

MEETING OF THE PARLIAMENT

Thursday 9 June 2005

Session 2

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Scottish Parliament

Thursday 9 June 2005

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

Health

The Presiding Officer (Mr George Reid): Good morning. The first item of business is a debate on motion S2M-2931, in the name of David McLetchie, on health issues, with specific reference to the Kerr report.

09:15

David McLetchie (Edinburgh Pentlands) (Con): The Scottish Conservatives are pleased to make our time in the Parliament available to members to debate the Kerr report and the state of the national health service in Scotland. It is a matter of regret that the Scottish Executive refused to do so in its time prior to the recess, given the importance of the subject.

Almost every survey of public opinion shows that health is the issue of greatest concern to people in Scotland, and it is, I submit, the biggest challenge facing this Parliament and the Executive. We need to engage in a genuine debate about the future direction of our health service. Professor Kerr's report is an important contribution to that debate. We need to start by looking at where we are today in a calm and rational manner, if at all possible. Too often, discussions on health in this chamber are reduced to a war of words over the key statistical indicators and whether they are getting better or worse. That is fine and valid, as long as we also make time for less fevered debates in which we consider the broader issue of how we improve our health care system. That is the purpose of today's debate and the purpose behind the Kerr report.

I have said on numerous occasions in this chamber that I am happy to acknowledge the additional funding that has gone into the health service since 1997. That funding has been substantial. Since that time, spending has increased by 55 per cent in real terms. However, that is not a break with the past, but simply an acceleration of a trend established under the last Conservative Government. Far from starving the health service of resources, the same spending figures indicate that spending in Scotland rose by 55 per cent in real terms during the period of our Administration. Those who call for a mature debate about the health service in Scotland should have the grace to acknowledge that fact.

Equally, I acknowledge some specific improvements that have taken place in recent years. For example, real progress has been made in dealing with premature death from coronary heart disease, with a 38 per cent drop in rates since 1995. Survival rates for most types of cancer are also up, with death rates down by 8.5 per cent since 1996. Those improvements are welcome. I fully accept that it is not all doom and gloom. However, honesty also requires that we not only give fair credit for improvements, but recognise failings and shortcomings. In many respects, the key indicators are worse. The extra money going into the health service has not been matched by corresponding increases in productivity, hence the increase in waiting lists and waiting times for in-patients and out-patients, which means that our patients are not receiving the level of service that they demand and deserve and for which they are paying through their taxes.

The problem of demand outstripping supply in the health service is not new—it is as old as the NHS itself, and politicians of all parties have wrestled with it since the NHS's inception in 1948. One assumption on which the NHS was based was that once the backlog of ill health had been treated, demand and expenditure would reduce. However, as we all know, the reverse has been the case, as a result of the demography of our population, rising public expectations and advances in medical research and health technology. Thus, we have the on-going political problem of dealing with potentially limitless demand on the one hand and finite resources on the other.

Carolyn Leckie (Central Scotland) (SSP): Does David McLetchie agree that the premise underlying the NHS and Bevan's vision that demand would decrease was based on there being anti-poverty measures and the eradication of poverty, which is the major cause of ill health? That is what Governments have failed to do, including his.

David McLetchie: I agree that there is a multidimensional aspect to it, and that we have to deal with issues relating to poverty, but if Carolyn Leckie examines the standard of living of people in all classes in this country since 1948, she will see that it has improved immeasurably under both Labour and Conservative Governments.

The outward signs of the health service struggling to cope are obvious: patients languishing on long waiting lists, unacceptable waiting times, proposals to close local hospital services—against the wishes of local communities—in the cause of rationalisation, and the slow adoption of new technologies and drugs in the NHS compared with other European health care systems, as identified by the Wanless report

that was commissioned by the United Kingdom Government. However, despite all those perfectly justifiable causes of complaint, as Professor Kerr points out, the NHS

“is still seen as Government’s greatest gift to its citizens”.

I contend that that underlying support is based on the founding principle of the NHS—with which we all agree—which aims to guarantee health care for all, according to need and irrespective of ability to pay. The challenge for us in this Parliament is how we sustain that principle while recognising that the structure of the NHS needs to be updated to make it fit for the 21st century.

I put it to the chamber that the main reason for the failure of the NHS to meet public expectations lies in its structure as a centrally-run state monopoly. As Alan Milburn said:

“The system seems to work for its own convenience not the patient’s—a frustration that is shared between staff and patients alike. The whole thing is monolithic and bureaucratic. It is run like an old style nationalised industry”.

The problems associated with central planning do not change. No matter how well intentioned or intelligent the people doing the planning, without the necessary information they will find it impossible to meet the needs of patients. In such a system, patients have no way of indicating how much they would like spent on health care or where that spending should be directed. It is therefore no surprise that those doing the planning often get it wrong.

There is limited spare capacity within the NHS, so waiting lists become the means of rationing access to health care to meet demand. Such shortfalls can be in different parts of the country or in particular specialist services. That is what leads the planners to advocate the rationalisation and centralisation of services, which we all know is deeply unpopular with people who see their valued local hospital services under threat of closure. That is exactly where we find ourselves today—the only way for people to register their support for their local services is not through the personal health care decisions that they make, but through political protest.

The Executive’s response to the unpopularity of rationalisation, which many see as a euphemism for closure, was to commission—some might say hide behind—Professor Kerr’s report. Of course, that did not stop political pressure being brought to bear in the interim to reverse unpopular decisions, such as those taken in relation to St John’s hospital in Livingston—a fine hospital built, of course, by the Conservative Government. Such politicisation is an inevitable consequence of the way we run our health service. It is deeply

unsatisfactory, which is why we need fundamental reform.

Many of the objectives set out in Professor Kerr’s report are eminently sensible. For instance, the aim of delivering health care predominantly in local communities is clearly in tune with public feeling. However, we should remember that we were moving in precisely the opposite direction as regards hospital services until the strength of opposition made its voice heard throughout Scotland.

How do we ensure that the Kerr report is more than just a temporary halt in that centralisation process? I submit that that will happen only if we are prepared to adopt a genuine change of approach. If I may say so, the weakness of the Kerr report is that, while it recognises the need for change, it advocates leaving in place the central features of the system that got us into the present situation in the first place. In that system, change comes about only at the behest of those who run the service—the politicians and their health board appointees—and the service develops according to the edicts, directives and targets that are set by the men from the ministry.

The alternative is to let patients’ choices determine how the service develops. In that way, change would become evolutionary and gradual and we would not have the periodic and disruptive shifts in approach that characterise the current system. The central feature of the NHS of the 21st century must be its determination to put patients’ needs first. Many fine words have been spoken about that, but it is time to turn them into reality. We will achieve a fairer system that guarantees access for all and that prevents political distortion of health care provision only if we give power directly to patients. That means putting funding into the hands of patients and enabling them, in conjunction with their general practitioners, to purchase health care from the provider of their choice.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD) *rose*—

Mike Rumbles (West Aberdeenshire and Kincardine) (LD) *rose*—

David McLetchie: Mr Purvis was first.

Jeremy Purvis: I ask Mr McLetchie to clarify two points. First, am I correct that the Conservative policies for greater devolution to individual hospitals and for a passport for patients will, as a Conservative policy paper states, result in

“large cost differences between hospitals”

being “eradicated”? In other words, there is to be a national cost basis for all treatment in the NHS.

Secondly, figures from the Department of Health show that in England in 1994, 19,800 people were on the in-patient waiting list for 15 months, whereas in 2004-05 the figure was reduced to 12,538. However, in Scotland, the most recent figure was zero. How does Mr McLetchie explain that?

David McLetchie: That is a bit of a statistical blizzard from Mr Purvis; I am not sure that I can explain the matter in the time that is available to me. However, on his first point about costs, it is extremely important that we establish the cost of services in our hospitals, because we will get better value for money for the taxpayer from NHS treatment if that information is transparently available and if we use a multiplicity of providers to treat patients in the NHS. There is no point in having a tariff system unless we are prepared to use it.

