The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Tuesday 22 March 2016

Session 4

Tuesday 22 March 2016

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Scottish Parliament

Tuesday 22 March 2016

[The Presiding Officer opened the meeting at 10:00]

Time for Reflection

The Presiding Officer (Tricia Marwick): Good morning. The first item of business this morning is time for reflection. Our time for reflection leader today is the Rev Fraser Donaldson of Greenock Elim church.

The Rev Fraser Donaldson (Greenock Elim Church): Good morning. It is a tremendous privilege to be able to share with you today during time for reflection and, in particular, to be able to share during Easter week.

Easter is the greatest celebration of the Christian faith. In fact, all that Christians believe, live and worship is rooted in the cross of Jesus and his empty tomb. The cross, of course, speaks to us of forgiveness and the empty tomb speaks to us of life. It is the belief of every Christian that forgiveness is found in Jesus and that we can live in a very real, very personal and life-changing relationship with God as a result.

In the time and culture in which we live, there are, however, voices and opinions that seek to suggest that Christianity, the church and the message of Jesus are out of date, irrelevant and incompatible with society. Such opinions are framed as being rooted in a heart for equality and acceptance for all, but the truth is that the Christian faith is rooted and anchored in the exact same convictions. It is our belief that every person, regardless of ethnicity, sexuality, belief and personal journey, is equally loved by the God who created the heavens and the earth and that all are welcome to discover, explore and experience a life-changing relationship with Jesus.

The moment that the Christian message ceases to be relevant in culture and society is the moment that the experience of that message ceases to impact and transform people's lives and, therefore, stops being true. That means that there will never be a moment when the church and its message will be out of date or irrelevant, because Jesus Christ has been changing and transforming lives in this nation for over 2,000 years and he will continue to do so throughout the passage of time.

Of course, life and culture within a nation change and evolve with the differing challenges that each generation faces but, despite that, the message of Jesus never changes—it is timeless. The cross and the empty grave still speak to us today the same life-changing truth that they did 2,000 years ago: God loves, God forgives and God changes lives because God is real. The evidence of his reality is seen in towns, cities, villages and communities up and down this nation where the timeless, limitless love of God is pushing through the issues of life and culture and is breaking through the differing challenges of generations to transform life after life after life.

May God's reality and love transform the lives of those who serve in this Parliament in the same way as he is transforming the many lives of those whom this Parliament serves. This Easter, may you discover for yourselves the life-changing message that the cross and the empty grave communicate: God loves, God forgives and God changes lives because God is real and is at work in the nation of Scotland. God bless you and yours this Easter. Thank you for listening.

Parliamentary Bureau Motions

10:03

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-15997, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Burial and Cremation (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Burial and Cremation (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, those time limits being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 5: 45 minutes

Groups 6 to 8: 1 hour 30 minutes.—*[Joe FitzPatrick.]*

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S4M-15995, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Abusive Behaviour and Sexual Harm (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Abusive Behaviour and Sexual Harm (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 5: 55 minutes.—*[Joe FitzPatrick.]*

Motion agreed to.

Burial and Cremation (Scotland) Bill: Stage 3

10:05

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Burial and Cremation (Scotland) Bill.

In dealing with the amendments, members should have the bill as amended at stage 2—SP Bill 80A—the marshalled list, the corrections slip to the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division on the bill this morning. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who want to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 1A—Meaning of "burial authority"

The Presiding Officer: We move to group 1: meaning of "burial authority" and "burial ground". Amendment 2, in the name of the minister, is grouped with amendments 3 to 17, 20, 21 and 71.

The Minister for Public Health (Maureen Watt): This group of amendments makes a number of changes to references to burial authorities. Most of the changes are consequential on amendment 2, which alters the definition of a burial authority.

The effect of amendment 2 is that a "burial authority" is defined as the person who has

"responsibility for the management of the burial ground",

rather than the person who owns the burial ground. This reflects that some burial grounds, particularly private burial grounds, are operated by someone other than the owner of the land. It is important that particular duties are placed on the operator, and most of the amendments in the group give effect to that.

Amendment 3 provides a specific definition of "burial ground" for the purposes of section 2, which places duties on local authorities to provide burial grounds. The effect is to make it clear that a local authority is required to provide an open burial ground.

A number of amendments are required where the bill places specific duties on local authority burial authorities. Amendments 4 to 10 make drafting changes in connection with the change made by amendment 2. Those ensure that the

powers conferred on local authorities by sections 3 and 4 are not affected by the change in the definition of "burial authority" made by amendment 2.

Similarly, various drafting changes are required to references to the provision of a burial ground since it is not always the case that a burial authority is the person who provides a burial ground but is instead the person who has responsibility for the management of the burial ground. Amendments 11 to 17, 20 and 21 give effect to that.

Amendment 71 changes the definition of a "burial ground" that is given in section 75—the bill's interpretation section.

Amendments 3 and 10 adjust the meaning of a "burial ground" in sections 2 and 4, so that those sections now contain a bespoke definition that is more limited than the definition elsewhere in the bill. Consequently, the general definition of "burial ground" requires to be adjusted so that it does not apply to sections 2 and 4. Amendment 71 makes that adjustment.

I move amendment 2.

The Presiding Officer: No member has asked to speak on this group of amendments. Does the minister wish to wind up?

Maureen Watt: No.

Amendment 2 agreed to.

Section 2—Local authority duty to provide burial ground

Amendment 3 moved—[Maureen Watt]—and agreed to.

Section 3—Provision of burial grounds outwith local authority area

Amendment 4 moved—[Maureen Watt]—and agreed to.

Section 4—Joint provision of burial grounds

Amendments 5 to 10 moved—[Maureen Watt]—and agreed to.

Section 7—Right to erect building

Amendment 11 moved—[Maureen Watt]—and agreed to.

Section 8—Application to carry out burial

Amendment 12 moved—[Maureen Watt]—and agreed to.

Section 10—Burial register

Amendment 13 moved—[Maureen Watt]—and agreed to.

Section 12—Right of burial

Amendment 14 moved—[Maureen Watt]—and agreed to.

Section 14—Register of rights of burial

Amendment 15 moved—[Maureen Watt]—and agreed to.

Section 15—Right to erect headstone

Amendment 16 moved—[Maureen Watt]—and agreed to.

Section 20—Fees for burials

Amendment 17 moved—[Maureen Watt]—and agreed to.

The Presiding Officer: We come next to group 2, which is minor and technical amendments. Amendment 18, in the name of the minister, is grouped with amendments 19, 22, 28, 35, 42, 44, 98, 99, 69, 70, 72, 102 to 107 and 73

Maureen Watt: Amendment 18 is a structural change to the bill to move section 20 so that it sits with the sections relating to burial in a burial ground. It will be placed in the bill after section 15. It is a minor drafting change.

Amendments 19 and 22 are minor technical adjustments. They will ensure the system for applying for an exhumation and the issuing of guidance about burial authorities' functions operate effectively.

There have been a number of amendments to the bill in relation to stillbirth, including one that provided for a definition of "still-birth" to be included in section 75, "Interpretation". Amendment 28 removes the definition from section 47, and amendment 35 removes the definitions of "still-birth" and "still-born child" from section 47B. The definitions are provided in the interpretation section and are no longer needed in sections 47 and 47B.

Amendments 42 and 44 move sections 48 and 49, so that they appear after section 47. The amendments regroup the sections, following the insertion of new sections between sections 47 and 48 at stage 2.

Amendments 98 and 99 make minor changes to section 62, which confers powers on inspectors to enter certain types of premises. Amendment 98 will enable an inspector, if authorised by the Scottish ministers, to enter premises associated with the carrying out of functions of burial authorities and others. The approach will ensure that all activities of burial and cremation authorities

and funeral directors are dealt with, by giving inspectors the power to carry out inspections wherever necessary. Amendment 99 makes a necessary consequential change.

Amendments 69 and 70 change references to "documents or records" to "documents, records or registers". The effect is to make it an offence for a person to fail to comply with an instruction by an inspector to produce a document, record or register. The approach will ensure that an inspector can view information in each format, for the purposes of section 62.

Amendment 72 adds definitions of "still-birth" and "still-born child" to the interpretation section of the bill. Amendments 102 to 107 are minor, technical amendments to the table of repeals in schedule 2. Amendment 73 is a technical amendment, which ensures that the long title of the bill accurately reflects the bill's content, including the amendments at stage 2 and proposed amendments at stage 3.

I move amendment 18.

Amendment 18 agreed to.

Section 22—Exhumation of human remains

Amendment 19 moved—[Maureen Watt]—and agreed to.

Section 23A—Exhumation register

Amendment 20 moved—[Maureen Watt]—and agreed to.

Section 34—Register of restored lairs

Amendment 21 moved—[Maureen Watt]—and agreed to.

Section 35—Guidance

Amendment 22 moved—[Maureen Watt]—and agreed to.

Section 37—Cremation authority: duties

The Presiding Officer: Group 3 is on cremation authority duties. Amendment 74, in the name of the minister, is the only amendment in the group.

Maureen Watt: Amendment 74 updates section 37 to put beyond doubt that any regulations that the Scottish ministers make in relation to the operation of a crematorium can include provision about

"the operation of equipment for the carrying out of cremations".

I move amendment 74.

Amendment 74 agreed to.

Section 42A—Location of crematorium

The Presiding Officer: Group 4 is on location of crematorium. Amendment 75, in the name of the minister, is the only amendment in the group.

Maureen Watt: The purpose of amendment 75 is to remove from the bill section 42A, which was inserted at stage 2.

I said at stage 2 that I considered the kind of statutory minimum distance for which the amendment provided to be unnecessary, because decisions about the location of crematoriums are rightly a matter for the planning system, as are decisions about development adjacent to crematoriums. A statutory minimum distance is inflexible and arbitrary and is an unnecessary blunt solution. It has the potential to undermine the functioning of the planning system and place unnecessary restrictions on the provision of crematoriums and housing.

Throughout the bill's passage, I have said that the proposed location of a new crematorium is a matter properly dealt with by the planning system, and I continue to be of that opinion. All planning applications are determined on their individual merit, in accordance with the local development plan and all material considerations. What may be regarded as a material consideration is a matter for the planning authority concerned and might include matters such as privacy and decency, preservation of sanctity and tranquillity, traffic and increased footfall, which are all relevant to crematoriums.

The location and individual characteristics of the site and proposal are likely to be key considerations in decision making. None of that would be taken into account by a statutory minimum distance, which would simply be a rigid and arbitrary distance with no particular justification or purpose.

10:15

I understand the concerns that are at the root of section 42A. It is important that crematoriums are tranquil places of peaceful contemplation. Nonetheless, I continue to believe that the best way to achieve that is through the planning system. A 200m distance offers no guarantee of that. Indeed, section 42A says nothing about any kind of development other than crematoriums and housing, and it would not necessarily do anything to offer any kind of screening for the crematorium or take account of any other local circumstances.

In seeking to remove section 42A from the bill, I commit the Scottish Government to providing specific policy advice for planning authorities to assist in considering planning applications for crematoriums as part of the next revision of Scottish planning policy. Scottish planning policy promotes consistency while allowing sufficient

flexibility to reflect local circumstances. That would be the most effective way in which to ensure that planning authorities consistently consider relevant issues in the context of specific locations when they assess development applications for crematoriums.

Planning policy of that type is already provided by Scottish planning policy in relation to other types of development. For example, Scottish planning policy advises planning authorities to consider buffer zones between dwellings and some waste management facilities, and it advises on preferred distances for particular types of facilities. Similarly, community separation is one of the factors to be considered when planning for the location of onshore wind farms.

I know that some people are concerned that Scottish planning policy is not statutory. However, the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan

"unless material considerations indicate otherwise."

As a statement of ministers' priorities, the content of Scottish planning policy is a material consideration that carries significant weight. Setting out guidance about the location of crematoriums in Scottish planning policy will ensure that all planning authorities will consider crematoriums in a consistent way. It will allow local circumstances to be taken into account, which means that planning decisions about crematoriums will reflect local circumstances in a way that would not be possible with a statutory minimum distance.

Such issues are currently dealt with well by the planning system, and that is an appropriate way to address the issues that have been raised in relation to crematoriums. I want decisions about where crematoriums are located to be handled sensitively and consistently by the planning system, and I believe that the approach that I have outlined will achieve that.

I move amendment 75.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Section 42A is very odd. From reading it, I take it that there are two policy intentions: to protect residential properties that exist from having a crematorium built at the bottom of the garden, so to speak; and to protect the peace and tranquillity of crematoria, which the minister referred to, from the encroachment of nearby residential properties.

The immediate difficulty is that, if those are the policy objectives, section 42A is incomplete in that it does not in any sense prevent the redesignation of something that might be within 200m as a residential property. Therefore, by the way that it has been constructed, the section fails to meet one of the policy objectives.

The second issue that one might consider in relation to protecting the peace and tranquillity of the crematorium and the grounds, which often contain memorials to those who have been cremated, is that section 42A does not address a wide range of other things that might fall within 200m. Let us think about some things that might do that. A school, a play park, a cinema, a theatre, a public house or a restaurant might do so. If we want to protect a crematorium's peace and tranquillity, we would need to consider that issue and not simply ban residential properties.

Section 42A is not constructed in a way that would delivery adequately on either of the policy objectives. However, the minister—I speak as a former planning minister—makes an excellent point when she says that putting it into primary legislation is an odd way to deal with a planning issue. The national planning guidelines would be a much more appropriate place, because that would leave councils—who are the planning authorities—the discretion to make decisions that are appropriate to the circumstances before them. In particular, circumstances in a rural location may be very different from those that prevail in an urban location.

Perhaps with regret regarding the policy intentions of the person whose amendment inserted section 42A, we must remove the section at this stage and deal with the issue in a more appropriate way, via the planning system.

Rhoda Grant (Highlands and Islands) (Lab): I am concerned about amendment 75. The minister went on at length about planning policy. We would all hope that the planning authority would make reasonable decisions when considering a planning application. It would be perfectly reasonable for the planning authority not to consider a planning application for either housing or a crematorium within 200m of each other. However, we know that planning decisions are not always made properly. Section 42A, which is about to be removed, would give protection to residences and crematoria.

Congestion could cause huge problems for people who live close to crematoria, such as road safety issues for young families. In addition, the noise and disruption caused by residents could upset people who are attending a funeral at a crematorium.

John Mason (Glasgow Shettleston) (SNP): Is Rhoda Grant saying that a local authority would not be concerned about such matters?

Rhoda Grant: I sincerely hope that it would be, but in the past we have seen local authorities make decisions that fly in the face of such

concerns. Even in spite of campaigns by residents, planning permission has been granted for things that we would not see the sense of.

Another issue is at stake. Presiding Officer, you have spoken on the record about the role of committees in holding the Government to account. This is one of the rare occasions on which a committee has agreed to an amendment at stage 2 against the will of the Government and shown that committees actually have some teeth. It would be a bit sad if at stage 3 the Government used its weight and power in this chamber to overrule the Local Government and Regeneration Committee on one of the few times when a committee has raised its voice and held the Government to account.

John Wilson (Central Scotland) (Ind): The amendment that inserted section 42A at stage 2 was lodged to address an issue that had been identified by the Local Government and Regeneration Committee when it considered the bill at stage 1. During that stage, we looked at the Cremation Act 1902. Section 5 of the 1902 act, "Site of crematorium", stipulates:

"No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority."

In their written and oral evidence to the committee, a number of people quite clearly asked not only for that limit to be included in the bill, but that it should be modernised. The Federation of Burial and Cremation Authorities said:

"Rather than have the 200-yard and 50-yard rules removed, the FBCA would like legislators to take action to protect these vital locations and prevent the siting of subsequent developments literally up to the curtilage of the crematoria grounds."—[*Official Report*, *Local Government and Regeneration Committee*, 9 December 2015; c 3.]

That led the committee to say in its stage 1 report:

"The overwhelming majority of the evidence we received asked for the '200 yard rule' to be retained and strengthened. We also noted the substantial confusion around how this rule works in conjunction with the planning system. We find it undesirable that the Bill does nothing to tackle this level of confusion."

Stewart Stevenson: Will the member take an intervention?

John Wilson: No.

"We therefore recommend the Scottish Government takes cognisance of the issues raised and, in discussion with planning colleagues, brings forward an amendment at stage 2 which addresses these concerns."

The committee was concerned enough to make that recommendation in its report, whereby it asked the Government to address the issue at stage 2. The Government did not lodge an appropriate amendment at stage 2 and, today, it seeks to remove section 42A, which my stage 2 amendment inserted in the bill.

We also received written evidence from Falkirk Council, which has the experience of having housing built up to 110 yards from an existing crematorium. In its submission, it says:

"We disagree with removing the existing provision which restricts the proximity of new crematoria to housing. In our view there are risks involved in reducing or removing the 200 yards limit. In the case of Falkirk Council's crematorium, an extensive area of new housing has been developed to within 110 yards of the crematorium buildings."

It goes on to say that the

"degree of separation should not be determined by the planning process alone, because policies and provisions in Local Development Plan can be overturned on appeal by developers."

That is part of the issue. We need to be reassured that Scottish planning policy will address the issues that have been raised, but Scottish planning policy can be amended and changed, and the decisions of local planning authorities can be overturned by developers on appeal.

Therefore, it is clear that there is a need to retain in the bill provisions that protect not only crematoria, but local authorities in maintaining the barrier between crematoria and new housing developments against the wishes of developers.

I ask the Parliament to oppose amendment 75.

Kevin Stewart (Aberdeen Central) (SNP): A number of issues have been raised. We often find that there is conflict between different pieces of legislation. In this case, the conflict is between the 1902 act and various pieces of planning legislation and guidance. I for one am always keen to ensure that there is no conflict between pieces of legislation, and I think that section 42A, which Mr Wilson's amendment inserted in the bill at stage 2, would create such conflict. We should trust local planning authorities to take the decisions on such matters. After all, they are the folk who know the geography and topography of their areas.

John Wilson: Will Mr Stewart confirm that he was the convener of the Local Government and Regeneration Committee that produced the stage 1 report that asked the Scottish Government to consider the matter and to lodge an amendment to address the issues that had been raised by many of the witnesses from whom the committee took evidence?

Kevin Stewart: I was the convener of the committee, and I suggested that that be looked at. Mr Wilson's stage 2 amendment could have been better worded, if it was intended to deal with the conflict that exists between different pieces of legislation. His amendment referred only to

housing; it did not mention commercial property. I think that the building of a factory next to a crematorium or the building of a crematorium next to a factory would present more of a problem than would the building of housing next to a crematorium or the building of a crematorium next to housing.

Beyond that, what would happen when an application was made to locate a new crematorium in an area where there is already a crematorium with housing around it? One of the best examples of that is here in Edinburgh, where there is housing right next to the crematorium.

Common sense should come into play here. The commonsense approach would be to allow local authorities to look at the geography and topography of a particular area in determining what it would be suitable to build in that area. We should deal with the issue through planning guidance, as the minister has suggested. We should put our faith in local councillors to take the right decisions in their areas.

10:30

The Presiding Officer: I call the minister to wind up.

Maureen Watt: It is true that local authorities agree with a minimum distance, but they believe that they should make the decision. The Institute of Cemetery and Crematorium Management supports the use of the planning system, as do local authorities, as I said, such as Glasgow City Council and Scottish Borders Council.

As some members have said, distance is arbitrary. There might, for example, be a dual carriageway between a crematorium and housing. Kevin Stewart made an important point about what other than housing might be built next to a crematorium. As members mentioned, there are crematoria that have housing right round their perimeters and they manage to exist perfectly well. Furthermore, what John Wilson has proposed does not apply to other developments—including larger ones—that may well be intrusive.

I ask the Parliament to support my amendment 75.

The Presiding Officer: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As this is the first division at stage 3, I suspend the meeting for five minutes.

10:31

Meeting suspended.

10:36

On resuming—

The Deputy Presiding Officer (John Scott): We will now proceed with the division on amendment 75.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 61, Against 38, Abstentions 0.

Amendment 75 agreed to.

Section 46—Arrangements on death of adult

The Deputy Presiding Officer: We come to group 5. Amendment 23, in the name of the minister, is grouped with amendments 24 to 27, 29, 31 to 33, 36, 38, 41, 43, 45 to 54, 91, 92, 55 to 57 and 60 to 68.

Maureen Watt: In themselves, the amendments in this group do not have any impact on the meaning of the sections to which they relate; they are technical drafting amendments to ensure consistency of language throughout the bill. I believe that, with the change from the term "disposal" to the phrase "burial or cremation" or "buried or cremated", the language used is more appropriate and sensitive.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Maureen Watt]—and agreed to.

Section 47—Arrangements on death of child

Amendments 26 to 28 moved—[Maureen Watt]—and agreed to.

Section 47A—Arrangements on termination of pregnancy after 24 weeks

The Deputy Presiding Officer: We come to group 6. Amendment 76, in the name of the minister, is grouped with amendments 77 to 80, 30, 81 to 86, 86A, 87, 88, 34, 37, 39, 40, 89, 90, 93, 58, 59, 94, 95, 95A, 96 and 97.

Maureen Watt: Amendments 76 to 83 seek to make various changes to section 47A, which relates to a stillbirth that occurs as a result of a post-24-week termination, and their cumulative effect is to enable a health body to ask the woman what she wants to happen to the remains before the termination occurs. By virtue of amendment 77, health professionals must do that if they consider it to be in the woman's best interests.

Amendment 84 adds after section 47A a new section that gives various powers to health authorities where they are authorised to make arrangements by section 47A. Powers rather than duties are used in the section to provide additional flexibility. The effect of that is that health authorities will be able to make arrangements for the disposal of remains when they are authorised to do so by virtue of section 47A.

Amendment 85 adds a new section after section 47A that will place a duty on health authorities to give a woman the opportunity to make a decision about what she wishes to be done with the remains following a post-24-week termination. That will have effect when it appears to the health authority that no decision has been made under section 47A. The new section allows women to make a range of decisions, including authorising the health authority to make the arrangements. When the woman does not wish to or is unable to make a decision, or when she does not inform the health authority of a decision, the health authority may make arrangements for the burial or cremation of the remains.

Amendment 86 inserts a further new section after section 47A. The effect of that is that a health body will be able to ask a woman if she wants to make a decision about arrangements for burial or cremation before the loss occurs in the case of a stillbirth. The health professionals must do that if they consider that it will be in the woman's best interests to do so. The woman can choose to make the arrangements herself or to authorise the health body to make them. The woman will be

able to instruct the health body to make the arrangements as soon as practicable after the loss occurs. Otherwise, the health authority must wait for seven days after the loss occurs.

Amendment 87 inserts a further new section after section 47A that sets out the process that a health body must follow when it is authorised before the stillbirth occurs to make arrangements for the burial or cremation of the remains. That authorisation is given by the woman by virtue of the section that will be inserted by amendment 86. If the woman has specified how she wishes the health body to make the arrangements, it must do as she has specified.

Amendments 88 and 34 make various changes to section 47B. Amendment 88 inserts a new paragraph so that section 47B has effect when it appears to a health body that no arrangements have been made by virtue of the section inserted by amendment 86. That means that, when a health body does not ask a woman what she wants to happen to the remains before the loss occurs, it must do so after the loss occurs.

Amendment 34 adjusts the drafting in relation to requirements around the keeping of information. That does not alter the effect of the provision; it provides consistency with similar duties throughout the bill. Amendment 37 replaces a reference to the "appropriate" form with the "prescribed" form in section 47C.

Amendment 39 adjusts the drafting of section 47D so that a health body can make arrangements for the burial or cremation of remains when it appears that no arrangements have been made or are being made. Amendment 40 adjusts the drafting of section 48 so that it refers to the burial or cremation of remains rather than their disposal.

Amendment 89 inserts a new section after section 49 that provides health bodies with various powers in relation to the burial or cremation of remains of a pregnancy loss that occurs before or on completion of the 24th week. The new section applies when a health body is authorised to make arrangements by virtue of section 54A. It allows health bodies to make the arrangements and requires them to comply with any wishes that the woman might express about the burial or cremation of the remains. If a woman authorises the health body to make the arrangements for burial or cremation of the remains as soon as practicable after the loss occurs, it must do so. Otherwise, it must wait for seven days after the loss occurs before making arrangements.

Amendment 90 adds an additional criterion to the circumstances that must be met before section 50 can have effect. It must appear to the health authority that no arrangements for the burial or cremation of the remains have been or are being made.

Amendment 93 provides a definition of appropriate health authority for the purposes of section 52A. It is given the same meaning as it has in section 56.

Amendments 58 and 59 adjust the drafting of section 54 to add additional criteria to the circumstances that must be met before section 54 applies. Those are that it appears to the health authority that no arrangements for the burial or cremation of the remains have been or are being made.

10:45

Amendments 94 to 96 make changes to section 54A. Amendment 94 adjusts the criteria that must be met for the section to apply to include the woman being in the care of a relevant health body, clarifying when the section will apply.

Amendment 95 makes changes to section 54A so that a health body may ask a woman what she wishes to happen to the remains of a pregnancy loss before that loss occurs. In some instances, that may be preferable for the woman, and the amendment ensures that it can happen. Where the woman makes a decision, the health body must follow her wishes.

Amendment 96 moves section 54A to after section 49, placing it next to other provisions dealing with the same subject. Amendment 97 changes the section of the bill to which section 55 applies. That has the effect of requiring health authorities to keep a register of information in relation to sections 47A to 54, which cover pregnancy loss on or before 24 weeks, post-24 week terminations and stillbirths.

Where it is known that a pregnancy will result in a stillbirth or will be lost, amendments 86 and 95 place health bodies under a duty to give a woman the opportunity to say before the pregnancy ends what she wishes to happen to the remains. Importantly, health bodies are given the discretion to decide whether it is appropriate to ask a woman in advance or whether it is better to wait until the loss has occurred.

In some instances, a woman who knows that she will lose her baby may wish to start making arrangements in advance. In other instances, the trauma of being told that her baby will be lost may be so great that it would be better for her to make the decision after the loss occurs.

The approach that is set out in the amendments means that a health body can act accordingly depending on the interests of each individual woman who experiences such a loss. If the health body considers that it would be better not to ask a

woman before the loss occurs, it is nonetheless still a duty to give the woman the opportunity to decide after the loss occurs.

Amendments 86 and 95 have the effect of allowing health professionals to use their judgment as to whether it is better to raise this difficult subject with a woman before or after the loss occurs. That approach ensures that a woman's best interests are always the priority. It will always be the woman who makes the decision.

The intention of amendments 86 and 95 is to ensure that no woman is required to make that decision before she is ready to do so. The amendments provide that flexibility and person-centred approach.

The effect of amendments 86A and 95A in Malcolm Chisholm's name would be to remove the health body's discretion, meaning that, in every instance where it is known that a pregnancy will end or a stillbirth will occur, the health body must ask a woman what she wants to happen to the remains, regardless of whether the woman is ready to make that decision.

I think that that approach is unnecessarily rigid, removing the health professionals' ability to judge whether a woman should be confronted with the decision before the loss has occurred. If amendments 86A and 95A are agreed to, it will mean that every woman will be asked what she wants to happen to the remains of her pregnancy loss or stillborn baby while she is still coming to terms with the fact that her baby has died.

I move amendment 76.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): At stage 1, the minister said—and I totally agreed with her—that

"In setting out what will happen after a pregnancy loss, the bill ensures that the woman who has experienced the loss is at the centre of the decision-making process."—[*Official Report*, 11 February 2016; c 86.]

In committee, I was concerned that the following words, which are in three of the amendments in this group, appeared in relation to another situation:

"If the appropriate health body considers that it would be in the woman's best interests to do so".

The situation that was discussed in the Health and Sport Committee is one in which six weeks have elapsed and a decision has to be made about what happens to the remains. The minister argued that those words are appropriate because perhaps, in that situation, the woman should not be asked.

I reluctantly accepted that explanation, but when I saw the words attached to the situations that are described in amendments 77, 86 and 95, I was alarmed. It seemed that the principle of deciding the woman's best interest in a paternalistic way was being extended to those new situations. At the Health and Sport Committee, the minister said:

"If the woman is still involved in the process, it will be entirely her view that is taken into account."—[*Official Report*, *Health and Sport Committee*, 8 March 2016; c 15.]

It seemed to me that there was a potential loophole if, in various situations, the authorities could decide on the woman's behalf.

If the minister can confirm that it is purely a matter of timing, that of course completely changes the situation, but it is not apparent from the amendments, which were lodged on the last possible day, that that is the case. If the minister can confirm that it is purely a matter of timing and that, in those situations, the woman will always be asked, possibly after rather than before the pregnancy loss, I shall of course not move amendments 86A and 95A.

Bob Doris (Glasgow) (SNP): The minister referred to section 54A, which is being moved to another place in the bill. I welcome the provision in section 54A, which puts a duty on health boards where pregnancy loss is likely to occur. As I am sure many members know, there are many occasions when women are sent home knowing that their pregnancy is likely to end in a loss and those ladies and their families are given little choice. Section 54A will strengthen the power and increase the choice that those individuals and families have.

However, I note that the provision kicks in when the woman is "in the care of" the appropriate health authority. I seek clarification on that. At what point is it deemed that a woman is "in the care of" the appropriate health authority? Is it at a 12-week scan or once the general practitioner is informed that the lady is pregnant? At what stage do the obligations kick in? Perhaps a little more thought is needed on that, particularly for women and families who suffer from recurrent miscarriages and losing their unborn children.

Nanette Milne (North East Scotland) (Con): I welcome the minister's amendments in the group. I share Malcolm Chisholm's concern and look forward to hearing what the minister says about his amendments 86A and 95A. The Health and Sport Committee discussed the issues with bereaved parents. They are obviously sensitive issues. Those people feel strongly that the women's interests should be put first and that matters should be discussed with them so that they can make up their minds when they feel able to do so. That is the right way to go, so I am happy with the minister's amendments.

Maureen Watt: All provisions relating to pregnancy loss and stillbirth are based on

flexibility and the centrality of the woman in the decision-making process. The amendments that are proposed by Malcolm Chisholm would remove that important flexibility and would not best serve the interests of the woman who has just learned that her pregnancy will be lost. It is absolutely about timing. I believe that my amendments provide that timing.

