while remaining relevant, that there are no unintended consequences for victims.

Although I am happy to support the general principles of the bill at stage 1, I question whether it will stimulate the cultural changes that are outlined in the policy memorandum. I agree that we need to tackle fear of litigation and reprisal in certain sectors, but the bill has the potential to have a host of negative unintended consequences, which I hope will be addressed during stage 2. If the bill can achieve its stated aim while avoiding making the system more unjust I will be happy to support it, but my continued support depends on what happens during stage 2.

16:03

**Alison McInnes (North East Scotland) (LD):** I acknowledge the work that Margaret Mitchell has done so far. I supported the proposed legislation back in 2012. At the time, I believed that apologies had an important role to play in reparation and the healing process, and I still believe that today. However, I recognise that the bill as introduced would have a far broader application than the initial proposal. I have some concerns about it, which I will touch on shortly.

We have all come across constituents who say, "All I want is an apology. All I want is for them to admit that a mistake was made and tell me what they have done to prevent this from happening to others. I just want to move on." I therefore understand what Margaret Mitchell is trying to achieve with the bill, which I support in principle. However, it is important that we strike the right balance between making it easier for organisations to say "sorry" and protecting the

rights of those who have been wronged. As drafted, the bill does not achieve that balance.

The effect of apologies in relation to legal proceedings and the regulation of health professionals are two areas in which significant questions arise. Pre-action protocols, which are currently in place to expedite and simplify proceedings, could be affected, as members have said. That could lead to individual injustices. The Faculty of Advocates has therefore argued that

"the Bill should provide, specifically, that it does not apply to pre-litigation ... Protocols where those Protocols provide for the making of binding admissions of fault".

As Ms Mitchell has said, things have moved on a little in that area.

On regulation of health professionals, the Nursing and Midwifery Council and the GMC both argue that the bill would have serious unintended consequences. There is a legitimate fear that it would be used to encourage admission of liability as a way of preventing information being used in subsequent proceedings, or to close down the option for a patient who has suffered harm to pursue a civil claim for compensation. The warnings that we have heard from those bodies must be heeded—the regulation of our health professionals is an important safeguard and we should do nothing that impacts on the regulators' ability to bring a fitness-to-practice case.

The bill currently provides for a number of exceptions, including fatal accident inquiries. We heard evidence that the list of exceptions should be extended to include court proceedings under the Children's Hearings (Scotland) Act 2011. The Scottish Children's Reporter Administration argued that the bill as drafted would inhibit the children's reporter

"from being able to establish grounds for referral"

to bring a child to a hearing. If fault remains part of the definition of an apology as the bill proceeds, we must address that, but I say again that I welcome Ms Mitchell's commitment this afternoon to look again at the inclusion of fault and statements of fact in the definition.

The Scottish Government has argued that by making apologies—including ones that admit fault—inadmissible in civil proceedings, the difficulties that face the survivors of historical child abuse as they seek justice would be compounded. On the other hand, the Scottish Human Rights Commission has said that that provision would help the survivors. Open Secret is supportive of the bill; that organisation told me that many survivors of abuse do not wish to pursue legal redress, although closure is important to them to ensure on-going recovery.

We understand that survivors feel let down by those who should have offered them care, and that they are deeply affected by their experiences. An apology does not put right what happened, but it acknowledges the pain and distress that are caused and gives some comfort. I am happy to be guided on that point by organisations, including the SHRC, that are dealing directly with survivors.

Margaret Mitchell's intentions in introducing the bill are commendable. The Liberal Democrats will support the bill in principle this evening. However there is much work to be done at stage 2 to ensure that the good intentions behind the bill are not drowned by damaging unintended consequences.

**The Deputy Presiding Officer:** We move to closing speeches a bit behind time, so I ask closing speakers to take a little bit less time, please. Gavin Brown has a maximum of four minutes.

16:07

**Gavin Brown:** This has been a short but particularly useful debate in which all parties in the chamber have taken a responsible and reasonable approach. Clearly, the minister and other members are in listening mode, so this stage 1 debate has been helpful in that regard.

Everyone supports the general principles of the bill—although many have a degree of caution over certain areas. Plausible arguments have been put forward for removing health from the bill, for removing personal injury from the bill, for adding other exceptions to the bill, and for reverting to a definition that is similar to that in the Compensation Act 2006.

However, if we do all those things, I would be slightly concerned that we would ultimately pass a bill that might not have the impact and effect that we all want. I urge the member who is pressing the bill, the Government and other members to do all that they can up to stage 2 and during stages 2 and 3 to get the best possible bill so that we ultimately strike the balance that I think we all want to strike.

If we take everything out of the bill that has been suggested—with perfectly decent arguments—there is a risk that we will be left with a bill that comes nowhere near to achieving what we all want. To take exceptions as an example, obviously the bill does not apply to criminal cases. As drafted, it applies to civil proceedings except fatal accident inquiries, sudden death inquiries or defamation proceedings.

Although I was not personally present at the evidence sessions, I read all the evidence and there were some pretty good arguments made for

excluding children's hearings, public inquiries, tribunals, arbitrations and pre-action protocols. However, there is a risk that the longer the list of exceptions, the greater the confusion that will likely be caused. As Professor Miller pointed out, if we include all those exceptions and some others that have been suggested, that could ultimately damage and go against the spirit of the bill. None of us wants a situation in which people need a law degree to figure out whether it is safe to apologise.

I draw attention to a point in the letter that Professor Miller wrote to Margaret Mitchell on 22 October, which members and ministers have seen. In that particularly powerful and well-crafted letter, Professor Miller made the point that, although there might be good arguments for moving to the Compensation Act 2006 definition—many would describe that as the “safe harbour” position, which is completely risk free—that would not meet the expectations of survivors of historical child abuse.

Given what Margaret Mitchell said in opening today's debate about the fact that the genesis of the bill was a meeting back in 2010 of the cross-party group on adult survivors of childhood sexual abuse, and given that a lot of the heavy lifting and the work that has been driving the bill has been done as a result of that, I make a plea to the Scottish Government and to members to listen to the views of Professor Miller and others, and to consider how we can find a way through some of the difficult issues so that, ultimately, when the bill is enacted it meets the expectations of those who drove it. It is not an easy problem to solve, but if we all put our minds to it, it can be done so that we have an act of which we can all be proud.

**The Deputy Presiding Officer:** Elaine Murray has a maximum of four minutes, although less would be better, if that is possible.

16:11

**Elaine Murray:** The debate has been short but interesting, and many important points have been made—and, in some cases, repeated. I hope that the fact that we are having a debate on the bill might in some way contribute to the cultural change that is required to enable apologies to be made that acknowledge the harm that is done to people who have experienced actions that have been damaging to them. However, as Margaret McDougall said, the issue is not that simple, because there is considerable fear of litigation, particularly in the public sector.

I will summarise some of the representations that have been made this week, in advance of the debate. As Gavin Brown mentioned, Professor Alan Miller, the chair of the Scottish Human Rights Commission, does not consider that amending the

bill along the lines of the Compensation Act 2006 would meet the expectations of survivors of historical child abuse. He also feels that a long list of exceptions would be confusing and unhelpful and would discourage full apologies. The commission does not agree that inadmissibility in a civil court would prejudice a complainant's case. That is an interesting position, because it is very different from everybody else's. The commission argues that, if apologies were to be admissible in court, they simply will not be made.

The British Medical Association agrees that removing the threat of civil action would improve communication between doctors and patients, but says also that it is unclear how the bill would work in practice in interacting with the General Medical Council's standards and its investigative and adjudicatory processes.

The Law Society of Scotland supports the policy intent and objectives of the bill, but considers that it is unclear how the provisions will achieve those aims, although the society also believes that the bill could help to change cultural and social attitudes to apologising. The society is concerned about the definition and how it would impact on the duty of candour and definition of apology in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. The society believes that the two definitions could lead to unintended consequences, because we would have two pieces of legislation with different definitions. The society agrees with the BMA that there is a risk that an apology containing a statement of fact could be used in an investigation or disciplinary hearing when professional standards may have been breached.

The Association of Personal Injury Lawyers was probably most critical of the bill. It stated that it would be "illogical and unjust" if no consequences were attached to an apology that contained a degree of liability. APIL argued that admissions after an event are important in Scots law, because they are very likely to be true. Its briefing contrasts the definition of an apology in the bill with the definition in section 2 of the Compensation Act 2006, which encourages appropriate expressions of regret but retains the ability to use an apology as evidence in court where there is a clear acceptance of legal responsibility. APIL also expressed concern about the consequences for pre-action protocols in personal injury cases, which a few members have mentioned, and stated that the bill risks making the civil justice system in Scotland "second rate" compared to the criminal justice system.

The majority of recent respondents, like the majority of witnesses during the stage 1 process, support amendment of the bill. I reiterate that we

will support the bill at decision time tonight, but we will also support its amendment at stage 2.

16:14

**Paul Wheelhouse:** I have listened with great interest to members' speeches and am encouraged by the cross-party support for promotion of apologies. I am sure that that is of great encouragement to Margaret Mitchell, as well.

As I noted in my opening speech, the Scottish Government shares Margaret Mitchell's aim of promoting cultural change in respect of the giving of apologies, and I support the general principles of the bill. However, as I outlined, we and others have some important concerns that need to be addressed. Colleagues around the chamber have repeated them.

Most important is that we need to ensure that the bill does not restrict access to justice by limiting what can be used as evidence. From listening carefully to colleagues in the chamber, and to respond to Gavin Brown's points, it is clear that the key question is how we strike the best balance between promoting use of apologies and avoiding the unintended consequences of restricting access to justice and making the bill overly complex.

I am aware of the argument that those unintended consequences might apply only to a small number of cases and would only rarely disadvantage individuals. In reflecting on that, I was struck by the recent comments of my colleague Nigel Don in the Delegated Powers and Law Reform Committee during an evidence-taking session on the Succession (Scotland) Bill:

"I observe on behalf of the committee that the fact that something is not very common does not mean that we do not need to get the law right. It does not matter if there is only one case. Even if we are not sure that the issue will arise, we still need to make sure that the law says what we think it should say."—[*Official Report, Delegated Powers and Law Reform Committee*, 8 September 2015; c 6.]

That is an important point to keep in mind, and I agree with Mr Don on it. We cannot ignore the rights of claimants or pursuers who might need to draw upon an apology in their evidence base simply because such cases are likely to be few in number. Surely protecting the rights of minorities is at the heart of good law making.

The aim of achieving legal certainty has also been addressed in the discussions. It is a sound point. I am concerned that the long list of potential exceptions to the scope of the bill to which Gavin Brown referred, and the remaining questions regarding its interaction with the insurance industry, would work against achieving such certainty. As I noted previously, an approach that is based on putting the common law in Scotland

on a statutory footing along the lines of the Compensation Act 2006 would avoid many such issues.

