

MEETING OF THE PARLIAMENT

Wednesday 9 March 2005

Session 2

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Scottish Parliament

Wednesday 9 March 2005

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Deputy Presiding Officer (Trish Godman): Good afternoon. The first item of business today is time for reflection, which is led by Canon Susan Wiffin, mission and ministry officer of Aberdeen diocese.

The Rev Canon Susan Wiffin (United Diocese of Aberdeen and Orkney, Scottish Episcopal Church): Good afternoon and thank you for the invitation to be with you today.

We moved home just before Christmas and are living now in Aberdeen. Over the past three months or so, I have had a number of conversations that have gone along the following lines.

“Oh you live in Aberdeen. How long have you been here?” “Just a few weeks,” I reply. “We came over from Fochabers in Moray.” “So Morayshire is where you come from, then?” “Well, no,” I say. “Actually, I am from the Borders—the central Borders, about an hour south of Edinburgh—and I lived there most of my life until moving to the north-east about four years ago.” And on it goes.

Perhaps you have been part of similar conversations. Where we are from, where we belong and where we find our sense of identity are, I believe, important to most, if not all, people. It is not that I do not want to put my roots down in the north-east and so claim a sense of belonging there, but neither do I want to lose sight of where I have come from. They are both part of who I am now—part of my uniqueness.

The Christian faith affirms in the deepest sense that each and every individual is unique and precious in the sight of God. We find evidence of that throughout the scriptures and most particularly in the gospel stories of Jesus’s encounters with a whole range of people—stories that show him engaging with and responding to people as individuals, each with their own particular needs and desires. In Jesus, we are reminded that our uniqueness matters and that there is no compromise to that uniqueness, so regardless of background, gender or any of the other categories that we might wish to apply, we also find that each one of us has a place of belonging in God’s kingdom.

I hope and pray that it is this kind of Scotland that you, in partnership with many others, are

working to create: a place where, no matter where we have come from—the fact that your website can be accessed in no fewer than 15 languages is evidence of your recognition of this wonderful diversity—we can declare, “I am me and this land of Scotland is where I find my place of belonging.”

May God’s blessing be on your work today and every day.

Charities and Trustee Investment (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-2352, in the name of Malcolm Chisholm, that the general principles of the Charities and Trustee Investment (Scotland) Bill be agreed to.

14:34

The Minister for Communities (Malcolm Chisholm): I am pleased to open the stage 1 debate on the Charities and Trustee Investment (Scotland) Bill. I thank the Communities Committee for its rigorous scrutiny of the bill and welcome its endorsement of the bill in the stage 1 report. We agree with many of its recommendations.

The bill aims to provide a robust, proportionate and transparent regulatory framework that protects the public interest and helps charities to flourish. The process began with the establishment of the McFadden commission in 2000 and the setting up of the Office of the Scottish Charity Regulator in 2003 to monitor and supervise charities ahead of the legal reforms that are contained in the bill.

The charity sector had been calling for legislative reform for some time and we worked closely with the sector to develop the bill. I am very pleased with the response to the consultation exercise and I believe that the positive report from the Communities Committee illustrates that we have a better bill as a result. I look forward to continued discussion with the sector as the bill progresses and as we move towards its implementation.

The Executive is committed to encouraging a vibrant and diverse charities sector in Scotland, and the bill is a crucial part of that. The charity sector provides a great benefit to our society. It has an income of £2 billion a year, of which the public donates about £240 million. It is therefore extremely important that we create an environment in which the sector can continue to flourish. The bill is designed to do that by providing reassurance to the public that the many charities to which they give generously use their donations appropriately, but without placing an undue burden on those charities. The principle of proportionate and balanced regulation is central to the bill, and we agree with the committee that co-operation between OSCR and the Charity Commission for England and Wales will be key to the bill's success. The inclusion of the duty on OSCR to co-operate with other regulators is designed to encourage that co-operation.

I reiterate my welcome for the committee's report. I am particularly pleased with its support for the two-part charity test and for our approach to public benefit and I agree with many of its comments on charitable purposes. The committee's evidence taking and consideration have moved policy thinking on and I am grateful for all its work. We will be carefully considering the wider implications of the committee's numerous recommendations. I do not intend to discuss all the recommendations today, but I want to clarify the Executive's position in a number of key areas.

I will start by mentioning the important issue of the independence of charities. Everyone agrees that charities ought to act independently and that trustees ought to act in the best interests of their charities. What we have not always agreed about is how to create a test of independence that is fit for purpose. One of the issues that was raised in evidence to the committee was the proposed test's potential to remove charitable status from the five national collections non-departmental public bodies. The committee said that, although the principle of independence is fundamental to the charitable sector, the restriction on third-party direction powers should not inhibit charities from continuing to operate under the same constitutions where there are public interest reasons for a link to a third party.

We remain committed to promoting the independence of charities. That is not to say that the Government cannot set up charities or that charities cannot take on government functions, or even that charities cannot receive government funding, but it means that a charity's purposes must remain exclusively charitable and that charity trustees should act solely in the interests of the charity. The specific exclusion of third-party control in section 7(3)(b) was added to the bill to reinforce that.

As a result of the evidence that was presented to the committee and in recognition of the unique role that is played by the five national collections NDPBs, we have already agreed to find a way to ensure that the National Library of Scotland, the National Galleries of Scotland, the National Museums of Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland and the Royal Botanic Garden Edinburgh are able to retain their charitable status.

The committee raised concerns about local authority arm's-length charities and the appointment of their charity trustees by the local authority. As the Deputy Minister for Communities, Johann Lamont, said in evidence to the committee, charitable status will depend on charities' purposes remaining exclusively charitable and their charity trustees being able to act solely in the interests of the charity. The fact

that the charity trustees are appointed by the local authority should in itself have little impact.

The possibility that the independence requirement may have an impact on further education colleges has been identified. We have acknowledged that the test in its current form could impact in such a way as to be too severe or unworkable and we are examining the test to consider whether amendments are necessary. However, we remain firmly committed to the principle of charity independence and of charity trustees acting solely in the interests of the charity.

The public benefit test has already been widely debated and I very much welcome the committee's support for the approach that has been taken in the bill. Much of the discussion has centred on independent schools and a number of views have been expressed on whether such schools should or would lose their charitable status as a result of the bill. The bill does not make judgments about specific types of charity but seeks to provide a robust test against which all charities can be judged. It is a key principle that all charities should have to prove that they provide public benefit before they can access the substantial benefits of charitable status.

Tommy Sheridan (Glasgow) (SSP): Will the minister elaborate on that and say how much of an organisation's activities have to be of public benefit? Surely we cannot just have a statement that they have to prove that they provide public benefit; the point has to be elaborated on.

Malcolm Chisholm: Every charity will have to satisfy OSCR that it can demonstrate public benefit. That applies equally to independent schools as to anyone else. I know that, as his amendment to the motion indicates, independent schools are Tommy Sheridan's particular concern. Although the fact that a charity charges does not in itself mean that it ceases to provide public benefit, charges will not be able to be "unduly restrictive"—two key words in the public benefit test.

By providing broad criteria of what constitutes public benefit, we have created a robust test that encapsulates previous case law but which, importantly, has the flexibility to adapt to changes in the sector and in public perception of what constitutes a charity. Allowing OSCR to judge each case on its merits is the right way to ensure that a fair and reasoned approach is taken to each case.

Alasdair Morgan (South of Scotland) (SNP): Will the minister take an intervention?

Malcolm Chisholm: I will have to make progress, because I think that I am getting behind time.

The committee acknowledged that point but highlighted that it was a challenging and contentious task for OSCR. I believe that the appeals process and the duty on OSCR to consult on how it will determine charitable status will ensure a fair and open process for those important decisions.

The other part of the charity test is to do with charitable purposes. I believe that we have developed a set of purposes that reflect the Scottish charitable sector and allow for development as perceptions of charities change.

Although I am committed to creating a legislative framework that meets the needs of the Scottish charity sector and public, there are concerns that differences in what constitutes a charity in England and Wales and in Scotland could create a situation where bodies are recognised as charities in Scotland but are not recognised as charities by the Inland Revenue. However, what matters most is that we have clarity about what constitutes a charity in Scotland and what fits the public perception of what a charity should be. The committee makes that point in its report. However, I acknowledge the need for close working between OSCR, the Inland Revenue and the Charity Commission, on which I know that officials are working.

Mr John Swinney (North Tayside) (SNP): Will the minister take an intervention?

Malcolm Chisholm: I think that I really need—

The Deputy Presiding Officer: Minister, you have time. I will allow an intervention if you wish.

Malcolm Chisholm: I do not know how much time I have to get through my speech. If I get through it, I will take interventions at the end.

Another part of the bill that has excited debate is the continuation of the designation of certain religious charities, exempting them from some aspects of the regulatory controls in recognition of their internal control mechanisms. The issues have been well debated by both sides; the religious charities think that they should be exempt from OSCR controls that could impinge on the internal governance of the church and their independence from the state and others feel that there should be no exemptions from OSCR review at all. The bill strikes a balance between the two sides, providing a regulatory framework for all charities and, in the interests of transparency and accountability, it is right that all charities should be accountable to the Scottish public through OSCR for their charitable status.

The status of OSCR has also been debated during the bill consultation and one of the main principles that the bill sets out is that OSCR is to be an independent regulator. The consultation on

the draft bill confirmed the earlier strong views that decisions on charity status and regulation of charities should be free from political interference. Modern practice is that independent regulators should preferably be bodies corporate, governed by a board of members, rather than relying on individuals to hold statutory powers. I am pleased that the committee's report agreed with the way that the Executive proposes to implement that.

OSCR is to be a public body free from ministerial direction, except in relation to the framework for its annual report that is to be lodged with the Parliament. It is intended that OSCR will be made a non-ministerial office-holder in the Scottish Administration by a Scotland Act 1998 order. We are discussing with the United Kingdom Government the feasibility of a body corporate becoming an office-holder in the Scottish Administration. There is no precedent for that but, whatever the outcome, we are committed to OSCR being an effective and independent regulator.

Mr Swinney: Will the minister clarify his comments on the judgments of the Inland Revenue? If an organisation is given charitable status by OSCR, will it automatically be given charitable status by the Inland Revenue?

Malcolm Chisholm: I cannot speak for the Inland Revenue, obviously, as that is within the provenance of the United Kingdom Government, and so cannot give the guarantee that John Swinney seeks. However, I can say that OSCR, the English charity regulator and the Inland Revenue are seeking to co-operate with one another.

I said at the start of my speech that I wanted the bill to set out a proportionate and balanced approach to charity regulation. That has been a consistent theme throughout our deliberations. The bill gives OSCR the necessary powers to prevent wrongdoing and to intervene to protect a charity's assets when a serious breach has occurred. However, the need to minimise dual regulation has been taken into account.

Following consultation, the bill has been amended to allow charities that have no major activities in Scotland but which have members here not to register with OSCR, provided they make it clear that they are registered elsewhere. The day-to-day regulation of charitable registered social landlords has also been delegated to Communities Scotland, although OSCR will remain in control of their charitable status.

The principle of proportionate regulation is found throughout the bill and will be continued in the subordinate legislation. The accounting regulations, which will be consulted on soon, will allow smaller charities to produce simplified

accounts while still giving OSCR and the public a clear picture of the charity's activities. Penalties for failure to comply with the legislation will be applied proportionately and will take account of the circumstances of the breach.

If charities are to flourish in Scotland, it is vital that the legislation that we implement recognises the wide diversity within the sector and acknowledges the pressures on the small, one-person charity as well as those facing the large international players. I believe that the bill does that, but we are committed to working with the sector to ensure we do not inadvertently place unnecessary strains on charities.

I welcome the committee's support for the provisions in the bill to regulate benevolent fundraising. Those provisions are key to ensuring transparency and accountability in the way in which funds are raised and to promoting public confidence in the sector, which is one of the main aims of the bill. We will continue to work with the sector as we develop the regulations on fundraising and public benevolent collections.

The bill regulates fundraising by and for all benevolent bodies—not just charities—in order to maximise public confidence in donating to good causes. The committee recognised the importance of that approach.

I am pleased that the committee supports the development of a scheme of self-regulation by the sector, with reserve powers in the bill that can be used if further statutory regulation should prove necessary. The Executive has agreed to allow the self-regulation scheme time to prove its worth. The sector has undertaken considerable work on that and we look forward to working with it as the scheme is finalised and put in place.

In the coming months, work will be done to develop the regulations and to establish training and awareness-raising programmes. The relationship that we developed with the sector during the initial consultation stage is key to that and we will continue to work to engage it in the implementation process to ensure a smooth transition to the new regime.

I look forward to working with the committee in the coming parliamentary stages. I am convinced that we can produce an act that allows the sector to grow while providing the necessary reassurance to the general public.

I move,

That the Parliament agrees to the general principles of the Charities and Trustee Investment (Scotland) Bill.

14:48

Christine Grahame (South of Scotland) (SNP): I should declare an interest, as I am the

patron of Scottish Heart at Risk Testing and Jam, which are two Borders charities.

I hope that the amendment in my name is not contentious. The Scottish National Party fully supports the thrust of the bill, which is much needed and has been a long time in coming. Of course, it follows in the wake of scandalous charity disasters, which have brought much disrepute to an extremely important sector and caused a great deal of damage. When the bill reaches its final stages, it must provide—as I am sure that it will—a robust framework for the registration and operation of charities, which will, of course, be the function of OSCR.

The SNP welcomes the way in which OSCR operates and the way in which it has been set up. We also welcome the bill's clean-slate approach to the question of what is and is not a charity. There will be no presumption that an existing charity should remain a charity. That is reflected in paragraph 25 of the Communities Committee's report. Time has moved on and some organisations that have historically had charitable status and the concomitant tax and rates benefits might no longer be entitled to that designation. That is covered in paragraph 86. Although it is ultimately for OSCR to determine any application, we in the chamber have a duty to assist OSCR through the primary legislation.

I am interested in what the minister said about public confidence and the public perception of what is and is not a charity. That is reflected in paragraph 86, which says that the committee

"believes that it is important to set criteria that bodies should meet in order to benefit from tax relief and to ensure that there is public confidence in the charitable and voluntary sector as a whole."

I, too, thank everybody who gave evidence to the committee and my colleagues for working through the bill. The programme is constructive, but there are issues that the minister has mentioned that need to be resolved. There are, of course, the national collections—our art galleries, museums and so on—to which the minister referred, which will have difficulties in passing section 7(3)(b), which is on third-party direction. The minister also mentioned NDPBs and the appointments system. There may be issues for the SNP—there certainly are for me—to do with the appointments system, which we will examine at stage 2.

Similar difficulties arise with Scotland's colleges, which I do not think that the minister mentioned. They would pass muster on the charity test on all counts, except the same subsection on third-party direction. I refer the minister to paragraph 134 of the report. Of course, those difficulties must be resolved. Colleges act in the public interest and do a great public service and we do not want them to

lose their status and the benefits that arise. My colleague Fiona Hyslop will address those matters more fully.

I will deal with the more contentious part of the SNP's amendment. I make it clear in passing that the SNP cannot support the Scottish Socialist Party's amendment, although I am sympathetic to it. We cannot support it because it would remove charitable status from all fee-paying schools and all private schools, with the exception of independent special schools. The amendment is too specific. There might be schools that use alternative education methods—the Steiner schools might be one type, but there are others—and the amendment does not deal with the private health care sector.

The catch-all part of the SNP amendment would give flexibility to OSCR, which is necessary in the grey areas that will arise in practice. Our amendment, which includes the words "overriding purpose", makes it clear that some fee-paying schools and indeed the private health care sector—it should be remembered that each organisation must independently apply to OSCR for registration—would find it difficult to meet the charity test on public benefit. I will be blunt. The Gordonstouns and Fetteses of this world—fees at Fettes College are £12,000 to £15,000 per child—represent an exclusivity that would fail the test, while Donaldson's school for the deaf is at the other end of the spectrum. There are grey areas in between.

Murdo Fraser (Mid Scotland and Fife) (Con)
rose—

Alex Fergusson (Galloway and Upper Nithsdale) (Con) *rose—*

Christine Grahame: I will take an intervention from whichever gentleman wants to intervene.

Murdo Fraser: The member may be aware that, according to recent figures, independent schools in Perth and Kinross are worth around £40 million to the local economy and that much of that is generated in the constituency of her colleague Roseanna Cunningham and much is generated from overseas. I thought that the SNP was the party of enterprise, so why is it attacking a part of Scotland's economy?

Christine Grahame: The member has done his bit for his electorate. The point is that those schools do not meet the charity test. What the member says is irrelevant to the bill that we are considering. They may have other routes that they can take, but that is not one of them.

In evidence, it was made plain by representatives of the independent schools sector that perhaps one in nine of the pupils has an assisted place. My committee colleague John

Home Robertson—who attended a private school—put it in a much more interesting way when he said:

“So about nine out of 10 pupils do not receive ... bursaries.”

He also said:

“I confess that I would struggle to defend the proposition that there is a public benefit in private education”.

My colleague Scott Barrie stated:

“We can all accept that the educational aims of the independent and state sectors are the same. However, like other members of the committee, I am struggling—from some of the answers that we have received so far this morning—to establish why it is necessary for the independent sector to have charitable status to achieve those aims, when the state sector seems to be able to do so without that status.”—[*Official Report, Communities Committee*, 12 January 2005; c 1568 and 1573.]