Bob Doris introduces an issue that does not relate to these particular amendments and is more about early pregnancy loss.

I am happy that Nanette Milne believes that my amendments serve their intended purpose.

Amendment 76 agreed to.

Amendments 77 to 79, 29, 80, 30 and 81 to 83 moved—[Maureen Watt]—and agreed to.

After section 47A

Amendments 84 and 85 moved—[Maureen Watt]—and agreed to.

Amendment 86 moved—[Maureen Watt].

Amendment 86A not moved.

Amendment 86 agreed to.

Amendment 87 moved—[Maureen Watt]—and agreed to.

Section 47B—Arrangements on still-birth

Amendments 88 and 31 to 35 moved—[Maureen Watt]—and agreed to.

Section 47C—Section 47B: power of appropriate health body

Amendments 36 to 38 moved—[Maureen Watt]—and agreed to.

Section 47D—Section 47B: general power of appropriate health body

Amendment 39 moved—[Maureen Watt]—and agreed to.

Section 48—Disposal of remains: nearest relative

Amendments 40 to 42 moved—[Maureen Watt]—and agreed to.

Section 49—Sections 46 and 47: application to sheriff

Amendments 43 and 44 moved—[Maureen Watt]—and agreed to.

After section 49

Amendment 89 moved—[Maureen Watt]—and agreed to.

Section 50—Arrangements on pregnancy loss on or before 24 weeks

Amendments 90, 45 and 46 moved—[Maureen Watt]—and agreed to.

Section 51—Change in arrangements

Amendments 47 and 48 moved—[Maureen Watt]—and agreed to.

Section 52—Individual authorised to make arrangements

Amendments 49 to 54 moved—[Maureen Watt]—and agreed to.

Section 52A—Duty to transfer remains

Amendments 91 to 93 moved—[Maureen Watt]—and agreed to.

Section 53—Appropriate health authority authorised to make arrangements

Amendments 55 to 57 moved—[Maureen Watt]—and agreed to.

Section 54—Duty of appropriate health authority

Amendments 58 to 66 moved—[Maureen Watt]—and agreed to.

Section 54A—Duty of health body where pregnancy loss likely to occur

Amendment 94 moved—[Maureen Watt]—and agreed to.

Amendment 95 moved—[Maureen Watt].

Amendment 95A not moved.

Amendment 95 agreed to.

Amendment 96 moved—[Maureen Watt]—and agreed to.

Section 55—Duty to keep a register

Amendments 67 and 97 moved—[Maureen Watt]—and agreed to.

Section 56—Disposal of remains: duty of local authority

Amendment 68 moved—[Maureen Watt]—and agreed to.

Section 62—Powers of entry and inspection

Amendments 98 and 99 moved—[Maureen Watt]—and agreed to.

Section 63—Section 62: offences

Amendments 69 and 70 moved—[Maureen Watt]—and agreed to.

After section 66B

The Deputy Presiding Officer: We move to group 7. Amendment 1, in the name of Lesley Brennan, is the only amendment in the group.

Lesley Brennan (North East Scotland) (Lab): When I moved an amendment identical to amendment 1 at stage 2, the minister said:

"I support the principle behind the amendment."

Therefore, it is really welcome that the Government will support amendment 1.

The minister also said:

"Funeral costs have been debated repeatedly throughout the bill's passage. The bill's central purpose is to improve legislation governing burial and cremation".—[*Official Report, Local Government and Regeneration Committee,* 9 March 2016; c 30, 29.]

However, she added that she remained of the view that the bill was "not the right vehicle" to tackle funeral poverty.

The bill's central purpose, which I do not disagree with, does not exclude the provision of guidance on funeral costs and the desirability of such costs being affordable. Therefore, I welcome the Government's support for the amendment at stage 3.

The minister did not make any comments about the drafting of the amendment that I lodged at stage 2; rather, she suggested that such a provision did not need to be included in the bill. I felt differently, especially having read the consultation responses, so I lodged the amendment again.

In the consultation document on the bill, there was a section on funeral poverty in which the minister sought answers to questions. The questions primarily focused on local authorities, but the final question asked:

"What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?"

Amending the bill to incorporate a duty to produce guidance will improve the current position. The consultation responses suggested that, in some areas, third sector organisations have produced guidance on how to make funerals more affordable. However, coverage is patchy, and the amendment will ensure consistency of information throughout Scotland.

Citizens Advice Scotland states that 19 per cent of issues raised with Scottish citizens advice bureaux regarding bereavement relate to funeral poverty. I welcome the Government's support because, if the amendment is agreed to, it will be a start in eradicating funeral poverty.

I move amendment 1.

11:00

Kevin Stewart: I am pleased that the Government will accept amendment 1. We have some opportunities coming up, as has been discussed at the Local Government and Regeneration Committee and the Welfare Reform Committee, and the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil, has said:

"new powers over funeral payments will give us the opportunity to set up a benefit which is simpler and more streamlined."

The committee heard evidence about private companies and the profitability of funeral services and cremation in particular. I pay tribute to CAS for its work in the area, and I hope that the Parliament will accept the amendment.

Maureen Watt: There is no doubt that funeral costs continue to be an area of concern for many people, and the issue has been debated repeatedly throughout the bill's passage. Where possible, the bill supports greater transparency of costs. For example, the bill was amended at stage 2 to require local authorities to publish full details of their burial and funeral costs.

Funeral costs are complex as they are made up of a number of different elements. I know that it can sometimes be difficult to understand exactly what is included in those costs. I believe that it is important that costs associated with funerals are as transparent as possible. The approach should include clear pricing structures and clarity about which elements of a funeral are necessary and which are not.

There has been much discussion of making funeral costs affordable. That is undoubtedly an important aim, but it is not necessarily straightforward. For example, a person may choose a particular type of coffin or a particular floral tribute that increases the overall cost of the funeral. Numerous factors can affect the real cost of a funeral.

The Scottish Government has worked closely with funeral directors, burial authorities and cremation authorities in developing the bill, and will continue to do so when it is implemented. In particular, I am keen that funeral directors' costs should be more transparent and that people should know that they can choose certain elements but not others when they are arranging a funeral. That area will be addressed in implementing the legislation.

The Scottish Government is already working to address funeral costs generally and funeral poverty specifically. The Cabinet Secretary for

Social Justice, Communities and Pensioners' Rights, Alex Neil, is leading on important work to address funeral costs and funeral poverty. He has recently published advice for the general public about what they should do when they are faced with organising a funeral. That includes advice on costs, including ways to reduce costs while still providing a dignified and respectful funeral.

The cabinet secretary has also commissioned work on funeral poverty, and a report has been published. In response, the cabinet secretary is undertaking a range of work to address funeral costs, including speeding up the time that is taken to make decisions about funeral payments, once responsibility for that area has been devolved to Scotland. Officials who are developing policy on those issues have engaged with a wide range of experts, including academics from the University of Bath, as Lesley Brennan has mentioned in previous debates. That is important work that should have a significant impact on the underlying causes of funeral poverty in the long term.

Given the work that the Scottish Government is already doing to address funeral costs and our intention to continue working closely with the funeral industry on the issue after the bill comes into force, I believe that Lesley Brennan's amendment 1 would place an important marker in the bill, and as such I am pleased to support it.

Lesley Brennan: I thank the Government for agreeing to support amendment 1. We need to recognise that this is the start of the process of eradicating funeral poverty in Scotland. During stage 2, I recognised that power over social fund funeral payments and other consumer protection measures will come through the Scotland Bill. However, the provision on guidance that amendment 1 sets out in the bill is an important first step in eradicating funeral poverty. I welcome the Government's support for my amendment.

Amendment 1 agreed to.

Section 73—Regulations: consultation requirements

The Deputy Presiding Officer: Amendment 100, in the name of the minister, is grouped with amendment 101.

Maureen Watt: Amendment 100 removes section 73(6), which sets out consultation requirements in relation to regulations made about the licensing of funeral directors. The subsection is no longer required because amendment 101 inserts a new section that sets out fuller consultation requirements, as well as placing additional duties on Scottish ministers in relation to developing a licensing scheme.

Amendment 101 inserts a new section after section 73 that sets out a range of requirements in relation to any regulations made by Scottish ministers under section 66(1) about the licensing scheme for funeral directors. Before laying a draft of the regulations before Parliament, Scottish ministers will be required to prepare a draft of the regulations that they propose to make on which they must consult persons representing funeral directors and anyone else whom they consider appropriate. Ministers must have regard to any representations made during the consultation and must then lay the draft regulations before the Scottish Parliament. In addition, ministers must also lay a document that sets out how representations made during consultation have been taken into account in finalising the draft laid before the Parliament.

The convener of the Delegated Powers and Law Reform Committee wrote to me after stage 2 to set out the committee's on-going concerns about the power in the bill to make regulations about the licensing of funeral directors. I am confident that the original approach offered sufficient detail and safeguards, but I acknowledge the committee's concerns and have lodged these two amendments in response. I hope that the amendments reassure the committee and other members.

I move amendment 100.

Nigel Don (Angus North and Mearns) (SNP): I am, of course, the aforementioned convener of the Delegated Powers and Law Reform Committee, which welcomes the amendments as a response to its concerns.

Section 66 contains a revised power allowing the Scottish ministers to make regulations for or in connection with a licensing scheme for funeral directors' businesses. That power was subject to the affirmative procedure. Given the extent of the power and its potential impact on individuals, the committee encouraged the Scottish Government to lodge, at the very least, an amendment to attach an enhanced form of affirmative procedure to the power, which amendment 101 does.

However, the committee continues to believe that licensing regimes ought, as a matter of principle, to be set out substantially in primary legislation rather than delegated entirely to regulations. The committee accepts that some matters of technical or administrative detail relating to such schemes could appropriately be set out in regulations but is of the view that the delegation of power to create an entirely new licensing scheme in subordinate legislation—whether under this bill or any other bill—does not strike an acceptable balance between primary and secondary legislation.

Accordingly, the committee's preference would have been for matters relating to the licensing of funeral directors' businesses to be set out more

fully on the face of the bill. The committee acknowledges the time constraints and appreciates that it has not been possible to develop such detail on the face of the bill. It therefore accepts that an enhanced form of affirmative procedure will enable the Parliament to scrutinise and influence the development of the proposals on licensing before the regulations are laid for approval in accordance with the affirmative procedure.

I see that the Minister for Parliamentary Business is here. It would have been helpful to the committee if there had been some recognised form of words about enhanced scrutiny to cover the issues involved in, for example, preparing a draft, consulting, laying a document that summarises representations and describing the changes in the affirmative procedure that are in front of us. I understand that we may not want such a form of words laid down in statute, but if we and the Government had such a form of words to refer to, it might make life an awful lot easier.

Maureen Watt: I am happy that the convener of the Delegated Powers and Law Reform Committee is pleased that I have gone some way towards addressing the committee's concerns. In the next session of Parliament, I am sure that another committee will take responsibility for looking at funeral directors and how we can make sure that the funeral industry addresses citizens' needs.

Amendment 100 agreed to.

After section 73

Amendment 101 moved—[Maureen Watt]—and agreed to.

Section 75—Interpretation

Amendments 71 and 72 moved—[Maureen Watt]—and agreed to.

Schedule 2—Repeals

Amendments 102 to 107 moved—[Maureen Watt]—and agreed to.

Long Title

Amendment 73 moved—[Maureen Watt]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Burial and Cremation (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-15996, in the name of Maureen Watt, on the Burial and Cremation (Scotland) Bill. Before I invite the minister to open the debate, I call the cabinet secretary to signify Crown consent to the bill.

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): For the purposes of rule 9.11 of the standing orders, I wish to advise the Parliament that Her Majesty, having been informed of the purport of the Burial and Cremation (Scotland) Bill, has consented to place her prerogative and interests, in so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

The Deputy Presiding Officer: Many thanks. I call Maureen Watt to speak to and move the motion.

11:11

The Minister for Public Health (Maureen Watt): I am delighted to open the stage 3 debate on the Burial and Cremation (Scotland) Bill. I thank the Delegated Powers and Law Reform Committee, the Local Government and Regeneration Committee and the Health and Sport Committee for the rigour with which they each considered the bill.

The subject matter of the bill is not something that many of us are keen to think or talk about. Nonetheless, the bill addresses important matters. It is vital that burial and cremation processes are robust, consistent and fit for 21st century Scotland. Recent events—as well as evidence taken at stage 1—suggest that that has not always been the case. The bill makes important and much needed changes to the burial and cremation processes, and it will help to ensure that those processes are easy to understand, reliable and fit for purpose.

The existing legislation for burial and cremation is extremely old. The legislation for burial dates back to 1855 and current cremation legislation is from 1902, when cremation was a new and largely untested process. We have come a long way since then, but current legislation continues to reflect older and very different expectations about death and what should be done with human remains. As our attitudes change to death, the treatment of human remains and how we remember the dead, the current legislation is increasingly found wanting. It is right that we should put in place legislation that reflects modern

Scotland and supports our expectations for the respect and dignity with which human remains should be treated. I believe that the bill will do that.

The bill's passage has been marked by broad agreement about the need for new legislation and by support for the bill's key provisions. Nonetheless, key areas of the bill have undoubtedly been strengthened by the parliamentary process. In particular, the provisions relating to stillborn babies and pregnancy loss have benefited greatly from the evidence given by various people at stage 1, and from the recommendations that were made by the Health and Sport Committee. Much of the bill is based on recommendations that were made by Lord Bonomy's infant cremation commission. It is particularly important that the provisions of the bill address problems that have arisen in the past.

Some of those who gave evidence to the Health and Sport Committee were healthcare professionals, who drew on years of experience working with people who have suffered the devastation of losing a pregnancy or a baby. I am pleased that the bill reflects that collective experience.

Others who gave evidence had personally experienced such a loss and, in many instances, had also been affected directly by past failings in relation to the disposal of ashes. Indeed, many people whose losses were compounded by the torment of not knowing what had happened to their babies' remains have been involved with the development of the bill as well as with other non-legislative work that has emerged from Lord Bonomy's report. I thank them for their continued commitment to ensuring that such mistakes will not happen again.

At stage 2, a number of amendments were made to the processes that will apply in the case of a pre-24-week pregnancy loss or a stillbirth. Those will provide improved clarity and consistency while ensuring that women are not rushed into making decisions before they are ready. The woman who experiences the loss is rightly placed at the centre of the process, and at every step of the process she will have the opportunity to make decisions about what she wants to happen to the remains. Several of the amendments that I lodged today at stage 3 provide additional flexibility, ensuring that women have every opportunity to make a decision about what they wish to do.

An important point that emerged from stage 1 was the tension that exists between ensuring that a woman is able to make a decision in her own time and ensuring that remains can be buried or cremated when it becomes clear that the woman does not wish to make a decision. The bill initially set out a six-week period between a loss occurring and a decision being made about burial or cremation. Although it was always the intention that a hospital could go beyond that six-week deadline when a woman was still trying to decide what should happen to the remains, the bill was amended at stage 2 to provide a clearer route for that to happen. In developing provisions about pregnancy loss and stillbirth, we have ensured that the woman is always at the centre of the decision-making process. That extends to situations in which it is known in advance that a pregnancy will be lost or will result in a stillbirth. The hospital must ask the question, but the bill gives the health professionals the discretion to decide whether it is best to ask the woman before or after the loss occurs.

Other amendments were made to the bill at stage 2 to set out a clear process for what should be done with ashes. Those amendments will make sure that a cremation cannot be carried out unless the applicant has stated what he or she wishes to be done with the ashes. Cremation authorities are placed under a duty to carry out the applicant's wishes. The bill sets out a clear process for cremation authorities and funeral directors about what should happen when ashes are not collected as agreed. Those are important steps that will provide consistency and clarity about what will be done with ashes.

There has also been considerable debate about the location of crematoriums in relation to housing. I am glad that the matter will now be left in local authorities' hands and that those who make the planning decisions will decide on the locations. It is a matter that is sensibly placed with local authorities. As I said in speaking to my amendment about the separation distance, the Scottish Government will produce specific planning policy on the issue that will set out the issues that planning authorities should consider in assessing development proposals for crematoriums, which will include steps that can be taken to support a quiet environment. Such guidance will be included in the next revision of the Scottish planning policy. Guidance on separation distances between particular types of development and housing is already contained in the Scottish planning policy, and it is right that matters relating to crematoriums will also be set out there. That will ensure a consistent approach in the siting of crematoriums while leaving scope for appropriate local decisions to be made.

The bill will bring about important improvements to burial and cremation, creating a system that meets the needs of modern Scotland and prevents a repeat of previous mistakes. I hope that the Parliament will pass the bill at decision time.

I move,

That the Parliament agrees that the Burial and Cremation

(Scotland) Bill be passed.

11:19

Jenny Marra (North East Scotland) (Lab): I would like to start in the same way as the minister by thanking the Health and Sport Committee, the Local Government and Regeneration Committee and the Delegated Powers and Law Reform Committee for their careful and scrupulous consideration of the bill over the past few weeks and months.

As the minister said, this is an extremely important bill. It addresses crucial issues around death with dignity and the importance of ensuring that all our loved ones and all our citizens have a dignified death and burial or cremation, that families are able to afford to give their loved one that dignity and that the appropriate arrangements are in place by statute to enable that.

The bill's passage in the last days of this parliamentary session has given me time to reflect on some of the representations that I have had over the past five years. Constituents have come to my surgery with issues and difficulties to do with death, burial and cremation. I am sure that many other members share that experience. Therefore, I very much welcome the improved arrangements that the minister outlined for how we deal with death and burial and cremation in Scotland today.

I will explore a few of the issues that we discussed at stage 3, because the bill has been a good example of legislation evolving through the stages of the parliamentary process. The most sensitive issue—and probably by far the most important one—that the bill has dealt with has been women's decisions on what happens to the remains of their unborn children following stillbirth, pregnancy loss or termination. The Scottish Labour Party very much welcomes the Government's amendments today. The minister has made great improvements on the clarity of the process for the families and the health bodies.

Malcolm Chisholm's amendments identified a potential loophole, but it was good that the minister was able to confirm that the intention of her amendments was to do with timing, and Parliament was in complete agreement that the bill is putting in place the correct and most appropriate and sensitive arrangements. That is to be very much welcomed.

On the issue of exclusion zones, I briefly argued at stage 1 that such decisions should rest with the local planning process, which is the decision that the Government has taken today. However, at stages 2 and 3 we were persuaded by the arguments for the amendments to provide that no residential property should be constructed within 200m of any crematorium. The evidence was strong on both sides of the argument. Although we took the position that I have outlined, it is good that we have come to an overall position on the matter today.

My colleague Lesley Brennan has raised persuasive issues on funeral poverty since she came to the Parliament. Lesley Brennan and I, as well as other members, are very aware of the funeral poverty issues in some of our more deprived communities, where people's experience is that they simply cannot afford to bury their loved ones. I think that I said at stage 1 that it is a hallmark of a civilised society that there are arrangements in place that allow everyone to have a dignified funeral, whether that be a burial or a cremation. That some families in the country simply cannot afford the costs is an issue that the next Parliament will need to look at seriously.

I am glad that the powers over funeral payments are being devolved, and that the Cabinet Secretary for Health, Wellbeing and Sport has commissioned a report on funeral poverty. If I am returned to the Parliament, I certainly intend to work on the matter and follow it closely to ensure that we make strides on it. I commend the work of citizens advice bureaux on the issue. They have highlighted very starkly the issues of funeral poverty across the country. It was good that the Government was today able to accept Lesley Brennan's amendment on funeral costs. As she said, this is just the start of the important process of trying to eradicate funeral poverty in Scotland.

Nigel Don, as convener of the Delegated Powers and Law Reform Committee, was left to deal with some of the intricacies of the bill. Like him, I would prefer arrangements for a licensing scheme for funeral directors to be set out in primary legislation rather than left to regulation. Such an approach would make for clearer and better law. However, I am glad that the affirmative procedure will help the next Parliament to scrutinise the development of a licensing scheme. For reasons that I have set out, and given the issues to do with funeral poverty, such scrutiny will be important. We will follow the issue intensely in the next session of the Parliament.

The Deputy Presiding Officer: Thank you.

I call Dr Nanette Milne. Members might want to note that this is Dr Milne's valedictory speech. On behalf of the Parliament, I would like to thank Dr Milne for her many years of dedicated service to our Parliament. [*Applause*.] She has been a figure of honest endeavour and, if I may say so, she has at times been undervalued, even by her own party. Dr Milne, thank you very much.

11:26

Nanette Milne (North East Scotland) (Con): Thank you very much for those kind words, Presiding Officer.

Of the seven bills that the Health and Sport Committee dealt with during this session of the Parliament, six have been before us during the past five or six months. This final stage 3 debate brings to a close a particularly busy session that has been quite onerous for committee members, clerks and support staff—no doubt that is the case for ministers and their staff, too. The committee clerks have done a tremendous job and have managed to retain their sense of humour even over the most nitpicking changes to their carefully written draft reports. I greatly admire their tenacity.

The bill is a welcome piece of legislation and is much needed, given that the law around burial is well over a century old and no longer fit for purpose in the modern world. The proposed legislation on cremation should prevent the traumas that were experienced by the many still-grieving parents who have no idea what happened to the ashes of their infants and still-born babies following cremation.

It was the discovery in 2012 that cremation authorities in Scotland had different practices for the recovery of ashes from the cremation of babies, and the severe distress that that caused to bereaved parents, that led to Dame Elish Angiolini's report on practice at Mortonhall crematorium and the establishment of the infant cremation commission, which Lord Bonomy chaired. The commission examined the policies, practices and legislation relating to the cremation of babies in Scotland, and its recommendations in 2014 led to the publication of a voluntary code of practice on baby and infant cremations, which the bill will make binding on relevant authorities in the funeral industry.

There were significant concerns around the drafting of the bill as introduced. A particular concern was the large amount of detail that was left to regulation rather than being set out in the bill. A deal of work will be required during the next parliamentary session, but significant amendment of the bill at stages 2 and 3 has resulted in a better and stronger piece of legislation.

At the last meeting of the Parliament's cross-party group on funerals and bereavement, which I have co-convened for a number of years, there was general consensus that the bill as amended at stage 2 was acceptable and indeed welcome, and the group made no suggestions for further amendment ahead of today's stage 3 proceedings. There was agreement that electronic records are needed in this day and age, although there was less willingness to accept the need to license funeral directors, most of whom already follow the code of practice of the National Association of Funeral Directors. Very few funeral directors give the industry a bad name. I am sure that the group will also welcome the agreement to provide guidance on funeral costs.

It appears that the bill has widespread support, from the bereaved and from people who are responsible for dealing with the burial or cremation of loved ones. There is a great deal of sensitivity surrounding the issues that the bill deals with, and the Parliament's committees and staff have done their very best to ensure that the bill's passage has been handled in a mature and sensitive manner.

As I said, the Health and Sport Committee scrutinised several bills during this session, as well as doing a number of other important pieces of work. However, we have had no time at all to look at previous legislation. That lack of post-legislative scrutiny in a unicameral Parliament will have to be considered in future, as critical appraisal of work in a Parliament such as ours is very important, particularly when there is a majority Government.

As I come to the end of my speaking time in the Parliament, I acknowledge with gratitude the help and support of many people who spare no effort in looking after us in this building. That includes all the Parliament support staff—those in security, the postal service, the canteen and Queensberry lounge, the Scottish Parliament information centre, the official report and many others whom I have no time to mention. I also acknowledge the excellent work by the Deputy Presiding Officer, his colleagues, the committee clerks and my party's hard-working researchers in our press and research unit. In particular, I must mention my own team of Miles Briggs, Dom Heslop and Lindsey Walls, whom most members know. They have been rocks of support and help to me over the years and are now more like family than employees.

I have enjoyed my contact and friendship with fellow MSPs in my party and across the chamber, and I have particularly enjoyed sharing the health brief with Jackson Carlaw, whose astute and witty comments have often enlivened a long Thursday afternoon of debate.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): No pressure, Jackson.

Nanette Milne: Jackson Carlaw quickly absorbed the detail of our health service, which I have lived and breathed for a long time.

It has been a privilege to represent the great folk of north-east Scotland for the past 13 years and to meet the many people whom I have got to know down here through committee work and the many

cross-party groups that I am involved with. However, I am looking forward very much to getting back to my long-suffering husband and family, to re-engaging with many friends in Aberdeen and beyond, and to paying a bit more attention to my home and garden.

When I met the late Tom McCabe's widow showing her young daughter around Parliament last week, I was reminded of my maiden speech in 2003. That was in a members' business debate on north-east dentistry, to which Tom McCabe replied in his role as health minister. During his speech, he inadvertently referred to me as Nanette Newman, who was quite a famous film star in her day—she is probably not known to younger members. Poor Tom McCabe could not understand what he had said to result in such loud laughter all around him, and I dined out on his mistake for quite some time.

Thirteen years on, I think that I am the oldest member of the Parliament. Therefore, there is perhaps a degree of irony in the fact that my final contribution is at stage 3 of the Burial and Cremation (Scotland) Bill. We will, of course, support the bill at decision time. [*Applause*.]

The Deputy Presiding Officer: We wish you every success in the future, of course.

We move to the open debate, with six-minute speeches.

11:32

Bob Doris (Glasgow) (SNP): I enjoyed Nanette Milne's valedictory speech, although she had me googling Nanette Newman to double check that I know who that is, and I do. Unfortunately, I am not that young; I just wanted to check that I was right.

I thank Nanette Milne for all her hard and diligent work on the Health and Sport Committee, which she was a member of, with me, for a number of years. I very much appreciate the constructive partnership approach that she took and I wish her the very best for the many years of her retirement outwith the Parliament. I suspect that she will be back to the real world rather than the bubble of Holyrood. I give her best wishes for her retirement.

I also thank all the witnesses who gave evidence to the Health and Sport Committee and the range of committees that took evidence on the bill. Most of all, I thank the families whom other MSPs and I met, who came forward bravely, fiercely and diligently to make their voices heard about the shortcomings in the service that should have been their due, that they expected and that should have been delivered to them when they had the most horrific experiences of their lives. They were let down by the organisational framework and people who failed in their service to them. I thank the parents who came forward to help to shape the bill.

I have written down a few words about what I think the bill is about. For me, it is about bereavement and loss as much as anything else. That thread runs through it all. When a person suffers bereavement and loss, it is about feeling in control and knowing that there is transparency and certainty in the process that they face, that there is compassion along the way, that there is sensitivity and flexibility to deal with the loss in the way that they see fit, and that they have that choice.

At the bottom of it all, there is also the expectation that when someone loses a loved one, they should be able to choose how that person's remains are dealt with, and that there will be ashes, should they wish to have them. It is said that 99.9 per cent of the time we should expect to get the ashes of loved ones who have passed away. The bill should ensure that people can get them every time.

The legislation that underpinned things was archaic and fragmented, and, to be frank, it was poor and shoddy. The bill as amended at stage 3 provides a coherent statutory framework with which to take forward a modern way of dealing with these tragic events.

When we considered one of the stage 3 amendments, I intervened on the minister in relation to section 54A. The minister quite rightly said that the amendment that we were discussing did not refer to section 54A, but I wanted to make a point about pregnancy loss and situations in which pregnancy loss is expected. A powerful aspect of the bill is that it expects higher standards of care across the national health service when expectant mothers lose their babies, whether that happens before or after 24 weeks of pregnancy. They will be given the choices that too often they have been denied. I said during consideration of amendments that many mums are sent home and told that they can expect a miscarriage or pregnancy loss in the next week or so, and they have to deal with the pain and grief that surrounds that tragedy. Section 54A affords those mums the same choice, power, protection and control that others who go through similar horrific experiences have—they should always have had that.

We must build on the bill and we must look at the continuum of loss and bereavement, from when it happens in pregnancy to when it happens in old age. We must draw the issue right down to recurrent miscarriage and early pregnancy loss, how we deal with the mental health of expectant mums and how we support families in relation to that, and how we ensure that when they lose their unborn children, we deal with that loss in a very sensitive way that gives them the maximum

amount of choice. The NHS has not always got that right.

The Parliament can legislate any way that it likes. The key aspects of this issue are empathy, respect and dignity, and the conversations that people have, whether that is NHS staff having conversations with mums who experience pregnancy loss or funeral directors having empathy and compassion in the discussions that they have with families who experience loss. We cannot legislate for those things; we have to hope that the human condition makes them happen in a positive and constructive way. We can, however, legislate for the framework that underpins all that. I hope that we do better in the years ahead than we have done in the past.

The Deputy Presiding Officer: Before we proceed, I should apologise to Parliament for having inadvertently misled it. I am expecting four-minute speeches in this debate, but there is quite a bit of time in hand, so they will be generous four-minute speeches.

11:38

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I pay tribute to Nanette Milne for the massive contribution that she has made on health and other issues during her 13 years in the Parliament. I have enjoyed working with her for the several years that we have been joint conveners of the cross-party group on cancer. Since the bill is in effect a health bill, which I dealt with during my six months on the Health and Sport Committee, I take this opportunity to say, for the last time, thank you to the committee's wonderful clerks and the always helpful members of the Parliament's legislation team and delegated powers and law reform team.

This is not my last speech, but like Nanette Milne I thought that the Burial and Cremation (Scotland) Bill might be a suitable topic for an older person such as me. Although it is the prerogative of an older person to look towards death in a realistic and light-hearted way, that is certainly not the situation for any parent who loses a child. In the context of the bill, that also means infant loss, stillbirth and pregnancy loss, which must be the most devastating experience that anyone could suffer. If anyone doubts that, they need only listen to the evidence that we heard. I thank all the people who gave evidence to us on the record and those SANDS Lothians parents who gave evidence to Nanette Milne, me and, I think, one other member of the Health and Sport Committee in a private session.

There was a great deal of discussion in that and other evidence sessions about ashes. I have even heard people ask, "What difference do the ashes make?", but if we listen to the parents, we know how important that is. Once we have listened, we can begin to empathise—to use the word that Bob Doris used—with those parents. I raised the issue of ashes in committee and suggested that there should be an expectation that ashes will be recovered, that the processes and equipment in crematoriums should be dealt with in regulation and that we should always insist that the maximum amount of ashes will be recovered. I pay tribute to the minister, because she reassured me in committee that the codes of practice covered those issues. I note, too, that amendment 74 is about the making of regulations about

"the operation of equipment for the carrying out of cremations".