I acknowledge the argument that Margaret Mitchell and others have made that putting the common law on a statutory footing does not necessarily go far enough. However, as I previously pointed out, it is about striking the right balance. A bill along the lines of the Compensation Act 2006 with an added definition of “apology” would provide clarity about the law on apologies in Scotland. That would raise awareness that an apology cannot, in and of itself, be used to prove liability: that may, in turn, encourage the making of more apologies. It would send a strong signal and strike a more appropriate balance between encouraging apology as a form of redress for victims and the need to ensure that justice is served appropriately through the court process.

I reiterate the point that, as Elaine Murray mentioned, the submissions from the Law Society of Scotland, the Nursing and Midwifery Council and the General Medical Council are consistent with the Scottish Government’s position and our proposal to take an approach that is based on putting the common law in Scotland on a statutory footing along the lines of the Compensation Act 2006 with an added definition of “apology”, as per the duty of candour provisions in the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. That would address the Nursing and Midwifery Council’s concerns and would be consistent with what it and the General Medical Council say about apology in their joint guidance on candour.

As members are aware, the Scottish Government is very committed to promoting the rights of the survivors of historical child abuse. We have demonstrated that with our decision to hold a public inquiry and our intention to remove the three-year limitation—or time bar—for cases of abuse. We are also keen to promote a climate in which survivors achieve the acknowledgement and redress that they deserve through receiving apologies. However, that cannot come at the price of restricting potentially valuable pieces of evidence that survivors might require to prove their cases.

I reiterate our support for the general principles of Margaret Mitchell’s bill. As previously noted, that support is conditional. If our concerns can be addressed, I will be happy to support the bill at later stages, but the Scottish Government will have to reconsider its position if we are unable to reach common ground. However, given the positive comments that Margaret Mitchell has made and the apparent consensus around the chamber, I am hopeful that we can achieve consensus.

16:19

**Margaret Mitchell:** I thank all the members who have contributed to what has been a short but good debate in which a number of points have been raised. I will try to address those points in my closing comments. Before doing so, it would be helpful to outline how the concept of apologies legislation came about and to convey the positive effect that an apology can have on recipients.

The first recognised apologies legislation was enacted in the US state of Massachusetts in 1986. It emerged from a tragic series of events in 1974, when a young girl named Claire Saltonstall was hit and killed by a car while riding her bicycle near her family home. The driver who struck her never apologised. Her father, William L Saltonstall, who was a state senator, was angry that the driver had not expressed contrition. He was told that the driver dared not risk apologising, because it could have constituted an admission in the litigation surrounding the girl’s death.

On the senator’s retirement, he and his successor presented the state legislature with a bill that was designed to create a safe harbour for would-be apologisers. That was the first tentative step, which has since resulted in more than 35 US states and many nations around the world, including Australia, Canada and New Zealand, quietly and successfully implementing innovative and effective apologies legislation. As legislators and the judiciary have come to appreciate, in many legal proceedings, an apology is frequently worth more to an applicant than money.

The positive effect that an apology can have on survivors of historical and childhood abuse is neatly covered by the following quote from one of the survivor organisation members of the cross-party group on adult survivors of childhood sexual abuse, who said:

“Many survivors of abuse do not wish to pursue legal redress but closure is important to them ... An apology does not put right what happened but it acknowledges the pain and distress that has been caused and gives some comfort that lessons will be learned for the future.”

The effect of an apology is also underlined in the following quote from a British Columbia ombudsman. He had been in office for more than six years when he said in 2006:

“I have heard repeatedly from individuals who need to hear a public agency apologize so they can stop being angry about what happened, forgive and move towards healing.”

That view is endorsed by the Scottish ombudsman. In a Justice Committee evidence session, Paul McFadden, the head of complaints standards at the office of the Scottish Public Services Ombudsman, said:



“People say, ‘I want recognition that I was right and something went wrong, and an assurance that it will not happen again to someone else.’ They might want various other things but, by and large, they do not say that they want compensation. It is very much about repairing a relationship, often with an organisation that they have an on-going relationship with. They are not consumers in the broader sense, as they cannot choose to go to another local authority or another health board, so repairing the relationship is at the heart of this ... However, in complaints that come to us, we still see a reticence from public bodies to saying sorry. From a very early point in the journey of many of the complaints that we see, it is clear that, if a simple, timely and human or empathetic apology had been given, the complaint would not have escalated. The failure to make that apology results in a breakdown of the relationship between the individual citizen and the public body, which then escalates, builds and exacerbates the situation—it grows arms and legs.”—[*Official Report, Justice Committee*, 9 June 2015; c 12-13.]

I turn to issues that were raised during the debate and begin with the view that using section 2 of the Compensation Act 2006 would be as effective as having a protected apology. There are various reasons why that is not the case. We can start with the view of Professor Miller, the chair of the Scottish Human Rights Commission, who said:

“Adopting a similar model to that of the Compensation Act 2006 would not achieve the aims of the Bill and would not meet the expectations of survivors of historic child abuse in Scotland.”

The main reason why the commission holds that view is that an apology could still be admissible. In effect, the 2006 act wording would preserve the status quo, and individuals or organisations would still continue to be unwilling to apologise for fear of litigation. Interestingly, in response to an inquiry from me about the impact of section 2 of the 2006 act, the UK minister for justice, Lord Faulks QC, confirmed that no detailed research or analysis of that had been undertaken, partly because the provision did not change the law.

Some concern has been expressed that making an apology inadmissible in civil proceedings could prejudice a pursuer’s future case. However, as the Massachusetts experience makes plain and as various witnesses have confirmed, that places too much emphasis on the assumption that the majority of individuals automatically wish to pursue a claim in court. It also downplays the potentially life-altering benefits of an apology.

As the Scottish Human Rights Commission, the Law Society of Scotland and Prue Vines—the academic expert on apologies—state from their experience, the pursuers are not prejudiced because, in most cases, no apology would be forthcoming if it was admissible in civil proceedings. I hope that those observations help to allay any concerns that members have about the issue.

As for the definition in the bill and any exceptions, I realise that that will involve

compromises and taking on board concerns. Those issues will be fully discussed if the bill progresses to stage 2.

Members might be interested to learn that the progress of the Apologies (Scotland) Bill is being closely followed in other common-law jurisdictions, such as Canada and Australia, where apology laws have operated effectively for some time. In Hong Kong, a draft apologies bill has taken detailed account of the work that has been done on this bill.

I hope that Parliament will vote this evening to approve the general principles of the bill, which has the potential to help to give closure to many people, including survivors of sexual abuse.

## Harbours (Scotland) Bill: Stage 3

### The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-14595, in the name of Derek Mackay, on the Harbours (Scotland) Bill.

16:27

**The Minister for Transport and Islands (Derek Mackay):** It gives me great pleasure to open the stage 3 debate on the Harbours (Scotland) Bill and to invite members to agree to pass the bill. I thank members of the Infrastructure and Capital Investment Committee for their careful scrutiny of it.

The bill aims to resolve a technical issue by stopping borrowings of affected ports scoring on Scottish Government budgets when we have no control over what is a private financial transaction. Before the bill was introduced, there was extensive consultation with the key stakeholders, including the British Ports Association, the United Kingdom Major Ports Group and the UK Chamber of Shipping.

The principles of the bill were strongly supported, and that support has continued throughout the parliamentary process. No issues have been raised and no amendments lodged. The bill is intended primarily to repeal sections 10 to 12 of the Ports Act 1991 as it extends to Scotland, which will remove the Scottish ministers' power to require certain trust ports—those with a minimum annual turnover of about £9 million—to prepare privatisation proposals. The power has not been used since devolution and we would not envisage it being exercised by any Government. However, the Office for National Statistics has interpreted the power as a key trigger for classifying as public corporations those trust ports that have reached the relevant turnover threshold, as the power gives a degree of public control.

What does classification mean? Following a trust port's classification as a public corporation, any borrowings that it makes count against Scottish Government budgets and are deemed to be our borrowing. That is despite the Scottish Government having no borrowing controls over trust ports and what is essentially a private financial transaction for trust ports.

This is a technical matter of bureaucracy and clarification. It makes no sense that those moneys should score against Scottish Government budgets, which could subsequently impact on the Government's ability to borrow and spend.

To date, only one trust port in Scotland—Aberdeen Harbour—has been classified as a public corporation. Two other Scottish trust ports—

Lerwick Port Authority and Peterhead Port Authority—meet the £9 million threshold. However, the ONS postponed their classification pending the bill's progress, so to date they remain unclassified.

Despite being classified since 2000, Aberdeen Harbour has been able to fund any infrastructure developments from its own reserves and there has been no impact on Scottish Government budgets. However, it is taking forward exciting proposals for a port extension in Nigg Bay—a project that is designated as a national development in the third national planning framework—which will need investment of about £400 million. That could mean a significant amount of borrowing, which under Aberdeen's current classification as a public corporation would impact on the Scottish Government's accounts and potentially our borrowing.

Our view remains that the removal of section 10 will mean that trust ports do not fall within the classification of public corporations. Indeed, the wording of the ONS review in 2013 highlighted that the remaining powers that ministers have to block voluntary privatisations are not sufficient in themselves to warrant classification as public corporations—at that point, the ONS was referring to the status of the smaller trust ports.

The ONS gave a decision in principle that, as the power to privatise was a key trigger for classification as a public corporation, removing that power should address the issue. However, it would not make a firm decision until the bill had started to make its passage through Parliament.

Following stage 1, we wrote to the ONS to outline our case and request a definitive decision on whether the bill will achieve the aim. We had hoped that that would be concluded in advance of stage 3 but, despite our making further requests to the ONS, it has not yet given us an answer. However, it has advised that this is very much on its agenda to review and we have stressed that that should take place as soon as possible. Ultimately, it is in the hands of the ONS and potentially the Treasury.

We are looking to get a positive decision from the ONS. However, what is fundamental and should not be overlooked is that the bill will remove uncertainty for the trust port sector and reaffirm our support for the trust port model as part of the diverse range of ports ownership structures that operate in Scotland.

Trust ports are independent statutory bodies that are governed by their own legislation and run by independent boards. They operate in a commercial environment with no direct public funding. It makes no sense for the Scottish ministers to have the power to privatise them.

The bill will also remove the requirement for six copies of a draft harbour revision or empowerment order to be submitted along with the application for the order. That is a necessary tidying of unnecessary bureaucracy.

There is a clear issue that we want to address and, given that primary legislation is required to do so, that is the route that we chose. The bill has had wide support from the industry, which remains the case as no amendments have been lodged.