We must make a fundamental change in the Government's role in relation to the NHS, so that it becomes a funder and a guarantor of access for all, according to need. In recent months, there have been signs that the Scottish Executive is trying to move in that direction. We understand that a tariff system is to be introduced that will provide a standard price for NHS treatments. That is an essential first step in creating a modern health service, as we have seen in Sweden, where such a reform was the catalyst for the creation of a level playing field on which public and independent providers could compete for patients. However, the Scottish Executive's announcement of the change was so sotto voce as to be almost imperceptible. As I pointed out at First Minister's question time two weeks ago, there was nothing about the change in the NHS plan that was published in December and nothing about it in the statement that the Minister for Health and Community Care, Mr Andy Kerr, made to the Parliament on the NHS plan. What is the minister so afraid of, that he has a policy that dare not speak its name?

Of course, it is never comfortable to admit that one was wrong. Further, the wholesale adoption of Conservative solutions would no doubt cause uproar among the health service unions and, by all accounts, Mr Rumbles and the Liberal Democrats, too. However, we should make no mistake: we are seeing Labour men and women and Tory measures. It is about time that the Minister for Health and Community Care admitted the truth about the policy.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP) *rose—*

Mike Rumbles *rose—*

David McLetchie: Sorry, but I think that Mr Ewing was first.

Fergus Ewing: On the topic of admitting when one was wrong, were the Tories wrong to introduce trusts and boards in to the NHS?

David McLetchie: Most certainly not. I inform Mr Ewing that, if we still had a trust in Caithness, we would not have the absurd situation in which women in Wick are sent 100 miles to have their babies. The Executive has vandalised and savaged the local control of our health service, which has sent the service down precisely the wrong road.

If there is to be a new dawn for the health service in Scotland, people in Scotland have a right to know about that and the Minister for Health and Community Care should stop hiding behind obscure language. The potential benefits of the policy are there for all to see. In England, a similar reform has enabled the independent sector to increase greatly the available capacity to treat NHS patients and the overall productivity of the service. For example, independent sector treatment centres that specialise in cataract operations can treat eight times more patients per day than the NHS has traditionally managed. Reform of that kind would lead to exactly the benefits that the Kerr report wishes for the health service in Scotland: standards would rise and patients would be treated more quickly; new ways of meeting patient needs would be developed, with faster adoption of new medical techniques and drugs; and there would be better value for money, as costs would be driven down by the most efficient providers.

Are the Scottish Executive and the ministers serious about genuine reform or, as in many other cases, are they just paying lip service to change and making a few token gestures but otherwise carrying on business as usual? If the ministers are serious about genuine reform, the Conservatives will support them. They should not be held back by the fickle Liberal Democrats, the fearties in the Labour Party or the Scottish National Party dinosaurs, whose thinking about the NHS is still stuck in the time warp of 1948. If the Scottish Executive has the courage to grasp the nettle, it will do the NHS and our people a great service.

I move,

That the Parliament welcomes the Kerr report as an important contribution to the debate on the future structure of the NHS in Scotland and its objective of ensuring that most health services continue to be provided at a local level in response to patient needs and demands; notes, however, continuing public concern over the extent of the proposed centralisation of hospital services across Scotland and the effectiveness of NHS 24 and the out-of-hours service; further notes that, despite a substantial increase in funding for the NHS in Scotland, the waiting list is longer and waiting times are higher than they were in 1997; believes that a truly patient-centred NHS will be possible only if purchasing power is put in the hands of patients so that their choices determine the development of

the service and healthcare providers are given far greater freedom to respond to those demands, and, to that end, calls for the establishment of foundation hospitals within NHSScotland and an increase in the capacity available to treat NHS patients by extending the use of the independent sector.

09:32

The Deputy Minister for Health and Community Care (Rhona Brankin): Although we received the Kerr report only two weeks ago, I was somewhat encouraged that the Conservatives wished to discuss it, because I thought that they might attempt to build on the welcome consensus among all parties that was displayed on 25 May. Mr McLetchie probably intended at the beginning of his speech to show some consensus. However, the Conservative party motion makes it clear that today's debate is not intended to be consensual and the rest of Mr McLetchie's speech bore that out.

As the Kerr report clearly points out, the NHS in Scotland must change to meet the challenges that it faces in the 21st century. Those challenges—the aging population, the emergence of chronic disease as the main issue facing the health service and the growth in emergency admissions—are significant, but surmountable. To bring about the necessary changes successfully, the Parliament must play its part, which means mature debate about how to improve the service and implement reform. We should not apportion blame or make unnecessary criticisms, because it is genuinely important that members act responsibly and consider what is best for the NHS. However, I will be pleased to tell my UK colleagues of the Scottish Conservative party's continuing support for the Labour Government's reform of the English health service. I am not sure that Mr McLetchie's colleagues down south will be so pleased, as they opposed foundation hospitals the last time I heard.

David McLetchie: Will the minister take an intervention?

Rhona Brankin: Let me finish my introduction.

Let me be clear that the Executive parties are pro-reform, pro-diversity of provision and pro-patient choice, but we are not about importing models from elsewhere in the UK with no consideration of their suitability in the Scottish context. As for the views on out-of-hours care that are expressed in the motion, I fear that the Tories are still living in the world of "Dr Finlay", perhaps around 1995, which was probably the last time the Conservative party had a majority.

The Scottish Executive is committed to a distinctly Scottish health care model that is based on collaboration and integration, and Professor David Kerr explicitly supported that model in his

report. However, we are also willing to make the necessary reforms. By implementing single system working in NHS Scotland, for example, we have already removed many barriers to local decision making and innovation. The Golden Jubilee national hospital and the developing regional treatment centre at Stracathro are two further examples of the innovation that there has been in NHS Scotland in recent years.

I turn to the motion's criticisms of NHS Scotland. Members are aware of the findings in the NHS 24 review group's interim report. We established that review to identify where performance could be improved and to realise the full potential of an innovative and crucial part of NHS Scotland. That was the right step for the Executive to take. The review group's interim report makes a number of recommendations, and I welcome the public commitment of NHS 24 to implement those recommendations as soon as possible. Are the Conservatives seriously saying that we can do without a telephone triage system?

The Kerr report makes a number of innovative suggestions about the integration of out-of-hours services with other parts of the NHS, including in multidisciplinary community casualty units. We will look at those proposals closely over the summer.

Bruce Crawford (Mid Scotland and Fife) (SNP): Page 30 of the Kerr report states:

"as a rule of thumb each current hospital offering A&E services should be able to sustain services for urgent care".

Will the minister give us a view on Fife NHS Board's proposal to move accident and emergency services from Queen Margaret hospital to Victoria hospital in Kirkcaldy in the long term? Does she still support that move, or does she support what Kerr says?

Rhona Brankin: Fife NHS Board will not revisit decisions that have been taken on the basis of consultation. What is exciting about the Kerr report is that it contains the concept of community casualty units in which people can be treated as close to home as possible, although they might have to move to other centres if very specialist treatment is required. The concept of community casualty units is hugely exciting and we look forward to examining the proposals closely over the summer months.

On waiting times, we continue to deliver improvements against the standards that have been set. In March 2005, no patient waited longer than our guarantees for in-patient, day-case or heart treatment. The number of patients who waited for more than six months with a guarantee for in-patient or day-case treatment, or for out-patient appointments, significantly reduced, which leaves us well placed to deliver our maximum

waiting time standards of 26 weeks at December 2005 and 18 weeks at December 2007.

I turn to the positive opportunity that the Kerr report offers for developing NHS Scotland. The report calls for the NHS to identify patients who are most at risk of hospitalisation so that better care can be provided to keep them out of hospital. We should not wait until an emergency develops before we provide appropriate care. Patients are better served by co-ordinated care in the home or community that is aimed at preventing crises from happening.