Mr John Home Robertson (East Lothian) (Lab): I am struggling to understand what the point of the SNP’s amendment is. Christine Grahame should not make the mistake of believing her own press releases. Section 7(1), which is on the charity test, requires a body to show that it

“provides ... public benefit in Scotland or elsewhere.”

It is surely good enough to have that public benefit test for the independent regulator to interpret without Christine Grahame’s amendment, which has been put forward as a political stunt.

Christine Grahame: That is an unfortunate shifting of John Home Robertson’s ground. The point of the amendment is to have in the bill a simple statement of the overriding purpose of charitable organisations. There is no such purpose in the bill as it is drafted. I wish the purpose to be inserted into the long title. I hope that I will get extra time for this, Presiding Officer.

The private sector fails in my book—and I thought that it failed in John Home Robertson’s book—to pass the “unduly restrictive” test. We need only look at the language that is used in talking about private hospitals. In his evidence to the committee, David Mobbs said:

“We do not see charging fees as being restrictive in our marketplace because people can access our services through insurance ... —a large proportion of the population has insurance—or through cash plans, taking loans”.—[*Official Report, Communities Committee*, 12 January 2005; c 1571.]

“Marketplaces”, “loans” and “cash plans” are not the language of charities. The test should be clear and simple. This is no witch hunt against private schools or hospitals and it is not—as a Conservative member said this morning—the politics of envy; it is a call for a simple and clear statement in the bill of the modern purpose and definition of a charity.

In my last minute or so, I will touch on some minor points that I welcome on behalf of the SNP. We agree that there should be separate lists of current, active charities and those that are no longer functioning. As Donald Gorrie said, some may have assets that can be used by other charities with similar purposes. That was a positive point to make.

In a recent letter to us, the Law Society of Scotland said that it would like to see a list of charities that are foreign based. That should be made clear and accessible to the general public through an on-going electronic register in which they can feel that everything is safe and secure. That would also assist OSCR.

We welcome the fact that a Scottish organisation will not necessarily be designated a charity just because its English twin is and, in reference to John Swinney’s question, we recommend that a protocol be established between the Treasury and OSCR to tidy such matters up before the bill progresses much further.

In paragraph 27 of the summary of its report, the committee recommends that

“the Executive should amend the definition of ‘misconduct’ in section 103”

to prevent honest people who are working as trustees in charities and who make minor and genuine errors from falling foul of the law, which is too draconian.

I have touched on a few points and expect colleagues to develop others. I commend the insertion of the purpose of a charity into the long title of the bill, so that the bill is not simply regulatory—a charity is a charity is a charity—and that people will recognise that. I trust that our amendment will receive a fair wind. The SNP otherwise fully supports this long-awaited reappraisal. Whether or not our amendment is supported, we support the thrust of the bill and the regulation of our many charities, which should now flourish in the confidence that rotten apples cannot get into the proverbial barrel and contaminate others.

I move amendment S2M-2352.2, to insert at end:

“and, in so doing, notes the Scottish Executive’s commitment to protect the National Collections’ charitable status but has concerns that Scotland’s colleges may fall foul of section 7(3)(b), and calls for there to be a clear statement on the face of the Bill of the purpose of a charity, namely that only those organisations which have as their overriding purpose the provision of a benefit to the public should qualify for charitable status, and for the Executive to bring forward appropriate amendments at Stage 2 to this effect.”

14:58

Tommy Sheridan (Glasgow) (SSP): Charity law is currently outdated and unsatisfactory. The case for reform is, therefore, very strong. We should take the opportunity today—as we have on many other occasions—to applaud the day-to-day work of charitable organisations and hope that the bill will provide robust cover to expose the tiny minority of rogue organisations whose activities prevent other organisations from enjoying the clean bill of health that they deserve. We must also ensure that none of the regulations that are introduced discriminates against the smaller charities that do not have the administrative capacity of some of the bigger charities to comply with the various regulations. I am glad that the minister referred to that.

The Scottish Socialist Party strongly supports charitable institutions having the greatest possible independence, so that they can pursue their goals free from Government, Scottish Executive or local authority interference. In particular, charities should be free to express opposition to local authority or national Government policies that are in conflict with their aims or the interests of their beneficiaries. Government, Executive and local authority quangos should not be allowed to seek charitable status as long as their independence from government is questionable, and quangos should not be granted charitable status if ministers or councils are able to overrule undemocratically other directors or trustees in decision making.

However, the nub of today's debate is the issue of public benefit. Perhaps I should declare an interest in this part of the debate because I consider myself a class warrior on the side of the working class. The class war, which Mr Blair often says is over—although he has not told us who won—is still alive and kicking. It is absolutely pathetic that if an ordinary member of the public is asked to highlight the odd one out between Amnesty International, Greenpeace or Fettes College, none would get the answer correct. Of course, two of them are fantastic organisations that work for the improvement of society and humanity; the other is a charity.

Christine Grahame should look for the updated fees at Fettes College. The annual fee is now £20,199 for a boarder at Fettes. It is garbage that those pupils, whose mums and dads can afford £20,199 per year to send their kids to a glorified child-minding agency, are going to an organisation that is considered a charity. That is absolutely pathetic.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the member give way?

Tommy Sheridan: I will give way to the member in a minute.

Because the school's charitable status is based on a historical precedent, it is a bit like comparing new Labour to a socialist party—it used to have some historical resonance but there is no resonance whatsoever today.

Mike Rumbles: I thank the member for taking an intervention. I am not clear about whether he is simply against any form of independent schooling per se. He used Fettes College as an example, but Lathallan School, which is in my constituency, is a very small school that provides public benefit for local people through bursaries and so on. Does he include Lathallan?

Tommy Sheridan: What I am looking for is absolutely clear—a presumption against fee-paying schools having charitable status. That should be the exception rather the rule.

Karen Whitefield (Airdrie and Shotts) (Lab)
rose—

Alex Fergusson *rose—*

Tommy Sheridan: There are two members on their feet. If they let me continue just now I will give way in a moment.

Unbelievably, the Executive wants to continue to give charitable status to those glorified child-minding agencies for the children of the wealthy.

The SSP welcomes the proposal for a public benefit test to determine eligibility for charitable status. However, we do not believe that the bill sets out clear public benefit criteria. That is why I ask the minister to comment on proportionality in relation to what is public benefit.

Mike Rumbles mentions that the odd bursary is up for grabs. Are we saying that if a school of 463 has three bursaries, it should qualify as a charity because that is a public benefit? That is utter nonsense and the people of Scotland want an end to the ridiculous situation in which such elite institutions are able to hide under the cover of charitable status.

Alex Fergusson: It is no secret that I went to one of those fee-paying schools—I hope that the fact that John Home Robertson and I both did so suggests that there is not too much about such schools that is elitist. Will Mr Sheridan come clean about the fact that his policy is to get rid of those schools altogether? Would it not be better to do that by reducing demand for those schools by making sure that the state sector provides such a good education that demand disappears, rather than by making public schools more exclusive than they already are, which is what the member's amendment would achieve?

Tommy Sheridan: It is interesting that the member finishes his intervention with the killer phrase “more exclusive than they already are”.

That is the point. They are exclusive institutions for the children of those who can afford to pay. Alex Fergusson should get a grip on reality. There are currently 1 million workers in Scotland whose wages are less than £15,000 per year. How can they afford to spend £20,000 per year to send their kids to the Fettes Colleges of this world? The majority of the respondents to the Executive's first consultation on the bill strongly opposed the continued charitable status of private schools and hospitals. The Executive has failed to take cognisance of that in today's debate.

The total fee turnover for private schools across the UK is £3.4 billion a year. Private schools are not charities but profitable private industries to which charitable status brings tax advantages, lottery funding and direct Government support. The state currently gives benefits that subsidise private schools to the tune of £1 billion a year. That is equivalent to £2,000 for every private school pupil. By the way, it is also five times what it would cost to provide every school pupil in Scotland with a free healthy school meal. The new Labour members will not support such a measure because they do not want to feed the rich kids, but they do not mind subsidising the rich kids to attend private schools.

Karen Whitefield: Does Mr Sheridan agree that the bill will give no presumption of charitable status for any organisation? For the first time, organisations will not automatically qualify for charitable status just because they provide education. Such organisations will need to convince OSCR by proving and demonstrating that they meet the criteria in the bill against which OSCR must judge whether they are charities.

Does Mr Sheridan also accept that some independent schools in Scotland are in no way elite but cater for exclusive groups such as those with learning disabilities or special needs?

The Deputy Presiding Officer: Mr Sheridan, you should think about summing up now.

Tommy Sheridan: Presiding Officer, I will do so, but I hope that you note the length of that intervention.

The member raised some important points, but my amendment is couched in terms that would not remove charitable status from independent special schools that provide the type of benefit to which she referred. However, she put her finger on the nub of the issue when she said that the bill will provide no presumption for or against private schools. I am opposed to that because I want a presumption against private schools. I want such special schools to have the same recognition that would be given to an elephant that sits in the corner of the living room. Private schools are

undoubtedly a symbol of elitism and privilege that represents the establishment in this country.

Charitable status confers 80 per cent uniform business rates relief on private schools. It provides tax relief on bank deposits and on income from investments. It provides private schools with the ability to claim back tax paid by benefactors. When the question was asked in Westminster last March, the Government had to admit that £150 million a year would be generated if value added tax was imposed, as it should be, on private school fees. In 1998, four private schools between them received more sports lottery funding—£3.2 million—than all the state schools in Scotland put together.

In conclusion, those who attend private schools tend to attend Britain's top universities—the Cambridges and the Oxfords. Seven of Britain's nine most senior generals, 33 of its 39 most senior judges and 120 of the 180 officers graduating from Sandhurst attended private schools. In other words, private schools represent the elite. As a Parliament, we should say that we have no truck with elitism.

The Deputy Presiding Officer: Mr Sheridan, you must finish now.

Tommy Sheridan: If such schools are to exist, they should stand on their own two feet without public subsidy.

I move amendment S2M-2352.1, to insert at end:

“but, in so doing, supports the removal of private and other fee-paying schools from the artificial cover of charitable status which saves these elite institutions thousands of pounds in various taxes every year, and calls on the Scottish Executive to bring forward amendments during Stage 2 of the Bill to achieve this objective whilst maintaining the status of independent special schools.”

15:08

Mary Scanlon (Highlands and Islands) (Con): At stage 1, the Scottish Conservatives welcome the general principles of the Charities and Trustee Investment (Scotland) Bill, which will review and update charity law in Scotland.

We believe that the focus of the bill should be on promoting volunteering, charitable work and giving. There is no doubt that charitable organisations offer solutions that are uniquely tailored to local problems in a way that could never be replicated by Government agencies.

Like many bills that have been introduced in Parliament, many issues will be dealt with not on the face of the bill but in the subsequent guidance, which will need to be interpreted and implemented. We must therefore hope that our understanding of the spirit of the bill will be

identical to OSCR's when it decides which organisations will retain charitable status and be regulated accordingly.

First of all, I will deal with the two amendments that have been lodged. I simply ask the SSP and the SNP to tell us the number of independent schools that they have visited. For example, have they ever visited Gordonstoun, which was set up in the 1930s by a Jew fleeing Nazi persecution? It provides more than 200 jobs in the Moray constituency and is absolutely central to that community.

Tommy Sheridan: Will the member give way?

Mary Scanlon: I want to finish this point.

Has Tommy Sheridan ever visited St Aloysius' College in Glasgow or, in Edinburgh, Stewart's Melville College and the Mary Erskine School, which is the largest independent school in Europe? Has he spoken to the many parents who make considerable financial sacrifices to pay for their children's education? Many of the pupils at those independent schools are from military families; as their parents are sent on duty to different parts of the world, boarding school provides the only continuity of education that those children can get. I declare myself a class warrior for every parent who works hard and makes serious sacrifices to give their children choice, freedom and the best education, as they see fit.

As Murdo Fraser has pointed out, independent schools also provide valuable jobs for local people in rural small towns. In fact, when he and I visited Morrison's Academy in Crieff this week, we heard of research that shows that more than 8 per cent of all employees in Crieff work in the independent school sector and that it brings millions of pounds into the local economy.

Tommy Sheridan: I thank Mary Scanlon for taking my intervention. If she had not allowed me to answer her question soon, my heart would have probably bled so much that I would not have been able to get to my feet again.

Yes, I have visited St Aloysius' College. I have also visited George Watson's College and Fettes College, and will talk about that later. Mary Scanlon seems to have the misconception that we want to close down those schools. In fact, we want to open them up, which will create more jobs.

Mary Scanlon: That response shows that Tommy Sheridan has a greater lack of understanding of the situation than I thought he had. I should also point out that, when Rannoch School in Perthshire closed, 57 jobs were lost in a local rural area. Many teaching staff left the area and the school was turned back into a private home.

If the SNP communities spokesman had wanted to know more about independent schools in Scotland, she might have chosen to attend at least one of the three pre-legislative briefings that Communities Committee members received, particularly the one that was held in Perth. Taking all the children in independent schools into the public sector would cost the taxpayer more than £150 million. Those who have lodged amendments to the motion should tell us where that money will come from.

Linda Fabiani (Central Scotland) (SNP): Will the member give way?

Mary Scanlon: I look forward to Linda Fabiani's explanation.

Linda Fabiani: First of all, I should point out that I have attended meetings on behalf of the SNP and the Communities Committee and have visited many private schools. Secondly, does the member really believe that if Fettes College lost its charitable status it would close its doors?

Mary Scanlon: I chose my words carefully and referred to the SNP communities spokesman; I was not aware that Linda Fabiani was the communities spokesman. As for her question, it is not for me to decide whether Fettes College should lose charitable status. That is a decision for OSCR.

Karen Whitefield: On a point of information, the member might recall that there was no SNP representative at our meeting with the independent school sector in Perth.

Mary Scanlon: I thank the member for reminding me of that. The SNP should have chosen to attend the informal briefing, which we all found extremely helpful.

Although I do not agree with him, I understand why Tommy Sheridan lodged an amendment. After all, he is not a member of the Communities Committee. However, I do not know why Christine Grahame lodged an amendment, given that she had every opportunity to amend the stage 1 report. Her amendment shows that the SNP would restrict freedom, choice and diversity in Scotland only to promote intolerance through its ideological lack of understanding.

Fiona Hyslop (Lothians) (SNP): Will the member give way?

Mary Scanlon: No, I have taken enough interventions.

Education is a public benefit; it needs no secondary justification. It benefits the pupil, their family and society. I say to Tommy Sheridan that it is a pathway out of poverty and that parents should be able to choose to make sacrifices to pay for their children's education. If we removed

charitable status from independent schools, fewer bursaries would be paid out and fees would have to rise, making those schools more exclusive and beyond the reach of many of the working-class families that he pretends to support.

Let us remember that the independent sector was educating Scotland's young people before the advent of the local authority-controlled network of today. My children received assisted places to go to the High School of Dundee, which is more than 750 years old. I did not put them there because I wanted them to be elite; I put them there because the discipline and the management were better than at their local school.

We should be considering ways of expanding the sector rather than crowding it out. I say to Tommy Sheridan that all the money that goes to independent schools is reinvested back into the schools and their facilities. If he knew more about the schools, he would know that.

Others have mentioned section 7(3)(b) of the bill and the effect that it will have on certain bodies. I heard what the minister said and accept that the Executive will consider the issue. The provision would affect the Church of Scotland, where the third party would be the General Assembly. For the Catholic Church, the third party would be the Vatican. Groups such as the girl guides would also be affected.

Most of the problems that people have identified in the bill have been in sections 7 and 8—on the charity test and public benefit respectively. I agree with the committee: these matters should be left to OSCR.

Two words in section 8 that gave me considerable concern are “unduly restrictive”. As a Campbell, I could not join the MacDonald clan. Does that make the MacDonalds unduly restrictive? When the Scottish Council of Jewish Communities says that it raises money within its communities to benefit people within its communities, does that make it unduly restrictive? The committee discussed the issue a lot. The arguments came back to the question, “What does ‘public’ mean?” Can something benefit one person, or a dozen people, or does it have to benefit every single person?

Issues to do with added bureaucracy have been very well covered by the bill.

At the committee, several witnesses gave the example of a children's charity that raised money in Scotland but spent nothing in Scotland. However, I would not like money raised in Scotland to be restricted to Scotland, in the same way as I would not like the enormous amounts that the cancer charities raise in the rest of the United Kingdom not to be spent on cancer research

here—research from which we benefit enormously.

The bill will have failed if it does anything that hinders charities in carrying out their work. As the bill moves forward today, let us ensure that it does so positively; that it reduces rather than increases administrative demands on charities; that it does nothing to discourage ordinary Scots from giving their time and money for charitable purposes; and that it does not place existing charities and their volunteers in a state of undue uncertainty over their future status.

15:18

Donald Gorrie (Central Scotland) (LD): This is a very important subject and, politically, a very enjoyable one. On the whole, the members of the committee addressed the issue as individuals—using their own intelligence and deploying their own prejudices rather than indulging in a party-political dogfight. We may come to wrong conclusions but at least they are genuine conclusions.

The subject has been waiting for attention for a long time. Some of us have been working on it intermittently for 30 years or so. The bill is very welcome. However, like an onion, it has more and more layers as we get into it. A lot of careful thought about amendments will be needed from the Executive and the committee, so that we can achieve the right result. We all want to promote the charitable and voluntary sector, to regulate fundraising correctly and to ensure that nothing untoward happens. The bill must be positive and promotional. We will have to examine very carefully anything that might be negative.