I move,

That the Parliament agrees that the Harbours (Scotland) Bill be passed.

**The Deputy Presiding Officer:** I call David Stewart, who has a generous six minutes.

16:33

**David Stewart (Highlands and Islands) (Lab):** During the stage 1 debate, I described the bill's proposals as non-controversial, simple and sensible. Nothing in the minister's opening comments or in the current iteration of the bill leads me to change my original comments, although members will be pleased to know that I tried hard to find something to raise as a matter of conflict.

I am a member of the Infrastructure and Capital Investment Committee, which was the lead committee and was charged with reporting to Parliament on the general principles of the bill. The policy memorandum states:

"The primary purpose of the Bill is to provide an improved legislative framework for trust ports across Scotland and increase the efficiency and effectiveness of existing procedures and processes for stakeholders."

The committee's report makes it clear that the trust port model is one of the three main port ownership models in Scotland, which the minister touched on. The other two are the private model and the local authority model.

In his winding-up speech—or just now, if he wishes to intervene; I am just making sure that he has some work to do—will the minister tell us whether the bill will have any impact on private ports? I do not think that it will, but perhaps he could confirm that. My colleague Jenny Marra made an interesting point about private ports earlier today. Is there a mechanism to change the status of private ports to trust ports, if they wish to do that, so that they come under the remit of the bill?

**Derek Mackay:** To assist the member, I understand that the bill will have no impact on private ports, because it refers specifically to the trust port model. What we are repealing and removing is specifically for that purpose, so the bill will have no unintended consequences.

**David Stewart:** The minister might cover the second question, as well. Is there a mechanism for private ports to change their status to trust ports? If there is, I presume that they would then come under the bill.

**Derek Mackay:** I am now being volunteered to intervene by the member's sitting down, but I am happy to accept that.

I have not considered that matter as part of considering the bill, but I am happy to explore it if there are private sector ports that want to transfer their status, which might be helpful for further development or ownership issues. The issue is certainly worth exploring. I cannot address it at stage 3 of the parliamentary process, but I am happy to look into it.

**David Stewart:** I appreciate the minister's comments. I am not setting a precedent in allowing him to constantly intervene, but that seems reasonable in this context.

The key issues are that, in simple terms, trust ports have no owners and that all surplus funds are reinvested in the port for the local community—or, more technically, the local stakeholders.

I have visited several of the trust ports in the Highlands and Islands, which is my region, such as those in the Cromarty Firth, Inverness, Mallaig, Scrabster, Stornoway and Wick. Scrabster, for example, is perfectly situated to benefit from oil and gas and renewables work. The chief executive and the board there have an imaginative business plan for expansion and development, which will boost economic development across the region, including in fisheries.

I have visited my home city harbour in Inverness several times and know it well. Last year, I made a joint visit with the late Charles Kennedy, who was a man of great stature who will be sadly missed across the Highlands and Islands and beyond. I am sure that all members will join me in remembering the fine work that he carried out in our national Parliament, Scotland and the UK.

Inverness has developed a successful marina from reclaimed land, and it handles freight from all over the world. Aviation fuel is delivered to the harbour and pumped to RAF Lossiemouth through a secure pipeline. I hope that I am not breaching any official secrets by revealing that to Parliament. On a serious note, that is a good example of how transport policy can dovetail with climate change policy. Heavy aviation fuel is shipped to the harbour and pumped directly to a location, which reduces the emissions that there would normally be if it was delivered in heavy lorries up and down the A9. I am sure that the minister will note that good example of two things coming together.

Why are those examples significant? It is clear that the minister has covered the main thrust of the bill, which is to change the assessment, decision or recommendation by the Office for National Statistics to reclassify certain trust ports as public corporations. As we have heard, the ports that are in the firing line are those with a minimum annual turnover of £9 million. The minister did not touch on this, but I assume that, if ports with a turnover of below that amount reached the magic figure of £9 million, they would come under the remit of the bill as well. A few ports are bubbling around with a figure just below that.

The ports that currently meet the threshold are Aberdeen port, Lerwick Port Authority and Peterhead Port Authority. As the minister said, the bill will repeal section 10 of the Ports Act 1991 and remove the Scottish ministers' powers to require larger trust ports to prepare privatisation plans. As I said, the cut-off point is £9 million a year.

I flag up the importance of looking at best practice around the world. The minister will have picked up from the stage 1 debate the Infrastructure and Capital Investment Committee's excellent visit to Rotterdam harbour, which is the largest harbour in Europe and was the largest harbour in the world. That harbour showed the way forward by investing €4 billion to construct a new freight-only railway line to Germany. I am not suggesting that every port in Scotland or the UK develops such a service; I merely make the point that, if we develop services to allow freight to go off the road and on to rail, that will be successful for transport and climate change.

I urge all members to support the bill. It will resolve a technical anomaly, free up our larger ports from financial conflicts with the Scottish Government and improve the legislative framework for all trust ports across Scotland.

**The Deputy Presiding Officer:** I call Alex Johnstone. You have four minutes or thereabouts.

16:39

**Alex Johnstone (North East Scotland) (Con):** I will rise to the challenge that we have been set: to find a way to spend the pre-allocated time discussing this fine piece of legislation.

The Harbours (Scotland) Bill is a simple piece of legislation—for example, section 2 relates to the number of copies of orders that must be issued. The key element, which is contained in section 1, is the repeal of sections 10, 11 and 12 of the Ports Act 1991.

I do not have the minister's advantage of being able to read out the explanatory notes, but by doing so he gave us the full details of the

legislation's function. David Stewart was faced with the dilemma of whether to take the same approach or a different one. He decided to repeat much of what the minister said. However, I feel unable to take the same approach and read out the notes for a third time. I will cover the issues that are contained in them, but I will probably do so more briefly, although I hope to be able to fill the four minutes that the Presiding Officer has allocated to me.

**David Stewart:** To assist the member, perhaps I could intervene to ask him to amplify Rotterdam harbour's vital role in the world economy.

**Alex Johnstone:** Rotterdam does indeed play a vital part in the world economy, but I am afraid that it is a subject on which the member knows rather more than I do, because he was on the visit to Rotterdam and I was not. Consequently, I am at a disadvantage on the subject.

To return to the bill, it might appear counterintuitive to some that the Conservatives will today vote for a piece of legislation whose main effect is to remove a requirement for port authorities to introduce proposals for privatisation when their turnover reaches £9 million. I have no difficulty with the privatisation of ports, but that is not the issue with which we are dealing in the bill.

Over recent months and years, the Office for National Statistics has caused a number of problems to various sections of Government by its redefinition of certain expenditure or borrowing as public rather than private. We are dealing with one particular aspect of that today. As the minister explained, the redefinition has meant that when some of our trust ports borrow money it shows against the Scottish Government's borrowing. If that was a small-scale operation, perhaps the Scottish Government could find a way around it. However, our problem is that we have a large trust port in Aberdeen which is about to become involved in an extremely large project that will require significant levels of borrowing. Aberdeen Harbour is able to deal with that borrowing; it would require no Government assistance over and above that which has already been committed. However, the Scottish Government may find itself in the position of having to account for borrowing that is not its own, which would be unreasonable.

The easiest way to deal with the situation is to take the approach that the minister eventually decided on and to introduce a small piece of legislation that is designed to repeal sections 10, 11 and 12 of the Ports Act 1991 and to take out the privatisation requirement. If I ever get the opportunity to be in the minister's position and want to encourage Scottish trust ports to become private, section 9 of the Port Act 1991 is still in place and, if they want to apply, I will be most

accommodating. That said, the Conservatives will support the legislation at decision time.

16:44

**Christian Allard (North East Scotland) (SNP):** Alex Johnstone said that this was a “fine piece of legislation”. I can only agree with that and with his comments about Aberdeen Harbour. The bill is about the Government’s intentions for the trust port model and this is the Parliament’s opportunity to give our support for that model. The bill will ensure that our harbours have a secure future and allow industries that are linked to our ports to grow and continue to build a strong economy. Such industries are a credit to this country and are world renowned.

When I first came to Scotland more than 30 years ago, I was already aware of the thriving fishing industry at many of the north-east harbours, and my time working in the fishing and haulage industries reinforced my view of the importance of the north-east ports for those industries. The ports also provide a home for the oil, gas and renewable energy sectors, which are vital for us all.

The bill will enable those industries to flourish, with assured security in ports’ organisational structure, development and funding. Indeed, the growing industries and the redevelopment plans at the harbour in Aberdeen, about which we heard from the minister, David Stewart and Alex Johnstone, were a driving force behind the bill.

Aberdeen’s status as the energy capital of Europe is a strong asset to the city and to Scotland. I welcome the improvements and expansions at Nigg Bay. Such an enterprising attitude will enable Aberdeen to secure its position as a principal port for the energy sector. Like the minister, I hope that the Office for National Statistics will respond positively and not deem Aberdeen Harbour a public corporation, so that the harbour’s ambitious proposals can succeed with no financial effect on the Government’s budget.

I wish the Aberdeen trust all the best with its future developments, and I urge it to consider nearby communities, particularly the fantastic community in Torry, whose people should benefit first. We sometimes forget about people, but they should have the benefit of development.

The bill will have a great impact in Scotland and in particular in my region. The port at Montrose has welcomed the bill’s repeal of sections 10 to 12 of the Ports Act 1991.

There are many trust ports in my region, many of which are small. West of Fraserburgh, we have Whitehills, Gardenstown, Pennan and Rosehearty;

south of Peterhead and north of Aberdeen we have Cruden Bay and Collieston.

Peterhead itself has one of our most successful harbours. It is the largest whitefish and pelagic port; it is also in the top league in European terms and in 2011 achieved the British Retail Consortium’s global standard for storage and distribution, which is regarded as the international benchmark for the handling of food produce. The harbour is considering various developments, which will be in strong hands if they are in the hands of a trust. I thank the Scottish Government and the minister for all the support that they have given to Peterhead harbour in relation to its future development.

I also thank the Scottish Government and the minister for the help that they have given to Fraserburgh. The harbour has greatly benefited from the recent multimillion pound deepening and upgrade project, which was welcomed by the whole community.

No amendments to the bill have been proposed to or by the Infrastructure and Capital Investment Committee, and all members seem to agree that this is a fine bill. Like many of the people who work in industries that are linked to our harbours, I congratulate the Scottish Government on introducing the bill. The trust port model has all my support and I will welcome the passing of the bill.

16:48

**Claudia Beamish (South Scotland) (Lab):** I am pleased to speak about the bill.

Scotland is blessed with a long and indented coastline, where we are never too far away from an exhilarating view. Our ports are rich in history, while being outward-looking, modern links to the rest of the world.