The report highlights the work that is still to be done on health inequalities and makes valuable recommendations in that area. Evidence has been presented of persistent underutilisation of health services in our disadvantaged communities, and that has an associated impact on health outcomes. Therefore, we welcome the recommendation that resources should be targeted at enhancing primary care capacity in deprived areas—and the recommendation that at-risk patients in those areas should be actively sought out—to provide appropriate health advice and treatment.

Christine May (Central Fife) (Lab): Does the minister recognise that providing such facilities at local level may require investment decisions that will mean that difficult decisions will have to be taken? Is the Executive committed to making those decisions and to ensuring that such facilities are provided in places such as Glenrothes, where there is currently a severe shortage of facilities?

Rhona Brankin: I recognise the need to invest in areas in which services have been underutilised. There will be an announcement on the modernisation of primary care premises shortly; I am sure that members will welcome that.

We remain absolutely committed to the proposition that a person's place of birth should not determine how long they are expected to live.

I commend the report's focus on unpaid carers, who provide a high proportion of health-related care. Their role is often insufficiently acknowledged and supported, and I welcome the report's stress on providing unpaid carers with the information, training and support that they need. They are invaluable partners in the provision of care.

We welcome Professor Kerr's finding that the majority of unscheduled care can be provided in multidisciplinary community casualty units and accept his conclusion that not every hospital will provide the whole range of complex emergency work. We expect boards to consider the range of options that the report gives for sustaining local unscheduled care services. Ministers also support

Professor Kerr's recommendations on the separation of planned and unscheduled care.

The Minister for Health and Community Care has made clear the Executive's intention to have a full debate on the Kerr report soon after the summer recess. That will give members time to consider the report, which is more than 250 pages long; more than 1,000 pages of supporting text are also available. It will also give time for all parts of the health service to consider and discuss the report. Earlier this week, the minister met the board of NHS Highland to discuss the implications and implementation of the Kerr report. I encourage all members to engage constructively with their local boards.

I finish by emphasising my opposition to the Conservative party's calls for the introduction of foundation hospitals within NHS Scotland; pointing out the evidence of steady improvement in out-of-hours services and waiting times; and emphasising the opportunity that the Kerr report provides to focus on the future of NHS Scotland. We should not squander that opportunity by dwelling on the past.

I move amendment S2M-2931.3, to leave out from "welcomes" to end and insert:

"commends the Kerr report, *Building a Health Service Fit for the Future*, and its emphasis on sustainable and safe local services and preventative care for the most vulnerable, which supports the Scottish Executive's goal of delivering care that is as local as possible and as specialised as necessary; welcomes the interim report of the NHS 24 review team and the public commitment of NHS 24 to implement the key recommendations as quickly as possible for the benefit of the people using the service, and is encouraged by the positive progress on waiting times and waiting lists."

09:42

Mr Stewart Maxwell (West of Scotland) (SNP): I begin by apologising on behalf of Shona Robison for her absence. She was keen to be here, but, unfortunately, has been taken unwell.

I welcome the opportunity to debate the Kerr report. However, it was incumbent on the Executive to have a debate at the earliest opportunity in Executive time, rather than put off a debate until some time later in the year.

I oppose the Tories' attempt to turn the debate into a political opportunity to try to promote the private health sector at the expense of the NHS. On that point, Professor Kerr's report states:

"Patient choice is important, but the people of Scotland sent us a strong message that certainty carries greater weight".

Carolyn Leckie: On the member's reference to the Tories supporting the privatisation of the NHS, will he explain why the Scottish National Party

members of the Health Committee do not support my amendments that attempt to halt the privatisation of the NHS?

Mr Maxwell: The Scottish Socialist Party's dogmatic approach is well known, but we do not take its approach. There is a role for the private health sector, where appropriate, but the Government's primary activity should be to support the NHS in Scotland and to ensure that that is the priority. The Tories' false choice would rob the NHS of both the certainty that was mentioned in the report and, of course, much-needed funding. That funding would be handed over to the private health sector.

David McLetchie: Will the member take an intervention?

Mr Maxwell: Not at the moment. The member should give me a chance to get started.

By having NHS patients treated in the private sector, we would actually often pay more to have the same patients treated in the same hospital by same doctor. The NHS would slowly become a second-rate provider. That is not choice for all, but choice for the few. The Tories' plans would give to the few who can afford to pay at the expense of the many who cannot.

One of the most important issues that the report identifies is the potential for improvement that can be achieved through the separation of elective and non-elective work. The patient journey can often be haphazard, as I found out last year when I was required to go into hospital for an operation. I was relieved to have my operation, and I praise all the staff who were involved, particularly those in ward 5 of the Victoria infirmary in Glasgow, who were part of a highly professional and dedicated team. I appreciate the care that I received. However, when I was first diagnosed, I was told that I would have to wait between two and six months for an operation. After two months, I was informed that the operation would be at least another six months away. However, after two months and one week, I received a phone call during which I was asked whether I could take a cancellation a few days later. I was extremely grateful for that cancellation but, as my personal experience shows, it is crucial to separate out elective procedures to ensure that, as Professor Kerr says,

"if we make a commitment to see or treat a patient on a specific date, we must honour this, and ensure the quality of care delivered."

Professor Kerr suggests that to do that, NHS boards will have to fulfil several tasks. Those include ensuring that diagnostics and theatre facilities are actively utilised during a more flexible working day to allow more patients to be treated. That is an excellent idea and it is long overdue. Boards should also introduce pre-admission clinics

led by nurses and allied health professionals so that certain tests can be carried out prior to elective surgery. Such clinics would also manage variations in the length of patients' stay through admission on the day of surgery and active discharge planning. Along with the other recommendations, that would contribute greatly to the smoother running of elective procedures.

We in the Scottish National Party are very pleased that Professor Kerr agrees with our policy of introducing a network of diagnostic and treatment centres. I agree with David McLetchie that there is ample evidence from England that diagnostic and treatment centres have a vital role in bringing down the length of waiting times for treatment. In England, the statistics show that, between 2002 and 2004, the percentage of in-patients admitted within six months rose from 77 per cent to 91 per cent. However, that was not because of the private sector diagnostic and treatment centres. As of March 2004, there were only two private treatment centres in use in England. Most of the increase in the percentage of patients being treated and the cuts in waiting times were down to the use of centres within the NHS.

I agree with the Kerr report when it states that we should look to the NHS first. I also agree with the report when it goes on to say:

"If this action does not sufficiently meet the supply side pressures, NHSScotland should continue to explore options for targeted partnerships with private sector providers".

However, the Executive decided to go straight to the private sector rather than use the NHS first. The NHS in England achieved great results through using diagnostic and treatment centres within the NHS, so is the minister able to explain why the NHS in Scotland could not do likewise?

I turn to the issue of staffing. If there is an expansion of the private health sector in Scotland, the big unanswered question—the Tories have never come up with a proper answer to it—is: where will the staff come from? I do not usually agree with Robin Cook, but I did when he recently said:

"As a former health spokesman, I find the least appetising passage in the manifesto to be its curious belief that the capacity of the NHS can be expanded by increased use of the private sector—or, as it is delicately described in the text, 'the independent sector'. The reality is that the private sector does not add capacity to the NHS but competes with it for the time of its consultants. My local health board gave the game away recently by advertising a new post for a consultant to work three days a week in the NHS and two days a week in a private hospital at NHS expense. The danger with increasing private provision is that its commercial culture undermines the very public-service ethos that makes the NHS popular."

Does the Minister for Health and Community Care agree with his Labour Party colleague, Robin Cook? I do not think so, because, frankly, the

minister's assurances that private health companies involved in NHS work would be prevented from poaching NHS staff are not worth the paper they are written on. The self-same assurances were given in England and they have proved to be absolutely worthless. As Unison pointed out,

"The treatment centres will be allowed to employ seconded NHS staff, contrary to the earlier assurances by the government that 'the medical staff from these units will be from overseas and additional to the existing NHS workforce.' Now, according to the BMA, overseas companies would be allowed to second up to 70% of their staff from the NHS."