Three main issues arise—charitable purposes, public benefit and independence. The minister dealt with some of those issues in his speech, in which he made a lot of good points, and Mary Scanlon also dealt with some of them effectively in her speech. I think that the list of charitable purposes could be improved by adding in such things as citizenship, promoting belief, promoting racial and religious harmony and the saving of lives.

Sport is a complex issue, and we need to consider whether we can use phrases such as “community sports clubs” or “non-commercial sport”, so that we encourage sport. We should not allow huge businesses such as professional football clubs to become charities, but we should encourage genuine sport in the community. The list of charitable purposes should also include such things as recreation and play, which are left out at the moment. There is also a question about all sorts of groups that need assistance. The bill mentions accommodation and care, but it does not

mention support, and I think that support and advice are important aspects. The Executive has made noises indicating that it is prepared to consider some of those issues, so that is encouraging.

On the question of public benefit, as Mary Scanlon said, there is the issue of what constitutes “public”. It must be quite clear that a public benefit is not something that has to benefit every single member of the public. I feel that a phrase such as “giving direct and indirect benefit to the community as a whole” could be introduced. A mutual aid group, a Jewish or Muslim group, a clan group, a group of former pupils of a school or a tenants association can benefit particular people, but by doing so such groups benefit the community as a whole. We have to embrace that concept, rather than insist that every group has to be open to every individual in the world so that they can benefit from it.

Margo MacDonald (Lothians) (Ind): I am playing devil’s advocate. There seems to be a parallel between the benefit that definitely accrues to children who attend a school of their parents’ choosing, even if they pay fees to do so, and who are therefore a minority in the community, and the benefit that accrues to the minority of people who might benefit from, say, a Muslim charity.

Donald Gorrie: In either case, I think that the same argument applies. The organisation concerned must demonstrate that it is not merely benefiting a small, tight bunch of people but that the work that it does for them benefits the community as a whole.

In fact, I was just about to come on to the question of schools. The position that I take, and which Liberal Democrats and, I hope, other people take, is that it should not be a blanket yes-or-no question as to whether fee-paying schools can be or must be charities. Each fee-paying school should have to demonstrate to OSCR that, in all the various ways in which it works, it provides a genuine public benefit—through its scholarships, through use of its facilities, through the training that it gives trainee teachers and through the work that it does in the community as a whole. OSCR will have to judge that and I believe that in the Parliament and in the Executive we must give some guidance to OSCR. It is hard for one person to make such important decisions, but each school ought to demonstrate its case that it provides a public benefit.

The third issue that I want to raise is independence, which is a knotty issue. I suggest that, instead of the way in which the bill tries to deal with independence, with reference to third-party control, we should strengthen the duties of trustees so that they have to act in the interests of the charity and not of any outside body. If we

emphasise that in some way, that would strengthen the point.

The minister made the right sort of noises about national institutions such as the National Galleries of Scotland, colleges and arm’s-length companies, but there are quite a lot of other organisations that might fall foul of the independence provisions if the wording is not changed. That raises the issue of what independence is. A lot of charitable organisations provide a service that is paid for by the local authority. If the local authority changes its mind about the funding, that can caw the feet from under the charity completely, because the local authority is in an almost monopolistic position. That does not prevent such organisations from being charities, but they are not totally independent. What is independence? Can I become a charity? Am I independent? My friend, George Lyon, who has just left the chamber, thinks that he can tell me what to do. Quite often, being a decent sort of guy, I go along with him. Does that mean that I am not independent? The issue of independence is a serious one, which requires careful examination.

By saying this I will probably lose some friends in the lobbying world, but there is a problem with some big charities in that they have become big businesses and have lost sight of their volunteers. Working in those big charities can become a career like anything else. OSCR should ensure that charities retain the spirit of being a charity and look after their volunteers. One of the duties of a big charity should be to train up its volunteers, look after them and give them worthwhile work to do. We should also concentrate on helping small organisations that have no staff and have problems filling in lots of forms. We must be as kind to them as possible.

Another debate that we should have is whether registered social landlords should be administered by Communities Scotland.

One of the good aspects of the bill is the introduction of the SCIO—whatever that stands for. The SCIO is a new style of company and its introduction means that a charity can become a company with the minimum of hassle.

Christine Grahame raised the important issue of dormant funds. Incidentally, I do not suggest to my colleagues that we support her amendment, because the second half of the amendment does not seem to cohere with the first half. I do not quite understand what she is getting at. The minister has given an assurance about colleges and so on anyway.

Fiona Hyslop: The minister referred to the non-departmental public bodies and colleges. The second half of the SNP amendment repeats the

committee's own recommendation in paragraph 150 of its stage 1 report.

Donald Gorrie: I still think that the amendment does not contribute to the sum of human knowledge.

The important issue is that OSCR has to be proportionate and reasonable—as, I am sure, the lady who is the present incumbent of the post of chief executive of OSCR is. However, it would be helpful to put in the bill more direction that there must be the minimum of regulation necessary to deliver the objectives. We want to avoid dual regulation, with more and more people pouring over organisations' accounts and so on.

Above all, we have to take the bill as a positive move. We will support any measure that helps the charitable sector to develop, but we want to avoid well-meaning but over-regulatory efforts, which can hinder the progress of the charitable sector. If we get the bill right it could be a great new dawn for the voluntary and charitable sector in Scotland. I greatly welcome the bill.

15:28

Karen Whitefield (Airdrie and Shotts) (Lab): When I first became a member of the Social Inclusion, Housing and Voluntary Sector Committee in 1999, I was appointed the voluntary sector reporter. The first meeting that I had in that capacity was with the Scottish Council for Voluntary Organisations and the first issue that I raised was the need for charity law reform. I know that the SCVO has welcomed the bill, which Martin Sime said

“will make a big and positive impact on charity in Scotland. It will underpin public support for thousands of good causes and will, for the first time, provide a proper framework for community action”.

Before I speak about the stage 1 committee report, I will thank a few people who have been instrumental in its production. First, I thank Steve Farrell and all the committee clerks for their assistance and guidance during the process. The bill is complex and there are many varying interests. The clerks have helped to ensure that committee members have heard a balanced account of the possible impacts of the bill.

I thank the SCVO for facilitating the pre-legislative meetings with charitable and voluntary organisations. The SCVO has been instrumental in the bill's development. I thank Gerry McNally of the Scottish Parliament information centre for the excellent briefings on the bill that he has produced and for his continued support to members. I also thank my colleagues on the Communities Committee, who have ensured that the bill has been thoroughly scrutinised during the stage 1 process and that charitable organisations' legitimate concerns have been taken into account.

At this point, I must say that I find Christine Grahame's amendment somewhat surprising and disappointing. It is surprising because it seems clear that the removal of the presumption of public benefit will have the effect that Miss Grahame seeks in her amendment. It is disappointing because Miss Grahame—

Christine Grahame: Paragraph 150 of the committee's report makes the point that I make in my amendment. That position is supported by the SCVO, which the member has applauded—it wants a statement to that effect to be included in the bill and I agree.

Karen Whitefield: I am in no doubt about what is in the committee's report. Like Christine Grahame, I laboured over it. My point is that she signed up to the report. The point in parliamentary proceedings at which we need amendments is stage 2. Today is not the day for amendments, so I am somewhat surprised that Miss Grahame has lodged an amendment to the motion and has not waited until stage 2.

Last but by no means least in my list of thanks are all the organisations and individuals who submitted evidence—both written and oral—at stage 1. As well as taking evidence in the Parliament, the committee travelled to Glasgow, Perth and Aberdeen to listen to the views and concerns of voluntary and charitable organisations that will be affected by the bill. We also met representatives of independent schools. I regret that so much of the debate has concentrated on the independent schools sector, because the bill's purpose is to provide a transparent framework for the proper regulation of charities in Scotland. For the first time, independent schools will have to play on a level playing field with every other charitable organisation. Their ability to show that they provide true community benefit will be assessed and questioned by OSCR.

The brief history of the bill that is set out in the report demonstrates that the Executive undertook a thorough process of consultation and revision during the drafting process. That process led to the introduction of a bill that has been widely welcomed. We all know about the damage that the fraudulent actions of a small number of rogue charities have done to the charitable sector. I believe that the bill's provisions will help to drive up standards in charities and to restore public confidence.

The removal of the presumption of public benefit is central to that process. All charities will have to pass the public benefit test. The committee acknowledged that the development of that test is a difficult and contentious task for OSCR. It is important that OSCR is seen to be acting reasonably and that it ensures that the process of determining public benefit is transparent.

The committee welcomes the clean-slate approach that the bill takes to the introduction of the charity test. That is important both to ensure public confidence in the sector and to establish the criteria relating to benefit from tax relief. The committee has clearly stated its support for the establishment of OSCR as a body corporate and for the setting up of a discrete Scottish charity register.

The committee took strong and compelling evidence from Jane Ryder from OSCR, who felt that we should not follow England and Wales in setting specific objectives for the regulator. She pointed out that objectives would change over time. The committee was convinced that, to ensure that the legislation remains flexible and responsive, the bill should not include specific objectives for OSCR. However, we concluded that the bill should make reference to the need to promote a flourishing charitable and voluntary sector in Scotland. OSCR also expressed its concern about the fact that the bill does not explicitly mention the regulator's current role of providing information and advice to Scottish ministers. The committee agreed that that was a valuable function for OSCR and that reference should be made to it in the bill.

It is important that we strike the right balance between the need for strong regulation and monitoring that builds public confidence and the need to ensure that we do not overburden and stifle charities to the extent that there is a negative impact on their operation. That is why it is vital that there is effective joint working between all the relevant agencies, both in Scotland and in England and Wales. That will ensure that the funding bodies that work at United Kingdom level are not overburdened by regulation.

I also welcome the Executive's commitment to lodge stage 2 amendments so that the five national collections institutions can retain their charitable status.

I am happy to support the general principles of the Charities and Trustee Investment (Scotland) Bill. I am pleased that the process of committee engagement with all sections of Scottish society has resulted in a report that makes positive suggestions for amendments. I look forward to the detailed examination of the bill at stage 2.

15:35

Fiona Hyslop (Lothians) (SNP): I welcome the committee report. I confess that I have always thought of Oscar more of as a dog or an award. I suppose that our job is to ensure that our OSCR is gold plated and not easily tarnished.

The bill was a long time in coming. I pay tribute in particular to the McFadden commission and to

MSPs Jackie Baillie and Tricia Marwick for keeping up the pressure on the Executive to introduce a bill. The stage 1 report correctly focuses on the central tenets of the bill, as well as on its potential weaknesses, and it does so in a constructive manner.

In supporting the Scottish National Party amendment, I draw the attention of John Home Robertson and Mary Scanlon to paragraph 150 of the committee report to which they signed up. That paragraph says:

"The Committee recognises the importance of ensuring that only those organisations which have as their overriding purpose the provision of a benefit to the public should qualify for charitable status."

In the report, the committee also

"suggests that the Executive should consider placing greater emphasis on the need to meet the public benefit test on the face of the Bill."

I am not a member of the committee, but I am struck by the fact that public benefit has been the main focus of the debate so far. It is quite proper for the SNP to lodge an amendment at this stage. I say to Karen Whitefield that, had today's debate not been the proper time to lodge an amendment, the Presiding Officer would not have accepted amendments for debate and vote in the chamber this afternoon.

Mary Scanlon: Will the member take an intervention?

Fiona Hyslop: No. I want to move on.

In the past, I have said that it would be unforgivable if the private schools agenda were to delay the provision of much-needed support to charities. There are far more important areas of Scottish life than the public schools, although that was not understood in the case that they presented. Those schools would pass the education test and the independence test, although the minister might want to reflect on the provisions in the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004, which could cause problems. However, some private schools might find difficulty in meeting the public benefit test, so it is right and proper that each school should have to state their case. The main focus of the bill should be the £250 million of charitable donations.

Three qualities are central to a successful charities bill: consistency, clarity and confidence. We need to have consistency of treatment by the regulator, clarity of interpretation by those who operate charities and confidence on the part of the public that they are supporting bona fide charities.

I will concentrate on consistency of treatment by the regulator. I appreciate the comments that the minister, the SCVO and others have made about

the importance of independence. However, it is on that issue that the principle falls foul of the practice. The public will find it bizarre if a private school gets charitable status but the local further education college does not. If that happens, it will be because the independent schools are precisely that—independent—whereas the colleges are not.

The report addresses the issue of independence in paragraph 24, with its reference to section 7(3)(b) of the bill. The committee highlights the problem that colleges in particular will face. If the regulator strictly interprets the bill, colleges could lose their charitable status, which could mean that they will lose £15 million of income. Charitable status also acts as a passport that attracts other donations. Currently, corporation tax is low for colleges because their surpluses are small. However, the bill could provide a disincentive for colleges to become more successful and grow their surpluses.

The bill will have unintended consequences. That is why, on 1 March, I lodged an amendment to the Further and Higher Education (Scotland) Bill—[*Interruption.*] I am not sure what is creating the hum that we can hear in the chamber, but I will keep going. It sounds as though the ceiling is being lowered down on us.

Provisions in the Further and Higher Education (Scotland) Bill are specifically about direction to ensure collaboration with fundable bodies. Yes, independence has a place, but so do probity and accountability for public money. Colleges could be made independent but, frankly, given the recent history of the management of some colleges, I am not sure that the time is right for that to happen. Even if it was, the governance of colleges should be driven by the strength of the sector, not by a loophole in the Charities and Trustee Investment (Scotland) Bill. As the Presiding Officer knows, our problem is that we have two bills running concurrently. However, the Further and Higher Education (Scotland) Bill is nearing stage 3, whereas the Charities and Trustee Investment (Scotland) Bill is just completing stage 1.

One solution to the problems of tax relief and the Treasury is to have a subsidy. I note that the minister states in the policy memorandum that the Executive wants to subsidise those NDPBs that lose their charitable status because of the bill. The Scottish Qualifications Authority, the General Teaching Council for Scotland and Learning and Teaching Scotland have said that the amount of subsidy could be £6 million to £7 million. That raises a key question: what discussions have there been with ministers to recoup from the Treasury tax relief that is forgone by former charities? From the Communities Committee's excellent report, I do not see that the Inland Revenue gave evidence, but I suggest that it should do so at stage 2.

Tommy Sheridan might like to reflect on the fact that the Inland Revenue could decide to give VAT and other tax relief to private schools, regardless of whether OSCR decides that those schools should have charitable status. If we are going to get so hung up on private schools, the minister and the Communities Committee might want to reflect on the role of the Inland Revenue.

The bill is much needed, much anticipated and much welcomed. It deserves close scrutiny at stage 2 to produce a piece of legislation that is worthy of the hundreds of thousands of Scots who selflessly give their time and energies to charities and voluntary organisations for the betterment of their fellow Scots.

15:42

Miss Annabel Goldie (West of Scotland) (Con): I should declare certain charitable activities. I am a member of the Salvation Army west Scotland advisory board, I am involved with the Prince's Trust in Scotland and I am a trustee of a charitable trust. Also, given the reference to the church in the committee's report, I should declare that I am also a member of and an elder in the Church of Scotland. I realise that such extramural activity is regarded as positively provocative in certain quarters, but I am unyielding.

I welcome the opportunity to modernise and reform charity law in Scotland. However, it is quite wrong to assume that no previous law existed—I shall come to that later—or that the previous law contains no important components that might continue to be relevant. Given the purpose of charitable endeavour—particularly with regard to the people whom it seeks to assist—it is important that we do not in legislation make that task more difficult, more burdensome and more expensive than at present. If we do, the losers will be the very people who are in need of help.

The extreme prospect—if the bill were to create confusion, duplicate obligations for charities operating in other parts of the United Kingdom and confront charities in Scotland with unsustainable costs—is that some charities would cease and, equally alarmingly, that others would not start. It is from that perspective that I wish to make the following points, which, in essence, are technical.

The first question that will confront any charity in Scotland, either existing or proposed, is what it is required to do if the bill becomes law. I am not clear about the answer to that. Although the bill will set up a charity regulator, a Scottish charity register and an application framework and give guidance on how applications are to be dealt with, I see no obligation requiring every charitable organisation to register. The sanction for an organisation that does not register may be that it

will lose its status as a charity for Inland Revenue purposes, but that is not stated in the bill. Indeed, the evidence taken by the Communities Committee confirms, as far as I can understand, that a charity might satisfy the Inland Revenue test but not the test under the bill. If so, that raises two questions. First, why would a charity bother registering under the bill as long as it has Inland Revenue approval? Secondly, is it not our desire, within reason, to bring all charitable organisations within a framework of light-touch regulation and accountability? The Executive needs to put those points beyond doubt on the face of the bill.

In evidence to the committee, the chief executive of OSCR said in response to questions from my colleague Mary Scanlon about the Inland Revenue and OSCR:

"It is like three-dimensional chess. I can say only that we are doing our best in discussions to ensure that there is alignment of definition and practice."—[*Official Report, Communities Committee*, 26 January 2005; c 1688.]

The purpose of the Parliament is to produce not games of three-dimensional chess, but lucid legislation that meets the objectives that it is intended to meet. The Executive must clarify those issues.

I have a specific concern about section 7, which sets out the criteria for the charity test. The danger of resorting to subject-specific definition is the high risk of omission, to which Donald Gorrie rightly alluded. Given the criteria, it seems that certain organisations will be excluded. The question has already arisen in relation to the Royal National Lifeboat Institution, but what about Hearing Dogs for Deaf People and Guide Dogs for the Blind? I assume that the fact that those charities do not specifically address the health issues of hearing and sight impairment excludes them from the charitable purpose of advancement of health, although they provide essential services to people who are affected by those conditions.