The development of the national marine plan raised issues such as sustainable growth—I prefer the phrase “sustainable development”—the need to connect remote communities, climate change and sea level projections. Such issues should remain at the forefront of our minds as we look to the future for our ports and harbours.

Our ports and harbours have a mix of ownership type, as we have heard, and I welcome efforts to improve the efficacy of trust ports. Ports can be the cornerstone of a community, and the proposed modifications to the Ports Act 1991 will bring relief from uncertainty as a result of unnecessary privatisation powers. It is also encouraging to see some governmental housekeeping in the context of simplified application processes.

Ports are a national asset and it is vital that we allow them to flourish without the threat of privatisation being attached to considerable

financial success, without a requirement to produce onerous paperwork and without unproductive approaches to dispute resolution.

The trust port model accounts for a significant number of Scotland's harbours, and I celebrate its improvement with the passing of the bill today.

Very often, ports and harbours are the beating hearts of coastal communities. I am passionate about providing support for local groups and communities that wish to take their own action to make the best use of their local resources. The Crown Estate, I am relieved to say, offers increasingly valuable support—by way of long-term guidance—to ensure that communities can harness the potential of the coastline and that the benefits are tethered to the local economy.

The marine stewardship fund helps communities to increase the value of their ports in financial, environmental and social terms through true sustainable development. A commitment to environmental responsibility, investment in accessibility and good management mean that ports improve and enhance their sustainability. Harbours are more than just instrumental in connecting external ports; they are key to internal community connectivity, too.

In my region, Portpatrick harbour is an inspiring example of community ownership as a model for ports. Only 20 miles from the Irish coast, Portpatrick harbour is a safe haven for thousands of mariners yearly. In the summer this year, the community rallied together to save the harbour from repossession. With support from Community Shares Scotland, the community formed the first Scottish charitable community benefit society, and it was able to sell more than enough shares to buy the harbour. In the spirit of connectivity, support came from around the world. It is fantastic that the community benefit society model stands ready for others to utilise.

Today, Portpatrick harbour underpins much of the local community and economy, and the community benefit society has further innovative plans to build new facilities and expand on to new land. It remains an unspoiled and productive asset for Scotland and beyond. I hope that, although this does not relate to the bill that we are discussing today, the minister will highlight in his closing remarks how the Scottish Government might be able to further support such models in future.

I support the bill and I feel positive about the simplifications that it brings. I wish all those who work on our seas and in our ports good luck for the future.

**The Deputy Presiding Officer:** We move on to the closing speeches. I call Alex Johnstone.

16:52

**Alex Johnstone:** Thank you, Presiding Officer. That surprised me. I did not think that you were going to come round to me quite so soon.

The debate has been interesting, and it was a great deal more diverse and wide ranging than I expected—and perhaps than it needed to be. I think that it is fair to say that the bill is extremely limited in what it sets out to achieve and it does no more than is required. In repealing sections 10 to 12 of the Ports Act 1991, it ensures that the risk of investment being redefined as public rather than private will be avoided. For that reason, it plays a key role in ensuring that our trust ports can go forward and invest with confidence, taking up the opportunities that are presented to them by the market and borrowing money to expand their facilities and services whenever that is required.

It would be inappropriate for the Government to be put in a position where it had to take responsibility for money within broader accounting schemes when it had nothing to do with the decisions that surrounded that money. For that reason, the bill, limited though it is, will serve a clear purpose for Scotland's trust ports. It will offer them the opportunity to expand in the future, and in the near term it will allow Aberdeen to take forward its ambitious expansion project without any imposition from Government.

However, a key element is whether the Office for National Statistics will change its definition once the bill has gone through. I believe that the minister said in his opening remarks that he had expected confirmation of that to come from ONS in some form before the completion of stage 3 but that he has not received that.

The Office for National Statistics works in strange ways, I am sure, but I hope that, once we have passed the bill tonight, we will get quick action from the ONS. There must be a clear understanding that the objective that we have set out to achieve by bringing the bill through the Scottish Parliament has been achieved and that we are delivered from the previous difficulties. I am sure that, at decision time, the bill will be passed unanimously in the expectation that that will be the outcome. I hope that we do not find ourselves in the difficult position of having legislated but still not having the comfort that we sought to achieve. When we have passed the bill, we will still have a little more excitement on the agenda until we see that in black and white.

Let us get on and pass the bill, and let us hope that those in other places do their bit.

16:55

**David Stewart:** When I thought about winding up the debate, I was reminded of one of my

favourite films, "Mr Smith Goes to Washington", in which James Stewart has to speak for 24 hours on a very important piece of legislation and resorts to quoting the Bible and the telephone book. I reassure the Presiding Officer that I have neither the Bible nor a telephone book in front of me—I am sure that he would rule me out of order.

This has been one of the most straightforward and consensual debates that it has been my pleasure—I use the term loosely—to speak in. The minister made the valid point that there has been absolutely no adverse feedback during the consultation. There is a strong argument that no Scottish Government of any political complexion should be responsible for the financial operation of an independent organisation—that is the key to this. Irrespective of who runs the Scottish Government in the future—whether it is the SNP or any other political parties—the point is well made that we need to get this right for both the Scottish Government and the ports.

As we have heard, the ONS believes that the power to privatise triggers the right for a port to become a public corporation, which causes all sorts of problems. Therefore, it is vital that we get this right. As Alex Johnstone rightly pointed out, the ONS may be a fairly strange operation—I believe that it is responsible to the Treasury—but I am hopeful that we can get the issue resolved. If it is not resolved, I am not sure that further legislation by the Scottish Parliament will be able to sort the matter out. However, let us be positive and hope that we can get the matter sorted out through this sensible bill.

I was amused by Alex Johnstone's comment that it is a great night for him because he is going to vote against privatisation. I will ensure that that is noted in his next election leaflet in Aberdeenshire or wherever he stands. He did not fall into my obvious trap by discussing Rotterdam, but he discussed Aberdeen Harbour, which we visited. I record my thanks to the chief executive of Aberdeen Harbour.

**Duncan McNeil (Greenock and Inverclyde) (Lab):** Will the member take an intervention?

**David Stewart:** I will, with great gratitude.

**Duncan McNeil:** I appreciated the member's earlier question for the minister. The private port that I am interested in is Greenock's Ocean Terminal, which he will know is strategically important for the Scottish export industry and is becoming increasingly important for our tourism industry through cruise liner traffic. The minister made the member an offer in response to his question. How will he ensure that the minister follows through on his offer to discuss the wider aspects of how we can support the development

of private ports such as Greenock's Ocean Terminal?

**David Stewart:** I am sure that the minister has noted my friend's comments, which I certainly support. Ocean Terminal is a vital port that is fantastic for the development of Scotland, and I fully support all the work that the member has done in that area.

Christian Allard made some excellent points about the importance of ports to our oil and gas industry, and he flagged up the important project at Nigg. When we visited Aberdeen Harbour, the chief executive took us to the proposed site at Nigg and I was extremely impressed with the work that is being done there with the tremendous investment of, I think, £300 million. Of course, that is a perfect natural harbour. I am sure that the work that is being done at the harbour in Aberdeen, which is almost full, given the great volume of traffic that it deals with from around the world, is necessary and I fully support the new development at Nigg.

Claudia Beamish took a different and highly refreshing tack on the bill—she talked about sustainable growth. To refer again to the movies, she suggested that it is a case of back to the future for port trusts. I believe that she is right that simplification is the key and that we need to avoid threats from privatisation. I had not followed the detail of the marine stewardship fund, on the use of which she gave some excellent examples, and I was not aware of the harbour repossession problem at Portpatrick, which I visited in my youth. It is an excellent facility, and I am pleased to hear that it is in community ownership. I do not think that there are many examples of harbours that have gone down that route, but I am sure that members will correct me if that is not the case.

Alex Johnstone always does what it says on the tin. The Harbours (Scotland) Bill is a straightforward bill, which it makes a lot of sense to pass. All of us have put our faith in trust ports, which are a good example—to use the horrible jargon—of double devolution from the Scottish Government to local authorities down to ports and local community trusts. That is what double devolution means for me—having strong, active local community groups. That was the theme of a recent debate at an excellent concert venue in Beaulieu—I will leave members to guess which venue I am referring to. That was an extremely useful debate, in which the importance of Aberdeen was emphasised.

I recommend that all members support this straightforward and very useful piece of legislation.

17:01

**Derek Mackay:** I agree that it has been a constructive and consensual debate, and it is one in which some new precedents have been set for the Scottish Parliament. Claudia Beamish spoke from a sedentary position because of a medical condition that was explained earlier and David Stewart invited me to speak—indeed, he compelled me to speak—by sitting down during his speech. Perhaps other members can learn from that in their grilling of future Scottish Government ministers.

David Stewart again invited me to go to Rotterdam. Even with my transport brief, I am Scotland bound and based. The furthest away I normally get is our islands—I have not been to Rotherham, never mind Rotterdam. However, I am happy to look at the experience that David Stewart had there. I know that he was profoundly impressed with how the port in Rotterdam has been developed and how water freight has been deployed, and I am very mindful of the Infrastructure and Capital Investment Committee's work on freight, including waterborne freight.

Claudia Beamish made an extremely important point about the ownership of ports and harbours and the ability of communities to take advantage of the potential of their coasts. I absolutely support community ownership and new developments of ports and harbours. Claudia Beamish asked what support is available for that. There is the Community Empowerment (Scotland) Act 2015, under which ownership can be transferred. There is also the potential for control of the Crown Estate to come to Scotland, which could be used positively for local communities. I am very excited by the potential that exists for greater local benefit to be derived through the Crown Estate, as I have proposed in the islands prospectus. Exactly how that would be delivered is a matter for consultation, but we have established the principle that local communities should benefit from the Crown Estate in a way that they have not previously done.

Christian Allard reiterated Alex Johnstone's point about the bill being necessary and a "fine piece of legislation" that will hopefully serve its purpose. Alex Johnstone was right to remind us that, in itself, the bill might not satisfy the ONS. I hope that it does; it should, because we are meeting its expectations and addressing the concerns that it had conveyed to us. That said, the ONS might not give us the classification outcome that we want.

However, I still believe that the bill is worth passing, even if it does not address the classification issue, although I hope that it will. The bill is good to do and necessary, however limited it is. It will give the trust ports in Scotland the

certainty and confidence that they would appreciate from all sides of the Parliament, not least from the privatising tendency that is Alex Johnstone. He conceded that the bill is absolutely the right thing to do, which is a fair point.

That takes us to the wider importance of ports and harbours, which are of course identified in the national planning framework as critical to the infrastructure of Scotland. As we have developed terrestrial planning, which is spatial planning on land, and marine planning, we have increasingly looked to the coast for further sustainable economic growth, to which Claudia Beamish referred. That is one of the reasons why we ensured that Aberdeen in particular remained in NPF3; a number of members covered that issue.