The minister briefly mentioned health inequalities, and I have one comment to make on that. Health inequalities in Scotland are appalling, and they are getting worse, not better. Successive Tory and Labour Governments have made the difference between the life expectancy and healthy life expectancy of the richest and poorest in our society worse rather than better.

I welcome the Kerr report and its support for the many policies that the SNP has been advocating for some time, particularly the use of diagnostic and treatment centres primarily within the NHS to avoid the many pitfalls that would result from attempting to go down the Tory route of expanding the private health sector at the expense of the NHS.

I move amendment S2M-2931.1, to leave out from "believes" to end and insert:

"commends the staff within the NHS for their hard work and dedication; believes that, to tackle waiting times more quickly, there is a need to set up fast-track diagnostic and treatment centres within the NHS, and welcomes the Kerr report's emphasis on addressing health inequalities in order to close the health gap that currently exists in Scotland."

09:49

Carolyn Leckie (Central Scotland) (SSP): I am grateful that my amendment was selected.

The new document "Building A Health Service Fit For The Future Volume 2: A guide for the NHS" is a big document, and there are lots of points for discussion in it. However, frankly, I am extremely disappointed at the level of the discussion and debate so far. The Tories want to reduce everything to the question of foundation hospitals. Despite the fact that the document has just been published and has not yet been distributed to NHS professionals, the Labour amendment shows that Labour is quite happy to commend it. The SNP wants to reduce all the issues to the single question of diagnostic and treatment centres. The phrase "raise your game" has been used in the chamber many times during the past couple of years and, really, members should raise their game. An Opposition should be prepared to

scrutinise properly, and we have had no proper scrutiny.

It is a bit rich for the SNP, through Stewart Maxwell's speech, to talk about privatisation. I will come back to that.

The Kerr report itself raises practical concerns about the implementation of some of its recommendations. It poses unanswered questions and raises challenges about issues such as recruitment and retention and where staff are going to come from. However, according to Nicola Sturgeon last week, the SNP wants the Kerr report to be implemented now, without exploring such questions.

There are a lot of things to be concerned about. According to the report, more care should be co-located with pharmacies and delivered on the high street. We know that the Executive is already trying, with the help of the so-called Opposition, in the guise of the Smoking, Health and Social Care (Scotland) Bill, to introduce local improvement finance trusts—LIFTs—which are primary care private finance initiatives. Soon, the general practitioner will be competing with the pharmacy for space in the LIFT primary care centre. More and more health checks, diagnosis and prescribing will be done by private pharmacies that are itching to branch out.

The report also says that more options should be explored to reduce waiting times, including partnerships with overseas private sector providers, who might bring in complete surgical teams. If the SNP is so concerned about privatisation, why is it not picking up some of those references in the Kerr report? Have SNP members actually read it?

Mr Maxwell: Does the member believe that the private health sector in Scotland should be completely banned? Is our position not more sensible? The NHS should be the primary focus, but if there is a private health service, people should have the right to go to it, although we would not fund it at the expense of the NHS.

Carolyn Leckie: Mr Maxwell obviously does not understand that the private health care sector undermines the very ethos of the NHS.

Mr Maxwell: Would the member ban it?

Carolyn Leckie: Yes. I am quite proud to say that. We would incorporate everything into public provision. That would be absolutely clear to Mr Maxwell if he had read my amendment.

The Kerr report also talks about the separation of emergency and elective care by establishing diagnostic and treatment centres. As we have seen from the Executive's actions, that translates into implementing the suggestion of independent treatment centres based on the English model,

just 24 hours after the Kerr report is published and a statement is made in the chamber. That is the way we are going. I asked Andy Kerr about what the Kerr report meant in terms of an increased market share for private health provision in Scotland. He did not answer that question, and I do not know whether that was because he could not answer it or because he refused to.

The Westminster Government is quite happy to tell us that it predicts that, over the next five years, the market share for the private sector in England will go from 5 per cent to 15 per cent. What is the projection for Scotland? Has the Executive done a projection? If it has, why is it not sharing the result?

I am grateful that paragraph 60 of the document lays down a challenge to orthopaedic surgeons on the amount of time that they spend operating in the NHS. It is interesting that orthopaedic surgeons have been singled out, given that, as we know, of all medical professionals in Scotland, orthopaedic surgeons are the most prolific providers of private surgery. There is a relationship between those two issues, because the more activity that surgeons carry out in the private sector, the less they carry out in the NHS. That is why we must make it clear that health care should be provided within a public framework.

We already have rationing in the NHS, but despite that context the report's proposals—they are supposed to be cost-neutral, but Kerr himself acknowledges that his report provides no evidence to substantiate that claim—will require a further reorganisation of NHS staff. A witness at last week's meeting of the Equal Opportunities Committee said that a section of the community had been "consulted to death", and I believe that NHS staff have been reorganised to death. How will the Executive reconcile the need to tackle the recruitment and retention problems that are endemic in the NHS with this further call for reorganisation on a cost-neutral basis? Staff will be required to retrain and to take on even more roles and responsibilities. Where will the money come from for that retraining? Who will back-fill those posts and who will pay the money that doing that will cost? If all of that is to be done through overtime, who will pay for the overtime?

In conclusion, I return to the issue of joint ventures. When it comes to the crunch, are SNP members opposed in principle to privatisation, given that their position on joint ventures means that they are railing against Unison, the Scottish Trades Union Congress and the Royal College of Nursing? Does their policy depend on whether they are fighting in the north-east of Scotland or in Glasgow? Are they for privatisation or agin it? I ask them please to make their position absolutely clear.

I must say that I agree with David McLetchie that the Tories are the most successful lobby group that exists. They do not even need to get elected to get the policies that they want. The Tories do not win elections because their class already has the Government that it wants. Everyone is competing on the same terrain.

Miss Annabel Goldie (West of Scotland) (Con): Will the member take an intervention?

Carolyn Leckie: I am sorry, but I do not have enough time.

Since the report was published, the only thing that the SNP has opposed is the Executive's failure to implement its policies sooner. Where is the Opposition? The SNP really should raise its game.

I move amendment S2M-2931.2 to leave out from "welcomes" to end and insert:

"notes the contents of the Kerr report and recognises its contribution to the debate on the future of the NHS in Scotland; believes that, if protected within a public model, many of its proposals are useful; is concerned, however, that the report suggests, in line with the current trend of Scottish Executive policy, several avenues for the further marketisation and privatisation of health care, relies heavily on NHS staff co-operating again with reorganisation and retraining and accepting new and additional roles and responsibilities but claims that the proposals within the report are 'cost neutral', and therefore believes that the NHS's capacity, workforce planning and recruitment and retention problems will not be resolved by the report's recommendations or current Executive policy, and that only securing and expanding the NHS as a public service, delivered by public service workers from publicly-owned facilities, will offer the foundation for the improvement and development of an NHS in Scotland fit for the 21st century."

09:57

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): That was an interesting contribution from Carolyn Leckie.

Despite what David McLetchie said, the Conservatives ensured that today's debate would not be focused simply on the Kerr report when they inserted into their motion ideologically inspired and partisan proposals that would have the effect of undermining the national health service in Scotland. However, I want to begin by focusing on the report, which makes a major contribution to developing an NHS in Scotland that, as the title of the report suggests, needs to be "Fit for the Future". Indeed, the report's main objective of ensuring that most health services continue to be provided at a local level fits in well with the vision for the national health service that the Scottish Liberal Democrats have long advocated. We have no doubt that the Kerr review should mark a turning point for the way in which the NHS operates throughout Scotland.