What about the animal welfare criterion? Does that relate to domesticated animals or wild animals and does it cover wild animals in captivity? I do not know, but I have serious concerns, particularly given the evidence to the Communities Committee that the bill repeals all existing charity law, in contrast to the Westminster Charities Bill, which will retain existing common law and the charitable status of existing charities. That evidence is extremely important because it also relates to the public benefit and charitable status issues. Ann Swarbrick, a solicitor with Anderson Strathern, said:

"The common law that has decided what is charitable is rather far-reaching and complex. Part of the common law defines public benefit. There are two strands. The first is public benefit tests, some of which are in section 8. The second defines types of charities, such as those for promoting the charitable sector and the relief of unemployment.

If we swept away the common law, as the Scottish bill proposes to do, we could jettison such types of charities, unless they are specifically covered by the 13 purposes in the first part of the Scottish charity test. I am afraid that the answer to whether such charities are covered is that that is, at best, uncertain. In many cases, the problem is not that they definitely would not be covered by the Scottish charity test, but that the whole thing is uncertain, which potentially leaves many charities in Scotland uncertain as to whether they are covered. That is not good enough."—[*Official Report, Communities Committee*, 15 December 2004; c 1504.]

I strongly urge the Executive not to jettison the common law, which has a helpful and important role. As the Law Society of Scotland said,

"pre-existing charity law and charities recognised under that law should be acknowledged and specified in the Bill."

That is not just sound legal advice; it is overwhelming common sense.

We should take a closer look at what is happening at Westminster and ensure greater alignment with the Westminster proposals and total alignment with the Inland Revenue. That may mean that, if an organisation has charitable status under United Kingdom revenue law, that would justify its inclusion on the Scottish register. There must be far greater cohesion between what we seek to achieve through the bill and its current text.

15:48

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): As a member of the Communities Committee, I welcome the opportunity to take part in the debate on what is an important bill. One might think from the bickering that seems to be going on that the committee is not united, but that cannot be said. The differences that we had when we started our work on the bill have been largely sorted out. Organisations throughout Scotland have called for a reform of the charity law for about 10 years. I am delighted that there seems to be a broad consensus on the bill's objectives. I am sure that members will bear that in mind when we discuss the issues on which the parties differ.

The charitable sector in Scotland provides an invaluable service and a lifeline for a variety of individuals and groups. We should place on record our debt of gratitude to it. From my work in my constituency and in the Parliament with people from deaf and deafblind groups that represent a broad range of people in the deaf community, I know that their commitment and dedication to working for the benefit of their charities is beyond question. Any legislation on the matter must ensure that we protect the ethos of charities and the good work that they carry out in Scotland, while creating a modern and workable framework for the sector. The sector must have clear regulation and responsibilities to ensure public confidence in the management of charities.

Time is not available to go into all the issues that the committee discussed when it considered the bill, so I will concentrate on the charitable status of colleges and how the test might affect them. Members will be aware that Cumbernauld College is in my constituency. I have had discussions with the college's principal and have closely examined the representations that the Association of Scottish Colleges made in its evidence to the committee and its submission to the consultation on the bill. I have also considered the views that the National Union of Students has expressed. Those organisations fully support the principles of the bill but have concerns about how they might be affected by one test.

I am in no doubt of the public benefit that accrues to the people in Cumbernauld because of the college, just as happens in other areas in which colleges serve their communities. Colleges can give a fine example of working for the benefit of their communities. Cumbernauld College is an example of an educational institution that strives for educational excellence and plays an important role in the community.

Members will have copies of the briefing that the Association of Scottish Colleges issued for the debate. The ASC estimates that Scottish colleges save approximately £13 million a year in tax benefit from their charitable status but is convinced that that could be put at risk if the bill is passed unamended. The removal of charitable status would put a great strain on the college budgets and I seriously worry about what would have to go to make the savings.

The benefits of colleges to the communities that they serve are clear. In many cases, colleges offer much more flexibility in learning levels and in the timing and availability of classes. The nursery in my constituency, which is attached to the college, benefits from the college's charitable status and the fundraising that it can do. Cumbernauld College benefits from VAT and other tax relief, which allows it to spend money on activities such as marketing, encouraging students to come and study in Cumbernauld and making local people aware of the opportunities that are available to them on their doorstep.

I worry that colleges will lose out financially from the loss of charitable status at a time when the old-fashioned divisions between further and higher education are, I hope, becoming a thing of the past—a good example of that is the progress that has been made on the merging of the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. I have no doubt that colleges will pass the charity test; my doubts are about whether they will pass the independence test.

For the same reasons that the committee argued so hard for the bill to make provision for the national collections, the Parliament should argue that ministers should retain Scottish colleges' entitlement to charitable status. The minister has indicated his intention to lodge amendments to protect our national collections' charitable status and I welcome the fact that, in his opening speech, he indicated that he would give further consideration to the status of further education colleges. I call on him to lodge amendments at stage 2 to safeguard the charitable status of our FE colleges.

On the basis of what the minister has said, I encourage the Parliament to support the general principles of the bill. I look forward to a much better regulatory framework for Scottish charities.

15:54

Patrick Harvie (Glasgow) (Green): I draw members' attention to the declaration in my register of interests that I am a director of GALA Scotland, a charity that organises an arts festival in Glasgow.

We can all acknowledge that the bill is welcome. People in the voluntary sector have been waiting for it for many years and it is good to see that it has arrived. We all regret the scandals that have taken place in the voluntary sector, which have undermined and shaken people's faith in the concept of charity, despite the fact that only a very small number of organisations were involved and that they do not reflect the field as a whole. Nevertheless, people's perceptions were shaken and voluntary sector organisations were left feeling undermined. That is despite the fact that charitable giving is still very much part of our culture, as witnessed in the response to the impact of last year's tsunami.

In the light of those scandals, a large part of the bill's purpose has been to build the charity brand, as people describe it. That is perhaps slightly uncomfortable marketingspeak, but the bill aims to build trust in and awareness of charities and to strengthen their identities. That is important not only with respect to donations and charitable giving, but for encouraging people to volunteer and to access services that are delivered by the voluntary sector.

The bill seeks to define what we mean by a charity, through listing the possible purposes. That is a significant improvement on what has gone before. I will mention a few details, as did Donald Gorrie. There is an argument for including play and recreation, as well as sport, as charitable purposes. During committee consideration of the bill, I had occasion to draw members' attention to the difference between the charitable purpose of

amateur sport in the United Kingdom Charities Bill and that in the Scottish bill. In England and Wales, amateur sport will have to involve “skill and exertion”; in Scotland, it will not. I wonder whether the minister and deputy minister would like to speak with their colleagues in the Health Department about that, to find out whether the definition is entirely appropriate.

On the charitable purpose given in section 7(2)(c), I was pleased that the committee agreed that “the advancement of religion” should be broadened slightly to include philosophical positions that do not have a supernatural basis and that are therefore not to be described as “religion”. Donald Gorrie mentioned the need to ensure that forms of support other than care, such as advocacy, are included. I wonder whether the “relief of poverty” covers destitution, a phenomenon that is very much the consequence of UK immigration policy.

The charitable purposes, alongside the public benefit test, have been intended to build the identity, confidence and brand of charity. I have got a lot out of the Communities Committee’s scrutiny of the bill, for which I thank my fellow committee members, but I have been aware of a steadily growing list of proposed exceptions. First, there are the national collections. We would all want a solution that does not harm the national collections.

However, when a conflict between public benefit and independence arises, we should surely address the question of independence. Surely we could argue that the organisations concerned should benefit from a limit to the extent of state control, as the McFadden commission suggested. I am not sure whether the Scottish ministers have responsibility for the McFadden commission, but I will mention that the commission’s website has disappeared and has been replaced by an advertisement offering to arrange dates with Christian singles. I wonder who needs to address that.

Other organisations could be affected, including FE colleges, as Cathie Craigie mentioned. Again, there is a conflict between public benefit—which none of us would question—and independence. I still feel that the question to be addressed is the one that involves independence.

The exception to the charity brand that I have raised in committee on several occasions relates to designated religious charities. In his speech, the minister said that the purpose of exempting designated religious charities from large parts of the regulatory regime was in recognition of their internal mechanisms and processes. The Deputy Minister for Communities told the committee that the exemption reflects the status of religion in society. I am not sure whether there are clear

reasons for that; I found it difficult to understand the purpose of the exemption. The Scottish Churches Committee told the Communities Committee that it feared that the civil authority—meaning this Parliament—was overstepping the line in the relationship between the church and the state. However, in a democracy, it is for the civil authority to draw that line. The Parliament should be convinced that there is a just reason for exempting religious charities from regulation before it does so.

I slightly regret that the status of independent schools has been seen as such a contentious issue. The voluntary sector is much broader than that and many people in it welcome the bill. I agree with much of what Tommy Sheridan said, although I disagree with some of it. I would rather that we addressed the wider aspects of the voluntary sector in welcoming the bill, which the Greens will support this evening.

16:01

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): There is no doubt that the bill is good and the Communities Committee has worked hard on producing a good report on it.

I will focus on Tommy Sheridan’s amendment to the motion. The Liberal Democrats believe in diversity in the educational system in Scotland. If parents want to opt out of the state system, surely it is right and proper for them to do so; that can only be of benefit. I could not disagree more with Tommy Sheridan, because he seems to glory in fighting a class war that is long over and which he does not realise he has already lost. Some of what Tommy Sheridan said was bizarre. He seemed to cite the graduates of the Royal Military Academy Sandhurst as a privileged lot. As a graduate of Sandhurst, I can tell him that he needs to get a grip on reality.

Tommy Sheridan: Of the 180 officers graduating from Sandhurst, 120 came from Oxford or Cambridge, so they were quite privileged. Does the member agree that any parent who chooses to opt out of the state sector is entitled to make that choice, but that the independent institution that they choose should not then be subsidised by low-wage workers?

Mike Rumbles: Tommy Sheridan fails to understand that it is not the institution that is subsidised. The cost would have to be passed on to those parents who send their children to such educational establishments. That would be an extra tax, but those parents have already paid their tax—why should they pay it twice?

The bill is right to focus on the principle of a charity test. Paragraph 86 of the committee’s report states:

“The Committee welcomes the principle of introducing a ‘charity test’ for all bodies wishing to have charitable status in Scotland. It believes that it is important to set criteria that bodies should meet in order to benefit from tax relief and to ensure that there is public confidence in the charitable and voluntary sector as a whole.”

Section 7 of the bill states clearly that

“A body meets the charity test”

on two counts, the first of which is if

“its purposes consist ... of one or more ... charitable purposes”

such as “the advancement of education”, which is listed. Secondly, a body meets the test if

“it provides ... public benefit in Scotland or elsewhere.”

As far as I can tell, it is clear that independent schools meet the test.

Christine Grahame: I refer the member to section 8(2)(b), which states that regard must be had to

“where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit is unduly restrictive.”

That is the test for the independent, private, fee-paying sector—the “unduly restrictive” test.

Mike Rumbles: Absolutely. The independent sector meets that test with all flags flying. There is no question of that, given the number of bursaries that are available for people who want to apply and which are open, right across the country.

The committee goes too far in its recommendation to ministers in paragraph 150, which was referred to earlier. The paragraph states:

“the Executive should consider placing greater emphasis on the need to meet the public benefit test on the face of the Bill.”

What is wrong with the Executive’s current position? It is, quite clearly, a well-balanced, well-argued position that OSCR can deal with. It is surely straightforward.

Paragraph 141 of the committee’s report includes the following quotation from the Scottish Council of Independent Schools:

“the schools have tried, extremely staunchly ... to adhere to the principles on which they were founded They have tried not to give up their charitable principles through giving assistance, as far as it can be afforded, to children who cannot afford the fees ... such schools are charities because they provide for advancement of education without personal gain or profit. As they see it, they give back to society more than they receive in terms of public benefit.”—*[Official Report, Communities Committee, 12 January 2005; c 1570.]*

I could not put it better myself.

16:05

Scott Barrie (Dunfermline West) (Lab): From today’s debate and the deliberations of the Communities Committee, it is clear that there is widespread consensus regarding the need for and the content of the Charities and Trustee Investment (Scotland) Bill—although, given some of the speeches that we have heard, that consensus is not as clear as I once thought it was.

As others have pointed out, a few well-publicised examples of charities abusing their status have sullied the charity brand, but the generosity that the Scottish people showed in the context of the recent tsunami disaster has demonstrated the strength of people’s faith in the charity sector. It is the desire to protect and improve the sector that makes this bill important.

The few—I emphasise that there have been only a very few—examples of misappropriation, if not downright fraud, have led to a slight loss of public confidence in the sector. The bill’s attempts to address that are to be welcomed.

I endorse the committee’s view, which is expressed in paragraph 21 of the report, that the bill has achieved an

“appropriate balance between ensuring that the charitable sector is properly regulated without imposing a heavy burden on the resources of charities.”

The vast majority of people who donate to charities of their choice want their donations to go towards providing relief or services or whatever the charities’ aims are, not towards supporting a complicated bureaucracy, including a regulating bureaucracy. That issue is particularly significant in relation to the charities that operate on a cross-border basis and which will need to register with the Charity Commission in England and Wales and with OSCR. As far as possible, we must ensure that the necessary regulatory frameworks in both jurisdictions are complementary.

I draw the minister’s attention to section 103, which deals with definitions and says that the definition of misconduct includes mismanagement. Whatever the legal advice that the committee received, I am not alone in believing that those two words—“misconduct” and “mismanagement”—have different meanings, colloquially. Mismanagement and misconduct do not have the same meaning and should not be used interchangeably. The former is a result of minor slip-ups or administrative error; the latter implies that someone is at it. If that section of the bill is left unamended, I believe, along with other members of the committee, that trustees who have action taken against them because of mismanagement will be lumped together unfairly with those who have action taken against them because of misconduct. That will act as a clear disincentive to

people giving up their time to become charity trustees. That needs to be examined at stage 2.

The public benefit test seems to have been the main topic of debate this afternoon. I echo Patrick Harvie's comments and agree that it is slightly unfortunate that we have over-emphasised the issue of private schools. However, having said that, I will now talk about private schools.

I want to make it quite clear that I do not support private education. I suspect that that goes for the vast majority of committee members. However, that is not the issue that we are discussing. We are discussing whether there is a fair and robust public benefit test. It has been said that there will be a year zero following the bill's passage; whatever went before that will be of no direct relevance and it will be up to any body that wants to achieve charitable status to prove the public benefit. Section 8 clearly states:

"No particular purpose is ... to be presumed to be for the public benefit."

That seems to be the crux of the issue.

In passing, I say in response to Mary Scanlon's defence of the private education sector that it was unfortunate that neither Gordonstoun School nor Fettes College took up the committee's invitation to give evidence. Mary Scanlon's arguments would have been much stronger if those institutions, or other institutions of that ilk, had chosen to come before the committee.

Despite the tendency of members to concentrate on differences, far more unites us than divides us on the bill. The bill seems to have been widely welcomed and its general principles should be supported. I look forward to the battle at stage 2 over the few points that seem to have resulted in division in the chamber.

16:11

Tricia Marwick (Mid Scotland and Fife) (SNP):

I am pleased to have the chance, at long last, to participate in a stage 1 debate in the Scottish Parliament on charities legislation. Members will be aware that charities legislation is close to my heart—that was the case before I became an MSP in 1999—as a result of my past employment with Shelter Scotland, which is a homelessness charity.

When I worked for Shelter Scotland, it was frustrating that an organisation called the Homeless Aid Trust went round various communities to raise money by selling scratch cards. I remember the sheer inability of the Inland Revenue and the Scottish Charities Office to deal with that organisation, which clearly did not put the money to the purpose to which it should have been put. Things were extremely difficult and fraught. At that time, I believed that bad charities

and organisations that were there to con and defraud should be driven out and that—more important—genuine organisations and charities that worked hard should not be brought into disrepute by bad charities and organisations. That is why I have been so frustrated that it has taken six years for legislation to come to the Parliament.

I am sure that all members acknowledge the huge contribution that charities make to Scottish society, especially in supporting our most vulnerable people. However, if charities are to perform their roles as effectively as possible, it is crucial that they have public confidence in their actions. Unfortunately, as a result of the well-documented activities of a tiny minority of people who are involved in charity work, confidence has been eroded over the years. That is why the bill is important; by creating a robust regulatory framework, the bill will go a long way towards re-establishing public confidence and allowing charities to flourish.

I disagree with the committee on a number of matters. Given what I have said previously, I disagree with what the committee says in paragraph 16 of its report:

"The Committee commends the Executive for conducting an extensive and inclusive consultation exercise".

The consultation on the bill was absolutely right, but I still regret that reaching this point has taken us so long.

I turn to some vital provisions in the bill that have not been mentioned and, in particular, to chapter 4, on the supervision of charities. The chapter will give OSCR the power to obtain information, to hold inquiries and to remove and suspend people from office. It will allow the putting in place of the monitoring and supervisory framework that is needed to restore and keep public confidence in our charitable sector, which has been absent for many years.