Right now, the Scottish Government has responsibility for terrestrial planning—spatial land planning—and marine planning. The only planning that we are not responsible for and which is still reserved to Westminster is extraterrestrial planning—space—but we look forward to Scotland Bill amendments to capture even that issue. Of course, we may jest, but there is still the on-going issue of wanting to locate the spaceport in Scotland. A number of members here have an interest in that. [*Interruption.*] I see that we have developed a new precedent of animal noises in the Scottish Parliament; perhaps we inherited that from Westminster. However, I am sure that that is just a temporary phase that we are going through to get through this very necessary debate.

The Infrastructure and Capital Investment Committee pointed out the issue of mixed ownership. In terms of the overall composition of our ports and harbours, that is maybe not how we would design it if we were starting with a blank page. However, supporting trust ports is absolutely necessary.

Duncan McNeil referred to Greenock and Port Glasgow, and I think that those areas are an example in which the private sector has aspirations but could do much more. They are of course very popular in terms of not only tourism and cruise ships but wider shipping, and they have great potential for Inverclyde. I know that Duncan McNeil has warmly welcomed the award of the ferry contracts to Ferguson Marine Engineering Ltd in Port Glasgow, which has ensured jobs there. That example might expand as part of strengthening our ferry fleet.

The overall thrust of the bill has achieved all-party support. I will just say a word or two about why we have not taken forward the engagement around mediation, which we toyed with earlier in the bill's legislative process. The Government's view is that if there was a requirement for mediation, we could produce non-statutory guidance on mediation rather than have it in the



legislation in order to keep the bill absolutely focused on the issue of classification and not compelling trust ports to go down the road of privatisation, for the reasons that we have given.

The marine sector is important in Scotland. We do not want to inhibit growth in a maritime sector that was shown, in an Oxford Economics study that was published in May, to have contributed £1.8 billion to the Scottish economy in 2013 alone. The sector accounted for an estimated 1.7 per cent of the country's total benefit, and generated over £630 million in addition. Approximately one in four people who are employed in the maritime sector in the UK are based in Scotland.

We have described the three types of ports that we have in Scotland, and of course trust ports operate in a commercial environment, as has been described. We are addressing the bureaucratic issue and the privatisation issue, and I think that we are also giving confidence to the trust port model. I am sure that the sector will warmly appreciate the very positive comments about the role that the ports and harbours have in Scotland.

David Stewart revealed earlier, to help fill the time, that one of his favourite James Stewart films was about someone who was filibustering to fill the time. I can reveal that my favourite James Stewart film is "It's a Wonderful Life", and this is indeed a wonderful bill. I hope that the Parliament will endorse it unanimously today.

## Standing Orders Rule Changes (Scottish Rate of Income Tax, Consolidation Bills and References to Printed and Published)

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of three motions, in the name of Stewart Stevenson, on behalf of the Standards, Procedures and Public Appointments Committee, on various changes to standing orders. I call Stewart Stevenson to move motion S4M-14554, on a Scottish rate of income tax; motion S4M-14555, on consolidation bills; and motion S4M-14556, on printed and published. You have until 5.15.

17:09

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The proposed rule changes to standing orders come from three separate reports by the Standards, Procedures and Public Appointments Committee. I shall deal with each of them in turn.

The first set of proposals for change arises from the Finance Committee's request that the SPPA Committee consider how the provisions in the Scotland Act 2012 on the Scottish rate of income tax should be translated into standing orders. We propose some changes to standing orders to update the Finance Committee's remit to delete the reference to consideration of "tax-varying resolutions" and insert a new reference to the Scottish rate of income tax. We also propose to delete references to motions for "tax-varying resolutions" in standing orders and insert new references to Scottish rate resolutions.

We propose a revision to rule 9.16.7, which currently states that if a budget bill depends on a tax-varying resolution and the Parliament rejects the motion for the resolution, the bill falls. The new rule 9.16.7 provides that stage 3 of a budget bill may not start until any associated Scottish rate resolution has been made by the Parliament. We have taken that approach because there is considerable interdependence between the Scottish rate resolution and the budget bill. If the Parliament rejected the motion for a rate resolution, there would be a chance for the Government to propose a fresh motion and amend the budget bill accordingly. Finally, under this heading, we propose a procedure for the cancellation of a Scottish rate resolution if that should ever be required.

The second set of changes relates to how we handle consolidation bills. Those bills take existing pieces of legislation and consolidate them into a

single bill that does not change the substance of the law. The Minister for Parliamentary Business asked the SPPA Committee to look at changing the rules so that the Delegated Powers and Law Reform Committee, rather than a specifically established consolidation committee, could consider consolidation bills.

We considered whether to recommend that change. One advantage is that considering consolidation bills would link to the law reform element of the DPLR Committee's work, and the DPLR Committee is used to considering legislation purely from a technical perspective rather than considering the policy behind the law. Another potential advantage is that a separate committee would no longer need to be established. We therefore concluded that there should be a new option to refer a consolidation bill to the DPLR Committee, but that the option of referral to a consolidation committee should be retained.

The proposed standing orders allow the Parliamentary Bureau to decide which option for referral would be most appropriate on a case-by-case basis. For example, if the bureau decided that a consolidation bill should be scrutinised by a committee that shares a member with the relevant subject committee, it might be appropriate to refer the bill to a consolidation committee rather than to the DPLR Committee.

Finally, we looked at the current requirements in standing orders to "print", "publish" or "print and publish" various parliamentary documents. Some of those terms are used inconsistently. For example, there are requirements to print motions in the *Business Bulletin*, but there is only a requirement to publish the *Business Bulletin* itself.

**The Presiding Officer:** One moment, Mr Stevenson. There is far too much noise from members who are coming into the chamber. I ask them to do Mr Stevenson the courtesy of listening to him for one minute and 45 seconds.

**Stewart Stevenson:** The important point about those references is that the term "publish" could refer to publishing by electronic means, whereas the term "printed" requires the production of a hard copy. In addressing those inconsistencies, the committee became aware of a number of instances in which there is no requirement to publish marshalled lists and groupings at all, while Presiding Officer determinations in most cases require only to be notified. The committee therefore decided to take the opportunity to address those anomalies, too.

As an additional tidying-up exercise, we propose that the multiple references to "notified" in chapter 9A of standing orders, which relates to private bill procedures, are replaced with a single duty to

notify and publish all the determinations under that chapter heading.

I should make it clear that the changes are designed purely to bring consistency and clarity to the rules and do not dictate or encourage any changes to the current practice of publishing a range of documents in hard copy, since the term "publish" applies to either format.

I move,

That the Parliament notes the Standards, Procedures and Public Appointments Committee's 8th Report 2015 (Session 4), *Standing Order Rule Changes – Scottish Rate of Income Tax* (SP Paper 813), and agrees that the changes to Standing Orders set out in Annexe A of the report be made with effect from 30 October 2015.

That the Parliament notes the Standards, Procedures and Public Appointments Committee's 9th Report 2015 (Session 4), *Standing Order Rule Changes – Consolidation Bills* (SP Paper 814), and agrees that the changes to Standing Orders set out in Annexe A of the report be made with effect from 30 October 2015.

That the Parliament notes the Standards, Procedures and Public Appointments Committee's 10th Report 2015 (Session 4), *Standing Order Rule Changes – printed and published* (SP Paper 815), and agrees that the changes to Standing Orders set out in Annexe A of the report be made with effect from 30 October 2015.

**The Presiding Officer:** The question on the motions will be put at decision time.

## Decision Time

## Gaza

17:15

**The Presiding Officer (Tricia Marwick):** There are three questions to be put as a result of today's business. The first question is, that motion S4M-14297, in the name of Margaret Mitchell, on the Apologies (Scotland) Bill, be agreed to.

*Motion agreed to,*

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

**The Presiding Officer:** The next question is, that motion S4M-14595, in the name of Derek Mackay, on the Harbours (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Harbours (Scotland) Bill be passed.

**The Presiding Officer:** The Harbours (Scotland) Bill is therefore passed.

**The Minister for Transport and Islands (Derek Mackay):** Woo! [*Laughter.*]

**The Presiding Officer:** I propose to ask a single question on motions S4M-14554 to S4M-14556, on various changes to standing orders. If any member objects to a single question being put, please say so now. [*Interruption.*] Order.

No member has objected to a single question being put. Therefore, the question is, that motions S4M-14554 to S4M-14556, in the name of Stewart Stevenson, be agreed to.

*Motions agreed to,*

That the Parliament notes the Standards, Procedures and Public Appointments Committee's 8th Report 2015 (Session 4), *Standing Order Rule Changes – Scottish Rate of Income Tax* (SP Paper 813), and agrees that the changes to Standing Orders set out in Annexe A of the report be made with effect from 30 October 2015.

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**The Deputy Presiding Officer (Elaine Smith):**

The final item of business is a members' business debate on motion S4M-14128, in the name of Sandra White, on as Gaza withers, its people perish. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament notes the findings of the UN report that suggest that the Gaza strip could become uninhabitable by 2020 due to what it terms de-development, the process whereby development is not only hindered but reversed, stating that "Three Israeli military operations in the past six years, in addition to eight years of economic blockade, have ravaged the already debilitated infrastructure of Gaza, shattered its productive base, left no time for meaningful reconstruction or economic recovery and impoverished the Palestinian population in Gaza, rendering their economic wellbeing worse than the level of two decades previous"; can understand the feelings of many that the Israeli Government's action and inaction with regards to Gaza are deliberate and leading to the genocide of those living there; supports those Israelis, Palestinians, Jews and non-Jews alike from Glasgow, Scotland and around the world who believe in mutual respect and understanding as cornerstones to a just solution in Palestine and Israel while condemning violence and extremism in any form; further believes that this groundswell of support for justice will only grow should the current situation not change, and hopes that, mindful of such, wise counsel will prevail.

17:17

**Sandra White (Glasgow Kelvin) (SNP):** I am aware that previous debates that we have had on Palestine and Israel have tended to become somewhat polarised and that rather than focusing on the issue in the motion at hand, members have conflated it with wider issues. I understand that, because people are so passionate about Palestine and Israel. However, I lodged my motion for debate primarily in response to the United Nations Trade and Development Board report on developments in the economy of the occupied Palestinian territory, and although I acknowledge that since the report's publication, other events have inflamed an already volatile situation, I ask members to remain mindful of the motion at hand, rather than to focus on some of the wider issues that we all acknowledge exist.

Let us be clear. The issue is about people: it is about a humanitarian crisis that is unfolding before our eyes. Regardless of where we sit on the debate on the on-going situation between the state of Palestine and the state of Israel, we cannot ignore or turn a blind eye to their plight.