Therefore, I think that the Government has dealt with those matters.

Earlier, I was reassured on the issue of putting women at the centre of decision making in relation to ashes, and I think that we are all united in the belief that the bill does that in a satisfactory way.

Of course, there are issues that are not dealt with in the bill and which perhaps cannot be dealt with in the bill. An issue that was raised by the SANDS Lothians parents in the private session was that of the training of staff, which is crucial to how staff relate to parents—mothers in particular—in such situations. They recommended that there should be specialist roles in midwifery, maternity and bereavement services, and I hope that the Government will consider that.

We ought to think about not just how health staff relate to patients, but how we as politicians relate to parents in such situations. As I have thought about the bill and the issues that it deals with, that has made me reflect on the need for politicians in general to have empathy with the people with whom we discuss matters, both so that we can respond appropriately to the individuals whom we meet and can develop suitable policies and legislation. As I come to the end of my political career—although not my political involvement—it seems to me that empathy is the most important quality that a politician can have.

I support the bill, including today's amendments, of which there were quite a lot, but as someone who lodged more than 1,000 amendments at the final stage of the Mental Health (Care and Treatment) (Scotland) Bill, I am in no position to complain about late amendments.

11:42

Kevin Stewart (Aberdeen Central) (SNP): I, too, pay tribute to Dr Nanette Milne. Over the years, we have agreed, we have disagreed and we have agreed to disagree, but there has been no malice when we have disagreed. Dr Milne's

service in the Parliament and, previously, as a councillor has been a great thing for Aberdeen, and I wish her and her husband Alan all the best for the future. I am sure that she will keep him very busy indeed.

We have given the bill a great deal of scrutiny, and there are a number of provisions in it that will make things much better than they were previously. The provisions on inspectors are to be welcomed, the introduction of a licensing regime for funeral directors is certainly a good thing and the reuse of lairs has been a long time coming. There are other measures that are important, too, even though they have not featured prominently in the debate thus far. The recording process must be improved, and the bill provides for that. During the Local Government and Regeneration Committee's deliberations, Willie Coffey mentioned that a lot and made a significant contribution, and I think that the passing of the bill will mean that we end up with a much better system in that regard.

Fraser Sutherland of Citizens Advice Scotland told the Local Government and Regeneration Committee that Citizens Advice Scotland had seen a 35 per cent increase in the number of clients who were concerned about funeral issues and affordability.

During our evidence-taking sessions, we noted that there are huge differences between the costs in various places. For example, the cost of a lair and an interment is £694 in the Western Isles but £2,785 in East Dunbartonshire. That is an astronomical figure. For a local authority cremation and the scattering of ashes, the cost is £512 in Inverclyde but £749 in Perth and Kinross. A private cremation costs £585 in Paisley but £830 in Moray.

I am pleased that the Government has agreed to organise a national funeral poverty conference and round-table discussions between ministers and stakeholders to look at the matter and promote action. As the funeral payments powers are being devolved, now is the right time to look at all the issues. As other members have said, people struggle with paying for the funerals of loved ones, and we must do all that we can to ensure that we get it right.

The bill covers a huge number of issues. As we heard this morning, one controversial issue that has been discussed is the distance between crematoria and housing. We need to look at the planning guidance, but I do not think that it is just housing that is the problem. If we are going to have limitations, they should include commercial property, too. We also need to look at the current position. As I said earlier, we have a crematorium here in Edinburgh that has housing right on the doorstep. If we had agreed to Mr Wilson's proposal, it would have been extremely difficult to reconstruct or refurbish that crematorium should there be an application to do so. We have to trust planning authorities to look at the matter carefully, take local circumstances into account and act accordingly.

The issue probably requires more than a four-minute speech, but as that is all that I have today, I will finish. I hope that we will agree to pass the bill at decision time.

The Deputy Presiding Officer (Elaine Smith): Thank you, Mr Stewart. You actually got five minutes.

11:48

Rhoda Grant (Highlands and Islands) (Lab): I join others in paying tribute to Nanette Milne for her valedictory speech, but also for her service to the Parliament. She is always thoughtful and considered in her responses, and she is somebody whom everybody listens to. She will be greatly missed, but knowing the way that this place works, I am sure that she will be in touch and will give us the benefit of her thoughts and ideas—or, at least, those of us who hope to go forward; we may hear more valedictory speeches than we would hope to hear.

I thank the witnesses who gave evidence to the Health and Sport Committee, some of whom gave evidence in difficult circumstances. I pay tribute to them, as well as to all those who supported the committee.

The Burial and Cremation (Scotland) Bill tries to put safeguards in place to prevent terrible things such as the baby ashes scandal from ever happening again. However, it also makes us look at the way in which we view death. There is, of course, a temptation to take as much pressure off the bereaved person as possible. That is understandable, and even more so when the bereavement was unexpected. Because such loss feels unbearable, we seek to make decisions for people in order to make things easier.

However, that can cause problems. Very strong rituals—indeed, cultural issues—are attached to the disposal of remains, and the practice is very often bound by religious belief. Moreover, it is the last thing that we can do for a loved one, and it is therefore important that their wishes, where they have been expressed, as well as the wishes of close family are put at the heart of the process. In cases of pregnancy loss or stillbirth, the mother must be involved in decision making at a pace and at a time that show that her best interests are being taken into account.

The organisation of a funeral, an interment or a cremation is a ritual that forces people to continue

through their grief, provides them with a focus and ensures that the person in question gets a fitting send-off. That can bring comfort in the long term, but if things are not done in accordance with the wishes of the bereaved, it can add to their distress. As a result, it is not only sensitivity but the provision of information and choices that is required. We have seen with the disposal of baby ashes the distress that can be caused when parents are not informed or involved. There is no way of easing that suffering; all we can do is ensure that what happened never happens again.

Under amendments that have been lodged and agreed to, matters will be put very much in the mother's hands and no one will be allowed to make assumptions with regard to her wishes; indeed, that is where things went wrong in the past. Whatever guidance goes with the bill, it must emphasise the need to seek out and implement the wishes of the bereaved.

The Health and Sport Committee, of which I was a member, dealt with some of those very difficult issues, but the Local Government and Regeneration Committee dealt with the bill's more contentious issues such as the siting of crematoria and their distance from housing. That is, indeed, an important issue; if a crematorium is put too close to housing, parking and noise problems for those attending it are likely to arise as well as problems with traffic congestion and disruption, which might be dangerous for the young children and families who live in the housing close by. I agree that it is only common sense to put such buildings at a reasonable distance, but as we know, common sense does not always prevail in planning decisions, and I sincerely hope that the Scottish Government does not rue the day that it removed the distance prescription from the bill.

Kevin Stewart: Is Rhoda Grant saying that she does not trust councillors to make commonsense decisions in that regard?

Rhoda Grant: The next time that I hear Kevin Stewart complaining about a council planning decision, I will remind him of his words. I think that we are all aware of council planning decisions that we have not agreed with and which might well have flown in the face of a community's wishes.

Another issue that was touched on in the stage 3 amendments was the cost of funerals, which has increased by a huge amount. Some of that is the result of local government cuts; because the Scottish Government has starved local government of funding, it has been left with no choice but to increase costs where it has the ability to charge. It is just not right for people who are already distressed by bereavement to have to worry, on top of that, about how they will afford the burial or cremation of their loved one. The speed and the cost of the process do not leave people with much choice, and they are often forced to take the cheapest option, which might not be their preferred option.

We need to talk about dying and death and provide family and friends with the information that they need to make choices about burial and cremation. We must also ensure that those who cannot make those choices for themselves are represented by close relatives, and that those relatives are, in turn, supported through a very difficult time.

11:53

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Like others, I welcome the bill and anticipate its passage come decision time.

Burials and cremations are, of course, a very important part of most people's lives. We will make individual decisions about what we want to happen after our own deaths, but it is for those who come after to discharge what we have decided. For my part, I hope that there is neither a burial nor, in particular, a cremation. It would be awfully nice if my pals got together and celebrated a little bit of my life, but I am in the tiny minority who wish their remains to be disposed of for the benefit of anyone who can find anything useful to do with them.

Different societies make different decisions. In 1972, I visited the remains of Vladimir Ilyich Ulyanov in Red Square, and in 1978, I visited the embalmed remains of Mao Zedong in Beijing. In our culture, burials have been important with cremations following on rather later. The important point seems to be that we should give those who are left behind to grieve a sense of connection to a place. That is why it is important that part of the bill places a legal duty on local authorities to publish where people are buried, because it enables that sense of connection to be continued through the generations if that is what we want.

Through the genealogical research that I have done during the past 50 years, I am still discovering connections to place. It is only three years since I discovered that one of my father's cousins died in Queensberry House in 1970; it was a nursing home then, so that was not particularly unreasonable. I have that connection and I find it interesting. In the past year, I have discovered that three members of my extended family are buried in the new Calton kirkyard out the back. That sense of connection is what we are discussing in the bill.

In looking at the issue of ashes, particularly those of youngsters or those who did not survive to be born, there is a particular poignancy around those remains, their disposal and the feeling of connection for those who have experienced the

loss to where the remains will end up. The bill does a great deal to set out a future in which people will not suffer the emotional turmoil that has been suffered in the past.

I congratulate Lesley Brennan, the most recent member of the Parliament, on persuading the Government to accept her amendment. Having spent quite a few years in opposition, I know that that is not the easiest of things to achieve, so she deserves our congratulations. It simply illustrates that, if sensible propositions are made, the option is always there to persuade people.

At the other end of the scale, the mother of the house departs shortly. I have sat beside Nanette Milne at many occasions when she has not felt at her most comfortable, particularly when she has deputised for Alex Johnstone at farmers' events. I see that she is nodding slightly, so that is certainly true. The fact that she has done so shows how she never shrank from undertaking the duties that come with elected office. As others have done, I wish her well in what we will describe as retirement but I suspect should more properly be described as simply another part of her life.

At an earlier stage of the bill, I referred to something that we have to deal with when we consider succession. One of the enduring mysteries for me in all this is the fact that I can decide how my house, the money in my bank account and my possessions are to be disposed of but, as the person who might be newly deceased, I will have no say over the disposal of my remains. That is left completely to my relatives. That is unfinished business in this area of policy, although we always need checks and balances and there will be difficulties to be considered.

11:58

Lesley Brennan (North East Scotland) (Lab): As many members have said, the bill covers many sensitive topics. I have focused on funeral poverty because of my experience as a councillor and, as I mentioned at a previous stage, because of a close friend's experience. Empathy has been mentioned a few times; politicians ought to be able to empathise so that we can understand how we can best serve the people who we are here to represent.

I am pleased that the minister agreed to accept the amendment that I lodged, especially given the welfare state's cradle-to-grave philosophy and in light of rising funeral costs and an ageing population. I am also pleased that the minister referred to the academic work that I highlighted at stage 2—particularly that of Dr Christine Valentine and Dr Kate Woodthorpe at the centre for death and society at the University of Bath.

Having communicated with those academics, I know that they are keen to share their knowledge to help to eradicate funeral poverty in Scotland. I hope that, in the next parliamentary session, those who are working in that area will use those academics' work and expertise. As they point out, it is accepted that

"funeral costs may impose considerable financial burden on those left behind ... This burden not only reflects that funeral costs are subject to market forces, but also that bereavement, in itself, may cause financial hardship."

The situation is compounded by death being perceived as a private and highly individualised event, and that is accompanied by a lack of a widespread culture of preparing for death.

Increasing funeral poverty has important implications for existing and potential future demand on local authorities, which has been flagged up. We need to look at why there is an increasing demand for public health funerals, which are often referred to as paupers' funerals; obviously, that demand is because of funeral poverty.

I look to the next Government and the next parliamentary session to fully address the social fund funeral payments scheme, because it is not working. Someone can get a funeral payment of about £1,300, but the actual cost of a funeral can be about £3,500.

When people have no choice, they have to go to the local authority or—as in the case of my friend, which I raised in the stage 1 debate—they are advised not to claim the body so that it is left to the state to arrange the funeral. That is not good enough in Scotland today. My friend was left with the shame of not being able to give his mother the funeral that he wanted to give her. I hope that that is addressed fully in the next parliamentary session.

I recognise that my amendment was modest—it was just about guidance on funeral costs—but it will illuminate how to help grieving families keep the cost down and give their loved ones a dignified final send-off. As Rhoda Grant said, a dignified send-off gives those who are grieving some comfort.

The amendment states that, before issuing such guidance, the Scottish Government will have a duty to consult

"burial authorities ... cremation authorities ... funeral directors ... any other persons they consider appropriate."

I am glad that the Government supported my amendment, because it is a reasonable amendment. It is similar in structure to section 20 of the Procurement Reform (Scotland) Act 2014. If everyone supports the bill and it is passed later,

the Parliament will take one step on the pathway towards eradicating funeral poverty.

I thank the Parliament's clerking team, which helped me as a newbie to shape an amendment. The team has been supportive and I express my appreciation for that support.

12:03

Richard Lyle (Central Scotland) (SNP): I am delighted to speak in this important debate on the Burial and Cremation (Scotland) Bill, particularly as I am a member of the Health and Sport Committee. I wish Nanette Milne well. It has been an absolute pleasure to have worked with her on the committee. She is actually younger than Nanette Newman—some eight years younger—so I say to Nanette Milne, "Don't say you're an oldie—you're not."

I take the opportunity to wish my other retiring colleagues on the committee—past and present—all the best in their retirement. It has been a pleasure to work with them over the years of the parliamentary session.

The committee has dealt with a number of bills over the years. The evidence that was taken on this bill was the most heart-rending.

I will focus my remarks on this important bill that is before Parliament today, which will modernise the legislative framework for burials and cremations. Our existing legislation on burials and cremations dates back more than 100 years, and we see each day that it is becoming increasingly unfit for purpose in modern Scotland.

I do not wish to deliver a history lesson to Parliament—Mr Stevenson does that quite ably—but it is important to note that the law on burials was set out in the Burial Grounds (Scotland) Act 1855 and has not been substantially revised since the 19th century. Our laws on cremation were set out in the Cremation Act 1902 and amended and regulated through other pieces of legislation. In short, the picture that I want to paint for the Parliament is that our existing legislation is fragmented, dated and increasingly unable to meet the needs of Scottish society. It is therefore right that we refresh and modernise the existing provisions that are relevant to today's society and combine those with new provisions, which will create legislation that is fit for our modern, 21st century Scotland.

I do not have a lot of time to speak, so I will reflect on two strands of the bill. First, I will look at the bill's ability to deliver on many of the recommendations in the infant cremation commission's report. In April 2013, the Scottish ministers established the commission in response to historical practices at some crematoriums in relation to the cremation of babies and to address serious public concern about that.

The majority of the commission's recommendations focused on providing a more consistent and robust process for applying for the cremation of pregnancy losses and of babies. The recommendations were made to remove ambiguity about the extent to which the legal process for cremation applies to pregnancy losses. The commission also recommended that the application process should be strengthened so that applicants are given as much opportunity as possible to consider the implications of various methods of disposal before making a final decision. As the minister, Maureen Watt, outlined, the bill has a number of provisions that address the issues that Lord Bonomy identified and it will ensure that we never make the mistakes that were made in the past.

In the time that I have remaining, I would like to look at burials. One of the resounding areas of the bill is that it will support burial authorities in the management of their burial grounds. As we know, all burial authorities already manage and maintain burial grounds, but there is no single source of guidance on that, which causes uncertainty over what actions can be taken in certain circumstances. In particular, there is a lack of clarity on what actions can be taken to make headstones and memorials safe. It was found from the Scottish Government's consultations with burial authorities that regulations would be beneficial. Therefore, the bill serves to clarify the situation and places a duty on burial authorities to ensure the safety of burial grounds.

I am proud to see another piece of legislation before the Parliament that seeks to deliver for our modern, 21st century Scotland.

12:08

John Wilson (Central Scotland) (Ind): I put on record my thanks to Dr Nanette Milne for her quiet words, particularly when we served together on the Public Petitions Committee. It has always been a pleasure to work with Nanette. I think that it is appropriate to mention the sage advice that she has given in comments in passing in the corridor.

Today we will pass a bill, which will become an act. Earlier, members heard my concerns about one area of the bill where we missed out on an opportunity to modernise. Many witnesses told the Local Government and Regeneration Committee that the Parliament should try to ensure that the bill is fit for the 21st century. In the written submissions and oral evidence that we received from local authorities, issues were raised about the retention of some type of buffer zone between crematoria and residential properties.

I wait with interest to hear the minister's assurance that Scottish planning policy will result in guidance being issued to local authorities. However, my concern is that, although we have guidance in the Scottish planning policy, as other members—such as Rhoda Grant—indicated, that guidance is too often overturned in decisions that are made not by local authorities, which try to follow the guidance, but by other bodies that are above local authorities.

Local authorities spend three years carrying out local plan consultations with local communities to find that, after that process, Scottish Government ministers and the planning and environmental appeals division—the DPEA—totally ignore the local plans when it comes to housing development proposals. I would like to think that, when the minister takes the issue back to her colleagues to consider the way forward, she will take on board the need to ensure that guidance applies to all.

I congratulate Lesley Brennan on her perseverance, which got her amendment 1 accepted by the Scottish Government and agreed to by the Parliament. It is important that we address fuel poverty—sorry, I meant funeral poverty, although fuel poverty is equally important.

When we took evidence at the Local Government and Regeneration Committee, we heard the costs of some of the burials that take place in Scotland. The most expensive was East Dunbartonshire Council, where the cost of a lair and interment was £2,785, and the cheapest was Western Isles Council at £694. When such costs are presented to us and we then hear and read that local authorities are increasing them by 15 per cent this year, we realise the importance and the urgency of the minister's working group addressing the concern. We need to get something in place so that people do not end up being unable to claim a family member's body because of the differences in funeral costs and the fear of having to pay them.

At committee, we also heard evidence from a chaplain from the Scottish Prison Service that, when people die in prison, family members are not encouraged to claim the body because they will be liable for the costs of the funeral or cremation. In the 21st century, we cannot say to individuals that it is better for them not to claim their loved one's body because they may be put into further financial hardship.

I think that the Parliament will vote for the bill and it will become an act. I support it with the caveats that I mentioned: I hope that the minister will address the concerns that have been raised and ensure that we do not find developers chapping on the door of local authorities and other bodies to erode further the barriers between crematoria and housing.

The Deputy Presiding Officer: We turn to closing speeches. I invite the two colleagues who have participated in the debate and are missing to return to the chamber.

12:13

Jackson Carlaw (West Scotland) (Con): The bill is a contract between the Parliament and the parents who reacted with anguish, bewilderment, astonishment and dismay earlier in the parliamentary session when they found out the fate of the remains of their babies. It was impossible not to be enormously affected—as I know members from all parties in the chamber were—by the personal testimony that we experienced at the time. It led to the recommendations from Elish Angiolini and Lord Bonomy, the voluntary arrangements that Nanette Milne detailed in her speech and, finally, to the bill.

As I think that the minister would accept, many of the amendments to which we have agreed today have been quite technical in nature, given the way in which the bill has progressed. However, the parents—some of whom were sitting in the public gallery earlier this morning as we discussed the amendments and began the debate—should be assured that the bill will, in its effect, realise the powerful demand that they made of us: to pass legislation that would ensure that such a situation would never happen again.

We can be proud of the fact that the bill will achieve that, even as we acknowledge with dismay that it proved to be necessary. As in so many areas of public life, something was going on beneath the surface of a nature that proved to be astonishing in the modern era, and which we all would have imagined was being addressed otherwise.

In the context of the debate, the key exchange of interest concerned the designated location of a crematorium and its boundary with adjacent properties. I was minded to support the minister, although I found John Wilson's contribution very powerful. However, I must say to Kevin Stewart that his unfettered, unblinking and unquestioning belief in the planning process that goes on in our local councils—which in my own area can often cheerfully ignore even elected councillors, if those in charge of the process bother to let those councillors have a say at all, given that so many planning processes are now automatic—will have provoked hoots of derision the length and breadth of the country.

Kevin Stewart: Will the member give way?

Jackson Carlaw: I know that his contribution was well intentioned; maybe the folks—as Kevin Stewart likes to refer to them—in old Aberdeen do things differently up there. However, I am not

persuaded that such faith will be rewarded elsewhere.

Kevin Stewart: I know that we all get upset from time to time about planning decisions. However, in sensitive cases such as the ones that we have discussed, councillors normally act wisely. We must take into account the situation in Edinburgh, for example, where there already is housing next to a crematorium. If there was a reapplication to refurbish that crematorium, would it be rejected out of hand if John Wilson's amendment had been agreed to? The answer to that is yes.

Jackson Carlaw: As Kevin Stewart said, councillors "normally" act wisely. That underlines the point that there must be occasions on which they do not act in that way. John Wilson's amendment, which simply sought to ensure that the provisions that existed in the ancient act would carry on, was perfectly sensible.

I will finish by commenting on departing members. Malcolm Chisholm's contributions over the years in which I have watched him in Parliament have always, on every occasion, given me pause for thought. They have very often challenged my conceptions, although they have often reinforced them on subsequent consideration. I have always admired Mr Chisholm's tenacity and fluency in identifying issues—even in relation to the amendments that he did not move today—that might otherwise have escaped the attention of Parliament, and in developing an argument around such issues in a way that has always given us pause for thought and helped to inform our debates all the more so for that. I will certainly miss him from this Parliament in the next session, if I am fortunate enough to be here myself.

I turn now to my colleague Nanette Newman—[*Laughter*.] Nanette Newman! Until I met Nanette Milne, I had never met or come across a Nanette before. The only Nanettes I had encountered were Dame Ninette de Valois, who I seem to remember was some ghastly old ballerina who used to stamp her stick on the television in some odd programme or two, and Nanette Newman, who I knew was married to a film director called Bryan Forbes and who—from my recollection—appeared in a lot of dreadful movies. I seem to remember suffering through some awful thing called "International Velvet" with my sister when I was younger. However, Nanette Newman was most famous to me for singing:

"Now hands that do dishes can feel as soft as your face with mild green..."

That was my recollection of her on the television.

Before that, the only other Nanette I had ever known was "No, No, Nanette"—the 1925 musical that had in it the songs "Tea for Two" and "I Want to Be Happy". I am very autosuggestive, so every time I have seen Nanette Milne in Parliament during the past nine years, the songs "Tea for Two", "I Want to Be Happy" and "Now hands that do dishes..." have gone through my mind.

Nanette Milne has been a persistent and superb member of this Parliament. On health, she has the advantage of having been a medical doctor. She has a son who is with her now because of an organ donation and she has spoken powerfully on that issue, too. I wish her well.

Mr Stevenson should be reassured. Nanette Milne's discomfort was not that Mr Johnstone was not there. It was because Nanette is so mild-mannered and polite that the savaging that Mr Stevenson was getting from the farmers left her slightly uncomfortable. That must have been the emotion that Mr Stevenson witnessed on that occasion.

I look forward to staying in touch with Nanette. We have worked together since John Major invited us both to be party vice-chairmen more than 25 years ago. She has given great service to this Parliament and I know that she and Alan will have a long and happy retirement, for which I wish them every success and happiness.

12:20

Jenny Marra: Since I have two opportunities to speak in the debate, I will use this one to pay tribute to some of my colleagues who are leaving Parliament.

As several other members have done, I pay tribute to Nanette Milne. I have held the health brief for only a relatively short period, but I have felt great warmth from Nanette Milne, both in meetings in Parliament and outside it, in NHS Tayside and other forums. I hope that Nanette has a long and happy retirement from Parliament.

While mentioning a woman who is stepping down from Parliament, I reflect on the example that women in this Parliament have set for me since I stepped into the role for the first time five years ago. There is an added pressure—if not a burden or responsibility—on women in elected politics. People like Nanette Milne bear it with great fortitude and dignity, and are a good example to us all.

This week, Parliament dissolves, and three very special colleagues of mine in the Labour group will not be seeking re-election. Duncan McNeil made his last speech in the chamber on the Scotland Bill last week. Given that this is a health debate, it is appropriate that I pay tribute to him now. As convener of the Health and Sport Committee for the past five years, he has paid assiduous

attention to the health of the national health service throughout Scotland. Duncan always provides insightful and grounded analyses of how decisions that are made here affect our constituents and the people whom he represents. He has given great service to Parliament and its development over the past 16 years, and I know that he will be missed.

I pay tribute also to my colleague Hugh Henry, whose sense of humour and wit will be dearly missed. Hugh Henry and Duncan McNeil are giants of the first 16 years of this devolved Parliament.

I also pay very special tribute to my dear friend and colleague, Malcolm Chisholm. This is the last debate that I will participate in with Malcolm. Since I stepped into this building five years ago, he has been the most supportive, inspirational and empathetic mentor that any young politician could hope for. He has taken very special care of me and of our Scottish Labour leader Kezia Dugdale, and we will both be forever indebted to him. With his attention to detail, I always feel reassured and more confident when Malcolm Chisholm is taking part in a debate, and I get the sense from the Government members that they feel the same. He will be greatly missed in Parliament.

I turn now to some contributions to the debate, although I summarised most earlier. I was particularly taken by Kevin Stewart's thoughtful reflection on the bill. He mentioned the welcome inspection regime, reuse of lairs—which is very welcome and particularly important—and licensing of funeral directors. I mentioned fuel poverty in my opening speech. It will be important to watch that issue closely, as we go forward. He also took the opportunity to highlight Citizens Advice Scotland's figures and the geographical disparity in costs of funerals, giving great weight and evidence to the case that my colleague Lesley Brennan made about funeral poverty. He highlighted the 35 per cent increase in inquiries about affordability, which together with the geographical differences in costs, are particularly stark statistics.

Kevin Stewart's contribution made me reflect on representation that I received from a constituent on that very issue, in respect of insurance policies for funerals. Some couples had been paying into insurance policies for many years to cover their funeral costs, but when the bill came the policies fell short of the actual costs of the funerals, and the family was left to cover the rest. Insurance policies should probably be regulated by the European Union. I wonder whether the matter can, at the summit that the Government will hold—which Kevin Stewart referred to—be addressed along with the welfare payment of £1,300 to which Lesley Brennan referred. That payment goes no way towards meeting the average cost of a funeral, which is £3,500.

As MSPs will know from representations about it, there is an issue with timing of payments—whether they will be approved by the Department for Work and Pensions and whether funeral directors can rely on the money when the application is still in progress. I am sure that all those issues will be discussed at the summit, and by the commission that the cabinet secretary, Alex Neil, has commissioned.

I close by saying that I have, throughout the passage of the bill, enjoyed Stewart Stevenson's contributions. The points that he made today about records of burials added a lighter note to the debate, but also added a important cultural note about knowing our place and about being able to track and record where our ancestors are buried. That is important not only for companies in Scotland, by allowing them to stretch abroad and to make business through genealogy, but for people who are making their family trees. It also adds to our sense of place and of belonging in this country.

That is a very appropriate note to end on, and a very important provision in the bill, which the Scottish Labour Party is delighted to support.

12:27

Maureen Watt: I thank all members for their contribution to the debate.

Throughout the bill's progress, there has been strong support for its principles. I am grateful to members for the quality of their contributions, not only this morning but throughout the bill's progress through Parliament.

I again thank the committees that dealt with the bill. It is always difficult when a bill is in front of two committees, but the Health and Sport Committee and the Local Government and Regeneration Committee have done a good job with this bill. I thank the Delegated Powers and Law Reform Committee, and its convener Nigel Don, for that committee's detailed look at bills. Nigel Don has brought specific insight into the working of this Parliament and has always had a slightly different take on bills as they have gone through Parliament, for which I thank him.

I pay tribute to Duncan McNeil as the convener of the Health and Sport Committee, and to the thoughtful way in which he dealt with witnesses and ministers at the committee. I had a tear in my eye when, last week, he spoke on giving legislative consent to the Scotland Bill in his final speech.

I thank the bill team for their support and the stakeholders who helped in the construction of the

bill. In particular, I thank Dr Simon Cuthbert-Kerr, who has lived and breathed the bill for months. I am sure that he wakes up thinking about the bill, but he will now be able to get his life back and get back to playing in his band, which he does so well.

Malcolm Chisholm said that he has not yet made his final speech in Parliament, but I pay tribute to all the work that he has done both in this Parliament and in the other place. He, too, has had a colourful and distinguished career in politics, and I commend him for that.

I will also miss Nanette Milne, and not just when I take the train up to Aberdeen on a Thursday night—a journey that we have shared on many occasions. The number of cross-party groups on health that there are in the Parliament has exceeded all expectations, and she has done her utmost to represent the Conservative Party on many of them. She and I have worked together at local government level, at Grampian regional level and at district level, and she has made a huge contribution to political life in the north-east. I am sure that I will still see her, as her son lives quite near me, and that she will continue her interest in the arts scene in the north-east. I, too, wish her and Alan a happy retirement.

There can be no doubt that the bill makes some much-needed changes to burial and cremation processes. I believe that it will create a legislative framework for burial and cremation that will meet the needs of 21st century Scotland. It will remove the inconsistency that is apparent and will make processes easier to understand and more reliable. When we are arranging a funeral, we should be able to expect a straightforward and transparent process that makes things easier, not more difficult, and I think that the bill will provide that.

Many of the topics covered by the bill are extremely sensitive. As the bill has made its way through Parliament, we have heard from people who have experienced loss in unimaginable circumstances, and those experiences alone should be reason enough for us to address the shortcomings in the current system.

Bob Doris made an important point about the need for health professionals and others to deal sensitively with pregnancy loss at whatever stage it occurs. In particular, the new processes that will be put in place in relation to pregnancy loss and stillbirth will address many of the issues that were identified by Lord Bonomy, as Rhoda Grant and Richard Lyle mentioned. It is really important that we prevent a repeat of previous mistakes, and I believe that the bill will do that. However, this is in no way the end of the process, as Dame Elish Angiolini has still to report on some of the mishandling of ashes at crematoria throughout Scotland.