Independence, too, is close to my heart and I want to talk about the independence of charities and protecting them from local and national Government interference. That is absolutely imperative. Some of us will remember something called the Third Age Group, which an independent review found to be a creature of Fife social work services. That is an example of interference in a charity. In fact, that charity was set up by Fife social work services—that has never been, and should never be, the purpose of a charity. The independence of charities has to be protected from interference from national Government and local authorities.

I welcome the publicly accessible register of all bodies that are eligible to operate as charities. The Inland Revenue, which was responsible for registering Scottish charities, failed to monitor the

charities and there are now a number of non-functioning, dormant charities. If there had been, in Scotland, the kind of monitoring and supervision that is conducted by the Charity Commission in England and Wales, we would not be in the situation that we are in now. There are 28,000 charities in operation in Scotland, and they are desperate for the bill to be passed so that public confidence in their activities will be restored.

Like other members—Patrick Harvie, Scott Barrie, Karen Whitefield and Fiona Hyslop—I regret the fact that much of the debate has been taken up by discussion of private schools. The bill is about much more than private schools; it is important for the present and future of charities. The bill treats private schools no differently from any other organisation. Just like any other body, private schools will have to make the case to OSCR that they should be registered. I welcome paragraph 150 of the committee's report, which is key to all that. The committee has recognised the importance of ensuring that only organisations that have as their overriding purpose the provision of a benefit to the public should qualify for charitable status. I agree that there should be greater emphasis of that point in the bill.

I whole-heartedly welcome the bill and congratulate the Communities Committee on a very fine job. I look forward to the stage 2 and stage 3 debates on the amendments and then the passing of the legislation for which we and the voluntary and charitable sector in Scotland have waited so long.

16:17

Mr Frank McAveety (Glasgow Shettleston) (Lab): I did not intend to speak in the debate, but I was entertained by some of the earlier speeches and I want to ask two specific questions of the minister. The debate on charity reform has developed through the role that Jean McFadden has played over the past four or five years. The length of time that the reform has taken is of concern to all members, but it has been a welcome development, especially as the situation has been exacerbated by recent events involving some charitable providers misusing their rights as charities.

Like other members, I am disappointed that the debate has focused on what we might call a narrow public benefit rather than on the totality of the issue: the ways in which the charity sector can be modernised and reformed. Mr Sheridan claimed that we need to reform something that is now outdated and no longer workable—that is a great encapsulation of SSP policy.

OSCR's role will be critical in ensuring the independence of the charitable sector. I trust

OSCR to assess what is in the public benefit, even if that is schools in the independent, fee-paying sector. As always, the most extreme examples of fee-paying schools have been cited; the reality is that there are many other such schools. Whether I would prefer that form of education to be available is immaterial; the fact is that the schools provide a service and quality of education that some parents want for their children. What Mr Sheridan wants is a foundation for the elimination of the local independent sector—so we could have OSCR and FELIX in the same room, for a change. That would certainly be a very odd couple.

The broader debate is about what we do in relation to public benefit. Fee-paying schools need to be tested more rigorously for the contribution that they make to the wider community. I regret the fact that, as Tommy Sheridan identified, a number of years ago lottery donations ensured that some of those schools received benefit when many state sector schools did not receive similar benefit.

However, in this debate, I do not want to sound like someone who is

“full of sound and fury, signifying nothing.”

We want to ensure that people can make the contributions that they want. In essence, the SSP wants to eliminate public schools, whereas I love the state sector so much that I do not want Torquils, Mirandas and Farquhars to populate the schools as they do in the private sector. I prefer Kylies, Jordans, Chardonnays and Jasons to be on the register. The real issue is how to develop a structure and system that will benefit the charitable sector throughout Scotland.

We have heard much rhetoric about the class war. I often tell people that I am a former student of St Aloysius in Glasgow. There is a remarkable transformation in the social discourse that I can have when I mention that. The aspirational middle class in Glasgow say, “That is a fantastic achievement,” but they are probably thinking, “How did someone who sounds like him manage to get through the gates in the first place?” The truth is that it was not the result of a bursary or a failed seminary opportunity; I went to St Aloysius Primary School in Elmvale Street in Springburn. Class prejudice, suspicion and snobbery still exist, but that is not what this debate is about; that debate is for another day.

A S Neill—probably the most radical Scottish thinker in education—operated an independent, fee-paying school. It was not necessarily the kind of school that I would have wished to attend, and the experience of those who assessed it was fairly negative. However, the reality behind that school is that an individual saw that the state sector did not provide what he felt was important for the

nourishment of children and argued for a much more radical and counter-cultural view of education. That school probably had charitable status and it might not have been caught by the SSP amendment. I do not think that Mr Sheridan would have intended that.

Christine Grahame: Does the member accept that the SNP amendment makes that point? As I said, there is a spectrum. At one end there are the very elitist schools and at the other end there are schools such as Donaldson's. In the middle are the very schools that Mr McAveety is talking about, and that is why we cannot support the SSP amendment. Different schools have different educational cultures and some might very well fit into charitable status.

Mr McAveety: I acknowledge that. That point should be covered in much more detail in the later stages of the bill, so I do not want to take a conclusive position at the moment. However, I recognise that there is diversity of provision, even within the fee-paying sector, although it might not be as extreme as some people suggest.

I will end on two points of critical importance that have not been touched on in any detail. I welcome the Executive's move on NDPBs and the cultural institutions. I regret that it took us that long. As a minister, I was involved in the previous discussions and I would have preferred it if those issues had been resolved well before we had to deal with them in today's debate.

I hope that the minister can address my final points in her summing up. In England and Wales, the Inland Revenue has published a series of tests and a question-and-answer document that gives examples of whether clubs will meet the criteria to qualify as community amateur sports clubs and therefore qualify for benefits. I hope that sportscotland can provide guidelines for such organisations, and I would like to know whether the Executive is addressing that issue. Are the definition of amateur sport and the test of public benefit being discussed with sportscotland and other sporting associations throughout Scotland? Could the criteria that have been identified by the Inland Revenue be applied in Scotland? I know that there are nuances to consider and I hope that we can deal with them.

I thank the Executive for the current position. I hope that, through the debate on the bill, many of my concerns can be addressed in the future.

16:24

Tommy Sheridan: Mr McAveety mentioned OSCR several times. I could not help but think of another Oscar—Oscar Wilde—who used that famous phrase

“the only thing worse than being talked about is not being talked about”.

It is welcome when fallen socialists concentrate so much of their time on the policies of the Scottish Socialist Party. I listened with bated breath to Mr McAveety and the other Labour members, apart from Scott Barrie, who was honest enough to say that he opposed private education. Mr McAveety was more concerned with attacking the SSP than with attacking the establishment elite of the private school sector.

It is regrettable that many speeches have concentrated on the amendments, but that may be the nature of today's debate given the consensus that exists across the Parliament on the bill. If the amendments are defeated, I understand that the bill will be agreed to unanimously at stage 1. I hope that the bill receives unanimous agreement because, as I made clear in my opening speech, it is about providing the support network and cover to the legitimate activities of the many charities throughout Scotland that do fantastic work and deserve full credit for doing so.

However, as Tricia Marwick said, paragraph 150 of the stage 1 report is absolutely clear:

“The Committee recognises the importance of ensuring that only those organisations which have as their overriding purpose the provision of a benefit to the public should qualify for charitable status. It suggests that the Executive should consider placing greater emphasis on the need to meet the public benefit test on the face of the Bill.”

That is the spirit in which I moved my amendment, which I hope will be supported in the same spirit.

I will respond to some points that members made. Mary Scanlon and I disagree passionately on political principles, but I respect her principles and I know that she respects mine. She asked whether I had visited many private schools. I have visited several, including St Aloysius' College, Hutchesons' Grammar School, George Watson's College and Fettes College. After today's debate, I may not be invited back to those schools, but most of the schools that invited me already knew my position on whether their charitable status should continue.

Indeed, when I visited Fettes some four years ago, I was very honoured when all the pupils stood up as I walked into the room. They were very polite and well mannered. After my rendition of the case for an independent socialist Scotland—fortunately, some of the pupils were still awake—one pupil asked an interesting question. He said, “Isn't it the case, Mr Sheridan, that in the independent socialist Scotland that you envisage you would close down Fettes College?” I replied to him, as I did to Mary Scanlon earlier today, that we will not close down Fettes College. On the contrary, we will open up Fettes College so that every child in Scotland has the opportunity both to

benefit from the small class sizes and wide subject choice that Fettes offers and to participate in sport using similarly first-class sporting facilities.

It is arrant nonsense to suggest that we should not incorporate the private school sector into the public state sector because it would cost too much. It would be an investment. Given the public subsidy that the private school sector currently receives, the investment would repay itself over a mere couple of years.

Mike Rumbles: Is it SSP policy to bring the private schools into the state sector by purchasing them or by stealing them?

Tommy Sheridan: We would do neither, as we would incorporate them. If the question of compensation arose, that might be the one situation in which the SSP would support means testing. We could have a committee of pensioners and single parents—

Tricia Marwick: On a point of order, Presiding Officer. Today's debate is on charity legislation. Mr Sheridan quite rightly opposes private schools but, frankly, that is not the issue, and Mr Rumbles's intervention has not helped. Presiding Officer, could you possibly encourage Mr Sheridan to get back on track?

The Presiding Officer (Mr George Reid): Yes. I would, above all, encourage Mr Sheridan to bring his remarks to a close. He has about 10 seconds left. *[Applause.]*

Tommy Sheridan: I knew that your comment would meet with approval, Presiding Officer. However, I must ask for your protection. After all, if my amendment had not been relevant to today's debate, it would not have been accepted. Tricia Marwick should bear that in mind. Mr Rumbles asked me a direct question and, unlike some members in the chamber, I try to answer the questions that I am asked.

I will finish by referring to the eulogy to private schools that we have heard this afternoon. I am aware that such remarks are not deliberate, but it can be seen as insulting when members talk about the sacrifices of hard-working parents who want to send their children to private schools with charitable status as if they were somehow more than those made by the single parent who earns £13,000 a year and cannot afford to make the other kind of sacrifice.

Most of the bill should be welcomed, because its provisions are long overdue. However, it must give greater emphasis to what does or does not constitute public benefit.

16:31

Donald Gorrie: First, I apologise to the chamber for the fact that members have to listen to me

twice. However, it gives me an opportunity to put right an omission in my first speech. I did not pay proper tribute to Jean McFadden and her commission; to members such as Jackie Baillie who have promoted this cause for many years; and to the voluntary sector. I should also pay tribute to the large number of people who gave evidence, which showed the amount of knowledge and concern about this matter. We must listen very carefully to the various charities to ensure that we do not inadvertently damage them in any way. After all, we are starting with a clean sheet and it is important that we get everything right.

We must be driven by the goal of providing benefit to the community and not allow rigid adherence to dogma to damage that. Although independence is the right sort of idea, we can get too hooked on a particular word. Indeed, such an approach might prevent certain beneficial organisations from becoming charities, which would be very unfortunate. OSCAR should be able to scrutinise charitable or benevolent organisations properly and, if they follow the rules, they should be allowed to become charities.

The question whether OSCAR should be able to give general advice is open to argument; however, it should be able to deal informally with organisations before a particular situation becomes an official dispute. For example, it can guide organisations through the process to ensure that they know that if they deal with matters in a certain way it will be easier for them to become charities.

We must also keep an eye on what is going on at Westminster and in the Inland Revenue, because we cannot depart too far from the basic concepts that they are seeking to adopt. I do not think that this bill strays too far in that respect; however, it could cause problems if the UK Charities Bill goes off in a different direction from ours.

Furthermore, many issues still have to be dealt with. In that respect, Frank McAveety mentioned sport and Annabel Goldie referred to guide dogs. Such examples illustrate my point that we must ensure that the final form of the bill deals correctly with all these matters and that no one is left out by mistake.

We should also give more thought to the emerging area of community enterprise and the social economy. We are getting away from this idea that charities are bunches of do-gooders who receive grants to go off and do something. More and more, they are developing non-profit-distributing but profitable organisations that work in the marketplace but deliver benefits to the community, and we have to ensure that the proposed legislation does not unintentionally hamper them.

They may well be helped by the Scottish charitable incorporated organisations. In my previous speech, I could not think of the word “incorporated”—it is not a word that I would normally use. The Scottish charitable incorporated organisations could help many people to develop social and charitable companies that are also profitable.

There are many good issues to pursue. The driving force must be what is beneficial to communities. We must not over-regulate. With the best will in the world, if somebody is an appointed regulator, there is a tendency to over-regulate rather than under-regulate. We must ensure in our rules that we do not fall into that trap. Regulation must be effective, but must be as light as possible.

I look forward to improving the bill, although I think that it is a very good start in dealing with a very important subject.

16:35

Mr David Davidson (North East Scotland) (Con): I congratulate the Communities Committee on a very good report, which I have read in full. Like the minister, Malcolm Chisholm, I congratulate the McFadden commission on its work. I want to echo Tricia Marwick’s comments: I am sure that we have all heard different parts of the charitable sector asking for this sort of legislation. We must ensure that we get rid of the bad-news stories that really damage public giving. The tsunami appeal was fantastic, but many people are cagey about supporting certain charities. They want charities to have a kitemark, so to speak. This legislation will enable us to build public confidence.

I ask the committee to continue with its good work in the next stages of the bill. We must consider the issues very carefully. As Donald Gorrie has just said, we should not over-regulate but should use a light touch. We should not put unnecessary burdens on small organisations, which are often very focused on what they do.

Two or three speakers have mentioned the need to work with the Inland Revenue. Such work is essential. As the national charitable bodies in particular have said, we do not want a huge difference between our system and the English and Welsh system, and we do not want to cause unnecessary difficulties with the Inland Revenue. Without such support, many charities that do much valuable work in Scotland would not be able to continue.

When people consider simply the amount of money that the public donate to charities, they often underestimate the worth of the voluntary and charitable sectors in Scotland. If the Scottish Executive had to pay in the normal way for the

services that those sectors provide, the latest estimate is that the equivalent sum would be in excess of £6 billion. As many speakers have said, this legislation has to be about fostering and encouraging that work, and not about restricting it.

Like others, I am disappointed that far too much time was spent talking about independent schools. The minister himself said that all charities must pass the test and must prove themselves. That is the spirit of the legislation and I welcome it. I am sure that the committee will consider that point carefully as the bill progresses.

I was a little disappointed in the amendments. There was a bit of grandstanding going on. As far as I was aware, the committee agreed the report unanimously. Obviously, Mr Sheridan has the right to do what he did and the Presiding Officer agreed with that. However, his speech was a political rant and not really about the essence of the legislation—which is the development of public trust and confidence in the charitable sector. We must ensure that the sector can continue to serve everybody.

I agreed very much with Donald Gorrie when he said that this should not be a party-political issue. We are talking about the collective common good and I was pleased to see that the committee dealt with its work in a dispassionate and careful manner. I give credit to the committee for that.

Tommy Sheridan: The member has referred to the report a couple of times. In relation to the private school sector, the second last bullet point on page 141 of the report says:

“Many schools were more concerned about charitable status as a trademark of approval for their role in and contribution to society.”

Does Mr Davidson think that we should allow them to have that trademark?

Mr Davidson: If that is what individual establishments want to say, they have the right to say it. They have said it to the committee in evidence, and I have no argument with it whatsoever.

As far as other contributions are concerned, I agreed with some of the points made about colleges, including comments made by Fiona Hyslop. There is a need to ensure that bringing in the legislation does not damage anything that fosters education, and I ask the minister to consider and comment on that and to assure us that the point about colleges will be addressed. Annabel Goldie talked about some technical terms, but she also questioned services for the deaf and the blind and raised issues about animal welfare. There could be a need to consider those issues, and it would be helpful if the minister could give us some early guidance on the list in section 7 with regard to the points that many members have made today.

Patrick Harvie was absolutely right when he said that the bill is about confidence in charitable giving. It is about building confidence not just in charitable giving, but in the volunteering tradition in Scotland, and I know that the Executive strongly supports that. Patrick Harvie also talked about the advocacy organisations, which are essential, and I am sure that work will be done to ensure that those valuable organisations—often very small but working actively in the community to provide a good public service—will be included at some stage as the bill progresses.

Not much was said about misconduct, although Scott Barrie mentioned it. That is an important part of the bill, but it is not something that we want to highlight. The fact that it is in the bill and that people will have to meet all the tests should be adequate.

Frank McAveety talked about modernising the charitable sector. I think that the bill does that, and I and my party support and welcome the passing of stage 1 of the bill today.

16:42

Linda Fabiani (Central Scotland) (SNP): I begin by declaring an interest as a trustee of Just World Partners and of the Al-Kameli Trust, the former registered in Scotland and the latter in England.

The SNP generally welcomes the bill; of course we do. Christine Grahame and I were both on the committee that put together the report. It was extremely interesting and we found the evidence from all concerned highly enlightening. Fiona Hyslop summed up the issue when she referred to the three Cs in describing what we are trying to achieve. They are consistency, clarity and confidence: consistency of treatment by the regulator; clarity of interpretation by those operating charities; and confidence for the public that they are supporting or donating to bona fide charities. That is extremely important.

In closing this debate for the SNP, I want to cover some of the issues that have already been raised, but I also want to touch on some that have not yet been mentioned. In opening, the minister talked about OSCR and spoke of proportionate and balanced regulation and co-operation with other regulators. He also mentioned that, under the bill, Communities Scotland was taking over some regulatory functions from OSCR. I know that there will be co-operation and a reporting mechanism, and I look forward to hearing more about how that will work, because it is important that all charities are registered and monitored to some extent by the central agency, which will be OSCR.