For the record, and for the avoidance of doubt, I say that I reference the state of Palestine in accordance with United Nations Security Council resolution 1397, which the UN adopted in 2002

and in which it affirmed the vision of a Palestine and Israel two-state solution.

Before the publication of the UN report, in May the World Bank published its economic monitoring report into the Palestinian territories, which provided some grim and damning reading. In the section “The destruction of Gaza’s Economy, Human Consequences and the Way Forward” the World Bank states that Gaza’s economy has been

“Tremendously damaged by repeated armed conflicts, the blockade and internal divide”.

The report goes on to state:

“income is 31 percent lower in Gaza than it was 20 years ago”.

Gaza’s manufacturing sector—some may find this unusual—was once very significant but it

“has shrunk by as much as 60 percent ... Gaza’s exports virtually disappeared since the imposition of the ... blockade.”

Nothing can explain that

“other than war and the blockade.”

The report goes on:

“The human costs of Gaza’s economic malaise are enormous ... if it were compared to that of other economies, unemployment in Gaza would be the highest in the world. Poverty in Gaza is also very high ... These numbers, however, fail to portray the degree of suffering of Gaza’s citizens due to poor electricity and water/sewerage availability, war-related psychological trauma, limited movement, and other adverse effects of wars and the blockade.”

According to the World Bank, the way forward

“requires a unified Palestinian government in both West Bank and Gaza which can be a partner to multilateral and bilateral donors and substantial donor support to rebuild Gaza’s infrastructure and homes, and it requires the lifting of the blockade on the movement of goods and people to allow Gaza’s tradable sectors to recover.”

It is important to note that those are not my words, but are taken directly from the World Bank report. That is what we must remember when we debate these issues—it is not simply a question of individuals stating facts; authoritative world bodies are stating those facts.

The UN report paints a similarly bleak picture, and highlights the dramatic effect of Israel’s withholding of Palestinian clearance revenues, which are VAT and import duties that are collected by the Government of Israel on behalf of the Palestinian National Authority. They are normally remitted monthly minus charges for electricity, water, sewerage and health referrals, and a 3 per cent administration fee. Those essential revenues, which represent 75 per cent of total revenue, were once again withheld for the first four months of 2015, which caused severe financial difficulties for

the Palestinian National Authority and, of course, for the people of Palestine.

We might ask ourselves—indeed, we might believe—that that revenue was withheld for good reason by the Government of Israel. However, it was withheld as a result of the Palestinian National Authority’s application for the state of Palestine’s membership of the International Criminal Court. Some may see it as a collective punishment for exercising international rights, but could it be an isolated incident? The answer is yes and no—yes, it was collective punishment and no, it was not isolated.

In 2000, clearance revenue was withheld for two years following the start of the second intifada. In 2006, it was withheld for one and a half years following Palestinian elections. In May 2011, it was withheld for one month following efforts at Palestinian national reconciliation. The list could go on.

The UN report also acknowledges that despite claims to the contrary, many of the hardships that are faced are not the results of inadequate leadership because, in fact, the economy of Palestine is that of “an occupied territory” and is therefore “undermined by occupation” rather than by policies that are pursued or by poor donor co-ordination.

As the motion states, the UN report notes:

“Three Israeli military operations in the past six years, in addition to eight years of economic blockade, have ravaged the already debilitated infrastructure of Gaza, shattered its productive base, left no time for meaningful reconstruction or economic recovery and impoverished the Palestinian population in Gaza, rendering their economic wellbeing worse than the level of two decades previous”.

In October 2014, during a visit to Gaza, the secretary general of the United Nations stated that the destruction was “beyond description”. That, for me, is the true cost of the Israeli Government’s policies towards Gaza—the cost to the people living there. It is estimated that 360,000 people are in dire need of treatment for mental health conditions. When it comes to children—Gaza’s future—400,000 of them are in need of immediate psychosocial and psychological support.

As the UN’s special co-ordinator for the middle east peace process said when visiting Gaza in April,

“No human being who visits can remain untouched by the terrible devastation that one sees here in Gaza and as shocking as the devastation of the buildings might be the devastation of peoples’ livelihoods is 10 times more shocking.”

That is why I am heartened by the number of Israelis and Palestinians—Jews and non-Jews alike—who wish to see a peaceful resolution to the situation and who, like me, condemn violence and

extremism in any form. It is vital that we continue to speak out against the injustices and that we continue to strive for a real peace deal.

I know that the Scottish Government has to date been strong, and has been one of the voices speaking out on the issue, so I commend it for doing so. However, the Government could do more. Scotland is in a unique situation and could offer its services to both sides, should they wish that. There is nothing to prevent us from looking to bring together representatives to discuss in an informal or neutral setting how we can go forward to achieve a just and lasting peace. I would be happy to work with the minister and anyone else—I am sure that other members would be, too—to consider ways of bringing Scotland's wise counsel to the table and stopping the terrible destruction in Gaza and Palestine.

**The Deputy Presiding Officer:** We turn to the open debate, with speeches of four minutes, please.

17:25

**Claudia Beamish (South Scotland) (Lab):** It is essential that the Scottish Parliament play its part in keeping in the public eye the injustice of the Palestinian plight, so I thank Sandra White for bringing the wide-ranging motion to the chamber and for her comprehensive analysis. In the short time that I have, I will focus on one part of her motion, which states that Parliament

“supports those Israelis, Palestinians, Jews and non-Jews alike from Glasgow, Scotland and around the world who believe in mutual respect and understanding as cornerstones to a just solution in Palestine and Israel”.

After Mr Netanyahu was re-elected in 2013, while speaking to the Israeli Parliament, he repeated a pledge to make “a historic compromise” in order to make peace with the Palestinians. He said:

“With a Palestinian partner who is willing to conduct negotiations in good faith, Israel will be prepared for a historic compromise that will end the conflict with the Palestinians forever”.

The coalition in Israel includes Mr Netanyahu's party, the centrist Yesh Atid party and the right-wing Jewish Home party. The line-up includes a strong showing of pro-settlement ministers, which shows the irresolvable tension within the Israeli Government. Mixed messages are being sent. There is an ancient Chinese expression, “Wu xin bu li”, which means, “Without trust, nothing stands.” Of course, trust must be based on truth.

I first learned of the plight of the Palestinians from my father, who was a regular soldier in the British Army and was based in Bethlehem during the mandate. Because he had witnessed the injustice of the settlement, throughout his political

life as a member of Parliament, he was an advocate for a Palestinian state and for support of refugees. Sixty years later, there is collective amnesia about the historical facts among many—although, of course, not all—Israelis. That is demonstrated by the Governments that they elect. Too often, other Governments and people across the world fail to understand the truth.

The Balfour project recently held an exhibition in the Scottish Parliament and, at the end of this week, it will host a conference in Durham to promote its film “Britain in Palestine 1917 to 1948”. The aim is to continue to raise awareness of the British mandate. In the words of the project,

“a homeland for the Jewish people has been achieved but the League's”—

that is, the League of Nations—

“trust to facilitate Palestinian independence is still to be fulfilled.”

Another film, “On the Side of the Road”, which was directed and written by Lia Tarachansky, focuses on the collective denial of the events of 1948. She is an Israeli who grew up in a settlement in the West Bank and who has come to understand the Israeli occupation and its implication for Palestinians. As well as telling of her awakening, the film tells the story of two war veterans, Tikva Honig-Parnass and Amnon Noiman, as they tackle their denial of their actions in the war against Palestine. Sandra White and I were interviewed by the director here in the Scottish Parliament for an introduction to the film.

As a co-convenor of the cross-party group in the Scottish Parliament on Palestine, along with Sandra White, Jim Hume and Jean Urquhart, I know that the CPG is determined to contribute to exposing the truth of the injustice. Initiatives to build mutual respect and understanding are essential, and there are many. One such initiative is the West-Eastern Divan orchestra, which was founded by Daniel Barenboim and Edward Said. The aim of the orchestra is

“to promote understanding between Israelis and Palestinians and pave the way for a peaceful and fair solution”.

In those and many other ways, young people in Israel can surely start to understand the essence of the Chinese proverb that I quoted. They are the Israeli electorate of the future. Of course, that is only a small part of working towards a just solution, but it is a significant one. “Without trust, nothing stands”, but the trust must be based on truth.

17:30

**John Finnie (Highlands and Islands) (Ind):** I congratulate Sandra White on the motion. Here we

are again discussing Gaza, but not in the positive terms that we would like.

We welcome the UN report—the UN is an authoritative world body, as Sandra White said—but the content will surprise no one. The discussion should be about people and the effect on them of the eight years of blockade, three wars in six years and the “accelerated de-development”—a strange phrase—in the Gaza strip. There are clearly human consequences to that. The blockade is often talked about in abstract terms, but it is real. There are 1.8 million Palestinians, and that number is expected to grow to 2.1 million by 2020.

The motion talks about justice, which is what I will focus on. I will talk briefly about the divestment programme but, first, I will talk about the arms trade.

The arms trade the world over has a pernicious effect on humanity. It is not an issue for others; it is an issue for Scotland and an issue for now. Sandra White asked what more we can do. We can commend the Scottish Government for the support that it has shown to Gaza but we can also legitimately criticise it because, last month, it gave £2.5 million to a military corporation that made \$3.614 billion of profit. That corporation is Lockheed Martin. I looked at its website today. It says:

“Lockheed Martin is proud of the significant role it has fulfilled in the security of the State of Israel. The company is proud of the C-130 and F-16 aircraft that are faithfully serving the Israel Air Force since the 1970s and 1980s.”

Presiding Officer, £2.5 million could have done a lot of good in Gaza. One of the many aid organisations that provides assistance there says:

“Many families in Gaza are literally on the breadline unable to cover the basic cost of living. Our family sponsorship project will help 120 displaced families with rent, food and medical expenses.”

The organisation encourages us to sponsor a family for a £200 a month. The sum of £2.5 million would be nine years’ support for those families.

Lockheed Martin is not alone. We have Raytheon in Glenrothes, which is also involved in Gaza. Some of us will be uncomfortable with talk of the arms trade and the fact that the white paper on independence mentioned the growth of the arms trade in Scotland, but we must link our fine words about peaceful resolution and humanity with our deeds.

I encourage people to support Gaza effectively through boycotts, divestments and sanctions. That movement started in 2005. It was inspired by South Africa—an example in which we can see positive development. Israel’s regime is one of occupation, colonialism and apartheid. It is attacking the basics of living.

Actions speak louder than words, so let us speak by our actions. It is shameful that, in the past two years, our parliamentary pension scheme has increased its investment in arms companies by 35 per cent, to more than £500,000. We must address that.