Throughout the bill's passage, much has been said about the role of funeral directors. Although it is possible to organise a funeral without using a funeral director, in the majority of cases people turn to funeral directors for their expertise and experience. In most cases, funeral directors provide a high-quality service but we are all aware, from our constituency cases, of poor service and high costs that can be difficult to understand. It is important that we can rely on funeral directors when we have to.

Therefore, the bill allows ministers to introduce a licensing scheme for funeral directors that will establish basic criteria for anyone who wants to operate as a funeral director and which will prevent those who fail to meet standards from doing so. The new inspection powers will bring a level of scrutiny to funeral directors—indeed, to the funeral industry as a whole—that has never been seen in Scotland. I am confident that that will drive up standards and consistency, helping people to know that they will receive the same level of care and service from all parts of the industry.

Before the Scottish Government commits to the licensing of funeral directors, however, it is important that we better understand the current state of the industry. That will ensure that any scheme that is introduced reflects best practice and addresses specific concerns. I therefore intend to use the inspectors who are appointed under the bill to monitor the industry and make recommendations about licensing.

During the bill's passage, there has also been much debate about funeral costs. The bill is likely to influence costs to a degree, as it requires local authorities to publish all costs relating to burial and cremation, which will help to improve transparency. It is also likely that the introduction of inspection and the potential introduction of licensing for funeral directors will help to improve cost transparency and consistency.

At this stage, I pay tribute to Lesley Brennan's work on funeral poverty in her short time in the Parliament. Like me, she came in at the tail end of a session, and she has immersed herself fully in the Parliament's work. Lodging an amendment in one's early days as an MSP is quite daunting, and I congratulate her on all the work that she has done. I wish her well.

As I said in my opening speech, the Scottish Government has recently initiated work to examine funeral poverty. That work, which is being led by the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, very much builds on Citizens Advice Scotland's report, "The Cost of Saying Goodbye: Burial and cremation charges in Scotland 2015", for which we should commend CAS. The cabinet secretary has

commissioned further work on the area, which will report early next year and on which there will be a conference, as has been said.

In response to the CAS report, the cabinet secretary has indicated that we will undertake a range of work to address funeral poverty, including speeding up the time taken to make decisions about funeral payments, which Jenny Marra mentioned, once responsibility for that area is devolved to Scotland.

Members have raised other parts of the bill on which we have perhaps not spent much time today. Kevin Stewart and others have mentioned reusing lairs and revitalising old burial grounds in our city and town centres, which will be important going forward.

The bill makes important changes in an area that few of us wish to think about but which, as Stewart Stevenson said, touches us all at some point. I hope that Parliament will pass the bill unanimously at decision time.

The Deputy Presiding Officer: That concludes the debate on the Burial and Cremation (Scotland) Bill.

Bankruptcy (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Elaine Smith): The next item of business is consideration of motion S4M-15993, in the name of Fergus Ewing, on stage 3 of the Bankruptcy (Scotland) Bill.

12:37

The Minister for Business, Energy and Tourism (Fergus Ewing): I commend the bill to Parliament and hope that members will support it at decision time.

I move,

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

The Deputy Presiding Officer: I call Nigel Don to speak on behalf of the Delegated Powers and Law Reform Committee.

12:38

Nigel Don (Angus North and Mearns) (SNP): I am grateful for the opportunity to speak on the Bankruptcy (Scotland) Bill, although, as I say that, it occurs to me that I may be one of a rare breed who would be interested in speaking on the topic.

This is a rare example of a consolidation bill. The Delegated Powers and Law Reform Committee first had to decide whether consolidation was appropriate; then it had to consider whether the text was clear, coherent and consistent, and whether the law remained unchanged, as it must. The committee found that scrutiny of the consolidation bill was very much in keeping with the other work that we carry out, as we are used to considering technical and complex legal matters.

Like the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill, the only previous example of a consolidation bill, which was passed back in 2003, the Bankruptcy (Scotland) Bill was introduced late in the session. The committee was able to undertake the necessary scrutiny of the bill in the short time available, but it should be noted that we were fortunate that we did not on this occasion need to consider a large number of Scottish Law Commission recommendations, as those would have made it much more challenging.

There are other areas of law that would benefit from consolidation. Indeed, the committee recommended last year that the law on succession, some of which dates back to the 16th century, should be consolidated. That is another area of law that has widespread impact.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate Nigel Don on the DPLR Committee's work. Does he agree that the Standards, Procedures and Public Appointments Committee's recommendation that there should be two Justice Committees—a road that we have already taken—is entirely flawed?

Nigel Don: I hesitate to say that anything is "entirely flawed", but I will come on to the remit of my committee and what we might do in future, if the member will bear with me.

I am grateful to our clerks and legal advisers for their painstaking work. I also recognise and put on record our appreciation of the essential role of Gregor Clark as draftsman for the Scottish Law Commission, and the invaluable evidence of the Minister for Business, Energy and Tourism, the Accountant in Bankruptcy and Scottish Government officials.

We also received evidence from practitioners. Their time and effort was very much appreciated. Not only did they challenge some of the proposals but in the process they also reassured us that the rest of the draft bill was fit for purpose.

I want to reflect on the changed remit of the committee. When I became convener of the Subordinate Legislation Committee in 2011, we looked only at subordinate legislation and the delegated powers in bills. Our remit has subsequently been expanded to allow us to progress non-contentious bills that are drafted by the Scottish Law Commission and to allow us to consider consolidation bills such as the one that is before us.

That has enabled the Parliament to do more. Three bills that would otherwise probably not have been dealt with have been fully considered and progressed to royal assent. I know that the Scottish Law Commission is grateful that such a mechanism now exists, but I note in passing that there is a risk that it will tailor its work to my committee's remit rather than the wider reconsideration of the law that would obviously be more appropriate.

The committee's revised remit has enabled us to address contract law in the Legal Writings (Counterparts and Delivery) (Scotland) Bill, the law of succession and the law on bankruptcy. The list gives me a clue as to the range of other legislation that it might be appropriate for the committee to consider, for the issues are all part of what is termed "private law". Given that the pressure on the Justice Committee will never go away, as that committee's convener has just said, I suggest that private law might be an area in which the Delegated Powers and Law Reform Committee might in future help the Justice Committee out a bit further.

I want to reflect on the committee's membership and our way of working. As a legislature, the Scottish Parliament enacts just over one statute per month but almost one statutory instrument per day. The Delegated Powers and Law Reform Committee considers each and every one of those instruments. Members will know that we are not concerned with the merits of the policy but must consider the instrument to ensure that the powers that it provides will do what the policy describes. We worry about the technicalities—all of them.

We are the Parliament's engine room. That is not everyone's cup of tea, of course, and I have no doubt that in times past the whips have found that the mere threat of sending someone to sub leg has been enough to bring some recalcitrant MSPs back into line. However, we need the right people to don the legislative boiler suit, and those members need to be prepared to work collegiately.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Will the member take an intervention?

Nigel Don: Certainly, from a member of the committee.

Stewart Stevenson: I absolutely empathise with the convener in what he is saying. Will he acknowledge that we are also the guardians of the English language and that one of our greatest achievements in this session has been to rescue the word "forthwith" from legislative oblivion?

Nigel Don: The member makes a perfectly fair point, which will be explained if anyone cares to look at the *Official Report*. We had quite a lot of discussions about "forthwith"; we decided that, although it was not a word that one would probably meet in the pub, it was one that we all understood and should not be replaced.

Let me return to my point about needing the right people to don the legislative boiler suit in the Delegated Powers and Law Reform Committee. It occurs to me that, when we are trying to apply a chisel to the machinery of legislation, it is important to know that the member who is wielding the hammer is on the same side. I thank my colleagues on the committee for working in that way.

Let me return to the bill. I reiterate that we have gone to great lengths to ensure that we have not changed the law. I think that the bill has two uses. First, I suggest to members that it will be very effective bedtime reading, although that is unlikely to be necessary after a hard day's canvassing. Secondly, for people who actually need to access the substantive law on bankruptcy, the bill has

been cunningly designed: it starts at the beginning, goes on to the end and then stops.

The Deputy Presiding Officer: I have had an unexpected bid to speak in the open debate. I call Malcolm Chisholm.

12:44

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I want to say just two things. First, I welcome the bill and the principle of considering consolidation bills. However, the real reason that I rise is because on this, my last day of legislating in the Parliament, I am reflecting on my first day of legislating, in 1992, when the United Kingdom Parliament was considering the Bankruptcy (Scotland) Bill. That bill amended the Bankruptcy (Scotland) Act 1985, so no doubt it features somewhere in the bill that is before us today, although I cannot say that I have read every word of it.

That memory made me reflect on two things. First, we do stage 1 of bills much better than the UK Parliament does. Secondly, let us just say that the UK Parliament used to do stage 2 in a slightly different way. In my first month in the UK Parliament, we sat literally until dawn listening to Donald Dewar and others giving speeches of an hour or more on one or two lines of the bill that I mentioned. Perhaps that was a bit extreme in one direction, although perhaps sometimes we go to the other extreme at stage 2.

I certainly welcome the bill, and I thank you, Presiding Officer, for allowing me to speak.

The Deputy Presiding Officer: I now call Fergus Ewing.

12:45

Fergus Ewing: I thank Nigel Don for his comments, and I thank you, Presiding Officer, for allowing me to speak in support of the Bankruptcy (Scotland) Bill.

Almost 13 years ago to the day, the Parliament passed the previous consolidation bill, which became the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, as Nigel Don said. Consolidating legislation and tidying up the statute book is good practice, and I am delighted that the Bankruptcy (Scotland) Bill has progressed through stages 1 and 2. I hope that we will not have to wait for 13 years for the opportunity to arise again. If I have anything to do with it, that will not happen.

Malcolm Chisholm referred to Donald Dewar. Donald Dewar once remarked that Scotland was the only country in the world that had its own legal system but lacked a legislature. One of the functions of a legislature is to bring the law up to date. Although the Bankruptcy (Scotland) Bill will never be the talk of the steamies, it is nonetheless extremely important for many reasons, which I want briefly to canvass.

Over the years, bankruptcy legislation has been so heavily amended that it has lost its coherence and structure. The numbering of the sections in the Bankruptcy (Scotland) Act 1985 had become complex, unwieldy and inordinately long—I know that because I used to use that act as an insolvency practitioner in the legal profession many years ago. Now is the right time to update the statute book in the area.

The purpose is to bring Scottish bankruptcy legislation into one place and improve accessibility. That will make things incredibly easier and simpler for practitioners who use the legislation day and daily and for those who are affected by the law to understand what it is. Ignorance of the law is no excuse, so it is our duty to ensure that it is possible to acquire knowledge by reading one document rather than a plethora of documents.

We have worked closely with stakeholders, who have given valuable feedback on the proposals. That work went back to August 2011, when the Scottish Law Commission published its consultation paper on the consolidation of bankruptcy legislation in Scotland. It made a number of recommendations following responses to that consultation. Virtually all those recommendations were implemented by the Bankruptcy and Debt Advice (Scotland) Act 2014, which, as members know, is known on the streets as the BADAS act. That allowed for a straight consolidation of the existing law in this bill.

The evidence that was provided through the Delegated Powers and Law Reform Committee's scrutiny highlighted widespread support for the bill. I thank that committee, its lawyers and it officials for their scrutiny and approach in communicating relevant issues with the drafter, the Scottish Government and all the individuals who submitted their views.

The exchanges between the committee and the Scottish Government have always been very positive and constructive. That approach improved the bill and enabled it to move smoothly and efficiently and to avoid stage 3 amendments, which I am sure is appreciated by many members.

I am also grateful for the Scottish Law Commission's work. In particular, I am grateful to Gregor Clark, who led on drafting the bill. The task that has been involved in consolidating the legislation has been enormous—I mean that—so I very much appreciate the huge amount of time and effort that has culminated in that good work.

I look forward to the bill receiving royal assent if it is passed and to its commencement, which we plan for 30 November this year.

As well as extending my gratitude to Nigel Don for his great work as convener of a busy committee and given that it is possible that he may not be returned to the Parliament in the next session, I want to say a few words by way of tribute to him, in case that is the scenario.

Nigel Don's very wide experience of life and work has informed his substantial contribution to the Parliament over two sessions and the past nine years. He is always rational and never personal, and he has always played the ball, never the man. Every contribution he has made has been well informed and closely argued, sometimes probing—gently, perhaps, but deftly and with great effect—the case that the Scottish Government has put on any particular occasion.

Much about politics is partisan—perhaps too partisan—but that has never been the case with Nigel Don. If I may say so, he is the least political politician that I have ever known in this place, and I am sure that all members present will join me in wishing him well—as I do forthwith. [*Applause*.]

The Deputy Presiding Officer: Many thanks, minister. I note your particular skill in sneaking in some unparliamentary language in an allowable way.

The question on the motion will be put at decision time. I now suspend the meeting until 2 pm.

12:50

Meeting suspended.

14:00

On resuming—

Topical Question Time

Police Scotland (Counter-corruption Unit)

1. **Alison McInnes (North East Scotland) (LD):** To ask the Scottish Government whether Police Scotland's counter-corruption unit is to be abolished. (S4T-01369)

The Cabinet Secretary for Justice (Michael Matheson): The Scottish Government has not been advised of any plans to abolish Police Scotland's counter-corruption unit.

Alison McInnes: The future of the counter-corruption unit matters to Parliament because its activities have been of national significance. MSPs have spent months scrutinising its unlawful spying on journalist sources. Scottish ministers were happy to cut the ribbon and open the unit as a vital service in 2013. In September, I asked the justice secretary whether the Government was at all concerned about the unit's conduct. He dodged the question then, so I ask it again now: does he have any concerns about the conduct of Police Scotland's counter-corruption unit?

Michael Matheson: Alison McInnes will be aware that the Scottish Police Authority has asked Her Majesty's inspectorate of constabulary in Scotland to undertake a review of the counter-corruption unit, following last year's investigation by the Interception of Communications Commissioner's Office. That review is presently taking place, so the most sensible thing for us all to do is to wait for its outcome. I have no doubt that, when the review is complete, the SPA and the chief constable will consider any measures that they believe are necessary for the unit.

Alison McInnes: It has been reported in the media that the unit's powers will be handed to the Police Investigations and Review Commissioner. If that is the case, the cabinet secretary will have to get involved, because the commissioner's powers are set in statute. Will the cabinet secretary tell Parliament whether the Government has had any discussions with either Police Scotland or PIRC about such a legislative change?

Michael Matheson: It is always dangerous for a member to come to the chamber and base their question on what is contained in a newspaper report. I am sure that all politicians are well aware that newspaper reports are not always as accurate as some members may believe them to be.

As I said, we have not been made aware of any planned changes to the counter-corruption unit. I reiterate that the most sensible thing for us to do is allow HMICS to undertake its review. Once it has

reported to the SPA, I have no doubt that the SPA will consider the findings, along with the chief constable's view on any actions that should be taken.

Elaine Murray (Dumfriesshire) (Lab): The Scottish Police Federation and retired officers have raised a number of concerns, some with the Justice Committee, about the culture and work practices that have been adopted by the counter-corruption unit, including disproportionate investigations into people's private lives, the use of detention up to seven hours and escorting people to washroom facilities during breaks in their interviews. Will the cabinet secretary engage with the SPA to ensure that human rights and natural justice are concepts to be extended to those who investigate allegations against police officers, to ensure proper proportionality?

Michael Matheson: I am aware of the evidence that was provided to the Justice Committee and I am also aware that PIRC requested specific evidence of such matters. It is my understanding that no evidence has been provided to PIRC on any particular incidences to date. If allegations are being made about how the counter-corruption unit has operated, or even how PIRC has operated, it is important that evidence is submitted, so that the issues can be considered.

Members have often stated that the SPA does not go ahead and get involved in matters that need to be reformed in Police Scotland or address issues that have been raised about Police Scotland. Here we have the SPA doing exactly what it should, which is asking HMICS to carry out a review of the counter-corruption unit. Once that is complete, the most appropriate and sensible thing to do is to wait for the report to be completed, at which point the SPA and Police Scotland should consider what measures should be taken. That demonstrates the governance process of the new single police force operating in the way that it should. The SPA should be looking into these matters, and that work is on-going. I have no doubt that it will consider HMICS's report once it has been submitted.

Margaret Mitchell (Central Scotland) (Con): The whole issue surrounding the transparency and accountability of the counter-corruption unit has raised questions about how easy it is for police officers with legitimate concerns to report those concerns in confidence. The public generally recognise that activity as whistleblowing. For the person who makes a disclosure to be covered by the definition of whistleblowing, they must believe two things. First, they must believe that they are acting in the public interest. Secondly, they must reasonably believe that the disclosure tends to show past, present or likely future wrongdoing. Does the cabinet secretary still support that definition? What action will he take to ensure that the SPA's monitoring of police officers' ability to take advantage of whistleblowing procedures is robust?

Michael Matheson: As the member will be well aware, such matters are largely operational responsibilities for Police Scotland. She asked about such matters when the Justice Committee took evidence from Chief Constable Phil Gormley recently, and he set out some of the issues that he is considering. Alongside the chief constable was the chair of the SPA, who said that the organisation was looking at how complaints are handled and the measures that it can take. In effect, the member is asking me a question that she has almost already asked the chief constable and the chair of the SPA. They provided her with an indication of the work that the SPA is doing internally in looking at those very issues. Given the role that the SPA has in the governance of Police Scotland, and given that the new chief constable is looking at those matters, I think that we should allow them to carry out that work to see how they can improve on the present arrangements.

I am always prepared to try to improve areas of our justice system, including within the police service, but, given that members are quick to criticise when they feel that the structures that we have put in place are not operating effectively, it is important that, when the police undertake work in such areas, we allow them to do that and to look at the evidence that has been provided to them in an effort to improve the existing system.

Dalzell and Clydebridge Steel Plants (Update on Negotiations)

2. **John Pentland (Motherwell and Wishaw) (Lab):** To ask the Scottish Government whether it will provide an update on negotiations to save the steel plants at Dalzell and Clydebridge. (S4T-01367)

The Minister for Business, Energy and Tourism (Fergus Ewing): The Scottish steel task force is doing everything within the power of the Scottish Government and involved partners to secure a viable future for the steel plants at Dalzell and Clydebridge. Discussions are on-going, but it is not possible to comment further because of the commercial sensitivities surrounding any potential deal, and further speculation at this stage would not be helpful.

The Presiding Officer (Tricia Marwick): John Pentland; I am sorry—please continue, minister.

Fergus Ewing: Thank you, Presiding Officer.

I assure members that we are leaving no stone unturned in our efforts to achieve our primary objective of securing an alternative commercial

operator for the sites and that we have made significant progress in a number of areas.

First, we have legislated for a business rates relief scheme at Dalzell and Clydebridge from 1 April 2016 up to the 2017 revaluation, and the state of the industry will be considered in the next revaluation.

We are working to reduce energy consumption at the sites and to reduce the cost of energy.

Skills Development Scotland has developed a £195,000 upskilling programme for key staff to safeguard future manufacturing capability across the two locations. There are 23 participants, who include a mix of process operators, tradesmen, managers and specialists, each with individual and tailored training plans. More than 1,001 training days in total have already been completed or are planned to the end of June.

The Scottish Environment Protection Agency has put in place a team of specialists managed by the head of operations in the west of Scotland to ensure that the best possible advice is provided to Tata Steel and/or any new operator.

On procurement, we are implementing measures to address the barriers that prevent United Kingdom suppliers of steel from competing effectively for public sector contracts in Scotland, including in the supply chain. The Procurement Reform (Scotland) Act 2014 places sustainable and socially responsible purchasing at the heart of public procurement in Scotland.

The Presiding Officer: I apologise for interrupting you, minister. You should not have stopped for breath.

John Pentland: I thank the minister for that reply. I am sure that he will not be surprised to hear that I consider that getting people back into their jobs is the priority. Can he assure me that everything possible has been done to ensure that the election does not delay a deal in any way and that all the Government support and spending that might be necessary will be put in place to achieve the rapid re-employment of personnel and the return of production at both plants?

Fergus Ewing: I will take very seriously the Presiding Officer's warning about breathing. [*Laughter*.]

I absolutely agree that the priority for all of us across the Parliament is, as Mr Pentland said, to safeguard the jobs. That has always been the rationale of our primary objective, which is to secure a potential future for the sites and to continue steel operations in Scotland. It is a perfectly fair question.

As for the election timetable, political timetables and commercial timetables—sadly—often do not coincide, but I give the member the assurance that he asked for. Everything possible is being done to bring matters to a conclusion and I remain hopeful that that can be reached. It would be imprudent to go into any detail, frustrating though that may be for members, but I give my personal assurance that everything possible has been and will continue to be done.

The Presiding Officer: I call Clare Adamson. [*Interruption*.] I am sorry. Mr Pentland, do you want in again?

John Pentland: No. I am quite happy with that answer—especially considering that the minister might be running out of breath.

The Presiding Officer: I call Clare Adamson.

Clare Adamson (Central Scotland) (SNP): I will try not to run out of breath, Presiding Officer.

The minister may know that I visited BRC in Newhouse on Monday and saw the preparation of the steel for the Aberdeen western peripheral route. That significant contract was awarded to BRC recently despite a bit of scaremongering that it was going to be awarded outwith Europe. Does the minister agree that we all need to get behind the steel industry in Lanarkshire and that part of that involves recognising that the Government's significant efforts are far from being a "token gesture", as they were described earlier?

Fergus Ewing: I recognise that Clare Adamson has done a power of work on these matters, particularly in relation to procurement, including attending meetings in Brussels to make sure that the Scottish interest is not neglected. I commend her for that, and I commend the other members across the Parliament who have given their time to the eight meetings of the task force that have taken place thus far.

I agree that things are beginning to look up for the whole steel sector in Scotland and I am pleased that BRC continues to be successful, including in providing steel for the Aberdeen western peripheral route, contrary to the implication of some press speculation that was drawn to my attention.

The work that we have done on business rates, energy, the environment, skills retention and procurement is certainly not a token gesture. All our work has been in support of the main objective, which is to retain a successful steel sector in Scotland.

Margaret Mitchell (Central Scotland) (Con): Business rates relief has been reinstated for a limited period for the two plants on the basis of them being derelict or mothballed industrial buildings. However, can the minister confirm whether there is any reason, other than the European Union state aid regulations, why the two

plants at Dalzell and Clydebridge should not receive enterprise status to help them to be more competitive?

Fergus Ewing: The key phrase there is "other than", because I am afraid that the import of the state aid rules is to restrict to a certain sum the maximum total aid that can be granted over a period of two or three years. Margaret Mitchell and I have discussed the issue and she has pursued it persistently, as is perfectly reasonable. However, the state aid rules say that we cannot provide aid in excess of a figure, and the consequence of doing so might be that we would be in breach of state aid. If we are in breach of state aid, we risk infraction proceeding. If we risk infraction proceeding, instead of the possibility of the deal being done and going through, we would end up in a difficult situation with the European Commission, which would help nobody.

I think that it is reasonable to say—the points were made in the task force, so they are not confidential—that our efforts on business rates have been appreciated by all parties, and we have already demonstrated that we have exhausted or nearly exhausted the maximum relief that we can provide. It is perhaps not the quantum of the relief that has been appreciated by the parties that are involved but the Scottish Government's willingness to get our sleeves rolled up and provide every single piece of help that we can. That is what businesses appreciate. It is not necessarily the precise amount of money, which, as I said, has a threshold fixed by Brussels.

The Deputy Presiding Officer (John Scott): Many thanks. That concludes topical questions for this day and indeed this session.

Abusive Behaviour and Sexual Harm (Scotland) Bill: Stage 3

14:14

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Abusive Behaviour and Sexual Harm (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division this afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Section 2—Disclosing, or threatening to disclose, an intimate photograph or film

The Deputy Presiding Officer: Amendment 3, in the name of Margaret McDougall, is grouped with amendments 4 to 14.

Margaret McDougall (West Scotland) (Lab): Currently, the bill covers only the sharing of photographic images and film. Amendments 3 to 14, in my name, which are supported by Scottish Women's Aid and others, seek to broaden the definition to include photographic images or film of an intimate situation; sound recordings containing intimate content; and any intimate written communication.

The purpose of amendment 5 is to tackle a loophole in the bill with regard to sharing screenshots of intimate text-based conversations, or the sharing of intimate audio or text conversations on social media, the internet or by any other means.

Scottish Women's Aid stated in written evidence that specifying photographs and films

"specifically excludes the sharing of private and intimate written and audio communications".

The exposure or the threat of sharing those has the same outcome: it is designed to humiliate and control the victim. Sometimes, text and images can be sent at the same time. Would we criminalise the image but not the abusive and threatening text?

That view was supported by Police Scotland in its submission, which said that the offence

"should take cognisance of all forms of communication and distribution".

The sharing of an intimate image on Facebook without consent would be a prosecutable offence under the bill. However, if someone were to share an intimate conversation, a screenshot of an intimate conversation or an intimate audio conversation, those would not be covered, even if a non-intimate picture of the victim that could identify them was attached.

The sharing of such content could have the same effect as sharing intimate images without consent; it could cause just as much fear, alarm or distress to the victim and would be designed to do so. Looking online, I found numerous examples of such behaviour, especially in abusive relationships where the threat of sharing that kind of content was used to control the victim.

Amendment 3 is a technical amendment that would update the bill to reflect the expansion of the definition in amendment 5. Amendments 4 and 6 to 11 are all technical amendments that would replace references to "photograph or film" throughout the bill with "item"; what we mean by the word "item" is defined in amendment 5.

Amendments 12 and 13 are further technical amendments, which would add a reference to the new subsection (1A)(a) that would be created by amendment 5.

Finally, amendment 14 clarifies what we mean by "intimate" in the context of conversation, messages or communications. That needs to include references to an act that is considered sexual or content that, when taken as a whole, is considered to be of a sexual nature. Further, the content must not have been expected to be distributed or there must have been an understanding that it would be kept private.

My amendments 3 to 14 would ensure that we criminalise the process when the intent is clear that the action of sharing photographs, film, or written and oral communication is designed to cause harm or be malicious.

I move amendment 3.

John Finnie (Highlands and Islands) (Ind): I support the amendments in the name of my colleague Margaret McDougall. There is a gap in the bill that needs to be plugged.

Margaret McDougall narrated the position of Scottish Women's Aid and the importance of what has been excluded, namely letters, text messages, emails and voice recordings. I agree with Scottish Women's Aid, and I do not accept the position that is laid out in the policy memorandum that it would be difficult to define and interpret the

"definition of an intimate written or recorded communication"

and, bizarrely, that there would be a risk of

"unintended consequences in terms of interference with freedom of speech".

At stage 2, Margaret McDougall's opponents made many references to the Communications Act 2003; my colleague Roderick Campbell highlighted that the 2003 act provides a punishment, so he did not accept the amendments. Similarly, the cabinet secretary has made much reference to that legislation, but offences under it are tried under the summary procedure rather than the solemn procedure, so there are limits on the disposals. There is also a specific time limit for bringing a prosecution under section 127 of the 2003 act, which would not apply if Margaret McDougall's amendments were to be agreed to.

It is important to note who supports the amendments—Scottish Women's Aid, Victim Support Scotland and Police Scotland. We will have to return to the issue at a future date. I do not believe that the legislation is future proof. The activities that the amendments would address are about humiliation and control, and I urge members to support them.

Alison McInnes (North East Scotland) (LD): I do not support Margaret McDougall's amendments; I did not support them at stage 2 and I do not believe that she has made her case. There is a danger of drawing the offence too widely and we need to take a cautious approach in this new legislation.

Roderick Campbell (North East Fife) (SNP): As far as future proofing is concerned, I like to think that the impact of the legislation will be kept under review and, if necessary, consideration will be given to extending it. However, for the moment, I agree with my colleague Alison McInnes that we need to take a cautious view.

The Cabinet Secretary for Justice (Michael Matheson): Amendments 3 to 14 would expand the scope of the intimate images offence at section 2 to cover intimate sound recordings and intimate written communications.

As I set out in the Scottish Government's response to the Justice Committee's stage 1 report, and as I explained when the stage 2 amendments were debated, we decided to focus the offence on the sharing of intimate images as almost all the cases that we are aware of have involved the sharing of images. Unfortunately, we are all too aware that there are websites that have been set up specifically to enable people to post intimate photographs or films of their partners or ex-partners. I am not aware of similar websites where people can post voice messages or emails written by or to their partner or ex-partner.

The sharing of images that could enable a complete stranger to identify the victim is a

betrayal of trust, and breach of privacy, that is especially likely to cause distress. That is part of the justification for the new offence. It is worth remembering that prosecutors will still be able to use existing laws on the sharing of written or recorded material by using, for example, the Communications Act 2003 offence or the offence of threatening or abusive behaviour, in appropriate cases.

The committee's stage 1 report noted that a majority of the committee supported restricting the scope of the offence to photographs and films and that the committee was mindful of the risk of unintended consequences if the bill took too wide an approach in this area. On unintended consequences, we note that the amendments would apply not only to intimate recordings that had been written or spoken by the victim, but to those that were directed to or left for the victim. As I explained at stage 2, one perverse effect would be that

"a person could face criminal liability for publishing or disclosing a communication that they themselves had written, or a voicemail message that they had left."—[*Official Report, Justice Committee*, 1 March 2016; c 33-34.]

It might be helpful if I gave a practical example of the unintended consequences that could result from the amendments, which could criminalise behaviour in the following circumstances. Two 13-year-olds exchange text messages about a celebrity. During the exchange, one of the teenagers indicates that they fancy the celebrity and would like to have sexual relations with them. The other teenager decides to share that text message with other people in their class.

In that situation, a communication has taken place that a reasonable person could consider to be sexual in nature and that a reasonable person would expect to be kept private. The teenager who shared the text has committed a criminal offence if it can be shown that they were reckless about whether sharing the message would cause the other person fear, alarm or distress. Although it would probably be embarrassing and potentially distressing for the person whose message has been shared, our view is that the teenager who has shared the message should not be considered to be committing an offence in those circumstances.

John Finnie: The cabinet secretary must have more faith in the Crown Office and Procurator Fiscal Service and, indeed, in the reporter system. It is a question of proportionality.