Talking of co-operation, I would like to say that I believe that that is what committee members of all

parties should do. When members are unable to attend an event, they should have confidence that their fellow members will report back to them accurately. I found the sniping on that issue—by both Mary Scanlon and the convener—extremely petty and demeaning of themselves and of the committee.

Tricia Marwick is very keen on the independence test, and other members mentioned third-party control and how we have to be careful about independence for all charities. We know that the national collections, for example, will be able to preserve their charitable status, because something will be done to look after them. However, we have to be careful about local authorities and arm's-length organisations. Although most of us have confidence in most local authorities, there have been instances when that confidence has been rocked and Tricia Marwick mentioned one such instance. We look forward to discussing that in more detail at stage 2.

On the charity test and on charitable purposes, the benefit of the public and the common good, the minister said that we need a set of purposes that reflect Scotland's needs. I was pleased to hear him say that we do not necessarily need to match what is done elsewhere in the United Kingdom, because what we have should be what Scotland needs. However, the committee has suggested that we could consider amendments at stage 2 to reflect more truly the objectives of the charitable sector in Scotland. Patrick Harvie gave a couple of examples of what the committee discussed: the broadening of religious purposes and the reconsideration of the relief of poverty. The RNLI asked the committee to consider adding the saving of lives to the preservation of health and well-being.

Scott Barrie mentioned charity trustees and the definition in the bill of misconduct. I know that he felt quite strongly about that at the committee, as did I. Many other members also had concerns. David Davidson has missed the point. Section 65(4) of the bill states:

“Any breach ... is to be treated as being misconduct in the administration of the charity.”

The word “misconduct” implies more than bad practice, for all that civil servants and lawyers say that the dictionary definition covers a range of things. The perception is that if someone is found guilty of misconduct, they have been at it: they have had their hands in the till or they have deliberately done something wrong. Scott Barrie is right to say that that provision could put people off serving as a charity trustee. I would like the terminology to differentiate between problems that arise from incompetence or are unintentional and problems that are intentional or caused by misdemeanour. That change should be

straightforward and simple. I look forward to that discussion.

That brings me to public benefit, which has been the most contentious aspect of the discussion today. I am at a loss as to why Christine Grahame's amendment has been so contentious. First, it addresses the colleges. We heard comments from both Fiona Hyslop and Cathie Craigie on the problem of further education colleges. The committee was concerned by the submission of the Association of Scottish Colleges that unless something is done to preserve their charitable status they could lose £13 million in tax relief. The minister did not mention what he is going to do about the matter, so I look forward to hearing about that.

That covers the first part of the SNP amendment. I do not see why that is contentious, nor do I see why the second part of the amendment is contentious. It does not mention independent schools, although Christine Grahame mentioned them in her speech in response to the SSP amendment and when she gave valid examples of what could arise under the bill. It is worth repeating that paragraph 150 of the committee's report clearly reflects what is in Christine Grahame's amendment. Paragraph 150 states:

"ensuring that only those organisations which have as their overriding purpose the provision of a benefit to the public should qualify for charitable status."

It also calls for a

"greater emphasis on the need to meet the public benefit test on the face of the Bill."

The SNP amendment is exactly what the committee has recommended. I fail to see the problem.

The SCVO, which was held up as a marvellous organisation which it is, and thanked for its contribution to the stage 1 consideration said in its submission:

"SCVO believes that the provision of explicit criteria of public benefit is critical to the effectiveness of the Act".

The SCVO agrees that this is an important point. It suggests:

"The Bill should provide that 'only those organisations otherwise eligible for charity status which have as their overriding purpose the provision of a benefit to the public should qualify for charitable status'".

I suggest that every member of the Communities Committee, which compiled the report, should support the SNP amendment. I urge all other members to do the same.

16:49

The Deputy Minister for Communities (Johann Lamont): I do not know whether I should declare an interest, as I am married to someone

who works for the SCVO. I do not know whether that is a delight or a burden—I will allow other people to judge that for themselves.

The Minister for Parliamentary Business (Ms Margaret Curran): Does he think that it is a delight or a burden?

Johann Lamont: He is too scared to say.

I am delighted to have the opportunity to sum up in this very important debate. This is the first stage 1 debate that I have been involved in from this side of the fence, so to speak, and it has been an interesting experience. I am happy that there is genuine consensus on the importance of the bill and that, in general, there are no divisions along party lines on the key issues that the bill identifies. That is a good-news story that gives confidence in the Parliament's work of wrestling with the difficult issues that will make a difference in local communities.

We should remember the history—and understand the importance—of the commitment to introduce legislation on charities, which represented recognition that there had been a sapping of public confidence in charities. There was a fear that if charities were not operating in accordance with a common understanding of how they should be operating, there would be an impact on charitable giving. We should commend those people who through their work strove to ensure that that position would be turned round not just by the bill, but by restoring faith in the charitable sector.

Acknowledging that something is important does not make it easy. The charitable sector does not exist in straight lines or in boxes; it was not created and developed by policy wonks and bureaucrats. That means that it is difficult to legislate clearly and simply on what the sector does. It is important that when we legislate we recognise that diversity is to be celebrated, but that it is not easily managed. In legislating for the sector, we must be careful that we do not drive out those bits of it that we cherish so much.

A lot of hard work has gone into developing the bill and it is gratifying that the Communities Committee has endorsed it. I congratulate the committee and its convener on the role that they have played. I acknowledge the hard work that Jean McFadden's commission did all those years ago in identifying the areas in which it was important to take action. I pay tribute to my colleague Margaret Curran, who caught and responded to the public mood and the desire for legislation by making the commitment to legislate that we are delivering on.

There is agreement that charities are vital to Scotland's community and that they need a regulatory framework that protects the public

interest and helps them to flourish. It is evident to me that, as the committee noted, on certain issues we may not have got things quite right yet, but that indicates that we have a successful parliamentary scrutiny process. I am looking forward to analysing the committee's recommendations before we propose amendments to the bill at stage 2.

Independence is not a new issue—Jean McFadden flagged it up. Everyone understood that bodies might have to choose between independence and charitable status. Although the Executive recognises the compelling case that has been made for the distinctive role of the cultural NDPBs because of their responsibilities for the national treasures, that is not an indication that we devalue independence.

Christine Grahame: Will the minister give way?

Johann Lamont: I want to progress a little.

Christine Grahame made a point about organisations that act in the public interest, but the fact that an organisation acts in the public interest is not sufficient to make it a charity.

I acknowledge the concerns about the FE sector, on which we will reflect. We have already made a commitment on third-party direction. However, I am concerned that we do not diminish the importance of the independence test or misrepresent its purpose. It was not just about addressing the position of NDPBs. As Malcolm Chisholm said, trustees—no matter how they are appointed—have the crucial role of working in the interests of their charity. When there is direction from elsewhere, there will be tension, at the very least.

Christine Grahame: I think that I am correct in saying that the McFadden commission examined the appointments system in an effort to resolve the contentious issue of third-party direction. I note that the bill does not take that up. I wonder whether the ministers are considering that as a way of uncoupling the system.

Johann Lamont: I refer to a point that I have made before. What is important is not where someone comes from, but how they act once they take up their position. A trustee's responsibility is to operate in the interests of their charity.

I want to deal with independent schools. I say to the SSP representative that I will take no lectures on my commitment to the state sector, in which I worked for 20 years. Every day I delight in the fact that my children are educated in that sector. At the age of 11, I refused to take the scholarship test that would have allowed a working-class girl from Anderston to go to what I perceived to be a place of privilege. We understand that there is an issue to do with elitism, but I must tell Tommy Sheridan that I know from my experience of education that

privilege and inequality exist inside the state sector, too.

It is deeply ironic that the example on which the SSP draws to make its case is the importance of its policy on free school meals. The SSP's free schools meals policy would draw money out of the community in which I taught and give it to better-off communities. In the places where I taught, 70 per cent of the children already had free school dinners. Under the SSP policy, the new investment that is being put into school meals would be taken from those children and given to children elsewhere. Instead of spending funds on initiatives such as home start or on working with families and the disadvantaged, the SSP would spend money on things that prevent youngsters from achieving equality.

Tommy Sheridan: Will the minister give way?

Johann Lamont: No, I will not.

Mary Scanlon made a point about the independent sector. The public benefit test is a real test; it is not a tick-box test. Indeed, the huge significance of the proposals in the bill seem to have escaped Tommy Sheridan's notice. No body or organisation will automatically become a charity; each one will have to prove its case. The report acknowledges the diversity of the independent sector. In acknowledging that, we should also recognise that the bill offers no guarantee of charitable status. Those that want charitable status will have to prove their case. Schools also have to contribute to the community. If a body loses its charitable status, its assets—which it gathered for charitable purposes—must continue to be used for charitable purposes. Those bodies would therefore still have to deliver on education.

The point was also raised that OSCR would need to understand the importance of the public benefit test. As I said, the test should be robust. We know that OSCR will have to consult on its guidance and that it can be asked to give evidence to committees of the Parliament. Indeed, it will also have to report to the Parliament. If any committee is unhappy with OSCR's performance, it or the Parliament can promote legislation to address that.

In the time that remains, I want to respond to a few other points that were made in the debate. Donald Gorrie spoke about the list of charitable purposes. The Executive has made a commitment to address the points that were raised in respect of adding heads for sport and belief. We also agree to consider the points that Frank McAveety made.

I also want to refer briefly to the point that Patrick Harvie made about designated religious charities. In our communities at the moment, the Church of Scotland has a particular role to play.

We can argue about whether it should have such a role, but it is not for the bill to change that. Religion has a particular role in people's lives. If we want to change the role that religious bodies play, we can do so by argument or legislation at another time. In the designation of religious charities, the Executive acknowledges that those charities have internal structures that regulate them; we are not saying they are being allowed to opt out of regulation. At the same time, we have argued that the powers that OSCR should retain over the designated religious charities are powers that relate purely to the protection of the charitable functions of the body. We will work with those who have concerns about the implications of the measure.

Scott Barrie made a point about the difference between misconduct and mismanagement. The Executive has reflected on the serious nature of that point. We do not want to endanger the very fabric of the voluntary sector or set challenges that deter people from becoming involved. I commit to looking further at the matter. The last thing that the Executive wants, simply because it used language with which lawyers are comfortable, is to say to the people who operate in the charitable sector that there may be a cost to them of doing so. There is no such cost, but we might want to look at how we can reassure people of that.

Mary Scanlon: Does the minister acknowledge that education, whether it is provided in the independent or the state sector, is none other than a public benefit?

Johann Lamont: We could argue all day about what we think education is and what we think the benefits of education are. I have nailed my colours to the mast on where I want my children to be educated; other people have to make their own decision. We must be clear about the matter; the charity test is for the schools to pass and not for us to facilitate. Given the scrutiny that the Parliament and the committee will afford in the development of the guidance, I am confident that the public benefit test will be robust.

I look forward to stage 2, at which time we can consider in detail the issues that have been flagged up today. I urge the chamber to support the general principles of the bill.

Charities and Trustee Investment (Scotland) Bill: Financial Resolution

17:00

The Presiding Officer (Mr George Reid): At this moment, colleagues will want to welcome Dr Günther Beckstein, the state minister of the interior of Bavaria, and colleagues from Bavaria. [*Applause.*]

The next item of business is consideration of a financial resolution, motion S2M-2319, in respect of the Charities and Trustee Investment (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Charities and Trustee Investment (Scotland) Bill, agrees to any increase in expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.—[*Johann Lamont.*]

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

Business Motion

17:00

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-2545, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 16 March 2005

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Procedures Committee Debate: 3rd Report 2005, Report on Procedures in relation to the Commissioner for Public Appointments

followed by Executive Debate: Housing

followed by SPCB Motion on Membership of the Scottish Commission for Public Audit

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 17 March 2005

9.30 am Parliamentary Bureau Motions

followed by Scottish Conservative and Unionist Party Business

12 noon First Minister's Question Time

2.00 pm Question Time—
Education and Young People,
Tourism, Culture and Sport;
Finance and Public Services and
Communities;
General Questions

3.00 pm Ministerial Statement on Dentistry

followed by Stage 1 Debate: Protection of Children and Prevention of Sexual Offences (Scotland) Bill

followed by Financial Resolution: Protection of Children and Prevention of Sexual Offences (Scotland) Bill

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 23 March 2005

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Executive Business

followed by

Business Motion

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by

Members' Business

Thursday 24 March 2005

9.30 am

Parliamentary Bureau Motions

followed by

Scottish National Party Business

12 noon

First Minister's Question Time

2.00 pm

Question Time—
Environment and Rural
Development;
Health and Community Care;
General Questions

3.00 pm

Executive Business

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by
Curran.]

Members' Business.—[*Ms Margaret*

Motion agreed to.

Parliamentary Bureau Motions

17:00

The Presiding Officer (Mr George Reid): The next item of business is consideration of five Parliamentary Bureau motions. I ask Margaret Curran to move motions S2M-2535 and S2M-2536, on the approval of Scottish statutory instruments.

Motions moved,

That the Parliament agrees that the draft Renewables Obligation (Scotland) Order 2005 be approved.

That the Parliament agrees that the draft Landfill Allowances Scheme (Scotland) Regulations 2005 be approved.—[*Ms Margaret Curran.*]

The Presiding Officer: I ask Margaret Curran to move motions S2M-2539, S2M-2540 and S2M-2541, on designations of lead committees.

Motions Moved,

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Management of Offenders etc. (Scotland) Bill.

That the Parliament agrees that the Communities Committee be designated as lead committee in consideration of the Housing (Scotland) Bill.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2005 (SSI 2005/93).—[*Ms Margaret Curran.*]

The Presiding Officer: The questions on those motions will be put at decision time.

Decision Time

17:01

The Presiding Officer (Mr George Reid): There are nine questions to be put as a result of today's business.

The first question is, that amendment S2M-2352.2, in the name of Christine Grahame, which seeks to amend motion S2M-2352, in the name of Malcolm Chisholm, on the general principles of the Charities and Trustee Investment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Etrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 39, Against 77, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The second question is, that amendment S2M-2352.1, in the name of Tommy Sheridan, which seeks to amend motion S2M-2352, in the name of Malcolm Chisholm, on the general principles of the Charities and Trustee Investment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Fox, Colin (Lothians) (SSP)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Martin, Campbell (West of Scotland) (Ind)
 Sheridan, Tommy (Glasgow) (SSP)
 Swinburne, John (Central Scotland) (SSCUP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 8, Against 77, Abstentions 32.

Amendment disagreed to.

The Presiding Officer: The third question is, that motion S2M-2352, in the name of Malcolm Chisholm, on the general principles of the Charities and Trustee Investment (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Charities and Trustee Investment (Scotland) Bill.

The Presiding Officer: The fourth question is, that motion S2M-2319, in the name of Tom McCabe, on the financial resolution in respect of the Charities and Trustee Investment (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Charities and Trustee Investment (Scotland) Bill, agrees to any increase in expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.

The Presiding Officer: The fifth question is, that motion S2M-2535, in the name of Ms Margaret Curran, on approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the draft Renewables Obligation (Scotland) Order 2005 be approved.

The Presiding Officer: The sixth question is, that motion S2M-2536, in the name of Margaret Curran, on approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the draft Landfill Allowances Scheme (Scotland) Regulations 2005 be approved.

The Presiding Officer: The seventh question is, that motion S2M-2539, in the name of Margaret Curran, on designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Management of Offenders etc. (Scotland) Bill.

The Presiding Officer: The eighth question is, that motion S2M-2540, in the name of Margaret Curran, on designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Communities Committee be designated as lead committee in consideration of the Housing (Scotland) Bill.

The Presiding Officer: The ninth question is, that motion S2M-2541, in the name of Margaret Curran, on designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2005 (SSI 2005/93).

The Presiding Officer: Before we conclude decision time, I am sure that members would wish to welcome the representatives of Deafblind Scotland who have come to the public gallery for the next debate. [*Applause.*]

Deafblindness

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S2M-1900, in the name of Margaret Mitchell, on deafblindness.

Motion debated,

That the Parliament recognises the European Parliament Declaration of Rights of Deafblind people which was formally adopted on 1 April 2004 and recognises deafblindness as a distinct disability separate from hearing or sight impairment; considers that more should be done to identify, correctly assess and provide appropriate services for this unique group who cannot automatically benefit from mainstream services or services for people who are either blind or deaf, and further considers that councils should make appropriate provision for this uniquely disadvantaged group, ensuring that they have the same provision of services as outlined in the guidance issued under section 7(1) of the Local Authority Social Services Act 1970 for England and Wales.

17:07

Margaret Mitchell (Central Scotland) (Con): I am genuinely delighted to welcome to the Parliament the deafblind people who are in the public gallery and their supporters and communicators. I am only too well aware that it was not an easy journey for them to get here. It is an indication of the strength of their feeling that deafblindness be recognised as a distinct disability that they were prepared to use part of their precious allocation of guide-communicator time to come and listen to the debate. I am indebted to the Scottish Parliament's visitor and outreach services and corporate policy unit for their assistance with the interpreters, the seating arrangements and looking after the guide dogs. I am also extremely grateful to the 59 MSP colleagues from all parties who signed the motion.

Last year, the European Parliament issued a declaration that recognised deafblindness as a distinct disability and called on the institutions of the European Union and its member states to recognise and implement the rights of people who are deafblind, including the right to receive one-to-one support, where that is appropriate. In England and Wales, the European Parliament was preaching to the converted; guidance that was designed to address the needs of deafblind people was issued there four years ago in 2001, under section 7 of the Local Authority Social Services Act 1970.