Some of Kerr's proposals will have a real impact on the national health service. His proposal to take action with anticipatory care chimes well with the Liberal Democrat emphasis on focusing on preventive health measures such as free dental and eye examinations for all. We have also delivered a new emphasis on health promotion by tackling issues such as sexual health, smoking, alcohol, lack of exercise and poor diet. The proposed creation of community casualty units for the provision of the vast majority of hospital-based unscheduled care is a major and welcome step. In addition, his proposal to support our remote communities by developing networks of rural hospitals and establishing a school of rural health care is an excellent idea that the Scottish Liberal Democrats whole-heartedly support.

However, before I venture too far in giving a 100 per cent welcome to Kerr, I must flag up an issue that causes concern. Although I absolutely accept the proposition that specialised or complex care needs to be concentrated on fewer sites to secure clinical benefit, I am somewhat disturbed to see that, for neurosurgery, he recommends

"a networked approach from a single hub."

Although I agree entirely that we need to provide highly specialised services such as heart operations and neurosurgery on a limited number of sites, I cannot envisage much support for neurosurgery being limited to a single Scottish location, wherever that may be. I welcome the opportunity to flag up such issues in today's Opposition debate, but I look forward to engaging in the Executive's extensive debate on the issue when we return from the summer recess. We should have far more time to debate the issues in depth.

Brian Adam (Aberdeen North) (SNP): I share the member's concern about the proposal to concentrate some specialist procedures on one site. Distance is a problem not only between Wick and Inverness but across Scotland, so providing and directing care from one centre is not the route to take. Does he agree that it would be much better to have a managed clinical network approach, provided that we can get cross-boundary arrangements among health authorities?

Mike Rumbles: I completely agree with Brian Adam on that point.

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

Mike Rumbles: I have just taken one. I will come back to the member later.

The Conservative motion before us today raises other issues. I cannot understand the Conservatives' reluctance to welcome good news when they see it. All the Scottish Executive's

commitments to reducing the very long waits that patients suffer have been achieved. Everyone with a guarantee has been seen in the timescale envisaged. I can tell Mr McLetchie that, as a constituency MSP, I used to be inundated with complaints from constituents about the length of time that they had to wait to be seen. By the end of this year, no one with a guarantee will need to wait more than six months. That is a real achievement compared to the situation that existed when the Conservatives were last in power.

David McLetchie: Will the member give way?

Mike Rumbles: I will do so in a moment, but let me make my point.

Perhaps that is the real reason why the Conservatives now say, as Mr McLetchie did today, that they will no longer bandy about statistics. What a cheek. Mr McLetchie knows that the statistics are all pointing in the right direction.

David McLetchie: If the statistics are all pointing in the right direction, can Mr Rumbles tell us why waiting lists in Scotland are higher today than they were in 1997 and why the median waiting times for out-patients and in-patients in Scotland are higher today than they were in 1997? They seem to be pointing in precisely the opposite direction.

Mike Rumbles: That is precisely the kind of bandying about of statistics to which I referred. David McLetchie has just talked about the numbers of those on the waiting list; I am concerned about waiting times, or how long individuals need to wait—an issue that the Scottish Liberal Democrats got into the partnership agreement. David McLetchie is not listening to the points that everyone is making. He seems to be cloth-eared.

Let me keep with the Conservatives' motion for a moment. One part of it states:

"a truly patient-centred NHS will be possible only if purchasing power is put in the hands of patients".

I could not disagree more, because what David McLetchie means by that is patient passports, which would take patients straight out of the national health service. To allow patients to be able to afford private health care, the Tories would give them a direct subsidy of money that had been earmarked for the national health service. No wonder the Conservatives no longer dare to mention patient passports, as everyone knows what they mean by that. David McLetchie's plans would undermine the national health service, and he knows it. There is nothing wrong with engaging the private sector to provide much-needed health care, but the fundamental principle of the NHS must remain that patients are not required to pay

for their treatment. Health care needs to be free at the point of use.

The Conservative motion goes on to call for the establishment of foundation hospitals, as in England. The Scottish Liberal Democrats oppose that initiative, on the ground that it would give a false impression of competition. The initiative would not work in Scotland, where many patients, especially in rural areas, do not have a choice of hospital.

There is no way that the Scottish Liberal Democrats can support the motion, which strikes at the heart of the national health service in Scotland and would be a disaster for the people of Scotland. I urge members to throw out the Conservative motion and to agree to the Executive amendment.

10:05

Mary Scanlon (Highlands and Islands) (Con):

I thank Rhona Brankin for taking the time to meet representatives of the Society of Chiropodists and Podiatrists last week. That was much appreciated. I also thank Carolyn Leckie for reminding us what the SSP is all about. If the party is looking for a new slogan, I suggest, "Remember Trotsky and forget the patients." That would be most appropriate.

In his report, Professor Kerr outlines the dominant issues that are of concern to the national framework advisory group. He is right to raise those issues again, as for the past six years we have been promised that they are being addressed. The report refers to

"Maintaining high quality services locally",

but we face current threats to downgrade hospitals in the Highlands and elsewhere. It also mentions "Improving waiting times", but waiting times have got worse. I say to Mr Rumbles that the waiting list has increased by 22,000 since the Parliament opened in spring 1999.

Another issue that Professor Kerr highlights is

"Supporting Scotland's remote and rural communities"—

tell that to people in Argyll and the islands. He mentions

"Using new technology to improve the standard of care",

but we still do not have joined-up information technology services. Also of concern is

"Reducing the health gap between rich and poor".

If someone can pay for a dentist, podiatrist, hip operation or care home, they get the service instantly. If they cannot, they wait and wait and wait.

This is an excellent report. However, as David McLetchie said, it cannot be implemented using the existing approach—the past six years have proved that. Over the six years of the Parliament's existence, we have been told by three health ministers that, if something can be done in primary care, it should be done there. The problem is that, under the Tories, things were being done in primary care. The advent of GP fundholding was the driver for more care, more treatment and more services to be offered as near the patient's home as possible. Dr Richard Simpson, a Labour MSP during the previous session, often acknowledged that. When the Labour Government ended fundholding, nothing was put in its place to drive forward care and treatment in the primary care setting.

The Kerr report also focuses on patient choice and seamless care across health, social work and all sectors. We all voted for free personal care and more care in the community. However, that is a major thrust of the Kerr report, because it is simply not happening. Either the Labour-Liberal Executive is not giving councils sufficient resources or councils are using money that is earmarked for care of the elderly to fund other services.

This week a lady in the Highlands came to my surgery regarding her mother's move to a care home. Like many others, her mother has fallen into the category of bed blocking, or delayed discharge, through no fault of her own. The figures for delayed discharge are higher now than they were at the inception of the Parliament. In a letter to the lady, Highland Council social work department states:

"Unfortunately the situation at present is that all funding available for the purpose of addressing delayed hospital discharge is fully committed, and therefore we have to operate a waiting list for care home placements."

There used to be a waiting list for people to get into hospital, but now there is one for them to get out.

The letter continues:

"I have ... reviewed both the current waiting list and the amount of resource released",

and

"I am sorry to have to reply to you that I see no immediate prospect of being able to provide funding".

The concerns of the patient in this case are certainly not being put first. I would understand the council's inability to provide funding if we were at the end of the financial year, but the letter is dated May. We are two months into the financial year, but the social work department has no money.

Rhona Brankin: Will Mary Scanlon accept that in recent times there has been a sustained

reduction in delayed discharge? Will she welcome that?

Mary Scanlon: No, because there has been no such reduction. The Highland Council has an enormous waiting list. The information and statistics division figures do not prove the minister's claim. Funding for a bed in the NHS is about three times greater than funding for an independent care home place, but people cannot be moved on. Of course, if someone can self-fund they will be placed immediately. Those who can pay get the place and care that they need, and those who depend on council funding must wait and wait and wait.

We are all led to believe that there is a national shortage of dentists, but this week NHS Highland informed me:

"There are also 10 dentists who have expressed an interest in joining the service as soon as further opportunities arise."

However, those dentists have no premises. We have 10 dentists with nowhere to go, at a time when thousands of people across the Highlands are desperately waiting for treatment.

Rhona Brankin: Will the member give way?