Michael Matheson: That is precisely the point that I am making and that is the danger with the amendments in the group and how they could be interpreted. That is why we do not believe that Margaret McDougall's amendments are appropriate, because they would criminalise such behaviour.

More generally, although it is hard to envisage circumstances in which someone would have a legitimate reason to share intimate photographs or films of their partner or ex-partner with a third party without their partner's or ex-partner's consent, it is easier to imagine circumstances in which they might wish to share a written message or voice message with a friend. A person may, for example, be confused or even fearful as a result of what they might consider to be the disturbing sexual content of a message that has been sent to them by a friend and wish to seek advice about what to do about it. They could be criminally liable if Margaret McDougall's amendments were agreed to.

As I said to the Justice Committee at stage 2, we are happy to monitor the issue as the provision is implemented to assess whether there is a need to reconsider the scope of the offence in the future. However, we consider that the focus of the offence contained in the bill should be on images and photographs only and therefore we oppose amendments 3 to 14 in the name of Margaret McDougall.

Margaret McDougall: I thank John Finnie for his support for my amendments.

I know that the sending of abusive messages is a criminal offence, but the same does not always apply to the sharing of intimate material. My amendments would ensure that the sharing of all types of intimate material without permission would be covered under one bill. As I said during stage 2, the current offence in section 127 of the 2003 act is not an appropriate offence for dealing with that type of behaviour, as it sets a very high threshold because the content of the message or other matter must be

"grossly offensive or of an indecent, obscene or menacing character".

Furthermore, as John Finnie pointed out, the offence can be tried only under summary procedure rather than solemn procedure and, as such, offers less protection to victims who have had intimate audio or text conversation shared about them, if they can even get a conviction.

With advances in technology making it easier to distribute information, with or without consent, it is vital that the law keeps up, to ensure that those who wish to cause harm are dealt with appropriately and consistently by the justice system. I am not looking to criminalise the process of sexting, nor do I wish under-16s who may have shared content of a sexual nature accidentally, or without thinking through the consequences, to be criminalised. In such cases, common sense should be applied. Of course, we should be

educating under-16s regarding the dangers of using private communications without consent. I believe that cases that relate to under-16s would be dealt with by the children's panel. Tam Baillie, the Children and Young People's Commissioner in Scotland, said in evidence that children should not be exempt, but he also said that there should be a robust education programme for the legislation.

At stage 2 and again today, the cabinet secretary used the example of two teenagers fantasising about having sex with a celebrity. That is not what my amendments are about—they are about the situation in which a relationship has broken down and one of the partners threatens to distribute or distributes intimate photographs, film or audio communication to cause harm to their ex-partner.

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. This is the first division of the afternoon, so there will be a five-minute suspension.

14:30

Meeting suspended.

14:35

On resuming—

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 34, Against 71, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Margaret McDougall].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 34, Against 68, Abstentions 0.

Amendment 4 disagreed to.

Amendment 5 moved—[Margaret McDougall].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 34, Against 69, Abstentions 0.

Amendment 5 disagreed to.

Amendments 6 to 12 not moved.

The Deputy Presiding Officer: That takes us to group 2. Amendment 29, in the name of Dr Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfriesshire) (Lab): Amendment 29 is similar to my stage 2 amendment 4, which I lodged but did not press after agreement to discuss its intention further with the Cabinet Secretary for Justice and his officials. I am grateful for their assistance in drafting this improved version and for their investigation into some of the wider issues that cannot be addressed in the bill but will, I hope, be pursued in the next session of Parliament.

Professor Erika Rackley of the University of Birmingham and Professor Clare McGlynn of

Durham University submitted written evidence to the committee. They welcomed the creation of a new offence that will criminalise disclosure of an intimate film or photograph without the consent of the subject. They were concerned, however, about disclosure of sexual images that are taken without consent in a public place, such as those that are obtained through the objectionable practices of upskirting and downblousing.

Upskirting—the taking of photographs of genitals, buttocks or underwear in a public place without the consent of the individual—is covered by section 9(4B) of the Sexual Offences (Scotland) Act 2009—indeed, such a case was brought to Dumfries sheriff court only a couple of weeks ago. However there is no legislation that covers the distribution of such images, and unfortunately such images appear on websites that are created for that purpose. In May 2015, one such site was exposed by the *Mail on Sunday*; it was estimated to be receiving 70,000 views a day and to be valued at £130 million.

I am grateful to the cabinet secretary's officials for the work that they have done between stages 2 and 3—which included seeking the views of the Lord Advocate—to investigate whether distribution could be included in the scope of the bill, but unfortunately there has not been time in the current session to draft robust amendments to that effect.

I think that the cabinet secretary agrees that the issue should be revisited in the next session of Parliament when, I hope, further legislation on coercive control and sexual exploitation will be considered. However, it has been possible to address circumstances in which intimate photographs are taken in a public place of someone who has been subjected to an act by another individual. If amendment 29 is agreed to, the defence will not apply when B was the subject of an intimate film or photograph

"as a result of a deliberate act of another person to which B did not agree".

Victims will be protected from a perpetrator's sharing of such images because the "public place" defence will not be available.

The person who takes such images will be committing an offence if they share them, although the provision does not cover further distribution of such images by others beyond the taker of the photograph. Someone who took a photograph of a victim who had been stripped or was being sexually assaulted, for example, would commit an offence if that photograph was distributed, but someone who took a photo of a streaker or a naked rambler and shared that photograph would be able to use the "public place" defence.

I am not a lawyer, but I think that amendment 29 would also apply to people taking upskirting images and subsequently distributing them. An upskirting image would be an offence under the Sexual Offences (Scotland) Act 2009, but distribution of the image would become an offence under the bill as it will be amended by amendment 29. I think that we are going some way towards where we want to be in achieving that policy intention, and I am grateful to the minister and his officials for their assistance in drafting the amendment.

I move amendment 29.

Margaret Mitchell (Central Scotland) (Con): I have some sympathy with the intention behind amendment 29, but I have real concerns about the definition of "public place", and about how distribution, without consent, of a consensual image that is taken behind the bike sheds, for example, would be covered by that definition. I do not think that Elaine Murray intends that such situations should be covered. Perhaps I have misunderstood her, but it would gravely concern me if that was a consequence of amendment 29.

Michael Matheson: Amendment 29, in the name of Elaine Murray, seeks to close a potential loophole in the operation of one of the defences to the intimate images offence. We are happy to support the amendment.

The defence at section 2(5) of the bill currently operates such that, where the image or film that has been shared was taken in a public place where

"members of the public were present",

there is a defence that means that the accused will not be convicted. That is to avoid a situation in which someone shares without consent a film or image of a person streaking at a sporting event, for example, and a criminal complaint is made to the police. In that situation, we do not think that a criminal offence should have been committed by the sharing of such an image or photo.

The effect of amendment 29 will be that the "public place" defence is not available where a person was in an

"intimate situation as a result of a deliberate act of another person to which"

they "did not agree". The "public place" defence will not be available where a person has distributed an image showing, for example, the subject of a photograph or film who has been stripped against their will or sexually assaulted in a public place.

Amendment 29 will close the loophole that arose from the way in which the defence was previously crafted. I thank Elaine Murray for

lodging amendment 29, and I urge the Parliament to support it.

14:45

Elaine Murray: To answer Margaret Mitchell's point, the cabinet secretary made it clear that a public place is where

"members of the public were present".

Unless it was a very strange sexual practice that was going on—I know that there are some of that nature—it is unlikely that somebody round the back of the bike sheds would have

"members of the public ... present";

therefore, such a scenario would not really be covered by amendment 29.

The Deputy Presiding Officer: The question is, that amendment 29 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 96, Against 0, Abstentions 12.

Amendment 29 agreed to.

Amendments 13 and 14 not moved.

After section 6

The Deputy Presiding Officer: We come to group 3. Amendment 30, in the name of Margaret Mitchell, is the only amendment in the group.

Margaret Mitchell: As members know, this is the third bill in which I have sought to address the issue of medical records, including psychiatric and psychological records, being released in sexual offence cases where the complainer, if they had the ability to employ legal representation, would object to their inappropriate release.

The stumbling block for victims of rape and other sexual assaults has been the lack of legal aid to pay for representation at a pre-trial hearing when the release of medical records and medical history information is sought merely in an attempt to discredit the victim in court. I am therefore delighted that in the recent judicial review petition of WF v the Scottish ministers, for which Rape Crisis Scotland was the intervener, Lord Glennie found that denying a complainer—in that case, a domestic abuse victim—legal aid to oppose the release of her medical records was contrary to the duty imposed on the Scottish ministers under the Victims and Witnesses (Scotland) Act 2014. Section 1 of the 2014 act states that

"a victim or witness should be able to participate effectively in the investigation and proceedings."

In his encouraging response to Lord Glennie's verdict, the cabinet secretary stated at stage 2:

"The Scottish Government will not appeal the decision. It is an important judgment and clarifies a number of issues that will lead to significant changes in procedure in cases where an application is made to recover sensitive information."

He went on to say:

"Changes to the legal aid system require to be made for cases of this nature, and plans are being developed to deliver the necessary changes. Meantime, I have put in place interim arrangements that will allow the Scottish Legal Aid Board to provide legal aid in future similar cases. Importantly, a means test will not be applied in this interim arrangement. Legal aid, in the form of assistance by way of representation, will be available in appropriate circumstances for individuals whose sensitive records are being sought."

He also stated:

"we think that the inherent flexibility of rules of court in comparison with primary legislation is what is required."—[*Official Report, Justice Committee,* 1 March 2016; c 59, 54.]

However, to ensure that the Scottish Parliament does not lose sight of the issue following dissolution and the election in May and, importantly, to ensure that the ruling is fully effective, complainers need to be aware, first, of their right to object to the release of those records, and, secondly—and crucially—that legal aid will be available for them so that they can have legal representation.

Therefore, amendment 30 seeks to place a duty on the Scottish Government to raise public awareness, as it considers appropriate and as a result of Lord Glennie's judgment, in relation to the rights of complainers in rape and sexual assault cases. In the hope that the amendment will gain cross-party support today, I deliberately did not specify the timings or nature of the campaign that the Government should undertake.

I thank Alison McInnes for her support both for the amendment and in relation to the whole issue of the release of medical and other records.

I move amendment 30.

Elaine Murray: I rise to support the amendment in Margaret Mitchell's name, and to congratulate her on her tenacity in bringing the issue forward—in the form of a number of amendments to a number of different bills—to try and address the issue of complainers whose sensitive records are sought by defence counsel.

This is an appropriate bill in which to place such a provision. Some of the issues around legal representation in court have been tackled; the amendment simply asks Scottish ministers to ensure that complainers are aware of their rights and to implement the recent court decision. Therefore, we will support the amendment.

Alison McInnes: I, too, pay tribute to Margaret Mitchell's persistence in this matter—she has been rewarded at last.

The recent judicial review vindicated the position that Margaret Mitchell and I took on the issue of representation at the stage of recovery of documents. I am pleased that the cabinet secretary set out clearly—at the committee and in written answers to me—the Government's acceptance that it had been wrong in law by refusing legal aid in such circumstances. An injustice has been addressed.

Margaret Mitchell's amendment 30 rightly addresses the need to raise awareness of the change of approach. It is a very modest amendment: its provisions are not onerous on the Government but could make a dramatic difference to the protection of victims of sexual offences. Sadly, we know that, too often, attempts by the defence to discredit witnesses by accessing their medical records have devastating results. I hope that the cabinet secretary will be able to support the amendment.

Michael Matheson: Amendment 30 raises an important issue. I want to explain clearly the Scottish Government's position in the wider context within which amendment 30 sits.

At stage 2, I made it clear that the Scottish Government welcomes Lord Glennie's recent judgment in the WF case. It was an important judgment that clarified a number of issues that will lead to significant changes to procedure in cases in which an application is made to recover sensitive information in criminal cases. The judgment is wide ranging, in that it relates to all sensitive information that may be disclosed in any criminal proceedings; it is not restricted to sexual offences, and it is not restricted to medical records. Nor is it restricted to complainers. Lord Glennie confirmed that, when someone's sensitive records are considered for disclosure in criminal proceedings—including, but not limited to, the complainer's records—important rights exist to help safeguard the privacy of any person whose records may be disclosed. Lord Glennie made it clear that those rights exist. They are: the right to be intimated that disclosure of sensitive records is being considered; the right to be heard in proceedings to consider whether disclosure is appropriate, including a right to be represented at those proceedings; and the right to legal aid, taking account of the individual's circumstances, when that is necessary to give effect to those rights.

Lord Glennie was clear that courts already have the ability to self-regulate their own procedures and must ensure that those important rights are protected. For the future, Lord Glennie recommended that rules of court be developed to cover procedures in the area.

Following the judgment, I acted swiftly to put in place, separate from the rules of court, interim arrangements to allow the Scottish Legal Aid Board to provide legal aid in the future when those rights are engaged. Importantly, a means test will not be applied in those interim arrangements. Legal aid, in the form of assistance by way of representation, will be available in appropriate circumstances for individuals whose sensitive records are being sought.

Amendment 30 would require the Scottish ministers to raise awareness of the rights that Lord Glennie has confirmed exist, but for only a limited number of cases, and for only certain types of sensitive records, rather than for all cases in which sensitive records are considered for disclosure. Therefore, amendment 30 does not cover the whole gamut of cases and people in relation to which those rights exist. Indeed, it does not even cover the type of case that WF was involved in, which was a domestic abuse case.

There are also some drafting issues with amendment 30, including the placement of such a provision in section 301A of the Criminal Procedure (Scotland) Act 1995, which has a different purpose from what the amendment seeks to do. That in itself could create confusion.

Notwithstanding those technical issues, we are certainly happy to accept the spirit behind amendment 30. It is important for people whose privacy rights may be breached to know what rights they have in that situation. Lord Glennie's judgment has already received considerable publicity, and parliamentary debates such as this can only help to raise awareness further. In addition, the Scottish Government will contact key third sector stakeholders, which do such valuable work with sexual offence victims and domestic abuse victims, to ensure that they are aware of those rights so that they can raise awareness with the people whom they are helping. We will also update relevant Scottish Government webpages and social media to ensure a wide dissemination of the details of the judgment and the rights that Lord Glennie has confirmed exist.

At stage 2, a similar amendment was lodged relating to publicity for the intimate images offence. Members were content not to accept that amendment for two main reasons: first, because of the commitment that I gave that publicity efforts would be undertaken; and, secondly, because legislation is not necessary for the Scottish Government to raise awareness about matters within its remit. In fact, the statute book would become very crowded and cluttered if we had a provision about awareness raising in relation to every policy or set of rights that exists in law. As I have indicated, the Scottish Government is happy to undertake work to ensure that awareness of Lord Glennie's judgment is raised.

For the reasons that I have provided, the Scottish Government will oppose amendment 30 and asks members also to do so.

Margaret Mitchell: The terms of amendment 30 were left deliberately vague to give the Scottish Government maximum flexibility to formulate any campaign that it wanted to cover the issue of awareness raising. Therefore, although it is disappointing that the Government has been unable to agree to the amendment, I am gratified and heartened that the cabinet secretary has said that he will try to publicise the fact that legal aid is now available and will contact groups that deal with individuals who would benefit from that provision.

I hope that lodging the amendment will in itself help to raise awareness that legal aid is available to those vulnerable individuals so that they can oppose the inappropriate release of their medical records, including psychological, psychiatric and

physiological records, when those are sought as a way of discrediting them in court. I also hope that the press will pick up on the issue and inform victims about their rights.

For all those reasons, I press my amendment.

15:00

The Deputy Presiding Officer: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 49, Against 58, Abstentions 0.

Amendment 30 disagreed to.

Section 17—Application of notification requirements where order made

The Deputy Presiding Officer: We move to group 4. Amendment 15, in the name of the

cabinet secretary, is grouped with amendments 16 to 27.

Michael Matheson: Chapters 3 to 6 of part 2 of the bill replace the existing suite of orders that are used to protect our communities from those who pose a risk of sexual offending. The bill establishes two new forms of orders—sexual harm prevention orders and sexual risk orders—and makes provision about the enforcement of older orders and equivalent orders made elsewhere in the United Kingdom. The amendments in the group all make minor amendments to those provisions.

Amendment 15 deals with what happens to existing sexual offender notification requirements under the Sexual Offences Act 2003 when a sexual harm prevention order is made. The making of such an order will keep alive any notification requirements that would otherwise expire. In the bill as introduced, it was not clear for how long the notification requirements would continue to be in place. Amendment 15 clarifies that that will be until the order expires.

Amendment 27 deals with a similar issue—what happens to existing sexual offender notification requirements under the 2003 act when a person breaches an order granted in another part of the UK that is equivalent to a sexual risk order or interim sexual risk order. Breaches of any of those orders will keep alive any notification requirements that would otherwise expire. In the bill as introduced, it was not clear for how long the notification requirements would continue to be in place. Amendment 27 clarifies that that will be until the order expires.

Amendments 16 to 18 adjust the provisions that relate to the requirement to hold a hearing or invite written representations on applications for variation, renewal and discharge of sexual harm prevention orders to take account of the fact that the High Court of Justiciary and not just the sheriff may vary, renew or discharge an order. The amendments are needed because sections 19(7) and 19(8) are currently too narrowly drafted, as they refer only to the sheriff.

Amendments 20, 21 and 23 adjust provisions that deal with the appeals processes in relation to sexual harm prevention orders and sexual risk orders to provide that, when an appeal results in an order being granted by the appeal court, any subsequent variation, renewal or discharge of that order should be considered by the sheriff court. That could be an issue if, for example, a condition in the order needs to reflect a change in the person's accommodation, family life or employment. Amendments 20, 21 and 23 will ensure that applications for variation, renewal and discharge of orders, whether granted at first instance or on appeal, are considered by the first-instance court.

Section 31A requires the clerk of court to serve a copy of a sexual risk order on the subject of the order. Amendments 24 to 26 make minor changes to the provisions by replacing the term "sheriff" with the wider term "court" to take account of the fact that, in appeal cases, orders may be granted by courts other than the sheriff court.

Amendments 19 and 22 relate to interim sexual harm prevention orders and interim sexual risk orders respectively. Currently, sections 20(7)(b) and 30(7)(b) anticipate that an application for an interim order

"may be made by separate application"—

that is, the application may be separate from an application for a full sexual harm prevention order or a full sexual risk order. On reflection, we consider that that approach is unduly restrictive. We consider it more appropriate for the Criminal Courts Rules Council and the Scottish Civil Justice Council to frame the necessary rules surrounding how applications for an interim sexual harm prevention order and an interim sexual risk order should be made when an application for a full order of either type has already been made.

I move amendment 15.

Amendment 15 agreed to.

Section 19—Variation, renewal and discharge

Amendments 16 to 18 moved—[Michael Matheson]—and agreed to.

Section 20—Interim orders

Amendment 19 moved—[Michael Matheson]—and agreed to.

Section 21—Appeals

Amendments 20 and 21 moved—[Michael Matheson]—and agreed to.

Section 30—Interim orders

Amendment 22 moved—[Michael Matheson]—and agreed to.

Section 31—Appeals

Amendment 23 moved—[Michael Matheson]—and agreed to.

Section 31A—Requirement for clerk of court to serve order

Amendments 24 to 26 moved—[Michael Matheson]—and agreed to.

Section 36—Breach of certain equivalent orders: application of notification requirements

Amendment 27 moved—[Michael Matheson]—and agreed to.

Schedule 1—Section 2: Special provision in relation to providers of information society services

The Deputy Presiding Officer: We move to group 5. Amendment 28, in the name of the cabinet secretary, is the only amendment in the group.

Michael Matheson: Schedule 1 makes special provision in relation to the application of the intimate images offence to providers of information society services. Amendment 28 is a technical amendment to remove the definitions of certain terms from paragraph 4 of schedule 1. As a result of amendments at stage 2 to paragraph 3 of schedule 1, amendment 28 is necessary to reflect the fact that the terms are no longer used in that schedule.

I move amendment 28.

Amendment 28 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments for today and indeed for this parliamentary session.

Abusive Behaviour and Sexual Harm (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-15994, in the name of Michael Matheson, on the Abusive Behaviour and Sexual Harm (Scotland) Bill.

15:09

The Cabinet Secretary for Justice (Michael Matheson): I begin the formal stage 3 debate by thanking the members and clerks of the Justice Committee, the Finance Committee and the Delegated Powers and Law Reform Committee for their careful consideration of the bill.

I also thank the external stakeholders who took the time to engage in the bill and scrutiny processes and share their knowledge of and views on the various issues with which the bill deals.

It is fitting that the final piece of legislation to be dealt with in the chamber in this parliamentary session relates to abusive behaviour and sexual harm. There are few more important issues for the Parliament to deal with than taking the necessary, important and far-reaching steps to improve how our justice system can respond to such distasteful behaviour as domestic abuse and sexual offending.

The bill contains provisions in six areas. The provisions that introduce statutory jury directions have probably been most debated, and it is worth spending some time explaining why we consider that they are so important.

We know that some members of the public who make up juries that decide sexual offence cases hold preconceived and at times ill-founded beliefs about how sexual offences are committed. Those unenlightened views concern the way in which someone who is sexually assaulted or raped will be likely to react when the offence is being committed and afterwards. Some people assume quite wrongly that anyone who commits a sexual offence will always have to use physical force to overcome their victim, and some people think that a victim will always try to physically resist their attacker. Some people think that a victim will always make an immediate report to the police after an offence has been committed against them.

No one seriously doubts that some people in our society hold these views. People do not necessarily hold those views as a result of malice or ill will towards victims of sexual assault; they may be held simply because of a lack of understanding of what the research has told us

about the reactions of victims to sexual assaults both during the assaults and in the aftermath.

We know from that extensive research that the reality of what can be expected from a victim of a sexual offence is quite different from those unenlightened views. We know that there is no standard type of reaction and that people react in many different and normal ways. Therefore, jurors who start with preconceptions about how sexual offences are committed and how a victim may react may assume, without considering the specific evidence, that a delay in reporting or the absence of the use of physical force by the attacker or physical resistance by the victim is an indication that an allegation is false.

The intent behind the statutory jury directions is to ensure that the focus of the jury is on the evidence that is laid before it and that any misconceptions that jurors hold about how people react to sexual crime should play no part in how evidence in a case is considered.

Margaret Mitchell (Central Scotland) (Con): Does the cabinet secretary agree that the use of expert witnesses would serve the purpose of dealing with those misconceptions in a very effective way—just as effective as statutory jury directions?

Michael Matheson: That point was raised at stages 1 and 2, and I will come to it in my speech. The issue was identified by the Crown, and I recognise that Margaret Mitchell and Christine Grahame, who is the convener of the Justice Committee, have raised a valid point.

At stage 2, comments were made that providing for statutory jury directions would somehow threaten the independence of the judiciary and the separation of powers between the legislature and the judiciary. I find it hard to reconcile such comments with the fact that other jurisdictions have already legislated in the area without interfering with judicial independence. In addition, the provisions in the bill are deliberately framed to ensure continuing judicial discretion, in any case, on whether it is necessary to use the directions. That means that directions are not required to be given when they are not relevant to a given case.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Would the cabinet secretary concede, however, that the Lord President and Sheriff Gordon Liddle, who is vice president of the Sheriff's Association, had very serious views that this is a constitutional crossover that should not take place and that it will result in a breach of the constitutional distinctions between the legislature and those who put legislation into action?

Michael Matheson: I recognise that they raised some concerns regarding the provisions, but I do not recall them saying that they would not take them forward if Parliament was minded to include them in the bill. If I recall correctly, in their evidence they said that if Parliament was minded to do that, they would have to consider how the provisions would be taken forward.

In Scotland, judges are already required by case law to give jury directions on relevant law and on certain evidential matters, for example on dealing with expert evidence or identification evidence. This common law on jury directions has developed incrementally by way of appeal cases challenging trial judges' directions or the lack of relevant directions. The reason why we have included in the bill statutory jury directions is that we have taken the view that the courts have not been sufficiently innovative in this area and it is necessary for statute law to intervene to deal with such an important matter.

There are many precedents for Parliament moving into areas of law that have, until then, been entirely based on the common law. For example, the Sexual Offences (Scotland) Act 2009 restated and codified the common law on sexual offences. Similarly, the law of evidence is largely common law, but it is supplemented by statutory provisions in the Criminal Procedure (Scotland) Act 1995.

Let us remember that the provisions in the bill do not attempt to prescribe the form that such a direction must take, and they give the judge the freedom to tailor any direction to fit the facts and circumstances of the particular case. The bill also provides that where such a direction is clearly inappropriate—for example, in a case where the alleged victim could not have reported the offence at the time it happened because they were in a coma, or because the alleged victim was a very young child—there is no requirement for the direction to be given. Nothing in the bill affects the ability of expert evidence to be led in a given case, and the Crown Office indicated during stage 1 scrutiny of the bill that it will continue to use expert evidence as it considers it appropriate in relevant cases.

We are pleased that at stage 2 the Justice Committee supported the retention in the bill of the jury direction provisions, as we consider that they will help to make a real difference in ensuring that jurors consider the evidence laid before them in sexual offence cases without allowing any pre-conceived or ill-founded views to cloud their judgment.

We are pleased with the broad support for the intimate images offence, which will help to ensure that perpetrators and victims understand what is against the law and will improve how victims can access justice. We have heard arguments for extending the offence to cover the non-consensual

disclosure of intimate written and recorded sound communications, such as texts, emails, letters and voice mail messages. It has also been suggested that the offence should be extended to cover the distribution of voyeuristic images taken in public places. We have some sympathy with the intent behind those suggestions. We know that there are a myriad of ways in which a person can seek to abuse or control someone—especially a partner or ex-partner. However, the offence was developed to deal with the problem of people—usually partners or ex-partners—sharing images that are likely to have been taken with consent, either with the intention of causing that person fear, alarm or distress, or else with recklessness as to whether that would have that effect. As I outlined earlier, extending the offence to cover written communications or voyeuristic photographs taken in public could risk unintended consequences.

We consider that it would be difficult to amend the offence to cover written and sound communications and to put in place appropriate defences without inadvertently providing a loophole for people who distribute intimate images. As with all legislation, there might be issues that the Parliament will wish to revisit in due course, and the scope of the offence might be one such issue. However, we believe that the offence that is set out in the bill strikes the appropriate balance at this time and that it will help our justice system to deal with such behaviour.

The bill also introduces a new domestic abuse aggravator, which will help to improve the recording of such crimes and will ensure that courts take the domestic abuse circumstances of an offence into account when they decide on an appropriate sentence.

The bill strengthens protections for victims of harassment in cases in which the person who harasses them is unfit to stand trial or lacked capacity to commit an offence because of a mental disorder, and it gives our courts new powers to hold perpetrators of child sexual abuse to account for offences committed elsewhere in the United Kingdom by extending extraterritorial jurisdiction to apply to England, Wales and Northern Ireland, just as it already does to the rest of the world.

The bill modernises and reforms the powers of our courts in relation to the orders that are available to help to protect our communities from those who pose a risk of sexual offending. Those reforms will streamline the operation of the powers that our courts already have in that area and will expand their ability to impose orders to protect our communities.

The bill makes a number of important reforms to address specific issues to improve the way in which our justice system responds to abusive behaviour and sexual crime.

I move,

That the Parliament agrees that the Abusive Behaviour and Sexual Harm (Scotland) Bill be passed.

15:21

Elaine Murray (Dumfriesshire) (Lab): I am honoured to open the stage 3 debate for Scottish Labour on the last bill to be considered in the fourth session of the Scottish Parliament. I would like to thank the clerks, the Scottish Parliament information centre and the witnesses who wrote to or attended committee for their contributions to our deliberations, not just on the Abusive Behaviour and Sexual Harm (Scotland) Bill but over the session as a whole.

I joined the Justice Committee in 2013, but I understand from the committee's legacy report that since May 2011 the committee has considered 13 Government bills and four members' bills. That has been a considerable burden of work not just for committee members, but for the clerks and the members of the legislation team who have helped us with our amendments. I also thank the committee's convener, Christine Grahame, and fellow committee members. It has been an interesting and informative committee to be a member of, and it has often also been quite a lot of fun—although that might seem to be rather unlikely.

Parliament's committees have attracted some negative comments in the press recently for not holding the Government to account. I do not consider that to be a fair criticism of the Justice Committee, which I believe has continued to scrutinise legislation effectively. The composition of the committee does not give the Government a majority, and the convener—as ministers know—is capable of independent opinion.

I would also like to thank the Cabinet Secretary for Justice and the Minister for Community Safety and Legal Affairs, who is sitting beside him, for being prepared to work with the committee and Opposition members on amendments not just to the bill that is before us but to others that we have considered.

It is pleasant to conclude the session on a consensual note, given that we will all be fighting like cats and dogs for the next six weeks. The Abusive Behaviour and Sexual Harm (Scotland) Bill has been generally welcomed, despite the division of opinion on the provisions on judicial directions.

Scottish Labour would have liked the forms of communications that are covered by the offence of distribution of intimate photographs and films to

have been extended, as my colleague Margaret McDougall argued when she moved her amendments on the issue. We had also hoped that it might have been possible to address the matter of the distribution on unsavoury websites of sexual images that are taken without consent in public places, but we can understand why that has not been possible in this bill, and we look forward to further discussion on that.

Scottish Labour members are pleased that amendment 29 in my name, which was agreed to earlier, will mean that anyone who takes a photograph in a public place of a person who has been deliberately placed in an intimate situation without their consent, and distributes it, will not be able to use the fact that the photograph was taken in a public place as a defence. I thank the cabinet secretary for agreeing to have his officials look into that issue. Although it has not been possible to achieve everything that we would both have liked to achieve, we have been able to make progress.

Labour is very supportive of the provisions on judicial directions, because we believe that they may help to achieve justice for rape victims and victims of other sexual offences. When the complainer at a trial has not told, or has delayed telling, another person or the police about the offence, or when evidence is led on the absence of physical resistance, the judge must now advise the jury that there can be good reasons for the complainer's behaviour and that it does not discredit their evidence. Amendments to remove judicial directions were lodged at stage 2, and we opposed them. I note that similar amendments were lodged but not selected for debate at stage 3.