That guidance contains important provisions. One crucial measure is that every local authority must identify the deafblind people in its area, which is important because many people are already deaf or blind and their hearing or sight is deteriorating. Early identification is vital and can

make a huge difference to the quality of life that they can expect in the future. The guidance also requires local authorities to keep a record of all deafblind people, who will then be properly assessed and given access to skilled and trained communicators. That is the provision that we seek for deafblind people in Scotland.

However, I understand that despite lobbying for deafblindness to be recognised as a distinct disability from as far back as 1988, and despite the work of organisations such as the Royal National Institute of the Blind, the Royal National Institute for Deaf People, Deafblind UK and Sense International, the Executive has not implemented the equivalent of section 7 guidance. I also understand that such guidance would be implemented only if the Scottish Executive's action plan for all people who have a sensory impairment was fully in place and could be seen not to work for deafblind people.

The point is that deafblindness is not just another sensory impairment; it is a distinct disability that requires specialised services. For example, guide dogs for the deafblind are being given specific training as hearing dogs and dogs for the blind. Furthermore, delays mean that the action plan is not expected to take effect until 2006; it will thereafter be several years at least before it can be evaluated. That simply is not good enough. Action is required now to ensure that deafblind people in Scotland have access to the same level of service as those elsewhere in the United Kingdom. Without that level of service, the sense of isolation that a deafblind person experiences and the obstacles to everyday communication and access to services that they face will persist.

That was brought home to me by Drena O'Malley of Deafblind Scotland. I pay tribute to the work that she has done persistently for the deafblind over many years. She has worked tirelessly for deafblindness to be recognised as a disability in its own right and, more recently, for similar provisions to those under section 7 of the 1970 act to be implemented in Scotland. She told me of one elderly deafblind lady who was terminally ill in hospital and whose isolation can only be imagined. Neither her family nor the hospital staff could communicate with her, nor could she communicate with them, so she had no way of knowing why she was in hospital or what was wrong with her. With the assistance of Deafblind Scotland, a trained guide-communicator was able to communicate with her, which made an enormous difference to the final days of her life. If provisions similar to section 7 of the 1970 act were implemented, that gap in provision would not exist.

I put it to the minister that it is impossible to quantify at any level the value of an experience

like that. To put it simply, here and now—coincidentally, on the fourth anniversary of the introduction of the section 7 guidance south of the border—the minister has the power to make a difference to the lives of not only those deafblind people who are listening to the debate, but the thousands of others throughout Scotland, many of whom are as yet unidentified. It would be a cruel irony indeed if devolution, rather than working for the benefit of Scottish people, were seen to have worked against deafblind people in Scotland by denying them access to services that should be theirs by right.

17:14

Cathie Craigie (Cumbernauld and Kilsyth (Lab)): As chair of the Parliament's cross-party group on deafness, I am pleased to have the opportunity to raise the matter with the Scottish Executive once again. I welcome the interest that the debate has generated and—especially—the work that has been done by members and supporters of Deafblind Scotland who, despite the many difficulties that they face, have successfully lobbied MSPs who represent constituencies throughout Scotland. To visit an MSP's surgery is not always the easiest thing to do, even for somebody who does not have a sensory impairment, so I very much appreciate the efforts that deafblind people have made and the logistical difficulties that they faced when they came to state their case and highlight their needs to MSPs.

Labour women are often criticised for wearing red jackets—we seem to bring them out of the wardrobe en masse. I thank the Labour women who are wearing red today—including you, Presiding Officer—to demonstrate their support for and solidarity with deafblind people.

I know from meetings and discussions with Scottish Executive ministers past and present that they recognise that more has to be done to support people who have dual sensory impairment. I know that support needs to be in place to allow people who are living with deafblindness better quality of life, so that they can take part in family activities, communicate with others or even just have support to do what they want when they want. I do not believe that that is too much to ask—it should be expected. I know that ministers appreciate the needs of deafblind people, and that they want the required help and support to be put in place and I know that they take seriously the need to research fully the level of support that should be put in place.

Research is helpful to identify what is needed and to ensure that the Executive's next moves achieve maximum benefit for deafblind people. I do not just want to see a tartan ribbon round the existing English legislation, which is section 7 of

the Local Authority Social Services Act 1970; rather, I want to see guidance that is tailored to meet the needs of Scottish people. I do not really care what legislation enables that objective.

At the lobby today, I spoke with people who said that this debate is just the start. This is not the start; I believe that we are on the home straight. I hope that the minister will be able to introduce the necessary guidelines to ensure equality of access to all services for deafblind people, so that they can enjoy life just as you or I can, Presiding Officer, with our senses of both sight and sound. I hope that we will hear news of that in the near future.

17:17

Eleanor Scott (Highlands and Islands) (Green): I thank Margaret Mitchell for securing the debate on a very important subject, and I associate myself with her words of welcome to the people from Deafblind Scotland who have made the journey here—quite a remarkable journey in some cases—and presented their case to us. I was talking earlier to somebody from the north of Scotland who made the journey here from Inverness. I am pleased to see all areas of Scotland being represented by the people who are visiting us.

I said that I was talking to somebody earlier; I should have said that I was attempting to communicate with somebody, but I was very much the deficient party in the dialogue. That person could communicate perfectly well with a communicator who had the necessary skills, but I was unable to access those skills, which made me feel quite bad. I can sign a little bit, but signing to somebody who is deaf but has full sight is quite different from communicating with somebody who is deaf and who also has a significant visual impairment. I felt very inadequate.

I will talk a little bit about the future for deafblind people in Scotland. The problems that they face are not going to go away. According to the background reading that I did prior to the debate, 2,800 people in Scotland are registered as deafblind, and that is probably very much an underestimate.

Sense Scotland supports about 400 children who have dual sensory impairment. As I know from my previous work as a community paediatrician, one reason why the problems will not go away is that children who survive extreme prematurity are at increased risk of being hearing impaired or visually impaired. They need specialised services. Children who have a hearing impairment, which—it is to be hoped—is nowadays diagnosed early when they are babies, will immediately get the appropriate services:

teachers of the deaf will be provided and they will receive appropriate professional input. It is the same if a child is diagnosed as having a visual impairment: a teacher of the visually impaired will go in and will build up a relationship with the child and family. When it comes to dual sensory impairment, the situation is quite different. A service package that is tailored to those children's needs simply does not exist and dual-impaired children do not fit neatly into one group or the other.

Normally, services for children are a lot better than those for adults. In the case of deafblind children, we must recognise that we are dealing with very specialised needs. If deafblind children and adults are to reach their full potential and to live lives that are as full as the lives that everybody in Scotland is entitled to, they need specialised services. We must examine provision of such services and the training of professionals who work with this group.

I was extremely impressed by the fluency and ease with which the communicators from Deafblind Scotland were able to converse with people to whom I had difficulty getting across what I wanted to say. I was the person who was deficient; the communicators were extremely skilled and my hat goes off to them. The work that they do is immensely valuable and should be supported fully. We are not talking about large numbers of people, but we are talking about a labour-intensive service. We have to pay the price for that, because it is what those people deserve.

17:20

Mr Andrew Welsh (Angus) (SNP): The motion acknowledges the distinctiveness and unique problems of deafblindness and shows how Governments, through guidance, direct action and practical measures, should be implementing the European directive on deafblindness.

Existing provision seems to be targeted at deaf or blind persons, rather than at persons with the combination of the two conditions. A relatively small number of individuals are involved but, rather than being a problem, the numbers could allow solutions to be found more easily and scarce resources to be targeted more effectively to meet the particular and special needs that deafblind persons have.

British Sign Language and other specialist languages do not work for deafblind persons and other fundamental communication methods are required to break through barriers of understanding. Those methods are highly specialised and tactile and require great skill, training and patience in order to allow deafblind people to relate to the world around them.

Another problem is acquired deafblindness. Existing services might not pick up what can be a traumatic and devastating process for individuals as deterioration gradually overtakes the young as well as the elderly.

The most immediate daily practical problem is providing a companion to assist and guide people. Many guide-companions are here today; the work that they do should be acknowledged fully and applauded by us all.

I also commend to Parliament the Angus Community Care Charitable Trust housing project, in which each occupant has their own self-contained flat and share of a communal lounge, dining area and kitchen. They also receive therapy and support to enable them to settle in and learn independent living skills and to encourage their integration into the community. Lentlands Court is the result of a partnership between ACCCT, Angus Council and Sense Scotland.

To approach the problem properly, we will need a registration system, co-ordination between local authorities and record sharing. I commend to the Deputy Minister for Health and Community Care the joint working arrangements between Angus Council and NHS Tayside whereby education, social work, housing and health services are linked. Angus Council and Angus local health care co-operative are about to start sharing a joint headquarters. Support services, specialist training, single shared assessment procedures and a multi-agency review of audiology services are all part of a comprehensive and co-ordinated Angus strategy and show the way forward.

The debate should start people thinking and remind us all of the daily problems that are faced by this important small group of people. I ask the Scottish Government to build on local initiatives and ensure that our fellow citizens can truly be a part of our society and allow them to lead a fuller life in spite of all the problems they face.

The motion is a European—and now Scottish—statement of intent to encourage both recognition of and action for this distinct group of people. I congratulate Margaret Mitchell on it and wish the initiative well.

17:23

Janis Hughes (Glasgow Rutherglen) (Lab): I, too, am pleased that the debate is being held. I congratulate Deafblind Scotland on the work that it does on behalf of its members. Without it, it is unlikely that we would be debating the issue and without the assistance of its guide-communicators, it is unlikely that many of those in the visitors gallery would be here.

It is difficult for any of us fully to comprehend what it is like to be deafblind. As we have heard

from Deafblind Scotland, it is a unique and profound disadvantage from which there is no respite. As we learned from those whom we met today before the debate, the provision of guide-communicators is key in helping those with deafblindness to participate in society. Nowhere was that clearer to me than on a recent visit to a meeting of the Scottish advisory group on deafblindness. At that meeting, I was able to speak to deafblind people thanks to the work of their guide-communicators. I met Vicky, a constituent who is in the public gallery this evening. Through the assistance of the guide-communicators, she was able to discuss with me a problem that she was having in the local community. Without the support of her communicator, access to her local MSP—which is her right—would have been extremely difficult. Similarly, at a recent surgery, another of my constituents, William, who is also here today, was able, through his guide-communicator, to urge me to attend this debate. I have seen at first hand the difference that guide-communicators make to the lives of people throughout Scotland. However, Deafblind Scotland estimates that less than 10 per cent of Scotland's deafblind community has access to a guide-communicator.

In 2000, I addressed the healthy living for deafblind people forum in Glasgow and spoke about the good work that the Executive had done for people with sensory impairment. Following the establishment of the sensory impairment action plan, that work has been built on. However, it is vital that we are not complacent. We need to recognise the specific needs of deafblind people, particularly with regard to communication, and it is imperative, therefore, that we improve the way in which we identify people who suffer from deafblindness.

However, the Executive must be commended for the work that it has done since 2000, which we should not forget. I also commend the work that my colleagues Kate Maclean and Cathie Craigie have done over the years as conveners of the cross-party groups on visual impairment and deafness respectively. They worked with the Executive on the formation of the action plan.

I know that Deafblind Scotland has been campaigning for guidance similar to that which exists in England in the form of the section 7 guidance that Margaret Mitchell alluded to. I would like the deputy minister to tell us today that the Executive is committed to finding ways of assisting deafblind people in Scotland to achieve the recognition that they need and deserve.

I look forward to the minister's summing-up speech and hope that she will respond to the points that have been raised this evening.

Deafblind people throughout Scotland deserve no less.

17:27

Mr David Davidson (North East Scotland) (Con): I congratulate Margaret Mitchell on securing the debate and on organising, with the Parliament, a way of enabling many carers and sufferers to attend the Parliament, which belongs to them every bit as much as it belongs to everyone else.

Last week, some of the MSPs who represent the Aberdeen area visited the Grampian Society for the Blind. While we were there, we were informed of a project that is taking place in the Forth Valley NHS Board area involving a shared facility for those who suffer from a visual impairment and those who suffer from deafblindness. That is the first such project that I have heard of and I gather that the societies for the blind are keen to work more closely with those who suffer from deafblindness and to share facilities, where they can.

Other members have already touched on some of the essential points regarding this issue. The main one, however, is early identification and full assessment. That full assessment of the individual must include an assessment of requirements for the carers. It is every bit as important that we look after the carers as well as the individuals who cannot look after themselves. I do not think that enough is done to remind people of what carers do in society. Obviously, that is an on-going project.

We need to train more guide-communicators. Equally, we have to ensure that public service agencies such as councils and even banks and post offices are able to assist deafblind people. It is not necessary for them to be able to do so directly, but they should be able to cope with people's carers and guide-communicators. Often, it is difficult for guide-communicators to do their work easily in confined spaces. It is essential that councils in Scotland start to come together with regard to this issue, whether they do so through the Scottish Executive or the Convention of Scottish Local Authorities.

I wish Deafblind Scotland every success in what it does and hope that it sends its message to some of the trusts for carers to ensure that they work with it as well. The area that we are discussing is specialised and I believe that deafblind people deserve the right to enjoy life as much as we do.

17:29

Bill Butler (Glasgow Anniesland) (Lab): I congratulate Margaret Mitchell on securing a

members' business debate on a subject of such importance. I was pleased to add my signature to her motion along with members of all parties. Such widespread cross-party support signifies the seriousness that members are right to attach to the concerns that the motion raises.

Like other members, I have been contacted by several constituents who are deafblind, who have urged me to support the motion and to do whatever I can to show my support for their legitimate demands. I am pleased to place on record my support for the motion and my support for the aims and objectives for the rights of deafblind people that are outlined in the motion.

I was grateful for the opportunity before the debate to meet briefly the group of 45 deafblind people from throughout Scotland, together with their guide-communicators. I welcome them as they follow the debate in the public gallery and in particular I welcome Evie from Glasgow Anniesland. I commend Deafblind Scotland for all that it has done to communicate the issue's seriousness to all MSPs and for all its hard work in organising today's events.

One constituent who contacted me made the point that section 7(1) of the Local Authority Social Services Act 1970 obliges only authorities in England and Wales to provide services for people in this uniquely disadvantaged group. As we have heard, such guidance does not apply north of the border. I admit that until my constituent approached me, I was wholly ignorant of that regrettable gap, which needs to be bridged quickly.

Deafblind Scotland told me that it wanted the Scottish Executive to acknowledge the European Parliament's written declaration, which recognises deafblindness as

"a distinct disability that is a combination of both sight *and* hearing impairments, which results in difficulties having access to information, communication and mobility"

and says

"that deafblind people should have the same rights as are enjoyed by all EU citizens; these should be enforced by appropriate legislation in each Member State".

I wholly agree.

Through Deafblind Scotland, deafblind people ask the Executive to act to introduce the same requirement as applies in England and Wales. They are right and the proposal is reasonable. I hope that the minister will offer some comfort on that point.

It strikes me that the duty to identify deafblind people is particularly important. Deafblind Scotland tells me that only eight people in my constituency have been assessed as having that distinct disability. Is that accurate? Authorities and

service providers must adopt a much more proactive approach so that the true extent of the disability can be assessed and appropriate, discrete services can be provided for our fellow citizens, who require one-to-one support, assistive technology and rehabilitation. As citizens of Scotland, they deserve no less.

I hope that the Executive's response begins to recognise the need for specialist support that is enshrined in statute. Such an approach would ensure the delivery of such services to all deafblind people throughout Scotland.

17:33

Ms Sandra White (Glasgow) (SNP): I congratulate Margaret Mitchell on securing the debate and welcome everyone who is in the gallery. I believe that 120 people altogether are in the gallery; they include 45 deafblind people and their helpers who have come to listen to the debate.

I hope that the minister takes on board the fact that without communicators and guides, those deafblind people would not be at the debate. We appeal to the minister to ensure that communicator services are provided as quickly as possible. We must secure and expand communicator and guide services for deafblind people, as everyone has said.

We must have proper training and recognition, such as the declaration of rights that Margaret Mitchell mentioned. We must have the same provision of services as in England and Wales, which, unfortunately, we do not have.

I will concentrate on mental health services for deafblind people, which were brought to my attention by a petition that Drena O'Malley, Lilian Lawson and others supported and which the Public Petitions Committee has considered. England has three specialist centres for such services, but Scotland has only an out-patients clinic, which is held for one day a month in Edinburgh and in Glasgow and is under threat. I would like the Executive to look into that.

Drena O'Malley gave an example of what happens when a deafblind person is taken into a mental hospital or into care. She mentioned that getting the communication wrong can make a person respond in a strange way. One example was when someone told a man that his guide dogs would have to be put to sleep. The man could not quite comprehend the fact that they had to be put to sleep. The truth was that the dogs were not to be put to sleep; they were just to be given an anaesthetic to put them to sleep while they had their teeth taken out. They were not to be put down, but the distress that the man suffered was

horrendous. That shows why communication is vital.

I would like the minister to take on board the importance of the interpreting service for mental health services for deafblind people, which is under threat. It exists in England and Wales but, unfortunately, it does not exist in Scotland any more. I also appeal to the Executive to implement in Scotland the guidance that exists in England and Wales. That would go a long way to satisfying not just MSPs but the people who are in the public gallery tonight and everyone else who suffers from deafblindness.