Mary Scanlon: No—I am in my final minute.

Let us consider the issue of investment. The previous Conservative Government's real-terms spending on capital equipment was £65 million per annum, on average. In Labour's first seven years, average spending on capital equipment was £48 million—a fall of 35 per cent. Professor Kerr is right to highlight that issue.

Murdo Fraser (Mid Scotland and Fife) (Con): Labour cuts.

Mary Scanlon: Absolutely.

Is it not sad that the eminent professor must tell the Liberal-Labour Executive to

"establish a clear policy about what patients in Scotland want in the way of choice."

That is sad, but it is necessary. I hope that this time the Executive will listen to Professor Kerr and the patients. I support the motion.

10:12

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): If Elton John, the man who famously spent £293,000 on flowers in a mere 20 months, can lecture us on world poverty, I suppose the Tories can lecture us on the national health service.

When the Kerr report was published, it received a favourable response all round and, having read the report over the past week or so, I concur with that response. There is much in the report that will

give us plenty of food for thought over the coming months. Professor Kerr's proposals offer a more strategic view of how we should deliver health services in Scotland as a whole. They contain an implicit criticism of the failed board-by-board approach to service reorganisation, which led to such disasters as the discredited Argyll and Clyde clinical strategy.

I do not understand how the Tories can welcome the report and, in the same breath, call for any sort of strategic planning to be abandoned. I know that there is some disquiet in the Tory ranks—there is talk of splits and defections—but I did not think that things had become so bad that they were arguing with themselves even in the motions that they lodged. The Tories want design decisions relating to the health service to be handed over not to patients, as they allege, but to vested interests—hospitals and the professionals who dominate the service. They say that their market-led chaos theory would deliver a better service, but it was hardly a roaring success when they ran the NHS in the past. This morning reference has been made to trusts, which were bad enough.

Carolyn Leckie: Will the member take an intervention?

Mr McNeil: No.

We saw what happened when individual health boards hunkered down behind the Berlin walls of artificial boundaries, and dreamed up grand reorganisation plans with no regard for the outside world, for neighbouring authorities or for the people to whom they delivered services. In Argyll and Clyde, maternity services for up to a quarter of the Scottish female population were to be concentrated in two hospitals that were 7 miles apart, as were consultant-led in-patient services for 800,000 women and children in the West of Scotland. What on earth would the system be like if it were even more insular and disjointed?

The Tories say that they want local, non-centralised health services. Good—don't we all? However, they cannot condemn centralisation and at the same time advocate renouncing all our powers to do anything about it.

Carolyn Leckie: Will the member take an intervention?

Mr McNeil: No thank you.

Having continually done battle with the vested interests in the national health service over the years, I have learned that we—the only elected element in the decision-making process—have the least power. Why should the power of our voices and, by extension, of our communities' voices be even further diminished? That would be the effect of the Tory policy. Our communities elect us to improve services, not to abdicate responsibility.

On one point the Tory members are correct: if we are to have the level of services that we want and deserve, the NHS must reform. Where we are now, or where we were a few years ago, is not good enough. Before the explosion of public fury over the latest round of unpopular clinical strategies—almost a year ago to the day, in the case of Argyll and Clyde NHS Board—I was not exactly overwhelmed with letters telling me that the NHS was perfect.

The Kerr report proposes a number of far-reaching reforms, which I look forward to debating in the Health Committee in the coming weeks. I applaud Kerr's intention to move away from the idea of the patient merely as a passive recipient of health care. Patients' interests, and not the interests of doctors, managers or politicians, should be the starting point for service design, with more services being delivered locally.

Miss Goldie: Will the member take an intervention?

Mr McNeil: No—I have run out of time.

The raft of far-reaching reforms that Professor Kerr proposes will be examined and debated in the coming months. During those considerations, we will have to focus on the basic ethos of the national health service, which still commands universal public support. That ethos is that free and comprehensive care should be available to all. The challenge to politicians of all parties here will be to provide genuine leadership and to create a compelling vision of where we are taking our health service. That will be our test in the coming months.

10:17

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Presiding Officer, I begin by offering my apologies for my having to leave the debate before its conclusion because of other commitments.

On Monday this week, I had the pleasure of attending a new Maggie's Centre at Raigmore hospital in Inverness. It was an extremely happy occasion. I know that the minister has taken a very close interest in such matters; some years ago, she spoke very courageously about her own experience. That improvement at Raigmore has followed other improvements. For example, there is a new accident and emergency unit and a new breast clinic. Staff have told me of many other services that are now on their wish list, which include a day-care centre for ambulatory care. We are seeing improvements in the NHS and it behoves us to acknowledge that because debate on it has, from time to time, been characterised by a jarring and malignant tone.

It is relevant to point out that there would not have been a Maggie's Centre in Inverness had it not been for the generosity of numbers of individuals and families in Scotland, such as the MacTaggarts and the Cayzers. Those people made their money in a private sector that some people think should be banned. We should all give our whole-hearted support to the philanthropic efforts of people who want to give something back to Scotland.

In the short time since publication of the Kerr report, I have sought to consult people in my constituency and I have to say that the report has been broadly welcomed. A number of GPs have said that they like it and welcome the fact that the significance of rurality and transport problems have been recognised. There is a suspicion that NHS politics will stifle some developments and prevent their being realised, but the initial reaction has been to offer broad support.

I want to talk about the recommendation on page 31 of volume 2 of the Kerr report, in which Kerr recognises the impact of the working time directive. The hours of junior doctors will be reduced by 40 per cent by 2009. Kerr concludes that a rural general hospital model should be central to providing services in rural areas. I fully support that recommendation and I want to stress how important it will be to the Highlands—not solely to the Belford hospital in Fort William in my constituency, but in other Highland towns such as Oban and in island towns such as Kirkwall, Lerwick and Stornoway. In the light of Professor Kerr's strong recommendation, does the Executive now accept the model of a rural general hospital? I hope that the minister will comment on that.

Kerr has not defined precisely what the rural general hospital model should be. He talks about "core services", but what are the core services? I have spoken to consultants at the Belford hospital over the past few days and I suggest that, at core, a rural general hospital should be a hospital in which services are consultant led. Obviously, the services would not always be provided by consultants, but they should be consultant led and should be provided 24 hours a day. Those services would include general medical services and surgery. To me, those are the core services.

I am no expert and I am not a health professional, but I do know about the importance of places such as the Belford hospital. Over three months from January to March last year, a study was carried out by consultants and others at the Belford, which sought to calculate and quantify the impact of downgrading the hospital and of loss of consultant services. That study proved that the number of emergency admissions that would have to leave the area would increase by three or four times. Those people would also have to travel

huge distances over long periods. The study also showed that the number of elective surgery treatments that would have to be dealt with elsewhere would increase by about 200.

Does the minister accept the importance of generalist training for the workforce in the new rural general hospitals? I certainly welcome the recommendation to establish a centre for that purpose. Logically, it should be in a rural part of Scotland—preferably in my constituency. I hope that the minister will acknowledge the importance of training generalists. If such training is not provided, where will we find the consultants, nurses and allied health professionals to staff the rural general hospital model in the future?

I believe that the kernel of the Kerr report offers a blueprint that will serve Scotland well, and will serve rural constituencies such as mine very well indeed.

10:23

Kate Maclean (Dundee West) (Lab): I welcome Professor Kerr's report and I note that many of its findings mirror those of the Scottish Parliament Health Committee's report into workforce planning. However, I reiterate a point that I made at the Health Committee when the then Minister for Health and Community Care announced the commissioning of the Kerr report. I said that the report would have been better commissioned six years earlier, before many controversial decisions on NHS facilities had been taken. We have had reviews of acute services and maternity services, and changes to the GP and consultant contracts, which will make it harder to plan service delivery around the recommendations of the Kerr report. However, that is where we have now to start from.