We must continue to condemn the collective punishment of the people of Gaza. I am on the side of proper housing, proper healthcare—including mental health care—a proper water supply and a positive future for everyone. That has nothing to do with race, religion or geography. I am happy to condemn violence. Discussion, words and debates such as this will move things forward.

I congratulate Sandra White on bringing the debate to the Parliament.

17:34

**Kenny MacAskill (Edinburgh Eastern) (SNP):**

I, too, congratulate Sandra White on bringing the debate to the Parliament and thank her for doing so. She has been a relentless campaigner for the cause of the Palestinian people, both here in Scotland and when visiting Palestine.

It is important that she mentions the report, which is not from people who could be accused of being standard bearers for the Palestinian cause. It is by not simply any United Nations organisation, but the Trade and Development Board, which considers the matter not necessarily from the point of view of the rights and wrongs that go back over generations in the middle east, but from the point of view of economic involvement and the practical impact that the situation has on the civic structure, civic society and the humanity that lives in Gaza. Therefore, we must take cognizance of it. The report deserves far more attention than it has received to date, and Sandra White performs a great service by raising it in this Parliament.

I will concentrate on two issues. First, the nature of the conflict in Gaza: what we have is a low-intensity war in an area of high-density population. The nature of the conflict has ebbed and flowed as intifadas have come and gone and rockets have rained down. Sometimes it has been a low-intensity conflict and sometimes it has been very high intensity. It has been waged on people not only by land, but by sea and air, because Gaza is surrounded on all sides and is dealt with quite harshly by Israeli defence forces. We must also remember that it is a very small area. As John Finnie mentioned, in Gaza, 1.8 million people live in 360 km<sup>2</sup>. The area is 65 miles long at its longest and between 3.7 and 7.5 miles wide. Those people are suffering as war is pursued at whatever level. The war varies in intensity but it has been on-going and the deaths and injuries are significant.

Of course, Israel says that it is attacked, and that rockets come out of Gaza. I put on record my condemnation of the rockets that are fired into Israeli civilian areas, but two things must be said. First, the response of Israel is entirely disproportionate and goes way beyond what could ever be countenanced. Secondly, as everyone knows, a cat that is put in a corner will scratch and, if the people in Gaza are treated like that, nothing else can be expected.

However, damage and loss of life are not the only issues. The report that Sandra White has drawn attention to states that, in 2014, the operation in Gaza resulted in 18,000 housing units being destroyed or severely damaged; 26 schools being destroyed and 122 being damaged; and 15 hospitals and 45 primary health centres being damaged. Israel is wiping out the infrastructure that civic society in Gaza requires if it is to be able to survive.

That takes me to my second point. Israel has created something that is to all intents and purposes a Bantustan. It is a society that cannot be expected to live as it is, because it requires access to areas beyond its borders, which have been encroached on by Israel. The issue concerns not only access to employment—unemployment is massive there; the rates are 80 per cent for young women and 44 per cent for the whole society—but matters such as access to water, because Gaza's water comes from outwith the area.

I am conscious of time, so I will just say that, in the limited space that Israel has allowed the Palestinian people in Gaza, civic society cannot be sustained. The final warning from the UN report is that, if trends continue and the Palestinian population rises to 2.1 million by 2020—only five years away—life will not be tolerable in Gaza. Things have to change. Israel has to allow Gaza to live, develop and breathe and to have a civic society that can be maintained.

17:38

**Jamie McGrigor (Highlands and Islands) (Con):** I, too, congratulate Sandra White on securing today's debate.

Like the United Kingdom Government, I readily recognise the severe suffering of the inhabitants of Gaza and want urgent action to be taken to alleviate the impact of occupation and improve the humanitarian situation. All of us will feel real sympathy for their plight. The UK is one of the leading international donors in terms of supporting the much-needed reconstruction efforts in Gaza and providing significant amounts of emergency assistance. The UK has provided £350 million to build Palestinian institutions, deliver essential services and relieve the humanitarian situation. I

am not saying that that is enough. We believe that other international donors should fulfil in full the financial pledges that they have made to provide support to Gaza, as the UK is doing. It is hugely disappointing that only around a third of the international aid that was promised at the 2014 Cairo conference on Palestine, which was called "reconstructing Gaza", has so far been delivered.

We are pleased that Israel has taken some steps to ease the restrictions in Gaza but want more to be done to allow an increase in exports from Gaza, to expand water supplies—which Kenny MacAskill mentioned—and to ease further the restrictions on the movement of people, fishing, electricity and waste water treatment. It cannot be acceptable to anyone that power outages in Gaza last for up to 12 hours per day and that 120,000 are still without a water supply.

However, we believe, too, that some action is needed from both sides, which is why we continue to call on the Palestinian Authority, led by President Abbas, to take steps to return to Gaza and advance reconciliation. The Palestinians must also take steps to address Israel's significant and legitimate security concerns. We should all recognise that Israel has faced an unacceptable barrage of rockets from Hamas and other militant groups. That is unsustainable. Israeli people cannot be expected to do nothing in the face of aggressive missiles.

At the end of the day, the aspirations of the Palestinian people cannot be fully realised until there is an end to the occupation. That will come only through negotiations, however hard that might be and however far away from a negotiated settlement we might be. I acknowledge recent events. Suffering and violence on both sides make it seem an even harder task. A negotiated two-state solution and a resolution through peaceful means is the only way of achieving any sustainable, long-term outcome for the region.

Making progress towards the two-state solution remains a foreign policy priority for the UK. The international community must strive harder than ever to work with both sides to find a comprehensive peace agreement that delivers an independent Palestine alongside a safe and secure Israel. We must not lose sight of that aim. All of us, including members of this Parliament, should support it and urge both sides to commit to meaningful talks. There is no alternative. Like Sandra White, I pray that wise counsel of Solomonic proportions will prevail and that the mutual respect and understanding that she mentions in the motion lay the cornerstones for a happier future.

**The Deputy Presiding Officer:** Due to the number of members who still wish to speak in the debate, I am minded to accept from Sandra White

a motion without notice under rule 8.14.3 to extend the debate by up to 30 minutes.

*Motion moved,*

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Sandra White.*]

*Motion agreed to.*

17:43

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I apologise for having to leave soon to chair a meeting of the cross-party group on rare diseases that was due to start at 5.30 but cannot start until I am there.

I congratulate Sandra White on securing the debate and reminding us again of the desperate situation in Gaza, which is graphically described in the report from the United Nations Trade and Development Board. Although members have already described many of the facts, it is important to keep stating those facts and to remind people of them, because many people perhaps wish to put them from their minds.

Gaza is home to 1.8 million Palestinians. More than 80 per cent of them live in poverty and are aid dependent, and 61 per cent are food insecure. There is no chance to grow a viable economy because the vital materials that are needed to plant crops and rebuild infrastructure are stopped at the checkpoints. The global shelter cluster, which works with bodies such as the office of the United Nations High Commissioner for Refugees to house displaced people, estimates that less than 1 per cent of the construction materials required to rebuild houses destroyed and damaged during hostilities have so far entered Gaza. There is no growth, no renewal and no jobs.

In 2014, the unemployment rate was 43 per cent—the highest in the world—and the youth unemployment rate exceeded 60 per cent. That should not have been allowed to continue for so long. It is a crime against multiple articles of the Geneva convention that Israel has perpetuated those conditions. As an occupying force, Israel has used the policy of separation and the illegal blockade to rip apart the economy, severing the links between Gaza and the West Bank and blocking off the important economic and cultural ties that once defined a vibrant people.

Article 33 of the fourth Geneva convention states that the collective punishment of a civilian population is a war crime. What we are seeing now, with the population on the brink of starvation, has been described as such an act by the European Union and the UN. It contravenes Israel's obligations under international humanitarian law and it is a mark of shame on the international community that many do not turn

their heads to it until the next rocket is fired or the next aerial assault is launched.

The crisis in Gaza is a slow daily march towards utter devastation, with each war bringing an unliveable reality closer. Those bright and hopeful children deserve better and their voices must be heard in making the case for change.

There is a different story to be told of Gaza and her people—one of potential, resilience and a tenacity to grasp hope in the ruins of despair. Gaza's children are among the most literate in the Arab world and they are imbued with a passion for learning. The culture and tradition of their land and their close connection to the sea and to the tending of their crops survive in the pages of their books. The height of their ambition is matched only by the height of the walls that lock them in—such is the nature of this conflict.

Natural gas is just one area that could help to rebuild Gaza's economic structure. There are many other examples in the agricultural sector, house building, teaching, medicine and fishing. There is nothing more heartbreaking than seeing the old men at the waterfront of Gaza city looking out to the sea where they have fished for generations. They stare out to sea knowing that the maritime blockade at 3 nautical miles is marked with Israeli military vessels that have been known to shoot at boats and destroy nets. The fear and sadness are worn into their faces. They are losing hope for themselves and for future generations.

Israel must lift the blockade immediately. It must honour its obligations as an occupying force in the occupied Palestinian territories. It must then allow a sustainable economy to grow and lift the land out of its current crisis. If it does not, further political deterioration and conflict will be inevitable.

The enormity of the crisis cannot be overestimated. I join others in the chamber today in calling for the international community to put pressure on Israel as an immediate priority.

17:47

**John Mason (Glasgow Shettleston) (SNP):** I thank Sandra White for bringing the debate to the chamber. I have to say that I detected a slightly more conciliatory tone in her speech than I had detected in the motion.

I did not particularly want to speak in the debate, because I have spoken before on Israel and Palestine and I think that I have made my position fairly clear. That position is that I believe that we should be doing all that we can—whether as Scotland, the UK or the EU—to bring about peace in the middle east.



I do not believe that peace will be brought about by giving either side unqualified support. I also do not think that we can achieve peace in the region without involving other players, such as Iran and Egypt. The problems in Gaza are not linked solely to Israel and Palestine.

However, on reading the motion, I felt that I should speak in the hope of giving a slightly different angle from the back benches. This subject stirs a lot of emotion on both sides, but I hope that we are mature enough as a Parliament to accept that there are two sides to the argument and that both sides have a degree of validity in their cause.

I will focus on a few words that appear in the motion. The motion refers to “justice” and a “just solution”. I certainly hope that we all support justice, but justice on its own can be quite a harsh concept. It is one of the words on our mace in the Parliament, but it is not the only word; “compassion” is another word that appears there. We need both those qualities when we talk about Israel and Gaza. We should look at the situation by seeking justice with compassion and we should encourage both sides to seek justice along with compassion for the other side.

The key word in the motion that made me feel that I had to speak today was “genocide.” It is a strong word that we should not use lightly. We are all prepared to use it in relation to the Nazis’ treatment of Jews and other groups in the Holocaust.