Juries are made up of members of the public, and research demonstrates that the public often have misconceptions about how victims of rape ought to behave—believing, for example, that physical resistance will always be given or that a victim will always report rape to the police immediately. That is not the case. Victims of sexual attacks may blame themselves and may hold themselves to be partly responsible. Often, women who are affected by unwanted sexual advances or sexual attacks think that they have done something to ask for it: it is quite common. Victims may feel ashamed, they may feel partially responsible and they may feel far too ashamed to come forward straight away. Victims can be far too shocked or scared about what else could happen to them to offer any physical resistance. Who knows what else could happen? They could end up being murdered as well as attacked. They may offer no physical resistance through fear or through being in a state of shock.

We know that, in about 15 per cent of rape cases, a "not proven" verdict is returned, which is the highest percentage for that verdict. Also, it is more difficult for rape cases to come to court due to the difficulty in presenting corroborating evidence. We have had a lot of discussion about abolition of the requirement for corroboration in the session of Parliament that is about to end, but corroboration is still a problem in such cases.

We consider that the provision for judicial direction will help rape victims to achieve justice; for example, it will enable a judge to advise the jury not to be swayed by misconceptions about the reaction of rape victims. [*Interruption*.] Excuse me.

The Deputy Presiding Officer: Just take a moment. There is plenty of time.

Elaine Murray: I have had this cough since 5 January. I wish it would go away.

Opponents within the judiciary argue that similar directions will creep into other areas of legislation, but that can happen only if Parliament agrees that it should happen. I do not think that mission creep is going to happen by itself. Decisions to extend judicial direction would have to be made by Parliament.

The bill also brings into effect a number of measures that have attracted less comment. For example, it extends courts' ability to award non-harassment orders for domestic abuse offences to circumstances in which the alleged offender has not been fit to stand trial, although the evidence suggests that the person is guilty of the offence.

The bill also extends the jurisdiction of Scottish courts to prosecute offences that are committed against children elsewhere in the UK; amendments at stage 2 clarified how that will operate. The bill abolishes sexual offences prevention orders, foreign travel orders and risk of sexual harm orders, none of which were used often—there was a petition lodged in Parliament about that—and replaces them with sexual harm prevention orders and sexual risk orders. That change is similar to provisions in the rest of the UK, and we hope that the new orders will be easier to use.

Although we welcome the bill and will support it tonight, we do not by any measure consider that the job is now done. The wider issue of coercive control, which exists in cases of domestic abuse but also in abuse of children and older people, is yet to be tackled. We appreciate the difficulty in defining such a broad offence that can be committed in many different circumstances, but we all know that behaviour of that nature can be very damaging to the victim. Such victims are often not aware of what is being done to them and, again, may blame themselves for what happens.

Whatever the shape of forthcoming legislation, there is a need for awareness raising. There is

work to be done in our society and in our schools on respect and consent in intimate situations. The education programme that will accompany the bill is much needed in the light of recent evidence about the amount of sexting that is reported to be taking place in Perth and Kinross schools, and I am sure that Perth and Kinross is no different from any other local authority area in Scotland in that regard. I read today that there have been similar reports in England, and I believe that the Labour Party at UK level has proposed that there should be compulsory sex education on the subject. We might wish to return to that in this Parliament. Although the bill is not intended to prevent the activity of sexting, young people need to be aware of their vulnerability both to bullying and exploitation.

My colleagues have raised the importance of tackling other issues. Rhoda Grant raised the need to change both attitudes and legislation around the purchase of sex; she introduced a member's bill on the issue and lodged stage 2 amendments to the Human Trafficking and Exploitation (Scotland) Act 2015. I am sure that she will return to those issues in the next session of Parliament. Cara Hilton, during the passage of the Air Weapons and Licensing (Scotland) Act 2015 highlighted the harm that is done by the exposure of young children to exploitative, sexualised and degrading images of women, which remains an outstanding matter of concern. In the next session, and maybe in sessions after that, Parliament will have further work to do.

There has been much dissent and disagreement during the fourth session of Parliament. However, we end on a note of agreement, on an issue of great importance: we are taking action on sexual and domestic abuse, changing court procedure to secure greater access to justice for rape victims, and protecting victims of what has sometimes been described as "revenge porn". I look forward to this final debate, and in particular to the speeches of Malcolm Chisholm and Margaret McDougall, who will be speaking in the chamber for the last time.

15:30

Margaret Mitchell (Central Scotland) (Con): The Abusive Behaviour and Sexual Harm (Scotland) Bill is, as others have mentioned, the last bill that the Parliament will consider as session 4 draws to a close. It is therefore fitting that the legislation has provisions that address and have the potential to make a positive difference in deterring—among other things—what has been dubbed "revenge porn". It is a particularly vexing and disturbing crime that can have far-reaching consequences.

Section 2 creates a new offence of disclosing or threatening to disclose an intimate photograph or film. That criminalises behaviour that is deeply distressing to victims and keeps pace with similar legislative changes in England and Wales. It also ensures that Scots law now covers the abuses arising from such subversive and psychologically damaging misuse of modern technology.

In addition, the bill seeks to tackle other complex and emotive areas, such as domestic abuse, with provisions that include the introduction of a domestic abuse aggravator. The Crown Agent has confirmed that that will result in abusers getting tougher sentences.

Although the provision is most welcome, I still have a concern about the aggravator applying to a first offence—as opposed to second and subsequent offences—for behaviour that is categorised as reckless. Time will tell whether my concern is justified.

I turn to the release of medical, psychological or psychiatric records in sexual offence cases. Over the parliamentary session, I have made a number of attempts to address the unjustifiable requisitioning of such records by arguing that the complainer must be notified of their right to oppose the move and, crucially, must have access to legal aid to enable them to appoint an independent legal representative to act on their behalf. I am therefore delighted that, having previously argued that legal aid was unnecessary, the Scottish ministers have accepted Lord Glennie's ruling relating to the judicial review petition WF v the Scottish ministers, which makes it clear that such legal aid must now be made available.

Although that is very good news, in order for such a provision to be effective in future it is essential that complainers are aware of their right. I hope that the discussion on the amendment covering the issue that I lodged will help to achieve that aim. I want to put on record my thanks and gratitude to Alison McInnes for her consistent support regarding the entire issue.

There is much that the Parliament can be proud of in the bill, which has been debated in the chamber. Sadly, the Parliament can take no pride whatsoever in the blocking of the opportunity for the entire chamber to fully scrutinise and debate the most controversial provision in the bill, namely the putting of jury directions in certain sexual offences on a statutory footing. Since stage 1, the Scottish Conservatives have strongly opposed the provision as has—to her credit—Christine Grahame, the Justice Committee's convener.

At stage 2, and again at stage 3, I lodged an amendment to remove statutory jury directions. The cabinet secretary's justification for opposing the amendment was that he wants to focus on the

misconceptions of juries in such cases. However, the use of expert witnesses could easily dispel misconceptions about why there might be a delay in reporting or a lack of physical resistance on the part of the victim in rape and sexual assault cases. In other words, exactly the same outcome could be achieved without the adverse constitutional implications of statutory jury directions. Quite simply, the reluctance to use expert witnesses is entirely due to cost.

Furthermore, grave concerns about the precedent these provisions set have been expressed by the Law Society of Scotland, the Faculty of Advocates, Lord Carloway and Sheriff Liddle. It is important to understand that those grave concerns have been expressed because the provisions for statutory jury directions compromise the independence of the judiciary that is a central tenet of Scots law, blur the constitutional divide between legislators and the judiciary, strike at the separation of powers, and raise constitutional issues that compromise democracy in Scotland.

To put that in context, we were told that, under the additional member proportional representation voting system, there could never be a majority Government, only a minority one or a coalition, and that both situations would introduce checks and balances on the party that has the largest number of members of the Scottish Parliament. We now have a majority Government. The consequence of that is that any amendment that the Government opposes has been ruthlessly whipped and consistently defeated in the chamber. Scotland therefore has a democratic deficit.

That situation is compounded by the Presiding Officer's refusal to allow Parliament the opportunity to scrutinise and debate an amendment of such a magnitude, despite being aware that it raises crucial separation of powers issues. As the Presiding Officer has stated, that is entirely for her to decide. Although that is certainly true, it does not mean that the decision is right.

Today is a dark day for our democracy in Scotland and it is a great pity that the end of the Presiding Officer's tenure should be marked by such a controversy. Those comments notwithstanding, as my colleague Annabel Goldie—whom I pay tribute to for her exceptional service, couthie contributions and general wit since her election to Parliament—will confirm in her final speech in the chamber, the Scottish Conservatives will support the bill at decision time.

15:38

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): It has been my privilege to convene the Justice Committee for five years. I thank all the committee members for their hard work and, not least, for their tolerance of my idiosyncrasies in the chair—they should put it down to age.

The bill has two main elements. The first is the new offence of the non-consensual sharing of intimate images colloquially labelled "revenge porn". That is not the most pleasant of terms, but it is well understood by the public so I will use it.

With advances in technology and increasing use of social media, it has become all too easy to use the internet as a weapon to humiliate, bully and intimidate other people. When that involves the sharing of intimate photographs or videos of another person that were never meant to be shared with a wider audience and are perhaps sent out on the internet following an acrimonious break-up, it can be particularly poisonous and harmful.

The new law will provide an opportunity to make it clear that sharing intimate images of another person without their consent and with the intention of or—and this must be stressed—with recklessness about whether it causes hurt or humiliation, is a crime. Images on the internet can live for ever.

The new offence is to be welcomed, and I hope that it will lead not so much to prosecutions as to a change in society's behaviour. Let us call it preventative legislation rather than punitive, although if someone does breach the legislation, they might, at the end of the day, end up with a criminal record.

There are some—particularly the young, perhaps—who may lack the insight or maturity to realise just how much harm such an act can cause, and it is usually young people who are the victims, as well as the perpetrators. There is an expectation that the vast majority of cases involving children and young people will not go before the courts or even before the children's panel and that there will be some discretion as to what happens with young people.

The second main element of the bill is jury directions relating to sexual offences, which my colleague Margaret Mitchell referred to. The bill proposes that, for the first time, we set out in statute what directions judges must give to juries in certain cases. If evidence is led about an apparent delay in reporting or telling anyone about an alleged sexual assault, the judge must direct the jury that there may be good reasons for the delay. In addition, if evidence is led about an apparent absence of physical resistance to an alleged sexual assault, the judge must direct the jury that there may be good reasons why a person may not have physically resisted such an assault.

I hear what the cabinet secretary says about case law but case law is made by the courts, not by Parliament. In my view, this is a case of Parliament interfering too deeply in the courts' discretion. I understand that the intention behind this element of the bill was to tackle alleged prejudices or misconceptions in the minds of some jurors but juries are, at their very heart, comprised of ordinary people, some of whom may very well bring their misconceptions into the jury room—in fact, I would be astonished if they did not.

Also, as the Government has instructed research to be carried out into juries' behaviour, I do not understand why we are leaping to setting out that requirement for jury directions before we have the results and the evidence from that jury research. That is where I fall out with the Government—not for the first time and, if I am re-elected, probably not for the last time.

Like my colleague Margaret Mitchell, I am very disappointed that her amendment to delete that requirement, which I supported, was not selected for debate. It led to substantial debate at stage 2 and the cabinet secretary devoted quite a chunk of his speech to addressing the issue. However, what do we have in the chamber now? If it had been in the amendment process, we would have had a full chamber listening to the arguments. Now the chamber is sparsely populated with a few hardy people, most of whom are contributing to the debate.

To me, that is not democratic, and I regret that I have to support my colleague Margaret Mitchell again in being extremely disappointed by the Presiding Officer's decision because, to quote the Lord President's written evidence,

"what is proposed is that the judge should essentially take on the mantle of the prosecution in making statements of fact dressed up as law."

The Lord President went on to say in oral evidence:

"I return to what I have said already: we the judges direct the jury on the law that is to be applied to the case. That is our primary purpose. We tell juries at the beginning that the facts are for them and that it is for them to assess the witnesses and make up their minds, applying their collective common sense. That is the jury's function. If a judge is seen to dictate, or attempt to dictate, to a jury on what facts should or should not be found, that would be in the realms of counterproductive."

Finally, he said:

"Yes, it sets a precedent. If Parliament dictates what should be said to juries by a judge in this area, other people will no doubt seek to extend that to other areas and will wish other directions to be given, and that is where we get into the constitutional divide."—[*Official Report, Justice Committee*, 8 December 2015; c 42, 50.]

Those are not light words and they are not from a lightweight; they are from the Lord President of the Court of Session, a man who—just as much as we do—wants to see justice done in his courts. If he has those substantial concerns about crossing the constitutional divide, I think that it is an issue that Parliament should have debated more fully.

Of course it is right to say that if we vote for the bill tonight, the judges will obey. Of course they will obey; they obey the statutes that we put down for them. However, the question is: should we be doing it?

Roderick Campbell (North East Fife) (SNP): The member has talked about Lord Carloway's comments. Will the member accept that he also said this?

"What I am trying to say is that it could be done but it is not what we would see as the best way of doing it."—[*Official Report*, *Justice Committee*, 8 December 2015; c 35.]

Christine Grahame: Exactly—why do it this way if there is a better way of doing it? I think that the member has shot himself in the foot, no matter that he is a member of the Faculty of Advocates.

We are crossing that constitutional line. The Parliament has not been given the opportunity to fully debate the issue. That said—and I very much regret criticising the Presiding Officer on her penultimate day in Parliament but I have done it, so there we go—I will be supporting the bill because I am not throwing out the baby with the bath water. I will support the bill at decision time, but I hope that we return to this issue and I hope that this is not the thin end of the wedge.

The Deputy Presiding Officer (Elaine Smith): Before I call Malcolm Chisholm, I advise members that this is his valedictory speech. Like me, he has been a member since 1999 and, prior to that, he was a well-known Scottish member of the UK Parliament. He served as a Government minister and has been a very effective back bencher when his party was in government and in opposition.

Above all, Malcolm Chisholm is not just a politician but a parliamentarian—he has been a parliamentarian for all his long and distinguished political career. On behalf of the Presiding Officer team and the Parliament, I wish him all the best for the future. [*Applause*.]

15:45

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Thank you for those very kind words, Presiding Officer.

Today's bill is another step in the significant progress on action against violence against women that we have seen in the Parliament since 1999. I welcome the domestic abuse aggravator, the extension of non-harassment orders, the action against image-based sexual abuse and the

measures on jury direction. I respect Margaret Mitchell and Christine Grahame, but I have to say that, when I read the research of Professor Louise Ellison and Professor Vanessa Munro, I found it overwhelmingly persuasive. Of course, it led to the similar changes that took place in England a little while ago.

The consultation document on the bill included a proposal for a new specific domestic abuse offence to cover coercive control and the long-term repetitive nature of much domestic abuse. I look forward to that becoming law, which I think will happen in the new session of Parliament. I hope that other measures will be taken in the new session—for example, there will perhaps be a response to the recent Scottish Women's Aid report on homelessness and domestic abuse.

I also hope that there will be a renewed focus on prevention. I first spoke on that subject in the House of Commons in July 1993, when I highlighted the great Zero Tolerance prevention campaign that was taking place in Edinburgh at the time. That was bringing the issue of violence against women out into the open and was challenging men with striking messages and shocking facts. It also transformed my understanding of the issue and led me to see such violence as a consequence and a cause of gender inequality. At the centre of that campaign was Evelyn Gillan, whom many members will remember and who tragically died a few months ago. I know that her partner recently wrote to the First Minister to suggest that the Scottish Government could consider a prevention campaign that at least drew on the lessons from the Zero Tolerance campaign. I hope that the Government will reflect on that.

We have certainly come a long way since 1993. In the debate then, I mentioned a Scottish Office campaign that focused on women taking precautions rather than on challenging men. I do not say that to criticise the Conservative Party, because I doubt that any other party would have done anything different at that time. Without being in any way complacent, especially in view of the horrifying continuing prevalence of violence against women, we can regard progress on the issue as one of the great achievements of the Scottish Parliament.

I believe that Scotland is regarded as the leader in the UK on such issues. That is certainly what I found when I spoke at a meeting 10 years ago in the House of Commons that involved English groups that were working against violence against women. I am sure that we are still the leaders now, because the current Scottish Government has carried on the work of the previous Government.

There are two fundamental reasons for progress in the area in Scotland. The first is that, from the very beginning, the key stakeholders were involved in developing the strategy, and that is still the case. I pay tribute to Zero Tolerance, which I mentioned, and to Scottish Women's Aid and Rape Crisis Scotland. There are too many groups for me to remember, but I want to thank especially certain inspirational women who are connected with those groups and other campaigns. I am thinking of women such as Jenny Kemp, Evelyn Gillan, whom I mentioned, Lily Greenan, Marsha Scott and Sandy Brindley of Rape Crisis Scotland. They have inspired me and many other people in the Parliament and across Scotland, and they have driven the strategy. With due respect to both Governments, they perhaps deserve the most praise.

The other key factor is the large number of women who have been members of the Parliament from the start. The proportion of women is much larger here than at Westminster, although I should add that it will not be large enough until 50:50 is achieved across the Parliament.

Our approach has been characterised by collaboration and even consensus, although that cannot and should not be the case with all issues. I do not believe in a consensus that buries genuine differences and turns a blind eye to injustices that need to be addressed, but we should collaborate and work together whenever we can and, if we agree, we should say so. Violence against women is one issue on which we have been able to work together and, for the most part, agree, even if there are disagreements on one or two specific policies.

I have one minute to go until my end as a speaker in the Parliament, unless I have the luck to get to ask question 9 at general question time tomorrow—I had better keep in with the Presiding Officer. As I said on television last night, I like the Westminster Parliament very much, but I have loved the Scottish Parliament. There are so many amazing MSPs from all parties and I thank all members for being such great colleagues, whether we have agreed or disagreed. I also thank my brilliant staff: Lesley Montgomery, April Cumming and Jason Thomson. Finally, I thank all the wonderful people who work in the Parliament, whom I will miss so much—although, being Edinburgh based, I may pop in from time to time. [*Applause*.]

15:51

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): On 11 September 2013, I led a members' business debate on the sensitive subject of revenge porn. It was then the subject of

a new campaign by Scottish Women's Aid and not many people had heard about it. I thank colleagues across the chamber for supporting that debate because, until it came to the chamber, we had not spoken about revenge porn and, if we had not done so, we would not be where we are today.

I opened that debate by talking about the history of domestic abuse. It was not recognised or spoken about in decades gone by. In fact, while the women's suffrage movement was active, it was promoted as a way to keep in line those upstart women who sought the vote. We have now moved on, but domestic violence is still very much a blight on our lives and the bill seeks to address that fact.

I commend the work of the Parliament over many years to tackle domestic violence. I offer Malcolm Chisholm my good wishes and thanks. He has worked for many years on the issue, as we have heard, and has co-chaired with me the cross-party group on domestic violence. I give him every best wish that I can and thank him for all that he has done and for everything that I have learned from him. I thank him especially for the support that he has given me during the campaign to ensure that the sharing of intimate images becomes a criminal offence. I say to him that we are realising that aim today. [*Applause*.]

I also thank Alison McInnes for her support because, without the cross-party support that we have had in the Parliament over many years, we would not be discussing this good bill.

As we all know, an image can go viral on social media within minutes. As I said in the debate that I held a few years ago, revenge porn is every bit as abusive as any other type of domestic violence. Freedom of speech and the freedom to protest cannot be translated into cyberabuse. Such actions are exploitative and very cruel. They ruin lives, cost people their jobs, take away self-respect and take away somebody's dignity. In some cases, people have taken their own lives.

Many key aspects of the bill bring me great comfort. I hope that that applies to all the organisations with which we have worked over the years, such as Rape Crisis Scotland, Scottish Women's Aid and Zero Tolerance—I make no apology for mentioning them all again. They expect us to do something about the issue, given the work that they have done to ensure that we are educated, understand the issues and can do something about it. That is why we are here.

It is very welcome to hear that there will be an aggravation of the offence if there is abuse of a partner or ex-partner. Non-harassment orders in criminal cases are also welcome. How many times have we sat in the cross-party group hearing of cases in which women were continuously harassed, whether that was from a prison cell, by text message, by phone message or through other people?

The provision for jury directions has caused a bit of controversy today. Given some of the evidence that we have seen and the views of the young people—and some older people—to whom we have spoken, it is clear that preconceived ideas can mar judgment in such cases, so I welcome directions to jurors who may have such preconceived ideas. In addition, the bill includes provisions to criminalise incitement to commit certain acts in other parts of the UK, not just in Scotland. That aspect has become important, especially given some of the issues surrounding revenge porn.

I turn to sexual harm prevention orders and sexual risk orders. Coming from a social work background, I know that we cannot overestimate the comfort and support that putting in place such orders to protect people can give to victims of domestic violence.

All the parts of the bill will send a clear and unambiguous message. For those who perpetrate domestic violence or sexual harm, for those who attempt to coerce and control and for those who use revenge porn and share intimate images to shame or blackmail, there will be zero tolerance.

The bill will support and protect the most vulnerable men, women, children and families, and it will make communities stronger. I commend for their work all my colleagues in the chamber, the Justice Committee, all the organisations that I just mentioned and especially the Scottish Government for having the courage to bring the bill to the chamber in the final week of the session. It is fitting that the final legislation is about people and protecting people who are victims of violence. I hope that everyone will support the bill at decision time.

15:57

Alison McInnes (North East Scotland) (LD): The bill addresses the need to tackle the damage that is done by abusive behaviour and sexual harm. The Government has acknowledged that the bill deals with only part of a wider problem, and I hope that Parliament will return as soon as possible to the issue of creating a specific offence of domestic abuse. We need legislation that can properly capture the complex web of coercive behaviour that is used to abuse victims.

Controlling and humiliating women is not new, but the ways of doing it change and our understanding deepens, and the law needs to keep up. The reckless or malicious sharing of intimate images can destroy lives, and it causes

victims huge harm. One victim of so-called revenge porn explained:

"I felt sick, violated and completely crushed by this. I have been a nervous wreck since I became aware of it".

The impacts of sharing intimate images can be far reaching and long lasting, with most people suffering some form of long-term anxiety and some facing self-harm and suicidal thoughts. Perpetrators must be held to account for their actions, and the creation of a new criminal offence in the bill will be an important step in the right direction. Such violations of privacy are unacceptable and will now be illegal.

During the committee stages, we explored concerns about the impact of the new offence on children and young people. There was a significant body of evidence to suggest that we should not exempt children from the provisions as the Law Society of Scotland had suggested. However, I seek assurances from the cabinet secretary that the appropriate route would be referral to the children's hearings system rather than the criminal courts.

At stage 2, I lodged amendments relating to the need for a public information campaign and for schools to do much more in relation to consent and respect in personal relationships. I was grateful for the cabinet secretary's assurance that he intends to tackle that prior to the implementation of the legislation.

Part 2 introduces jury directions relating to sexual offences and has—as we have heard this afternoon—become the most controversial part of the bill. However, it is clear that women face too many misconceptions and prejudices in rape and sexual offence trials. I believe that, with jury directions, the bill does nothing more than introduce a sensible safeguard, and I support their inclusion in the bill.

If I am allowed a moment's reflection, Presiding Officer, I briefly highlight that this is the 17th bill that the Justice Committee has dealt with in this session of Parliament. Many of those bills have been of significant import, and it has been my privilege to serve on the Justice Committee for the whole of the current session.

I came into politics to make a difference and to speak up for those with no voice. If ever there was an example of a group of women with no voice, it was the women in Cornton Vale. I am particularly pleased, then, that I have been able to play my part, alongside progressive voices such as the Howard League Scotland and many others in civic Scotland, in securing the reform of the women's prison estate.

In 2011, disturbed by a succession of damning reports from HM inspectorate of prisons for Scotland into Cornton Vale, the Justice Committee called the Scottish Prison Service and the Government to appear before the committee to account for their lack of action on the recommendations of Brigadier Hugh Monro, who was then HM chief inspector of prisons for Scotland. The Justice Committee's on-going scrutiny led to the Government announcing the establishment of the commission on women offenders and set in train reform that resulted eventually in Michael Matheson's bold decision to support the calls to scrap plans for HMP Inverclyde.

I pay tribute to the convener of the committee, Christine Grahame, who has been a benign, independent and very relaxed chair. She has always allowed committee members the space and time to pursue issues of importance to them. I thank also my fellow members of the Justice Committee for their diligent scrutiny of justice matters.

The decision on Inverclyde has presented us with an opportunity to do things differently and to redefine the experiences of women who come into contact with our justice system in future.

Let us not stop there. Prison has proven to be hugely ineffective—even destructive—for people who are given short-term sentences. It causes untold collateral damage to prisoners' families. More children in Scotland each year experience a parent's imprisonment than experience divorce, yet Scotland continues to have one of the highest prison populations per capita in western Europe and reoffending rates remain stubbornly high.

Too many people still find themselves in the criminal justice system because of poverty, addiction and mental health issues. I have long argued for radical and ambitious reform throughout the prison estate. The largely supportive welcome that Michael Matheson's decision received last year shows that Scotland is ready and willing to consider taking a different approach. I fervently hope that, whatever the make-up of Parliament in the next session, prison reform is, at last, at the forefront of its work.

16:02

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 begin by acknowledging Alison McInnes's immense contribution to the issue of the alternatives to Cornton Vale. [*Applause*.]

I turn to what is perhaps the most controversial part of the bill. The provisions in the bill on jury directions are designed to tackle two very

important issues: first, any delay in the reporting of a sexual offence; and, secondly, any absence of evidence of physical force. We know that those two issues regularly feature in crimes of sexual violence. We know, from the Police Scotland management information for 2013-14, that a quarter of all sexual crimes and 36 per cent of rapes were reported one or more years after the incident.

We have to accept that Lord Carloway's view was that there were other ways of dealing with those issues, one way being to seek to declare the matters to be within judicial knowledge. However, even he acknowledged that that approach was not without difficulty. While he took the view that it would be easy to encompass within the two directions the concept that the matters are within the ambit of judicial knowledge, he did not think that every member of the judiciary would necessarily share that view. Yes, issuing such directions breaks new ground, but the approach is not unfamiliar to other jurisdictions. Yes, jury research might have assisted but, alas, the provisions of the Contempt of Court Act 1981 have prevented that up until now.

We know from expert evidence elsewhere that juries often have misguided as well as preconceived views on these issues. Above all, we need to remember that such directions apply only where the issues are raised in the trial itself—they will not be given as a matter of course. Let us remember that judges are used to giving directions to juries. I believe that they can give directions in such cases without undermining the role of juries as masters of the facts. As the cabinet secretary has said, nothing in the bill restricts the leading of expert evidence in any particular case.

We should also bear in mind one other matter that I do not think has been referred to this afternoon, which is the issue of a joint minute of agreement between the prosecution and the defence on matters that could be considered uncontroversial. Mr Meehan of the Faculty of the Advocates said that more use could be made of the statement of uncontroversial evidence to reduce the likelihood of evidence being led on the matters addressed in the two directions. Lord Carloway agreed with that view. Therefore, there are ways of looking at the matter other than by using the two directions.

Christine Grahame: Will the member take an intervention?

Roderick Campbell: I will—briefly.

Christine Grahame: Does the member agree that juries may have preconceptions and prejudices in other types of case? For instance, if a young man with cropped hair and covered in tattoos and earrings comes before the jury, do we need to give judicial directions about appearance?

Roderick Campbell: I am not, for one minute, suggesting that this does not set a precedent, but we need to look at every case on its facts. We will see how the directions work in practice. I think that they need to be kept under review.

I will move on to the domestic abuse aggravator. The Law Society, in particular, has been lukewarm about the aggravator. I am not unsympathetic to the argument that domestic abuse cases are assiduously prosecuted at present. Clearly, there is danger in overpromoting the aggravator as a panacea when it simply represents "an additional tool", as Catherine Dyer of the Crown Office and Procurator Fiscal Service described it. We also need to look at it in the context of the recently completed consultation on a new offence of domestic abuse.

I think that the right way to look at the aggravator is as a further incremental step in dealing with the scourge of domestic abuse, and certainly not as an alternative to the creation of a specific offence.

The part of the bill that relates to non-consensual sharing of images generated much discussion at stages 1 and 2, as well as in today's debate. While there was general agreement on the benefits of an offence that deals with what has been described as a relatively new type of socially unacceptable behaviour, there was a difference of views on whether we should seek to criminalise the disclosure of text messages or written material.

It is very important that we look at the impact on the victim. That should be first and foremost when we look at the offence. My view is that, for the moment, we should take a conservative and cautious line regarding the disclosure of texts or written materials. I understand the arguments put forward by Margaret McDougall and I am concerned about the wider implications for young people.

It is right to point out that the Children and Young People's Commissioner, Tam Baillie, said in evidence that he was not looking for an exemption for children and young people. I honestly believe that the sharing of texts between teenagers is an industry in itself. Although I understand the views of those who sought to extend the offence, I think that, on balance, we have taken the right position.

I agree with all those who think that we need a proper campaign of information and education to accompany the commencement of the legislation and, as the cabinet secretary said, we should keep the provisions of that part of the bill under review.

I cannot let this opportunity pass without at least mentioning the contributions of Professor Chalmers and Professor Maher in relation to issues arising from what were described in the committee's report as

"sexual acts elsewhere in the UK".

I am glad that the Government addressed the academics' points at stage 2.

I also welcome the fact that amendments at stage 2 put beyond doubt the right of any person against whom a sexual harm prevention order is sought the opportunity to make oral representations.

In conclusion, this is an important bill. I wish it well. It is important that it is the last piece of legislation to be passed in this session of the Scottish Parliament.

The Deputy Presiding Officer: Before I call Margaret McDougall, the chamber will wish to note that this is her valedictory speech. Margaret McDougall became a member in this session of Parliament in 2011. She has contributed fully to the work of Parliament and its parliamentary committees—most recently, of course, to the Justice Committee. Margaret has worked steadfastly for her constituents across the west of Scotland.

On behalf of the Presiding Officers, and of the Parliament, I wish you all the best for the future. [*Applause*.]

16:08

Margaret McDougall (West Scotland) (Lab): Thank you, Presiding Officer, for your kind words.