17:36

Elaine Smith (Coatbridge and Chryston) (Lab): Like other members, I congratulate Margaret Mitchell on securing the debate. I also recognise the work that my colleague Cathie Craigie has done over the years to bring the issue of deafblindness to the Parliament's attention, as well as the work of Kate Maclean in that regard. I am pleased that so many members of Deafblind Scotland are in the public gallery this evening. I commend the organisation for its continuing work and its active campaigning over the past few weeks.

The Equal Opportunities Committee is undertaking a disability inquiry this year in which it is looking at barriers and problems and identifying areas of good practice. It is opportune that this debate is taking place during that inquiry, as it can help to inform that process. I understand that Deafblind Scotland will participate in the inquiry's events that are taking place around Scotland.

The impairment of both a person's ability to hear and their ability to see has a profound impact on their life. Everyday activities that so many of us take for granted, such as communicating, travelling and accessing services, pose significant challenges for deafblind people. The potential for isolation and marginalisation is huge. The availability of relevant support services can make overcoming such challenges much easier; unfortunately, as members have said, such services are either not available to or not adequate for many deafblind and dual-sensory-impaired people in Scotland, and a one-size-fits-all approach to services is unacceptable.

The uniquely disabling nature of deafblindness means that mainstream services or those that are designed for people who are specifically deaf or blind may not be of automatic benefit. There are also different forms and causes of deafblindness. Some people are born deafblind, whereas others become deafblind for various reasons, and their needs and problems will, therefore, differ. It is important to remember that many deafblind people

may not be totally deaf or totally blind and that people with deafblindness have varying skills, abilities, aspirations and requirements, just like any other group of people. Therefore, there is a need to provide sustained and cohesive services that are tailored to individuals and are not susceptible to the vagaries of a system that means that some people can access appropriate services while others cannot, depending on where they live. That is unacceptable.

Deafblind Scotland points out that, of its 700 members, fewer than 100 receive a guide-communicator service, although such a service can make a huge difference to the lives of many deafblind people and can help them to achieve a greater degree of independent living. Guide dogs, too, can help some people, and I understand that the first guide-and-hearing dog in Scotland is working in my constituency.

In response to a question that was posed by Cathie Craigie in December 2002, the then Deputy Minister for Health and Community Care said that there were no plans to issue guidance similar to that which exists in England. However, she gave assurances that the Executive was

“reviewing objectives, agreeing priorities and devising a strategy for future developments.”—[*Official Report, Written Answers*, 12 December 2002; S1O-6069.]

Can the minister outline what progress has been made on that, and will she undertake to revisit the guidance issue? It seems that such action has been successful elsewhere.

I understand from a recent meeting with a constituent that the services and support that deafblind people receive can depend on assessment by one individual. When a person's quality of life is so dependent on such an assessment, it is vital that the assessors are trained consistently and to the highest possible standard. I ask for the minister's support for that.

It is clear that deafblind people in Scotland require better services than they receive currently and that there is a need for increased access to the services of professional guide-communicators. That would allow people to maximise their potential and lead independent lives.

17:40

Dr Sylvia Jackson (Stirling) (Lab): I welcome Margaret Mitchell's motion on this very important issue. I was lucky enough to be present when the petition that Sandra White and others have mentioned was presented. Many of the issues that are being raised tonight were raised then. I welcome all the work that has been going on in the cross-party groups. I know that the issue will continue to be worked on.

I must apologise on two counts. First, I apologise that I was not able to meet the group of deafblind people prior to the debate, particularly Louise Wardlaw who has come in from Stirling. Secondly, I am sorry that I did not hear the red message. I am wearing pink and I hope that that is near enough to red; the group definitely has my support.

I also thank Deafblind Scotland for the briefing that it gave us, which was customised for each constituency—I now know that there are 15 deafblind people in Stirling. I have met the visually impaired group in Stirling several times, and many issues raised by the deafblind have been raised both by that group and by the hard of hearing people who also have a group in Stirling.

The three problems mentioned in the briefing are common: communication, mobility and access to information. My colleague Bill Butler spoke about the guide-communicator service, which is key if deafblind people are not to be so isolated. I know that Deafblind Scotland wants the service to be extended in Scotland and I hope that the Scottish Executive and the minister will be able to tell us how that can happen and how other very specialised provisions can be brought in to make sure that deafblind people are included in Scottish society.

Margaret Mitchell raised the key issues of early assessment and identification and getting on-going support, training and rehabilitation. Many people have spoken to me about associated mental health issues. I have already written to the minister to ask how mental health issues are being addressed, and she has very kindly written back to tell me how we are moving forward in that area.

David Davidson mentioned the sensory centre that is being developed in Camelon near Falkirk. That is a very good centre that will have a lot of resources when it is opened. However, there are real problems for deafblind and visually impaired people in getting to the centre. A lot of work has to be done on buddy and companion schemes and accessibility to information at railway stations so that that centre can be used effectively.

I look forward to the minister giving us positive messages about how deafblind people and other such groups can be helped in future.

The Deputy Presiding Officer: Before I call Karen Whitefield, I invite a member to move a motion without notice to extend the debate.

Motion moved,

That, under Rule 8.14.3, the debate be extended until 6.03 pm.—[*Cathie Craigie*.]

Motion agreed to.

17:44

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity to take part in tonight's important debate on Margaret Mitchell's motion. I join others in welcoming the deafblind people who have come to this evening's debate.

The provision of services for deafblind people is a matter that Cathie Craigie has ensured has remained high on the agenda of the cross-party group on deafness. I also congratulate Deafblind Scotland on the work that it has done to highlight the issue.

I will spend the little time that I have talking about guide-communicators for deafblind people. I was recently contacted by a deafblind constituent. When she attended my surgery, she communicated with the assistance of a guide-communicator. She made it clear how important her guide-communicator was in allowing her to take part in society and she explained how difficult the most basic task can be without a guide-communicator.

She also told me a dreadful story that illustrates the difficulties that deafblind people face when they do not have access to a guide-communicator. During her recent stay in hospital, medical staff wrongly assumed that she had learning disabilities, but it was difficult for her both to clarify that that was not the case and to state what her real medical needs were. She told me of the terrible sense of isolation that she has faced, both within hospital and in her own community, when she has not had access to a guide-communicator.

The evidence of my constituent has left me in absolutely no doubt that we must ensure that deafblind people have a right to the provision of a guide-communicator. Deafblind people must be given the opportunity to take part in the ordinary, day-to-day life that most of us take for granted and enjoy. Ordinary tasks such as shopping, visiting the doctor and using public transport can become next to impossible for deafblind people who do not have access to a guide-communicator. As a society, we rightly find that level of exclusion unacceptable for people who have other physical disabilities. We should find it equally unacceptable for those who are deafblind.

I commend the motion.

17:46

Mr Frank McAveety (Glasgow Shettleston) (Lab): I thank Margaret Mitchell for lodging the motion and I congratulate her on securing this evening's members' business debate. I also thank colleagues from all parties in the chamber, but especially Kate Maclean and Cathie Craigie, who have made the issue a priority interest in their initiatives since they entered the Parliament.

As members have said, deafblindness is a unique and profound disadvantage from which there is no respite. The fact is that the deafblind people who are in the public gallery this evening are able to attend only because they have family members who can provide the necessary support or because they have access to the services of a guide-communicator.

For the more than 4,000 people who are estimated to require the support that Deafblind Scotland has identified, the guidance issued in England and Wales under section 7 of the Local Authority Social Services Act 1970 at least provides a framework within which they can try to ensure that more appropriate services are provided. However, those figures mean that there may be hundreds, if not thousands, of others who might have wanted to come to the Parliament this evening to express their view on how the quality and range of care services for those who have deafblindness can best be improved.

Many organisations have worked together since the creation of the Parliament to try to get the Executive to focus on the issue more appropriately. That has resulted in two major developments. First, the Executive has produced an action plan for community care services for people with a sensory impairment. Secondly, many members have been lobbied extremely effectively to be present at this evening's debate to voice the concerns of constituents who are often ignored.

Unlike Bill Butler, previously I had limited awareness of deafblindness, even though I spent some time serving in the community care section of the Executive. Often, members can think that such issues have already been tackled. Until we hear of a particular case, we often do not realise the importance of trying to ensure that much better services are provided.

Like many members, I have constituents present this evening. Michael Rooney and Christine Fry, who had a meeting with me in my office in Glasgow on Monday afternoon, have come through from Glasgow for today's debate, as have several others who contacted me. Their strong message to me was that they want the debate to be taken forward because they want even more confidence to be able to make a contribution. They were already confident individuals, but they felt frustrated that they could not maximise their contribution because of the limitations on support services. They want to establish more friendships and they want to ensure that services are much better.

Given the importance of having good guidelines, I hope that the minister will respond to the calls that have been made for such guidelines this evening. However, resources must follow on from

those guidelines; outcomes must follow on from resources; and a reasonable and recognisable improvement in the quality of experience must follow on from outcomes.

One of the most emotional contributions that was made on Monday came from a constituent who said, "I don't want to be 50 before I'm 40." If we can recognise the power of that simple sentence in the actions that we take to improve services, we can genuinely make a difference.

I hope that, both tonight when the minister responds to the debate and in the weeks and months ahead, we will show that the Parliament can be used effectively when members demonstrate their support for an issue that has the demonstrable support of the public. We will then truly make this a Parliament of which the people of Scotland can be proud. I hope that those in Scotland with deafblindness will see a difference in the future and that the minister will respond positively in her closing speech.

17:50

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I thank Margaret Mitchell for securing such an important debate. It is obvious that there is full cross-party support for her motion, and we all acknowledge the difficulties that people must have faced in getting here today.

Communication is very important to all of us, but we all understand how difficult it can be. Indeed, even good friends can quite often misunderstand each other's comments. However, things become more difficult when interpreters of any kind are involved. I have had some experience of that with refugees and, in my own practice, with deaf and blind people. I have to say that the most difficult experience was watching a woman who had been blind from birth—but who, through learning Braille, had become very capable—end up locked in her body and her house when she became totally deaf. She and her family found the situation most distressing. However, we know that many people suffer from varying degrees of blindness and deafness and in fact could be helped greatly by all that has been mentioned.

I was interested to learn from a Deafblind Scotland representative that, in my area, East Dunbartonshire Council has funded the establishment of a register. We know of 40 people who have this condition, but there could well be more. Most important of all, we need to find money for guide-communicators, because sometimes there are not enough to service an area, which means that they have to be brought in from all over the country at added cost. I think that the Parliament would support such a move.

When I spoke to her, the Deafblind Scotland representative must have been with a group,

because she also told me that we need to remember that some people do not take up the service. Apparently, she was accompanied by five people. One, who was 40 years old, would not go out because she was too ashamed and thought that using a guide-communicator was like using a white stick. After all, many people do not like using sticks, never mind white ones. The representative said that at the moment there was no culture of providing such services and that, if they were more available, people would feel less ashamed about taking up such an offer. As a result, they would not be trapped in their houses and their bodies and would be able to have the best quality of life that they could have. Given that not many people are involved, such measures would not cost that much money. The Parliament certainly has the will to bring Scotland up to date with other parts of the UK and Europe.

I support Deafblind Scotland and everyone who has come to the chamber today. It must have been such an effort for them, and I think that they are all wonderful.

17:53

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I thank the Deputy Presiding Officer for allowing me into the debate at a fairly late stage. Like other members, I commend Margaret Mitchell enormously for securing this debate, if for no other reason than it allows me to congratulate myself on outdoing every Labour woman—and indeed women of other parties—in the chamber. I am wearing not just something red but a red and white striped shirt. As I learned this afternoon, red and white are the defining colours of deafblindness.

I was not going to speak in this debate, but I was moved to do so by the attendance this afternoon of Mr Donnelly from Newton Stewart in the heart of my constituency. He and his guide-communicator have taken three hours to get here, and the fact that he and everyone else in the gallery have taken such trouble rather underlines to me the debate's importance.

I want to make only one substantive point; after all, every other member who has spoken has made extremely good points, none of which I disagree with. Several members have said that we are not talking about a lot of people. I hope that the number of people will in no way affect the Executive's response to any issue.

More important, I want to expand on the point Bill Butler and Dr Jean Turner made about the number of deafblind people in their constituencies and areas. Bill said that he had been told that eight deafblind people live in his constituency. Rather worryingly, I was told this afternoon that I

have one and a half. There are actually three, the number being split between Dumfries and Galloway. I was also told that if recognition and registration were carried out in the same way in Scotland as they are south of the border, the total would be 60 such people in Dumfries and Galloway. If that kind of increase is applied across every constituency—where at present only one, two, three or eight people are registered—the total number becomes very significant. We are talking about a significant number of people who are being treated in a system that is considerably less robust than the system south of the border. That is neither just nor fair. It is not what most of us thought devolution was about.

In her speech, I sincerely hope that the minister will say explicitly that we will not tolerate the present situation for much longer.

17:56

The Deputy Minister for Health and Community Care (Rhona Brankin): I too would like to welcome the deafblind visitors to the Parliament, as well as their communicators and supporters. I look forward to meeting many of them after the debate.

I thank Margaret Mitchell for bringing her motion to the Parliament. I also congratulate and pay tribute to Cathie Craigie, Kate Maclean and others for their work on the cross-party group on deafness.

Let me state from the outset that we will issue statutory guidance to local authorities to improve services for sensory impaired people. That will include specific guidance on services for deafblind people. I recognise that for too long people with a sensory impairment, including those who are deafblind, have experienced difficulties accessing the community care services that they need. We acknowledge the very complex needs of deafblind people.

We know deafblindness affects a relatively small number of individuals from birth; the majority of deafblind people are, of course, older people who lose their hearing and sight as part of the aging process. Our most recent statistics show us that 84 per cent of all registered blind people who are also deaf are over the age of 65. Of course, that is only the number of people who are registered.

Services have to meet the needs of individuals who vary in age and degree of impairment, and who have differing circumstances. As I have said, there are people with very complex individual needs. That is why, in 2003, we began to work with sensory impaired people and the organisations that represent them to make things better.

We thank Deafblind Scotland for its involvement throughout the process. At the beginning, it told us how services needed to change. It set up meetings between the Executive and deafblind people so that we could hear at first hand what was needed. Since then, we have developed an action plan to bring about those changes. Deafblind Scotland is represented on the steering group to implement that work. Its chief executive, Drena O'Malley—to whom many speakers have paid tribute tonight—leads the work of the subgroup that is looking in detail at improving services for deafblind people. I would like to thank Drena O'Malley for that work.

Margaret Mitchell: I very much welcome the minister's announcements. Will she give me a little more detail? Will the guidance deal with identification, the keeping of a record, assessment and the access to guide-communicators that we seek?

Rhona Brankin: The guidance for local authorities will be decided in conjunction with the people who are working on the sensory impairment action plan. I would hope that the guidance will be stronger than the current guidance in England. That is my strong intention.

We are proud of the sensory impairment action plan. It is a wide-ranging community care strategy for all sensory impaired people in Scotland, including those who are deafblind. We believe that the seven recommendations will improve access to community care services not just for deafblind people but for all sensory impaired people in Scotland.

Mr Welsh: Will the minister take an intervention?

Rhona Brankin: I really will have to carry on, if that is all right. I have a lot still to say and I am conscious of the shortage of time.

The first recommendation is about getting better at collecting information on the number of, and the needs of, sensory impaired people, so that services can be planned and delivered more effectively. As part of that, we clearly need better information on the number of deafblind people. We need to work out how best to collect and use information that is currently held by a number of agencies and Government bodies for differing purposes. We also need deafblind people, and their families and carers, to feel empowered to approach local authorities, make themselves known and ask for the services they need. It will be important for us to find out about their needs.

Good assessment is critical in meeting individual need. The action plan recognises that and has already changed the assessment process to ensure that sensory loss is picked up in older people. That will be extended to other care groups

as the changes to the single shared assessment are rolled out. That means that the worker carrying out the assessment needs to recognise when a more specialised assessment is needed and to make that happen. That could mean having someone trained in meeting the specific needs of deafblind people and undertaking a joint assessment. For others, it will mean having a guide-communicator alongside the person being assessed to assist in interpreting their wishes. We must ensure that we are meeting the needs of all people.

Another recommendation is that service standards will be produced that will make it clear what deafblind people are entitled to expect. The Social Work Inspection Agency will inspect against those standards, which are currently in development, to see how effective they are.

There are several other recommendations, but I would like to cover just two, briefly, before I run out of time. We recognise that having a competent workforce is crucial. That is why we are collecting information on all the courses that are available to see what works and to disseminate good practice to local authorities, the voluntary sector, carers and everyone who uses the services.

The last recommendation to which I would like to draw members' attention concerns the groundbreaking research that is being undertaken to identify what needs to change in community care services so that specialist needs are met.

I hope that, now that I have gone through the action plan, members will see that we intend to go further than the scope of the guidance that is in place in England. It is an inclusive plan and we believe that we are laying the foundations of improved services for people whom we know have been neglected in the past. The action plan and the research that flows from it will further inform our next steps. We will make changes to the way in which services are delivered at the moment and we will issue statutory guidance to local authorities inviting them to implement the changes.

Changes will not happen overnight, and I ask people to continue to work with us in ensuring that quality services are developed to meet the individual needs of everybody who is deafblind. The recommendations in the action plan are the first step to identifying, correctly assessing and providing appropriate services for a unique group of people. They are entitled to nothing less.

Meeting closed at 18:03.

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