**Sandra White:** I will read out the dictionary definition of genocide, which is the deliberate killing or elimination of all or part of a racial, ethnic, religious, cultural or national group. I think that that is what has been happening in Gaza. I make no excuse or apology for using the word “genocide” in the manner that I did.

**John Mason:** I will continue with what I was going to say, which will answer or at least respond to Sandra White’s point.

I used the word “genocide” in a motion that I lodged about the Armenians in Turkey in 1915, which provoked a strong response from the Turkish consulate in Scotland. We can and should use the word when it is appropriate, but we need to be careful not to use it too loosely.

“Genocide” is defined in article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which refers to

“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

It goes on to give examples. The Nazis intended to destroy the Jews, but I do not think that there is

any evidence or serious suggestion that Israel intends to destroy the Palestinians.

This is not just an academic debate that we are engaged in. Criticism of Israel might not be intended to be an attack on the Jews but, in practice, it can be perceived in that way. The Jews in Glasgow and the west of Scotland tell us that they feel more threatened at present than they have done in living memory.

I am not here to defend the Israeli Government and its actions—it is well able to do that itself—but we need to decide what our aim is when we have such debates and more generally when we consider the middle east situation. I hope that we want to do all that we can to bring peace to that region and that we want to be as supportive as we can be to Jews who live in Scotland.

I very much agree with the final phrase in the motion, which is that “wise counsel will prevail.” “Wisdom” is also a word that is on our mace. I very much hope that we can see more wisdom in relation to Israel and Gaza.

17:51

**Cara Hilton (Dunfermline) (Lab):** I congratulate Sandra White on securing the debate and declare an interest as a member of the Scottish Palestine solidarity campaign.

Last week, Sandra White and I met Jim Malone and representatives of the Fire Brigades Union to discuss the situation in Gaza and across Palestine. I wish him and his colleagues well on their trip to Palestine later this week to support Palestinian firefighters in Nablus, Ramallah and Hebron and Israeli firefighters in west Jerusalem and to complete their documentary on firefighters under occupation. I know that the minister and the Scottish Government support their visit, and I hope that everyone across the chamber will wish them well.

It is just over a year since the Israeli Government’s operation protective edge destroyed the lives, homes, schools, hospitals and livelihoods of thousands of men, women and children in Gaza. After eight years of Israeli blockades, a United Nations development agency report says that almost all the population of Gaza have been left destitute and warns that Gaza could be uninhabitable within just five years.

Last year’s war not only killed 2,200 Palestinians, including 556 children; it displaced half a million people and left much of Gaza in ruins. According to the report, 20,000 Palestinian homes were destroyed or damaged, and 148 schools, 15 hospitals, 48 healthcare centres, 247 factories and 300 commercial centres were fully or partially destroyed. Gaza’s only power station

sustained severe damage. Israel's three military operations over just six years, together with the economic blockade of Gaza, mean that economic recovery is simply impossible.

It is therefore no surprise to learn that Gaza now has the highest unemployment rate in the world—it stands at 43 per cent. Kenny MacAskill highlighted that eight out of 10 women are out of work as a result of that. A staggering 95 per cent of the population in Gaza do not have access to clean, safe drinking water, and 72 per cent of households are affected by food insecurity. More than half receive food aid.

The economic blockade that Israel has imposed has devastated Gaza, isolated its people from the outside world and forced its population to rely on international aid. More than half the population of Gaza are under 18. Thanks to the blockade, those children, who should have everything to look forward to, are being denied the very basic essentials of life, collectively punished for being Palestinian and denied the basic human rights that every child has and should have under international law.

The time has come for Governments to take effective economic and political action to ensure compliance with international law; to force the Israeli Government to lift the blockade on Gaza; to halt the illegal settlements and the bulldozing of Palestinian homes; to end the apartheid policies that are destroying people's lives; to start to respect the rights and dignity of the Palestinian people; and to take action to ensure a two-state solution that respects the security, peace and freedom of both the Palestinian and Israeli populations. Sadly, the comments that Prime Minister Netanyahu has made in recent days and weeks do not inspire much hope of progress.

One of my constituents, Mia Oudeh, has hit the headlines in *The Herald* and *The National* today with a powerful letter to J K Rowling that highlights why a campaign of boycotts, divestments and sanctions is essential if we are to peacefully encourage Israel to comply with international law. I urge any members who have not done so to read her letter.

I hope that the Scottish Government will look at using the powers of procurement and divestment to support the Palestinian people and to address the issues that John Finnie raised about pension funds being linked to companies that are in the arms trade, such as Raytheon UK in Fife. I encourage consumers to use their purchasing power to boycott Israeli goods and send a message to Israel—just as we did to South Africa—that enough is enough. This is not about taking sides; it is about human rights, justice and peace. Every day that we do not act, Palestinians

and Israelis are paying the price of that failure to act.

We must use all our influence to make it clear to Israel that the blockades, the illegal settlements, the collective punishment and the breaches of international law must stop. My time in the debate is running out, just as time is running out for the people of Gaza unless we act. I thank Sandra White again for securing tonight's important debate.

17:56

**The Minister for Europe and International Development (Humza Yousaf):** I thank Sandra White for lodging the motion. I also congratulate her on her speech: she stuck to the important issue of the UN report, and I thought that her tone was measured. I congratulate members across the chamber, who also took a very measured tone on what can often be—quite rightly and understandably—an emotive issue.

Attempts to resolve the situation in Israel and Palestine have been under way for 60 years—more than twice the time that I have been alive. The argument could be made, unfortunately, that we are as far away and as distant as ever from a peaceful resolution. That is a damning indictment of the international community and of us all.

The deadlock brings devastating human consequences, as many members have highlighted. We have seen incitement of, and an upsurge in, that violence in the past few weeks. Dozens of people have been killed and hundreds have been wounded in the latest wave of hostilities alone. The Scottish Government unreservedly condemns all acts of violence, whichever party perpetrates them. It does not matter whether they be Muslim, Christian, Jewish, atheist, Palestinian or Israeli, because the deaths of all innocent persons are to be condemned and mourned equally.

The Palestinians and Israelis deserve peace and stability. As Sandra White's motion highlights, even during periods of relative calm, that is not the reality for hundreds of thousands of people in the region. The UN report on which the motion focuses makes for troubling reading. Gaza's economy has been battered by years of blockade and successive military offences. Socioeconomic conditions are at their lowest point since 1967 and unemployment in Gaza is at its highest recorded level.

Hamas is, of course, not a blameless party. A recent UN report accused it of war crimes for which it must answer. The bleakness of the situation is undoubtedly exacerbated by the enormous damage that last summer's military assault did to Gaza's infrastructure and to the very

assets that could otherwise help the local people to rebuild their economy and move towards self-sufficiency. Hospitals, health centres, schools, sewerage infrastructure and homes have been destroyed or damaged in significant number, which has caused living conditions to deteriorate further. As Cara Hilton and others said, that has made Gaza almost uninhabitable.

I agree with Sandra White that the situation in Gaza is unsustainable. I would go as far as to say that the Government believes that Gaza has been turned into the largest open-air prison in the world. The Scottish Government unequivocally condemns, in the strongest possible manner, the collective punishment of the people of Gaza.

The UN report underlines the urgent need for political progress. There has been some high-level progress since the report was published in July. Last month, for example, St Lucia became the latest country to recognise Palestine as a state. That means that 136 of the 193 UN members—two thirds of the world's countries—recognise the state of Palestine. It is no secret that the Scottish Government thinks that the UK should join that number. It is a fallacy and logical inconsistency of the highest order to say that we believe in a two-state solution while refusing to recognise one of the states involved. The UK Government should change its stance immediately.

Such a step might be viewed as being of symbolic importance, but it will not of itself improve the situation on the ground for people in Gaza. To secure a lasting peace in Israel and Palestine and stability and prosperity for the people who live there, a sustainable negotiated settlement is needed.

However, meaningful peace talks have stalled and local people's faith in the ability of talks to deliver is faltering. I read with interest that a survey last month by the Palestinian Center for Policy and Survey Research found that fewer than half the people in Gaza support the peace process and that fewer than 27 per cent believe that negotiations are the most effective way to secure a Palestinian state.

The international community must do its utmost to reverse such developments and to help to convince people in Palestine and in Israel that their interests are far better served by negotiation than by violence. I therefore welcomed last week's intervention by the UN's secretary general Ban Ki-Moon, who acknowledged the real anger and fear on both sides but emphasised that only a return to the peace process can prevent the current crisis from worsening.

Members asked about the Scottish Government's actions. We have consistently condemned obstacles to progressing the peace process, such as the continued expansion of illegal settlements—I use the term deliberately; we

view the settlements as illegal. We have strongly discouraged trade and investment from illegal settlements, and last year we published guidance for public purchasers on dealing with companies that might be involved with illegal settlements. Cara Hilton asked about that. Our procurement guidelines are a step in the right direction.

We have also directly supported the people of Gaza. Last year we gave £0.5 million to the UN Gaza flash appeal, to help to provide water, food, shelter and medical assistance. We also stood ready to provide medical assistance through plans for casualties of violence in Gaza to receive specialist care in Scottish hospitals.

While doing what we can within the limitations of our devolved competence, we have repeatedly called on the UK Government to use its influence to help to relieve suffering in Palestine, whether by taking in refugees or by calling for a ban on exports of arms to Israel—let me say to John Finnie and Cara Hilton that that includes exports from companies that are based in Scotland.

**John Finnie:** Will the minister take an intervention?

**Humza Yousaf:** I am about to respond to the member's point about Lockheed Martin, which I thought was well made. I do not know 100 per cent about the issue, but I think that criticism might well be fair enough. As a Government, we strive to do our utmost to meet the highest standards of ethical business, and if there is still work for us to do in that regard I am more than happy to discuss the matter with John Finnie.

The Scottish Government does not tolerate violence or extremism in any form in Scotland. Just as we condemn violence and extremism in Israel and Palestine, we condemn violence and extremism here when they are directed at our Palestinian, Israeli, Jewish or Muslim communities.

We all hope for peace in Israel and Palestine, but the anger and frustration that fuel much of the current violence will not subside unless there is hope for a better future. It is hard to see how such hope can exist when the conditions in Gaza, which are described in the UN report, make the prospects so bleak for the people of Palestine.

We urge all sides to work together to bring an end to the violence, to allow the people of Gaza and wider Palestine to build the prosperous future that is so vital to a long-term sustainable peace. Cara Hilton made the point well when she said that this is not about being pro-Palestine or pro-Israel, but is about being pro-human rights and pro-international law. That is where the Scottish Government's position lies.

*Meeting closed at 18:03.*



This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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