I am disappointed that the Scottish Government rejected my amendments to the bill, and I will continue to push my case. As it stands, the section of the bill that deals with the illegal sharing of intimate images includes only

"disclosing, or threatening to disclose ... a photograph or film which shows, or appears to show, another person ... in an intimate situation"

without prior consent.

I support the creation of the new offence, as the law desperately needs to be updated to provide for the new, digital age, but I believe that it is far too narrow. Everyone who owns a smart phone, a tablet or even a computer knows that you can take a screenshot that then becomes an image, and that represents a glaring loophole in the legislation—the sharing of text. The Government has missed an opportunity here by not future-proofing the bill. As I said during the debate on amendments, Scottish Women's Aid is clear—as is Police Scotland—that written and audio communications should be included in the bill.

Although I acknowledge that it was raised during the evidence sessions that the sending of abusive or threatening messages is already against the law, the sharing of intimate text or messages is not. For example, the sharing of an intimate image on Facebook without consent would, under the bill, be a prosecutable offence. However, what if someone was to share a non-intimate picture of a person and then include intimate text relating to that person? That seemingly would not fall under the remit of the bill. It is not good enough to say that that does not happen online or that there is no dedicated website for it. It may be rarer than the sharing of intimate images, but it does occur. The sharing of that type of content has the same effect as sharing intimate images without consent: it is designed to damage, embarrass or shame the victim. The fact that it occurs less frequently than the distribution of intimate images does not mean that we should ignore it.

As I said at stage 1—I feel that it needs repeating, given the cabinet secretary's comments during the stage 2 committee proceedings—I am not advocating that we make the process of sexting between consenting adults illegal; nor am I suggesting that we criminalise those who are 16 or under who have engaged in the process consensually. What I am proposing is that the sharing of sexts or any intimate photographic, film, written or audio communication non-consensually should have been included as an offence within the bill. When the action is designed to be malicious or cause harm, that would include such messages from those aged under 16. Indeed, the children's commissioner, Tam Baillie, did not want children to be exempted from the offence, although he and others recommended the provision of a robust education programme for school children on the dangers of sexting. I heard a report on the television this morning that said that sexting has increased twelvefold in England. We need assurances that the education will be adequately funded to discourage the practice here in Scotland.

Although I will support the bill, as it is a step forward in tackling revenge porn, I fear that the Government is being short-sighted by refusing to acknowledge that this loophole exists. The legislation is not future-proofed, and the fact that the cabinet secretary does not seem to be aware of the extent of the problem does not mean that it does not exist.

As the Presiding Officer mentioned, this is my last speech in the chamber. I have been here a relatively short time compared with some of my peers, and, over the past five years, it has been a great honour and a privilege to represent the people of the West Scotland region—particularly the North Ayrshire area, where I have largely focused my efforts.

Parliament is very different now from how it was five years ago. We now have three female party leaders—Kezia Dugdale, Ruth Davidson and Nicola Sturgeon—and, of course, Scotland's first female First Minister. That sets a great example for women and girls across Scotland, yet more work still needs to be done to get a better gender balance in this place.

Apart from all the bills that have been passed, constitutionally, we had the independence referendum—Scotland's first ever democratic say on whether we should stay in the union—which has created a more engaged and politically aware electorate than ever before. We have also seen one of the biggest transfers of powers since devolution, which will make this Parliament one of the strongest devolved Parliaments in the world. I am proud to have been part of this historic term, and I hope that parliamentarians make the most of those powers in the future.

My time here has been varied but never dull. I have been a member of five different committees—latterly the Justice Committee—although I was not on all of them at once. I thank the clerks of all those committees for the help and support that they have provided over the five years that I have been here.

I have also been the convener of the cross-party group on volunteering and the voluntary sector and the cross-party group on housing. I have greatly enjoyed both and I would like to extend my thanks to the secretariat and members of both groups. I hope that they will continue in the next parliamentary session, because they are important.

I would also like to extend my thanks to Sir Paul Grice and all the Parliament's staff for their support, which has been exemplary, as well as to all the auxiliary staff who make this place function behind the scenes.

I thank my Labour colleagues, because we have gone through quite a journey together these past few years, and I especially wish them—and all the MSPs across the chamber—all the best for the future, whether they plan to stand again or are moving on to pastures new.

Finally, I thank my constituency staff, past and present, who have supported me over the past five years. This has been a fantastic experience and privilege. One thing that I have learned is that this Parliament is at its best when we pull together across the chamber, because we all want what is best for Scotland.

16:16

John Finnie (Highlands and Islands) (Ind): A lot of work takes place before we get to this point in any piece of legislation, and I thank all the contributors that got us here.

I will allude to information that the Cabinet Secretary for Justice provided to the Justice Committee on 1 December 2015, when he outlined in a letter the latest figures on domestic abuse. The letter said:

"just under 60,000 incidents of domestic abuse were reported"

to the police, which was "an increase of 2.5%". We might view that people were more willing to come forward as a positive. The letter continued:

"In 79% of the incidents, where the gender was known, the perpetrator was male and the victim was female."

That is important to say. It is also important to say that the Justice Committee took a lot of evidence both in written form and privately and confidentially with male and female victims. We learned a lot from that. The letter carried on:

"we also know that the police only become aware of around one in five (12%) of the incidents of partner abuse each year."

It is for those reasons that I am certainly very happy to support the abuse aggravator. It will bring about a situation in which victims will have more confidence that regard will be had to an offence in the context of an abusive relationship when sentencing takes place. The abuse aggravator is not a new concept; existing legislation covers offences aggravated by prejudice. The consultation showed that that was well understood and, most important, the Crown Office and Procurator Fiscal Service said that that

"would be a useful tool for prosecutors".

I know that Scottish Women's Aid supports that specific offence and that it was aware of the consultation that has taken place. It is timely to remind the chamber that it described domestic abuse as

"a cause and consequence of women's inequality and occurs within the context of ongoing control and repeated abuse."

It is right that we address that.

The cabinet secretary's letter outlined the latest stats on sexual offences. I will not go through them all, other than to say there was

"a 13% increase in convictions for rape and attempted rape".

However, depressingly, the

"overall conviction rates remain lower than for other ... crime."

In addition, as other members have alluded to, the latest figures

"indicate that 36% of rapes reported to Police Scotland were historic i.e. took place at least 12 months prior to being reported."

In more than a third of cases, reporting was delayed. We must have a situation where that is explained to jurors.

I am disappointed that there was not an amendment included that meant that we could discuss directions to juries. I must tell the chamber that I have changed my position on the issue. Initially, I was minded that the situation of expert evidence being led—and it still can be led by both sides—was sufficient. We have heard from Roderick Campbell that joint minutes can be used. During the stage 1 debate, however, I alluded to two cases that significantly changed my view. I will very briefly go through them. One case resulted in an individual being placed on the sex offenders register. He appealed, and the appeal was upheld on the basis that the sheriff who passed the original sentence had not

"given sufficient attention to the fact that the appellant had consumed a considerable amount of drink beforehand, with the result that the assault can be regarded as drink-fuelled rather than overtly sexual."

That was a deeply damaging statement to make after years of trying to correct misunderstandings about pernicious sexual offences.

That was swiftly followed by a case that Alison McInnes—I pay tribute to all her work—and I questioned. It involved the repeated rape of an adult and the sexual abuse of children. The trial judge referred to the crimes as "minor", criticised the adult victim for a delay in reporting the assaults, claimed that the adult victim was "condoning" or "acquiescing" in being raped, pointed out that the person continued to live with the accused, and talked about the parties' "benefit-grubbing existence".

That was deeply offensive language. I should say that the appeal court said that the trial judge

"had no basis for his theories",

but the case shows that education is required that goes way beyond the public and prosecutors. Judicial training will be required. For those reasons, it is appropriate that we should have jury directions.

I often look to other sources for an opinion, and the Scottish Human Rights Commission often weighs up people's conflicting positions. On jury directions, the SHRC said:

"The Commission's position is that the jury directions of the type set out in section 6 of the Bill amount to uncontroversial statements which may indeed serve to address misconceptions held by some members of the public around the behaviour of victims of sexual assault. The Commission does not consider that these statements, if delivered appropriately, would prejudice an accused's Article 6 rights."

That is important information, which I welcome.

I am disappointed that the amendments in Margaret McDougall's name, which were well presented, were not accepted, but I respect the vote and the decision that was taken, and I respect the fact that the whole area will be subject to on-going review, as many members have said. I hope that a future justice committee will have sufficient time to do post-legislative scrutiny.

There are many important issues in the bill, such as the provisions on non-harassment orders and the reinforcement of the appeal process. Margaret Mitchell's work is worthy of commendation in that regard; I am pleased that she got the result that she did.

This is about education, judicial training and post-legislative scrutiny. Most of all, it is about supporting this good bill.

16:22

Rhoda Grant (Highlands and Islands) (Lab): I pay tribute to Malcolm Chisholm. It is fitting that he has made his final speech in this debate, because his contribution to tackling violence against women is second to none. He spoke out about violence against women long before tackling abuse was universally supported, at a time when it was still common for people to talk about "a domestic". He leaves a Parliament that is committed to ending violence against women. In many ways, that is due to his tireless work in the area.

I also pay tribute to Margaret McDougall, who has, as she said herself, been in Parliament only for a comparatively short time. However, she has made her mark—not least, during consideration of this bill. I will come back to that. I wish Margaret, Malcolm and other members who are leaving Parliament for the last time well for the future. I know that whatever they choose to do in the future they will continue to influence Parliament and use their knowledge and experience for the good of the people of Scotland.

One of the main purposes of the bill was to tackle revenge porn. It is right that we are legislating on that. In an age of increased use of technology and social media, intimate information can be disseminated quickly, and with devastating consequences. Making such dissemination a crime might force people to think twice before they share information.

Margaret McDougall sought to strengthen that aspect of the bill by extending its scope to sound and written information. She was right to do so, so I am disappointed that her proposed approach was not agreed to. Some of the reasons that the

cabinet secretary gave for not agreeing to her approach could have been applied to any other aspect of revenge porn. I am concerned about that.

The bill needs to cover every type of information that may be disseminated to embarrass, humiliate or, indeed, blackmail a person. The wider the definition, the better able we will be to deal with developing means of communication, and to ensure that there are no loopholes.

We need to inform young people about what they should and should not share. Intimate pictures should never be shared over the internet, by text or by social media. Once they are out there, they can never be recalled and a person has very little control over them.

Sexting is no different. Actions and messages that are sent consensually but privately can be used against the other person as revenge at the end of a relationship in order to humiliate, embarrass and blackmail, so they, too, should have been included in the bill. Young people come under huge peer pressure to do it, so we need to consider how we can make them aware of the dangers of those actions. The ramifications of such information being distributed widely can impact on one's mental health and have devastating consequences. Advice and information about internet and social media safety need to be delivered at home, at school and through youth groups. Social media platforms also have a duty to educate and to highlight the new law as a prevention measure.

There has been controversy over judicial direction, but misunderstanding of the nature of rape and sexual assault is widespread. Judges need to ensure that the jury understands the impact of those crimes and victims' natural responses to such attacks. We need to ensure that the jury does not assume the media portrayal of rape, stranger danger and extreme physical violence. Juries need to understand the requirement to obtain consent and ensure that the person is able to give informed consent to sex. I have concerns about the ability of some judges to give that direction. It is clear from some judgments that have been handed down—John Finnie gave examples—that some judges have very little understanding of those concepts. There should be a requirement to train judges and the legal profession about what constitutes rape and what constitutes sexual assault, and what is acceptable in cross-examination of a rape victim.

Juries may need to be trained before they take part in such trials. That is because of the widespread use of and access to pornography, which peddles the myth of men's entitlement to sex. Young people get their sex education from pornography, which leads young men to believe that they are entitled and young women to believe that they have to deliver. How can people who have those preconceptions provide safe judgments in rape trials?

I want to touch on non-harassment orders and a person's being unfit to stand trial, which has not been much discussed during the debate. There has been a step forward, but again I am not sure that it will provide the required protection. Breaching a non-harassment order is a criminal offence, but if the person is not fit to stand trial for the behaviour that led to the granting of the order, it is difficult to see how they can stand trial for breaching it. Surely someone who causes harm to another person, albeit that they are unfit to plead, should be restricted or detained in a way that protects their victim until such time as they can be treated, they no longer pose a threat, or they are able to stand trial. I understand that the law must protect the vulnerable, but it should not leave victims in fear.

In conclusion, I believe that the bill will make a difference, and we will support it, but I regret that there was very little time, commitment and effort on it. Had there been more of that, we could have gone much further. The bill is the only piece of legislation that supports the equally safe strategy. If that is the level of the Scottish Government's commitment to the issue, it does not augur well.

If we are to tackle violence against women, we need to take steps to criminalise every aspect of that violence and we need to take steps to stop the perception that men are entitled. Violence against women is not a women's problem; it is a problem with a minority of men, and the views and actions of that minority cannot be condoned or tolerated. We need a brave Government to tackle that, but I am afraid that the current Government has fallen short of that.

The Presiding Officer (Tricia Marwick): We now move to winding-up speeches. I call Annabel Goldie, who will give her final speech in Parliament.

16:29

Annabel Goldie (West Scotland) (Con): I am delighted to participate in this afternoon's proceedings on the Abusive Behaviour and Sexual Harm (Scotland) Bill, which is the final piece of legislation that we will deal with in this session.

From the contributions that have been made, there is a clear consensus that the bill contains many positive provisions that will help to tackle the very worst manifestations of abusive behaviour. The cabinet secretary spoke eloquently about that.

In the time that is available to me, I will focus my remarks on three specific areas of the bill: the

domestic abuse aggravator, the new offence covering unauthorised disclosure of an intimate photograph or film, and statutory jury directions.

I turn first to the domestic abuse aggravator. Incidents of domestic abuse are increasing and breach of the peace convictions for offences that are related to domestic abuse have also risen significantly. That probably reflects the targeted efforts of Police Scotland and the Crown Office and Procurator Fiscal Service to secure justice for victims who have been tormented at the hands of their abusers. Such behaviour is repugnant, and is especially unforgivable because it violates and exploits the very bonds of trust that are implicit in a relationship. I therefore welcome the introduction of a statutory aggravation of the abuse of a partner or ex-partner, which bolsters support for prosecutors in dealing with such crimes and creates the possibility of more severe sentences for perpetrators of domestic abuse, which I consider to be a positive step.

Let me now turn to the provisions that create an offence of disclosing, or threatening to disclose, an intimate photograph or film of another person without their consent. Such behaviour is inexcusable and is profoundly distressing and damaging for victims, who are often young adolescents. It is increasingly facilitated by advances in technology that provide perpetrators with the media to make such images, as well as the platform on which to share them with a widespread audience. The new offence recognises advances in electronic communication and provides clarity. I know that some concerns were expressed in the stage 1 report, so I urge the Scottish Government and the prosecution service to monitor closely the implementation of sections 2, 3 and 4 in the next parliamentary session.

I will now briefly address the introduction of statutory jury directions for sexual offence cases, which Margaret Mitchell described in her opening remarks as a worrying example of constitutional creep. I regret that the issue could not be the subject of specific debate this afternoon. The matter is important and it merits such discussion. I share my colleague's reservations. Although I understand the intent behind the policy proposal, the Government is not getting this bit right. As many people in the legal profession are, I am concerned that such measures will blur the constitutional divide between legislators and the judiciary. In any criminal proceedings, the judge must remain master of the law and be free to exercise judicial discretion based on the circumstances of the particular case and the evidence that is being led. Christine Grahame made a particularly cogent contribution on that. In the absence of the opportunity to amend the bill on this aspect at stage 3, I hope that new and returning members of Parliament will in the next parliamentary session assess the impact of the provisions on the courts.

Notwithstanding that one reservation, my party will support the bill at decision time. It takes us into new territory and offers new help and hope.

As you indicated, Presiding Officer, this is my final speech in this Parliament so, with your indulgence, I would like to share a few concluding observations. My first speech in Parliament was in the first-ever debate here. We were all a fine set of rookies and pretty clueless as to what was going on; indeed, some may say that I leave this place as I entered it. [*Laughter*.] Back in May 1999, I was supporting my colleague Alex Fergusson in his attempt to secure prayers in Parliament. Amid the general confusion, I felt that the combination of Alex Fergusson and the Almighty offered a good start. That led to time for reflection and the weekly and welcome presence of those quiet people in red—parliamentary prayers Scotland. I would like to thank them for their unwavering interest in and support for us all. [*Applause*.]

This has been an extraordinary job. It has been a privilege and a great honour to be allowed to serve this Parliament and Scotland. It has afforded me pleasure, satisfaction and fulfilment, and to have come in at the beginning has provided added lustre. None of that would have been possible without the extraordinary range of people and talents that make this place function. Together they constitute a tangible familial ethos. I thank them all, and my political friends in this part of the chamber and my adversaries in other parts, for that vital contribution.

I take away a rich repository of memories: the wit of Donald Dewar; the effect on David McLetchie's central nervous system of the mere mention of the word "consensus"; the discovery that minority Government made Alex Salmond biddable, with the rare pleasure of witnessing him having to dance to a few bars of my tune, for a short time at least; and the achievement of what I consider to be one of my major triumphs in this Parliament—getting those ghastly turnip-like red plums banished from the fruit salad in the cafeteria.

I have seen the character of this place evolve, and none of us or our successors should forget that our primary obligation as MSPs is to the institution of Parliament. If we fail to discharge that responsibility both Parliament, and we along with it, are diminished.

The matter of legislative scrutiny is unfinished business. With the powers that are coming, that is not good enough, so I urge that serious consideration be given to how we can secure a more robust mechanism for that scrutiny. Perhaps specific committees should be convened by

Opposition members. I think that a new code of practice should remind committee members that they are parliamentarians first and party emissaries second.

Robust debate and passionate exchanges are the currency of any Parliament, and we should celebrate that vibrancy, but too easily rancour and casual use of language can create the impression that Scotland is fractious, divided and riven, which is much less attractive. Whatever we do and whatever party we represent, we should remember that this Parliament and our country are bigger than any of us.

Oscar Wilde's last words have been paraphrased as, "Either that wallpaper goes or I do." I face no such dilemma. I think that the wallpaper in here is just fine. I go and, in so doing, I wish my fellow retirees every happiness, and I wish this place—the institution and the family of the Scottish Parliament—every success for the future. [*Applause*.]

The Presiding Officer: On behalf of the Parliament, I would like to thank you for your substantial contribution to the Parliament as an MSP, as a committee convener and as the leader of the Conservative Party. As has been evident again today, your speeches have always been filled with wit, grace, style and great knowledge. You will be greatly missed in this Parliament, but we know that you will continue to make a substantial contribution to public life. Thank you. [*Applause*.]

I call Elaine Murray. We have a bit of time in hand, Ms Murray, so if you want to stretch it out a bit, feel free.

16:37

Elaine Murray: Thank you very much, Presiding Officer.

I often wonder how much more can be said about a bill when we get to the final debate at stage 3. The cabinet secretary and I discussed the possibility that we might have only half an hour for the stage 3 debate, but we have ended up with an hour and three quarters. It has actually been a comprehensive conclusion to this session's debates.

Margaret Mitchell and Christine Grahame expressed concern about not being given the opportunity to discuss their judicial direction amendments today. The amendments would not have been agreed to, but I can understand their frustration at not being able to air their arguments again.

Christina McKelvie and Alison McInnes spoke effectively about the work that is done by the various organisations that are active in this area and about the psychological effects on victims of things such as revenge porn. In what I hope will not prove to be her last speech in Parliament, Alison McInnes also spoke about her work and the Justice Committee's work on Cornton Vale, which led to the great change in direction on the women's prison estate that has come during this session.

Margaret McDougall reminded us that screenshots are images. She knows a great deal about screenshots—she was able to show us all how to do them—which are not something that I knew much about. She and Malcolm Chisholm made very important points about the Parliament. Malcolm Chisholm said that we make progress through collaboration and working together when we agree, and we should never allow the political discourse and the ignominy of the political football that we sometimes all get involved in to detract from our understanding that it is when we work together that we make the most progress. Margaret McDougall said that the Parliament works best when we all pull together in the interests of Scotland, and we would all do well to remember that.

John Finnie and Rhoda Grant spoke about the shocking attitudes that there still are towards victims of domestic abuse and sexual violence and the need to continue the education work on the understanding of consent. As I said earlier, that is unfinished business in the Parliament that we must return to, because although, as Malcolm Chisholm illustrated, a lot has happened since he first brought up the issue in the House of Commons back in 1993, we still have a fair way to go to make real progress.

I will use most of my speech to pay tribute to four colleagues—I thought that it was only three—who retire this week. Three of them gave their final speeches in this debate and one gave his a couple of weeks ago without telling anyone. He has been in London as he is involved in the appointment of the new electoral commissioner, but he said that he would be here this afternoon. He is not here, but he need not think that that will prevent me from marking his retirement from membership of this Parliament. I know that he will not be retiring in any real sense, but that will certainly not put me off embarrassing him by putting my thoughts on the record.

First, however, I pay tribute to Annabel Goldie, who has had a distinguished parliamentary career, including as leader of her party for many years. The only thing that I can say to her is that I may often have disagreed with what she has said but, by heck, I have always been very entertained by the way in which she has said it.

This debate saw the last of many insightful contributions from Malcolm Chisholm. He served

as an MP for seven years before coming here, and he has been an MSP for 17 years. He was a minister in both Parliaments and he made his mark on both the communities and health portfolios. Malcolm has also been an outstandingly prolific speaker for Scottish Labour in this Parliament. I believe that he holds the record on our benches for the number of speeches that he has delivered. His hard work and thoughtful kindness have gained him popularity across the parties but, more than that, and perhaps rarely among politicians, he is universally recognised as being a person of principle.

I thank my colleague Margaret McDougall, who also made her last speech today. As she said, she has served on several committees—five, I think—since 2011, which in itself is no mean feat, as there is an awful lot of homework to do to get up to speed when an MSP joins a new committee. Margaret has taken up that challenge on several occasions.

On the Justice Committee, Margaret McDougall has been a tenacious advocate of the rights of victims. I am sure that she made an impression on the new chief constable. Having raised police officers' concerns about the need to assimilate the volume of information that is sent to them by means such as email, she received a detailed, lengthy and erudite response from Mr Gormley. After what felt like about 10 minutes, he finished his peroration and she looked at him and said, "Yes, but what about the emails. Are there fewer of them?" It reduced the rest of the committee to laughter. I cannot remember whether it was Christine Grahame or Margaret Mitchell who said, "Welcome to Scotland." Mr Gormley may be pleased that Margaret is not coming back.

As I said, Graeme Pearson may have thought that he could get away without being mentioned, but he cannot, even if he is not here. Graeme served in the police in Scotland for 38 years, starting as a young constable on the streets of Glasgow and finishing his service as director-general of the Scottish Crime and Drug Enforcement Agency. His trajectory in the force is, in itself, testament to his abilities. We on the Labour benches have benefited hugely from his extensive knowledge, and I believe that the whole Parliament has benefited and profited from his unique experience.

On a personal note, I have very much enjoyed working with Graeme Pearson. One can have a robust exchange of views with him without in any way falling out with each other. I also noticed that his police experience was shown in other ways. One time, we had been in a meeting and the division bell rang. Graeme set off as if he was in hot pursuit of a felon. It reminded me of police series on TV, where there is always a young, fit police officer, either male or female, who can jump over fences, run fast and get to the criminals, and there is usually an unfit and overweight counterpart who puffs along behind them. On that occasion, I was peching along behind Graeme as he dashed into the chamber. I am grateful to Graeme for everything that I have learned from him during our time working together.

I know that there are a lot of people in this Parliament who hope that this is my last speech in the chamber. That is not paranoia—I am standing only in my constituency, and I know that both the Conservatives and the SNP are working hard to take it off me. I think that most people would agree that I do not have much in common with Arnold Schwarzenegger—although some years ago I had an intern who went on to work for Arnold Schwarzenegger, which was a bit odd, because Evan was a Democrat and I am not sure how he ended up working for Mr Schwarzenegger—but like the Terminator, I would like to think I'll be back.

If I am not back—and politics is an uncertain business—I do not in any way regret having spent the last 17 years of my life in Parliament. It has been an absolute blast. At times I have been frustrated, irritated and delighted, but it has been great. Thanks very much to the wonderful staff and to my colleagues, past and present, from all parties. I will be back. [*Applause*.]

The Presiding Officer: I call the cabinet secretary to wind up the debate. Mr Matheson, you have until 5 o'clock. That is your challenge, should you choose to accept it.

16:45

Michael Matheson: Thank you, Presiding Officer, that is clearly a lot of time.

It has been a very good stage 3 debate. A number of powerful speeches have been made, particularly by members who are retiring, some of whom are from the class of 1999. It feels as though those of us from the 1999 intake are becoming a dwindling band—I know that some members are looking at me and thinking, "There's no way that young man came in here in 1999". It may be that the electorate will decide that some members of the dwindling band will be retiring, even though it is not their choice.

I was struck by the remarks that Elaine Murray made at the beginning of the debate and some of the criticisms that have been levelled at the Parliament's committees. I have no doubt that there are ways in which our committee system could be improved—show me a legislature anywhere in the world that has a perfect system. Some of the points that were made by Annabel Goldie about the ways in which our committees

operate have some weight and merit and they would add further value to the Parliament.

I was also struck by Elaine Murray's point about the volume of work that the Justice Committee has had to deal with. As a member since 1999, Elaine Murray will know that that is not an uncommon or infrequent complaint from Justice Committee members. Having spent seven years on the Justice Committee, over two parliamentary sessions, I know that it was a complaint. We moved to having two Justice Committees for a while, in order to deal with the volume of work.

As Alison McInnes mentioned, some 17 bills have passed through the Justice Committee during session 4. Over the last year and a half, since coming into post, my colleague Paul Wheelhouse and I have taken six of those bills through, alongside three members' bills. That demonstrates the level of legislation that the committee has dealt with.

In the year and a half that I have been engaged with the Justice Committee on a regular basis, I have greatly valued the contribution of committee members and their shared commitment—although they have held differing opinions at times—to improving our justice system in the way in which they believe it needs to be shaped and modernised for victims of crime, and in the way in which we deal with individuals in the criminal justice system.

Committee members have played a tremendously important part in helping to shape and improve many of the bills that the Government has brought before the Parliament. Those bills have been improved as a result of the committee's diligence, commitment and scrutiny.

Malcolm Chisholm: I do not want to fall out with the Presiding Officer on my second last day, but is not one of the great advantages of having the same committee carrying out inquiries and scrutinising legislation that the people looking at the bills have expert knowledge of that area of policy? That point is manifested in the committee's excellent stage 1 report on the bill. It is a great strength of the Scottish Parliament that we have all that scrutiny at stage 1—we certainly did not have that in the United Kingdom Parliament, although it is now, to some extent, copying our procedures.

Michael Matheson: I agree with Malcolm Chisholm on that point. There are real strengths in our committee system, and the expertise that members can build up when undertaking legislative scrutiny and post-legislative reviews and when looking at policy is one of those strengths.

I am also mindful that the Justice Committee has, at times, shown that it has a mind of its own and operates in exactly the way that a committee should operate. I was interested in its convener's comment about how her idiosyncrasies are a result of her age. I have known Christine Grahame for a long time, since before we were first elected back in 1999, and I can assure members that her idiosyncrasies have nothing to do with her age. Christine Grahame has always taken the route that she thought was most appropriate. Even as a delegate at the Caird hall in Dundee, I remember her making her views known from the floor during a debate even though she had not been called. I say to Christine Grahame that she should not put her idiosyncrasies down to her age.

I am also conscious that a number of members over an extended period of time have made important contributions to moving on the agenda of tackling domestic abuse and sexual violence in our society. Some of those members are with us here today, and I will come to them, but I recall members who are not here today who made a substantial and considered contribution to raising the debate in Parliament and improving the way in which our justice system deals with such issues.

One of those members was Maureen Macmillan. During the early days of Parliament, she raised the issue in a consistent and constructive way in the chamber and in the Justice and Home Affairs Committee, including pursuing one of the first member's bills to go through Parliament—on protection orders—to help to support individuals who had been subject to domestic abuse.

There is no doubt that, in the past 16 years, across different Governments, we have made significant progress in changing the way in which we deal with domestic and sexual violence in our society, and we have shone a light on an area that had been for too long overlooked and at times written off as being private matters that we should not get involved in. We have opened that door, and we are now in a much better place in dealing with such issues, from the way in which our justice system and the courts through to the police and our prosecutors deal with them. The Parliament has shown leadership in its determination to continue to pursue the issue.

I also pay particular tribute to the contribution of Malcolm Chisholm to the agenda during several decades. Malcolm Chisholm is one of those politicians whom I can remember from before I became involved in politics myself, when he stood down on a matter of principle as a minister in the United Kingdom Government on the changes to benefits for single parents. He was the first minister to resign from the Blair Government on that issue.

Malcolm Chisholm's commitment to tackling domestic violence and health inequalities and to

improving cancer treatment, as well as a whole range of other issues, has demonstrated his determination to take forward key issues. He did not just pick them up for a short time; he was determined to pursue them over an extended period of time. He made some comments earlier about collaboration and consensus, and he has always been prepared to demonstrate that he will collaborate, co-operate and help to develop a consensus if it will achieve a better outcome, irrespective of which party badge a member wears or which seat they occupy. I sincerely believe that the chamber and Parliament will be a lesser place for Malcolm Chisholm not being here after the election. [*Applause*.]

I also wish Margaret McDougall well in her retirement. In the short time that I have known her, the contribution that she has made in the course of my time in front of the Justice Committee has always been noteworthy. She has pursued areas that, at times, I could easily have overlooked and she has been diligent in pursuing those matters in great detail. I have greatly appreciated that input, and it has helped to contribute towards improving the legislation that we have scrutinised. I note her disappointment about her amendments not being agreed to today, but I assure her that the Scottish Government is committed to continuing to keep this area under observation and to considering what further measures can be taken. I am sure that the incoming Scottish Government, of whichever party, will be committed to doing that too.