In opening the debate, David McLetchie said that he regretted the Conservatives' having to use their time to debate the issue because the Executive refused to debate it before the recess. I suspect that David McLetchie is actually delighted that the Tories have again had the opportunity to have a go at the NHS and the Executive.

I agree with the Executive that we need to have an informed debate about the report, but I do not think that we have had time to consider it fully. The Health Committee certainly hopes to take evidence on the report, and I would welcome that opportunity's being given before we debate the report in full. I would also like the opportunity to speak to local service providers and service users in my area before we come back for a full debate on the Kerr report in Parliament.

David McLetchie also said that patients are not receiving the level of services that they demand and deserve. Having listened to a few speeches and read some of the comments in the press since

the report was published, I note that people are saying, "Kerr says this," or "Kerr says that." They are interpreting what Professor Kerr said based on their own political ideologies or geographical situation, but I do not think that Professor Kerr is saying that we should consider centralisation versus local delivery, or that local delivery is better. What he appears to be saying is that the appropriate care should be given at the appropriate time in the appropriate place. I would have thought that everybody, wherever they come from geographically or politically, should be able to sign up to that.

I have seen evidence of that recently. A close relative of mine had a heart attack just over a week ago. The first care that he received was at Victoria hospital in Kirkcaldy, and he was then moved to the Western general in Edinburgh for angioplasty. The care that he received was excellent and he certainly thinks that the move from the Victoria hospital to the Western general was seamless. I understand that the stent that was used in the operation cost more than £3,000. That does not include the cost of all the care that he received or the other costs that were associated with the operation. He got what he needed when he needed it and where he needed it. It was appropriate that the care that should be provided locally was provided locally, and that the care that should be provided at a specialist centre was delivered in a specialist centre in Edinburgh. All the staff who attended to him did an excellent job: auxiliaries, paramedics and all other staff with whom he came into contact.

That leads me to the problem with having a debate such as this, when the debate is relatively uninformed. When we held a public debate in the chamber on reshaping the NHS, Jim Devine of Unison said that for every person who has a bad experience with the health service, thousands of people have excellent experiences and have no complaints. I do not want to suggest for a minute that we should not have a debate about health—it is an important issue and it is where a lot of money goes—but I do not think that it should be used as a political prop in the chamber, as it often is. We can understand that it must be demoralising for staff to come to work every day when all they read in the press is reports from politicians about what a rubbish service they are delivering. Politicians obviously say that they are not blaming the staff; everybody would say that health service staff do a great job and that it is the Executive's fault or somebody else's fault—

Alex Johnstone (North East Scotland) (Con): It is the Executive's fault.

Kate Maclean: That is what the Opposition says, but if members of staff are working really hard to try to deliver a service, it is demoralising to

read that or hear it on the news before they go into work every day to try to deliver the best service that they can, which is an excellent service 99.9 per cent of the time.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Will Kate Maclean take an intervention?

Kate Maclean: I am just about to finish. It is certainly not because I am worried about any questions that he may ask that I am refusing Mr Monteith's intervention; it is just because I am about to finish.

I hope that we can take time over the recess to digest the contents of Professor Kerr's report fully and to consult local service deliverers and users. I look forward to coming back after the recess and to having an informed debate about the report.

10:29

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Today's debate is a welcome opportunity to raise many issues of concern about our health services, and to highlight the recommendations in Professor Kerr's report, which was presented to Parliament recently. Like many other members, I particularly welcome Professor Kerr's report, which clearly identifies some of the major problems in current provision of health services. More particularly, it makes sensible and practical suggestions on how improvements could be achieved and implemented quickly.

I have been an elected member in the Highlands for many years—more years than I care to remember—and during that time I have been involved in many campaigns that attempted to retain and protect our rural health service provision, particularly the excellent services that have been provided by our small community hospitals and their dedicated staff. However, our entreaties invariably fell on deaf ears—or on stony ground—with successive health boards, which inevitably resulted in drastic reductions in locally available health services.

Fergus Ewing mentioned the hospitals at Lerwick, Kirkwall, Stornoway and Oban, but he missed out the most important island of all—the island of Skye. The MacKinnon memorial hospital on the island of Skye previously had a full-time surgeon and a consultant anaesthetist, which allowed the dedicated team there to undertake most surgical provision for that community. That provision, of course, is no longer available because successive Highland health boards have not been prepared to continue funding a full-time anaesthetist at a cost of £250,000 per annum. That has resulted in all emergency surgical patients being transferred to mainland hospitals for treatment, some of which are 100 miles distant.

However, in the Kerr report there is a bright light on the horizon, which strongly suggests that far more use must be made of community hospitals, where patients can expect to have their health needs attended to locally and in their own hospital. Why not? If the facilities are available, let us make sensible use of them. If cost is to be the main impediment, let us consider and calculate the cost that is associated with the loss of a life through lack of surgical services in rural Scotland.

Like many other members, I congratulate the Minister for Health and Community Care on commissioning the Kerr report. I hope that in the months ahead the Executive can be encouraged to support many of the suggestions that are made in the report. By strengthening provision in our community hospitals, which is strongly recommended in the report, we will see an immediate and welcome reduction in current waiting times that we hear so much about every day. Far more important is that we will also restore confidence in our national health service, which is the envy of the developing world.

10:34

Ms Sandra White (Glasgow) (SNP): I note once again how quick off the mark the SSP speaker has been in leaving the chamber. I would like it to be noted for Carolyn Leckie's benefit that the SSP does not have a monopoly on socialist principles. Many of us here have been espousing such principles since long before the SSP was established and will be espousing them long after that party's demise. I hope that she reads the *Official Report*. It is typical of the SSP to say something and then not to stay for the rest of the debate. I hope that Carolyn Leckie will answer me if she comes back.

I welcome the opportunity to debate certain aspects of the Kerr report. However, I cannot say that I thank the Conservative party for using its time to debate the report, because all that we have heard from the Tories is the usual diatribe about further privatisation of the health service. I am not the only one who is worried about that; even the BMA is concerned about the creeping privatisation of the health service. In its briefing, which we all received, the BMA said:

"The BMA remains concerned that the Scottish Executive"—

not just the Tories—

"is increasingly considering expanding private sector involvement in the provision of NHS services".

Perhaps the BMA knows what we know, which is that there is not a great deal of difference between the Tories, Labour and the Lib Dems. The minister and other members on the coalition benches should think about that.

Mr Monteith: Will the member give way?

Ms White: I am sorry, but I am short of time as it is.

I whole-heartedly agree with the great emphasis that the Kerr report puts on consultation of the public, but I am concerned about decisions that were taken before the report was produced. I cannot agree with Kate Maclean's view that we should have more time to discuss matters, because the big problem—especially in the West of Scotland—is that decisions have already been made and are, as has been said, not reversible.

As we all know, the consultation process in the West of Scotland was less than perfect; indeed, it was deeply flawed. It led to countless protests, petitions and public meetings. I am concerned that, in his statement to the Parliament, the Minister for Health and Community Care said that the Kerr report

“will not be used to reopen decisions that have already been made.”—[*Official Report*, 25 May 2005; c 17155.]

The minister has reiterated that. However, I think that those decisions should be re-examined, especially in the light of the situation involving Argyll and Clyde NHS Board that has materialised over the past few months.

Jackie Baillie (Dumbarton) (Lab): For the sake of accuracy, does the member accept that NHS Argyll and Clyde has not taken a decision on the acute part of its clinical strategy and that that is set aside?

Ms White: I take on board what Jackie Baillie says, but the position of Argyll and Clyde NHS Board has a significant knock-on effect on the situation in Glasgow, where a decision has been taken to have only two full accident and emergency-equipped hospitals. As Jackie Baillie will know from consultation of her constituents and from meetings that she and I have attended, people want to come to Glasgow for services, but the decisions of Argyll and Clyde NHS Board and the Executive will have a significant impact on Glasgow. The issue must be revisited because it is not enough to have only two A and E hospitals for Glasgow, West Dunbartonshire and other areas. I had hoped that this morning's debate would allow us to probe the issues in the Kerr report, but unfortunately the Conservatives have not given us the opportunity to do that.