I also wish to refer to Annabel Goldie's valedictory speech this afternoon. Like Malcolm Chisholm and I, she joined the Parliament in 1999, when we were all rookies and, quite literally, we were establishing a parliamentary process that was nothing more than something written in the Scotland Act 1998. We were bringing that into real life and translating it into the reality of day-to-day politics.

Throughout her time in the Parliament, Annabel Goldie has always demonstrated a real ability to cut through some of the nonsense that can go on in parliamentary debates, very often with a razor-sharp wit, which if someone found themselves at the wrong end of it could leave them looking rather foolish. She has made a distinguished contribution to this Parliament. My late mother always used to say, "I like Annabel—Annabel is good," although, as Annabel will know, that was followed up with the curse that many Conservative Party leaders in Scotland may have felt, which was, "but I widnae vote for her."

In the previous parliamentary session, Annabel Goldie made a particular contribution on reframing and resetting our drugs policy in Scotland to make it much more targeted on dealing with the underlying causes that drive drug dependency in our society in the first place. That has led us to take a much more mature and considered approach to our drugs policy in Scotland. That enlightened approach is reaping rewards. There is still much more to be done, but her contribution has helped to improve how Scotland deals with drugs policy.

I have no doubt that, although Annabel Goldie will no longer be in this chamber, she will continue to make a distinguished contribution to Scottish political life in years to come. I certainly wish her well in her retirement. [*Applause*.]

It is fitting that the Parliament should sign off on a point of consensus with this particular legislation. I mentioned earlier that, back in 1999, we started to look at the issues of domestic and sexual violence, which had never had a light shone on them in the way that there has been over the past 16 years.

We are in a much improved position, but John Finnie pointed out in his speech that, in 2014-15, Police Scotland dealt with just under 60,000 domestic violence cases. The Scottish crime and justice survey suspects that that is a significant underestimate of the total number of cases. Police Scotland would tell us that, every nine minutes, it deals with a call relating to domestic or sexual violence in Scotland.

Although we may have modernised our legislation and improved the way in which our justice system deals with domestic and sexual violence, there is still a deep-seated inequality in our society that results in the domestic and sexual violence that takes place far too often within our communities. The root cause of sexual and domestic violence in our society is our societal structure; it is one that is created by inequality in our society and the power imbalance within our society. We have clearly made progress but we have much more to do. I hope that, in the next parliamentary session, there will be an opportunity to address the issue further.

Alison McInnes referred to the decision not to continue with Her Majesty's prison in Inverclyde. We have reformed many parts of our justice system over the past 16 years, from our courts to our police service and the way in which our prosecution services operate. However, I strongly believe that one area where we as a society and a Parliament still have a significant way to go is our penal policy.

Some aspects of our penal policy have not changed in almost 200 years, which is not a good reflection on our society or on any Government. I hope that, whoever has my role and whoever is in government in the next session of Parliament, they will see penal policy as one of the areas where we

need to shine a light and they will reform the way in which we deal with those who commit offences in a way that makes us a much more modern and progressive society.

The Abusive Behaviour and Sexual Harm (Scotland) Bill is part of the 16-year journey that we have been on to ensure that, as a society, we do not tolerate domestic and sexual violence. With the final piece of legislation in this session of Parliament, we will sign off by collectively sending out a strong signal that we will continue to do everything that we can to tackle domestic and sexual violence in Scottish society.

Business Motion

17:01

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-16029, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, which sets out a revision to the business programme for tomorrow.

Motion moved,

That the Parliament agrees to the following revision to the programme of business for Wednesday 23 March 2016—

delete

10:15 am	Parliamentary Bureau Motions

and insert

10:00 am	Parliamentary Bureau Motions
10:00 am	Motion of Condolence: Brussels, 22 March 2016—[*Joe FitzPatrick*.]

Motion agreed to.

Decision Time

17:02

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-15996, in the name of Maureen Watt, on the Burial and Cremation (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Burial and Cremation (Scotland) Bill be passed.

The Presiding Officer: The Burial and Cremation (Scotland) Bill is therefore passed. [*Applause*.]

The next question is, that motion S4M-15993, in the name of Fergus Ewing, on the Bankruptcy (Scotland) Bill, be agreed to.

Motion agreed to,

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

The Presiding Officer: The Bankruptcy (Scotland) Bill is therefore passed. [*Applause*.]

The next question is, that motion S4M-15994, in the name of Michael Matheson, on the Abusive Behaviour and Sexual Harm (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Abusive Behaviour and Sexual Harm (Scotland) Bill be passed.

The Presiding Officer: The Abusive Behaviour and Sexual Harm (Scotland) Bill is therefore passed. [*Applause*.]

Local Control

The Deputy Presiding Officer (John Scott): The final item of business is a members' business debate on motion S4M-15322, in the name of Rob Gibson, on bringing about more local control. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes what it sees as the growing means to promote local control in communities through the Community Empowerment (Scotland) Act 2015 and various land reform measures to effect land purchase and access to natural resources; believes that this has been benchmarked in the recent Scottish Government report, *Impact Evaluation of the Community Right to Buy*; considers that the Scottish Government target of one million acres being in community control by 2020 is both achievable and necessary; notes the view that, the closer to communities the decision-taking processes over matters such as affordable housing, environmental designations, cultural life and health provision are, the more there is a requirement for a fundamental review of local government and the powers to raise local taxes and to answer widespread and increasing calls for localism, including in Caithness, Sutherland and Ross, which has a land area that is equivalent to that of Northern Ireland, and further notes the view that subsidiarity, sustainability and social justice should be applied to all community life, the length and breadth of Scotland.

17:04

Rob Gibson (Caithness, Sutherland and Ross) (SNP): For my final speech as the member of the Scottish Parliament for Caithness, Sutherland and Ross since 2011, I will explore bringing more local control to the people whom I have had the immense privilege to represent. I will reflect on how the Highlands and Islands region, which I represented from 2003 to 2011, and my huge mainland constituency, which is the size of Northern Ireland, have suffered without sufficient say in their affairs. I hope that I will point out how decisions that affect local lives can be sustainable and socially just and how, by applying subsidiarity, all our communities around Scotland can, I believe, thrive.

First, I will recall some of the pressures that have shaken our land and shaken out its people. The so-called improvements by lairds in the early 19th century evicted the age-old, cattle-raising Gaelic communities from the most fertile land and brought in sheep farming, deer shooting and salmon angling for personal gain and the pleasure of the rich few. The results have been stark. Since around 1810, the exodus of surplus population to the industrial areas and to the ends of the earth has been augmented by losses in war after war, which has undoubtedly made the area clearances country.

I whole-heartedly welcome the Community Empowerment (Scotland) Act 2015, as it can pave the way to build on the Land Reform (Scotland) Act 2003, which has enabled 500,000 acres to come into community ownership. The cause has a long back story. Early protest against individual clearances led to the major victory of the 1880s in the crofters' war for secure rented tenure. In the 1920s, the Stornoway Trust gained local control, but it was the 1992 fight by the Assynt crofters in my constituency to win their land that ignited the modern debate.

Professor James Hunter talked of

"new lights shining in the glens"

when the crofters won. In praise of their 20,000 acre purchase, my old friend the singer-songwriter Andy Mitchell told it like this:

"No love nor commitment those past lairds did display,
A playground for the wealthy always was their way,
This land they once stole from us, they've now been forced to sell,
Since we've paid for what we own we'll try to keep it well."

Our Scottish Parliament will leave its teenage years behind and reach adulthood before the 2021 election. As discussed in the strategy report on having 1 million acres under community control, there is a new mood of hope for more diverse land ownership that is ready to roll.

That opens up wider questions about the democratic deficit in local government, as well as the need to build confidence and capacity and to use every possible resource to maintain and, we hope, repopulate more of our land beyond the crofting communities, create more smallholdings and create 1,000 huts and allotments across the land. We must apply human rights under the United Nations International Covenant on Economic, Social and Cultural Rights to ensure that local people have the right to decide how to provide affordable housing, safeguard their most cherished environmental features, supervise local health provision and develop a vibrant local cultural life.

When I was a district councillor in Ross and Cromarty from 1988 to 1996, our policy had to cope with a steep downturn in economic activity, such as the then oil slump. Ross and Cromarty District Council promoted quality of life at the core of its work. Fèis Rois and arts provision were created alongside environmental adaptation and modern affordable house building.

In 2010, as an MSP, I consulted on decentralising services in local government and argued that small works. Today, the urgent need to develop local control could not be clearer. Local management of the Crown Estate coastal funds is looming and strategic planning of considerable community benefit funds from renewables is urgently needed.

The need to break up Highland Council, which covers an area the size of Belgium, is widely discussed. How can 80 councillors meet local needs in an area of that size? Caithness has always wanted its council back and deserves to have it. Other areas should have that, too.

In Highland, the democratic deficit shows as one elected councillor per 4,000 voters. Germany has one to 500 and representatives have full planning and service powers in thousands of communes. In Scotland, we must gain the right for local communes around groups of secondary schools and their catchments to decide local taxes to meet local needs. That is urgent business because, as the Parliament grows up, so should local democracy.

On the environment, my constituency has been heavily subject to conservation by command. All manner of designations hamstring scattered communities. We have a quarter of the high-profile core wild land areas. Our hinterland is criss-crossed by restrictive designations. We need conservation by consent.

We are caught between the zealots of the John Muir Trust, who want no wind power and who fail to manage deer culls acceptably, and some retirees and the rich, who often object to renewables or other developments in sight of their properties. Dougie MacLean described the latter in his song "Homeland (Duthaich mo Chridhe)":

"You sold your house in the city
You put it on the market and you did so good
Now you've bought a little piece of something
That you don't understand and you've misunderstood".

Despite the growing constraints, I have witnessed many leaders emerging over the years—even from the smallest communities—to make a difference. Open debate and the ability to spend taxes will bring out many more local voters if we have more local elections.

Those who have led communities to own their own land include the late Allan MacRae of Assynt; Maggie Fyffe in Eigg; Willie McSporran on Gigha; and the real David Cameron, of North Harris. They have made their own lands places of possibility, aided immeasurably by the late Simon Fraser of Carloway—at last, the poor had gained a lawyer.

I have so many folk in my constituency to thank for advice and support, including my staff over the years, two of whom are now members of Parliament. I thank my current staff: Niall MacDonald, Maureen Forbes and Councillor Gail Ross. They call me the moss boss—I will not explain why, but some members will know. My sincere thanks go to the clerks of the Rural Affairs, Climate Change and Environment Committee; the

Scottish Parliament information centre; my MSP colleagues, not least the RACCE members; and most of all my family and my partner, Eleanor Scott, who is my rock.

We live in a better land thanks to the huge support for this Scottish Parliament, which will soon reach adulthood. I will be cheering it on in helping to make our land fit for a sustainable future.

A dozen miles from where I stay on Easter Ross, at Kildermorie, in the winter of 1921, Christopher Murray Grieve taught the children of the estate gamekeeper, whose then laird Dyson Perrins—of Worcester sauce fame—was philanthropic at least in the village of Alness near his private kingdom. Much later, Grieve, who was the founder of the Scottish literary renaissance, having adopted the nom de guerre Hugh MacDiarmid, reflected in his long poem "Direadh III" on the act of surmounting difficulties. Thinking of the rugged Cuillins of Skye, he wrote:

"Let what can be shaken, be shaken,
And the unshakeable remain.
The Inaccessible Pinnacle is not inaccessible."

My case for deepening local decision taking is unshakeable and rests on the solid ground of an increasingly confident Scotland where full powers are not inaccessible. [*Applause*.]

The Deputy Presiding Officer: Members will wish to note that that was Mr Gibson's valedictory speech. He has given devoted service to the Parliament in a variety of roles. As we have heard today, he has been a constant champion of the crofting and rural communities, and particularly of his own community in Caithness, Sutherland and Ross.

Most recently, Mr Gibson has convened the Rural Affairs, Climate Change and Environment Committee with enthusiasm and zeal, particularly during the passage of the Land Reform (Scotland) Bill. His contributions will be much missed in this place. We, the Presiding Officers, wish him and Eleanor every success in their future endeavours.

17:13

Ken Macintosh (Eastwood) (Lab): I thank Rob Gibson for bringing the debate to the chamber, and for his powerful, personal and moving remarks. Fittingly and historically, he has secured the last members' business debate of the session on what many of us might regard as some of the defining ideals around which this Parliament was established: promoting local control, land reform and community empowerment. In fact, I note that Mr Gibson concludes his motion by calling on us to apply the principles of

"subsidiarity, sustainability and social justice".

I could not agree more.

Another term that neatly encapsulates that same approach is the word "devolution". In many ways, that sums up why I stood for Parliament in the first place. Whether that approach is applied to the land or to community rights, it encourages each of us to take more control over our own lives, to have the self-confidence to speak up and to see government and decision making as participatory rather than something that is done to us.

I am tempted to digress somewhat and have a more philosophical discussion on the limits of localism—for example, where do we apply national standards? Given our proximity to the election, I am sure that Mr Gibson would understand the temptation for me to tease him slightly about the centralising tendencies of his own Government. However, he and other members will be relieved to hear that I will do neither. Instead, I want to use my short contribution to join forces with him and with members across the chamber to talk about how we can now use the powers at our disposal to empower people throughout Scotland.

My interest in the land reform agenda comes at least partially from my Highlands and Islands roots. However, I have long believed—it is a view shared by most of my Labour colleagues—that urban communities have as much to gain from land ownership and community empowerment as rural and isolated communities.

My example—the Neilston Development Trust—is much closer to home. Neilston is now in my colleague Hugh Henry's constituency but originally it was part of Eastwood. The trust's origins are in the Clydesdale Bank's decision to close the last bank in the village, which, as members might imagine, caused considerable alarm. In response, a group of residents came together and drew on the powers in the Scottish Parliament's land reform legislation to take over the premises and turn it into a community facility.

I cannot do justice to the amount of work that local residents put in. There were crucial moments, such as when they secured funding from the Co-operative Bank. To be fair, Clydesdale Bank itself was very sympathetic. In the end, local residents were successful and the bank was up and running as a community hub. It is no exaggeration to say that the trust has gone from strength to strength. It has come up with plans to regenerate the whole village, it has promoted cultural activities and—in what I regard as the most significant development—it jointly developed and owns a small wind farm. The wind farm has the potential to generate hundreds of thousands of pounds in income for the local community and is a fantastic example of how we

should, co-operatively, be making the most of our renewable energy resources.

I am not saying that the trust is perfect. Its members are more aware than anyone of how they could do things differently if they had a chance. For example, despite my unreserved support and admiration for the trust, I am conscious that it has tended to be dominated and driven by the more middle-class members of the local community and, initially at least, there were tensions with the more traditional community council. I mention that simply because although we pass the legislation here at the Parliament, it is sometimes every bit as important to build the capacity in local communities to access and use new powers.

Although the Neilston Development Trust used the initial land reform legislation, as a small village at the edge of the vast conurbation that is Glasgow, it only just qualified. I hope not only that the new land reform legislation makes things easier for communities but that the community asset transfer powers open up a whole new avenue for local residents to assert themselves.

Also in East Renfrewshire, the local Muslim community has already taken over a run-down pavilion and turned it into the Woodfarm Educational Trust. Members would struggle to find a better example of a local community taking a liability and turning it into a hugely valuable and well-used asset. It will be an interesting test of the Community Empowerment (Scotland) Act 2015 to see whether it allows the Woodfarm Educational Trust to move to the next phase of its development.

I conclude by paying tribute, albeit briefly, to Mr Gibson's contribution to Parliament. His passion for Scotland and for the issue of land reform in particular has always been evident. He has never been more animated or more persuasive than when arguing about a cause that is so clearly close to his own heart. It is fitting indeed for him to end his parliamentary career with the positive, consensual but still radical motion that is before us today. I am proud to extend my thanks and those of my party to Rob Gibson for all the work that he has done for his community, for the Scottish Parliament and for Scotland.

17:18

Graeme Dey (Angus South) (SNP): I am delighted to speak in the debate, which, as we have heard, marks the final contribution to the Scottish Parliament of my friend and colleague Rob Gibson, at least in the capacity of MSP.

This is the third opportunity in a little less than a fortnight that I have had to highlight Rob's contribution to the Parliament. It is starting to feel like he is making as many farewell appearances as Frank Sinatra. As I said in paying tribute to him at the final meeting of the Rural Affairs, Climate Change and Environment Committee, I suspect that it is highly unlikely that this institution is hearing the last of the current member for Caithness, Sutherland and Ross. All joking aside, it would be a great pity if it was. He has made an enormous contribution to the work of this Parliament, not least on the issues about which he is particularly knowledgeable and passionate. As his deputy convener on the RACCE Committee, I have learned a great deal, thanks to his generosity.

In the land reform debate, we touched on the fact that the generally consensual and effective nature of the RACCE Committee over the past five years owed much to Rob's approach as its convener. His contributions to the committee, and in this chamber, will be missed. Indeed, he himself will be missed. I am sure that we will continue to hear from him in the years to come about matters such as land reform. I certainly hope so.

At the risk of giving away the speaking order for the debate, I understand that Dave Thompson—another distinguished representative from the Highlands—will also make his final speech tonight. Like Rob, Dave has left his mark on this institution. I have enjoyed working with him on the RACCE Committee for the past couple of years, where I have watched him argue passionately for causes such as crofting and fishing. A debate on localism is the perfect way for Dave, like Rob, to depart the scene, as it were.

Dave and I have often chatted about his views—which are shared by Rob—that there is a democratic deficit in the Highlands, because it is such a massive geographical area and its diverse communities are represented by a single local authority. Dave argues that case well, as we may hear in a few minutes.

Through listening to Dave and Rob and serving for five years on the RACCE Committee, I have come to share the view that this Parliament needs to commit to handing power down to a local level. It is already doing that in a number of areas, but at the heart of localism lies empowerment, and significant capacity building will be required if empowerment is to be delivered at the scale we all want it to be delivered at. For example, if improving the management of our communities in their best interests and in the interests of the environment in which they exist involves enhancing community councils, we have to ensure that those community councils function effectively.

It is a matter of concern that two community councils are in danger of folding in the county of Angus, which I represent, while two others have just started on the comeback trail. As the motion

highlights, we need to carry out a fundamental review of local government. That review should consider the effectiveness of the multi-member ward system that is used by councils. I am unconvinced that the present system delivers accountable local representation. Across all parties and none, there are fine examples of good local councillors. However, the present system also allows people to coast along on the strength of a party vote or an anti-party-politics vote.

Localism is not just about tiers of governance; it is also about encouraging local people to come together, facilitating that so that they deliver in the best interests of their communities, for example by acquiring land or buildings and putting them to better use for the wider good. The Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Bill have opened the door for that to happen, but we need to facilitate capacity building to support communities that may have little understanding of what is entailed. That is why, during the passage of the Land Reform (Scotland) Bill, I argued that Community Land Scotland should be empowered to proactively go out to raise awareness both of the existing opportunities for change and of the support available to communities. That is also why I raised the possibility that the Crown Estate—post the Scotland Bill, when it will come under the auspices of the Scottish Parliament—could deploy the experience that it has built up of working with communities to proactively deliver local management agreements to enhance capacity.

I hope that we see real progress on those issues during the next session of Parliament.

17:23

Alex Johnstone (North East Scotland) (Con): I am very pleased to have the opportunity to speak in the debate tonight. The main reason I want to speak is to pay tribute to the work that Rob Gibson has done during his time in the Parliament.

Some things have already been mentioned about Rob Gibson's work, but one has not. That is the work that Rob has done, along with a handful of us, to ensure that the Burns club continues to be a success in this Parliament. During his opening speech, Rob delivered a number of quotes, not from Burns but from artists known in the Highlands today. It is very much in Rob's nature to take the lessons of life from those who have experienced it and expressed it through poetry and song. I will remember that positively.

Another thing that I will remember positively about Rob Gibson is his enthusiasm for localism. Localism means different things to different people, and there is a point at which Rob and I will diverge and take a different view. However, I agree that one of the responsibilities of this Parliament—in a range of fields—should be to avoid the tendency to gather power to ourselves in Edinburgh. Wherever possible, the devolution of power should be carried down through communities to the lowest possible common denominator, because only by ensuring that decisions are made locally can we truly reflect local views and needs.

That is probably the point on which Rob Gibson and I disagree. Rob's experience, particularly in land ownership, was gained in the Highlands, but land ownership and its functionality exist in a number of diverse forms all around Scotland. My experience was different: it was in a small farming community in Kincardineshire, an area in which most farms were relatively small and owner occupied. That is why I have found the land reform process in this Parliament to be obsessed with a particular version of history, perhaps centred on a particular form of land ownership that is not universal throughout Scotland. As I have said before in the Parliament, it is true that most land in Scotland is in the hands of a relatively small number of people. However, the vast majority of landowners are small landowners and we must be prepared to defend their rights. Their right to the private ownership of land is something that we should cherish.

That is one of the areas in which I have some worries about the position that perhaps Rob Gibson and certainly others in the debate have expressed tonight. The concept of community can mean different things to different people. If community means a press towards some form of collectivisation, it is something that I will not support and I will defend the rights of the individual. I have looked deep into my heart—I have shone a light into the darkest corners—and have even turned over one or two of the stones that I have found there, but I have not found anything that resembles socialism.

Michael Russell (Argyll and Bute) (SNP): There's a surprise.

Alex Johnstone: I believe that it is never appropriate for us to dictate that the needs of the many should outweigh the rights of the few. We should be prepared to defend the rights of the few wherever we find them.

It is absolutely essential that I express, once again, my true and honest support for the principles that Rob Gibson has laid out. However, it is my desire to ensure that, as we go forward, the rights of the individual and the rights of the private landowner will always be defended. Only by defending them can we have a truly free society in which the rights of the individual will always be defended.

The Deputy Presiding Officer: I draw members' attention to the fact that this will be Mr Thompson's second valedictory speech, as he gave his first last week. A Presiding Officer has suggested that he is having more farewell tours than Tina Turner. [*Laughter*.] Mr Thompson has given this Parliament distinguished service—in his case, since 2006—faithfully representing his constituents of Skye, Lochaber and Badenoch. His enthusiasm and care for his rural constituents, as well as for his fishing communities, serve as an example to us all. Mr Thompson, we thank you for your contribution over the years and we wish you well in whatever your future endeavours may be.

17:28

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Thank you very much, Presiding Officer. I apologise for having another go at a last speech. I had intended to make my last speech last week, but I had not realised that this debate was coming up. When I saw that it was Rob Gibson's debate, and that it was to do with localism, I could not resist putting my name forward.

I have known Rob Gibson for many years. He has been very active in the Highlands and Islands on land issues in my constituency, in Skye and elsewhere. He has an excellent knowledge of the subject and a passion for it as well. It has been a privilege to work with him and with Graeme Dey, Mike Russell, Angus MacDonald and the other members of the Rural Affairs, Climate Change and Environment Committee over the past couple of years. It has been hugely interesting and very appropriate to my constituency. I have thoroughly enjoyed it, and being part of getting the Land Reform (Scotland) Bill passed has been a real privilege.

I was a trustee of the Stornoway Trust, so I suppose that I was a landowner for a couple of years, many years ago. There is no doubt in my mind that there is an appetite in the Highlands for change. I have approached the Government on the islands bill. The minister is well aware of my suggestion that when we are looking at that bill, the Inner Hebrides, which I believe to be the neglected part of the Highlands if not of Scotland, needs to considered, as well as Orkney, Shetland and the Western Isles. When we look at Skye, the small isles, the Argyll islands, and places such as Knoydart—basically it is an island, unless people want a 10-mile hike over the mountains—and Ardnamurchan, we see that all those areas in the west Highlands have exactly the same problems and issues as Orkney, Shetland and the Western Isles.

I have asked the Government—I made a submission to the consultation—to consider creating a council for Skye, Lochalsh and Lochaber. Argyll is a council area, but there are many islands there. We must look at the Inner Hebrides and the west Highlands as special cases. They are different. They are many miles from Inverness. If a person is in Uig on Skye, they are 130 miles from Inverness. I know that because I was over there on Friday. It was 115 miles to Portree. I went down to Raasay for a wee while on the Saturday, and then back home on the Sunday. It was two and half hours non-stop driving. That is all within my constituency. It is crazy; it is too big. Geography must be taken into account when we look at council boundaries and sizes, as well as when we are looking at constituencies for the Scottish Parliament. It is not fair on constituents that they have so far to go to meet their MSPs.

We need to go back to the burghs—the little places with populations of, say, 10,000 to 50,000 in Highland and the greater Highlands area. Perhaps we could have a regional authority covering Moray to Argyll dealing with strategic matters, but there could also be small councils for Skye and Lochalsh, Tain, Wick, Thurso and Oban to which we would give real power and money.

The Minister for Children and Young People (Aileen Campbell): Could we add Lanark to that list? [*Laughter*.]

Dave Thompson: It is up to other people to argue for their areas, but my remit is for the Highlands and Islands. We must ensure that people engage again with their local communities.

Community councils are failing all over the Highlands. They are disbanding; people are resigning in disgust. They have no power and no money. We would not need more politicians, because we would not need community councils if there were small councils covering populations of 10,000 to 50,000; neither would we need to elect people to the strategic element, because we would nominate from the small councils up to that level. We would need only to elect people to the small councils.

Why does the Government not give the Highlands and Islands a wee pilot project? We could pilot the approach there, and then we will see whether it works and could be used elsewhere in Scotland.

I am conscious of my time, Presiding Officer. I could say an awful lot more, but I will stop there. I wish Rob Gibson and everyone else in the chamber all the best for the future as I head off into the twilight, too. [*Applause*.]

The Deputy Presiding Officer: Before we move to the minister's closing speech, members should be aware that this is Marco Biagi's last speech in our Parliament—I do not think that he has let us know that this is his valedictory speech

although, now that I check my notes, I think that perhaps he has—as he moves on to greater things.

Mr Biagi has made a huge impact in a relatively short time in this place, having been elected in 2011. In that time, he has served as a deputy convener of the Equal Opportunities Committee, where he dealt with the bill on same-sex marriage. In 2014, because he is fast-track young man, he was selected to be the Minister for Local Government and Community Empowerment—a position that he has held for the past two years. He has carried out the work of that office with great distinction.

Mr Biagi, we wish you well in your endeavours, whatever they may be. Good luck, and thank you.

17:34

The Minister for Local Government and Community Empowerment (Marco Biagi): I think that that was a call to speak.

The motion is a fitting send-off for my colleague Rob Gibson because, a bit like him, it is packed with ideas for local democracy, communities and land reform. Taken together, the unifying message is testament to the role that the motion's lodger has carved out as a dedicated, thoughtful and occasionally just-the-right-amount-of-outspoken champion for the Highlands and, as a committee convener, an esteemed voice in the Parliament on rural affairs, climate change and the environment.

As the Presiding Officer said, this will be my final full speech. I therefore beg his indulgence to take time to develop a broad response to Mr Gibson's equally broad motion, which is fundamentally linked to the question of the amount of control that people and communities have over their own affairs. That applies in Rob Gibson's rural Caithness and in my own beloved, urban Edinburgh Central.

When I was elected in 2011, my acceptance speech was the product of three things: euphoria, sleep deprivation and a lot of rehearsal in the Ingliston toilets. It has been immortalised by the former First Minister as, "This victory is statistically impossible"; I maintain that I said no such thing—I only thought it.

What I did say was that this would be the Parliament and the Government that really changed Scotland, and for the better. I contend that we have done that, albeit not quite in the way that I expected at 6 am in Edinburgh that day. The voting buttons of the Parliament have brought much change—probably too much for Alex Johnstone's liking—raining down on the nation's heads over the past five years. We are not just the nation's Parliament; we have a growing sideline in being a job creation scheme for political historians.

The Community Empowerment (Scotland) Act 2015, which is mentioned in the motion and which I had the privilege—and challenge—of taking through the Parliament, is still sitting there like a present under a Christmas tree. It is wrapped and we have noticed it, but we have not yet opened it to see what wonders truly lie inside.

We empowered individuals and tackled social injustice by legislating for equal marriage. That gave me two stand-out memorable experiences: testing the Presiding Officer's discretion by tweeting a photo taken in the chamber of the yes button in front of me; and, more enduring, being a witness at one of Scotland's two, simultaneous, first same-sex weddings, both of which were, atmospherically, assignations at midnight.

Those are two personal highlights, but the real change is in the spirit that runs through the country. It is a spirit of subsidiarity, sustainability and social justice. Scotland has changed, through the actions of not principally her Government or her Parliament but her people. Although they were offered full control of their own country, the people of Scotland drew back, but in the process they built a great, loud, irreverent and sometimes rowdy public square and threw the great questions of state into it like fruit into a smoothie maker.

In 1971, Chinese premier Zhou Enlai was asked what he thought of the consequences of the French revolution. He answered that it was too early to say. We will be working out the consequences of these years for a long time to come, but if we or the next Parliament think that the desires that people expressed were just for greater national independence and not for greater personal and community independence too, we are misunderstanding the people more than history has misunderstood Zhou Enlai—because although that is how his comment is famously remembered, it is a misattribution; its meaning was lost in translation, and he was referring not to the revolution two centuries earlier but to the events in Paris in 1968.

The ambitions of the people of Scotland must not be lost in translation. The people wish to be closer to the decisions that hold such sway over the places that they hold dear. They ask how much control they have over their own lives. They ask that of the nation, but they also ask it of their cities, towns and villages. They ask to whom they pay their taxes, in what form and how that is decided. They ask who owns what and to what purpose. Those are great questions of community as well as of state. This country now needs to be changed materially. Like clothes that have been grown out of, our institutions now hang uncomfortably on broadened shoulders.

I am proud of our record, but community empowerment comes not from one act but from every act that is taken to make society more just, taxes more fair and control more local. It will be not for the current Government but for the next one to build on the work that has been done already, to recognise that great challenge and to meet it. I have chosen not to be part of the Parliament in the next session or, indeed, the next Government. I wish everyone who is part of that very well.

At the end, I am reminded of wise words that I heard spoken on a departure:

"there must be no regrets, no tears, no anxieties. Just go forward in all your beliefs and prove to me that I am not mistaken in mine." [*Applause*.]

Meeting closed at 17:40.

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