The position of maternity hospitals is not mentioned in the Kerr report. That issue, too, was the subject of flawed consultation. The people of West Dunbartonshire and the West of Scotland as a whole went to public meetings and signed petitions and there was a great deal of unrest. We still do not know what will happen to the Yorkhill hospitals, where maternity services in Glasgow will

be sited or when they will be moved elsewhere. Those questions must be answered. I had hoped that the Conservatives would seek to obtain such clarification during the debate, but it seems that written questions to the minister will be necessary.

We cannot afford to wait until after the recess. I am disappointed that we will not debate the issue for another few months because we do not know what decisions will be taken. I asked the minister what advice and guidance had been given to health boards in the past and what advice and guidance they would be given now, but I have received no answer. We must wait another three or four months, but we do not know what decisions the health boards will take in the meantime and what impact that will have on users—patients and the public—and the professionals who work in the health service. We should have had an answer, but by the time we get one, it may be too late.

Many members have spoken about staff retention and recruitment—an important issue about which there is a great deal of concern. A written answer from the minister shows that, in 2004, the number of medical graduates from Scottish universities fell by 61 to 727. At the same time, the proportion of those graduates who went to work outside Scotland rose from 9 per cent to 12 per cent. That is worrying. We must find out why we cannot solve that problem and keep staff here. If we intend to implement the Kerr report, we must get that right—we must ensure that we have sufficient staff to further the report's recommendations.

I turn to an issue that I would like the minister to take up. Medical students at the University of St Andrews do a three-year course in St Andrews, but then go to the University of Manchester to finish their degrees.

Christine May: Will the member give way?

Ms White: I am sorry, but I am in my final minute.

By the minister's own admission, medical students who study at St Andrews enter the health service down in England. They spend three years at university in Scotland, but cannot continue their course without going to England. I want to know why that is the case. Surely it must be possible to ensure that we retain those graduates.

10:39

Miss Annabel Goldie (West of Scotland) (Con): As the motion in the name of my colleague David McLetchie makes clear, this morning's debate provides a welcome and necessary opportunity to debate the structure of the national health service in Scotland post the Kerr report. It

would have been helpful and timely if the Executive had offered such an opportunity sooner.

As someone who lives in the middle of the beleaguered Argyll and Clyde NHS Board area, I am no stranger to the challenges and difficulties that confront the NHS in Scotland and I am certainly no stranger to the frustration, bewilderment and anger that constituents who live in that area have expressed about an administration that, over the past four to five years, has been characterised by crisis and dogged by lack of confidence.

Let me outline the damning chronicle of events. In 2001, the Minister for Health and Community Care had to send in a management task force to investigate the scale of mismanagement. That team found a culture of managerial and financial incompetence and a deficit that was projected to rise to £100 million in 2007-08. In 2002, four senior managers resigned. As Audit Scotland's report and the recent report by the Audit Committee disclosed, matters deteriorated further. The ensuing crisis induced the recent ministerial statement.

The human face of all that is represented by the patients who have grappled with threats to maternity services at Inverclyde royal hospital and Vale of Leven hospital, the closure of A and E services at Vale of Leven, the removal of consultancy-led maternity services from both hospitals and an ever-increasing reliance on the already overstretched resources at the Royal Alexandra hospital in Paisley. That outcome presented tensions and anxieties for patients, not to mention the sheer practical challenges of transportation.

A deep-seated and corrosive lack of confidence in governance at both Scottish Executive and local levels has developed among patients and professional workers in the NHS. I commend the professionalism and dedication of health service workers in Argyll and Clyde during what have been very trying times. The malaise to which I have referred is accompanied by a palpable cynicism that no one is listening and no one cares. Six years down the road of devolution, who would have thought that such an impasse could have been reached in the delivery of such an essential public service?

The recent declaration that the days of NHS Argyll and Clyde are numbered has simply exacerbated the low morale and cynicism. I repeat the call that I made on the day of Mr Kerr's statement for the Executive to assume interim responsibility for the administration of the board's affairs—that is the only acceptable way forward.

Quite simply, we are in a state of flux. There is no doubt that the Kerr report has implications for

the Argyll and Clyde NHS Board area. The former regime drew up proposals for the closure of the Victoria infirmary in Helensburgh, the Dumbarton joint hospital, Ravenscraig hospital in Greenock and the mental health hospital at Lochgilphead. Are those proposals to be withdrawn or are they to be put on ice and, if so, for how long? How can the Kerr report be considered for the Argyll and Clyde area, who is to do that and what strategy is to be deployed?

For all those reasons, the only sensible way forward is for the Executive to run an interim administration. We are talking about the most crisis-fraught health board in Scotland. The people in the area and the professional workers who work in the service need leadership, guidance and reassurance. Heaven knows, the people of Port Glasgow, Greenock and Gourock are due that minimum reassurance after all they have been through, as are the people of the Vale of Leven, Helensburgh, Dunbartonshire and the surrounding area.

I turn to the broader platform of the debate. There must be a genuine debate on whether the present system of governance of the NHS and the mechanisms for the delivery of health care in Scotland are working. The patients of Argyll and Clyde would say resoundingly that they are not. They want more control over and a greater say in how and from where their health care services are procured. At the moment, they feel uninvolved in, disengaged from and powerless to influence such matters. That situation is unacceptable and, in a devolved Scotland, unsustainable.

Jeremy Purvis: Under the Conservative policy that would have each NHS hospital operate as a company limited by guarantee, what public involvement would there be?

Miss Goldie: As Mr Purvis will be aware, the proposal for foundation hospitals is not analogous with that structure. From speaking to staff in one of those hospitals, I can tell him of their clamant desire to have more control over and say in how their hospital is run.

We have to contemplate reforms that put the patient in the driving seat, offer them choice and increase capacity. If the Parliament really cares about patients, those proposals cannot be consigned to some no-go ideological cul-de-sac. It is a matter of regret that there has been little response to those proposals except from the Conservatives, who have tried to introduce new thinking and to instil, instigate and encourage debate.

Mr Kenneth Macintosh (Eastwood) (Lab): Will the member give way?

Miss Goldie: I cannot; I am in my last few seconds.

The independent sector can support the efficient provision of a public national health service without impugning or threatening in any way the valued ethos of the NHS. Sadly, the abolition of NHS trusts, which was supported by the Executive parties and the Scottish National Party, has led to the loss of meaningful local control and has directly contributed to the centralisation of services that we are now seeing throughout Scotland. That process has made the patient remote from what is happening and from the decision making that causes it to happen. That is not acceptable and it is not sustainable. I support the motion in David McLetchie's name.

10:46

Helen Eadie (Dunfermline East) (Lab): The clear point that emerges from the Tories' criticisms of the Scottish Executive for not holding a debate prior to the summer recess is that Tory members appear not to believe in hearing the opinions of their constituents or of the various stakeholders across Scotland. As the Tories do not have a track record of listening to what people say, it comes as no surprise to me or to anyone else in the chamber that they want to make pronouncements and to have debates before they have had the opportunity to hear what those opinions are. After all, when did the Tories' representatives ever turn up at health board meetings or at the liaison meetings that we hold with health board representatives in order to hear at the local level what the professionals have to say? I am therefore not surprised that the Tories do not want to listen to what people in Scotland have to say.

Mary Scanlon: Will the member take an intervention?

Helen Eadie: No, not at this point—I will later on.

I disagree with the point that Sandra White made about the Executive not having time to listen to what the people of Scotland are saying. As Kate Maclean said, we have to take time to hear what they are saying. She argued that we should engage with our constituents, hold meetings with the professionals, hear people's opinions and come back after the Parliament resumes in the autumn to debate the issue on an informed basis.

Sandra White also referred to students at the University of St Andrews. Obviously, she is not up to date on the issue—I quite understand that, as she is not a Fife person and so would not be aware that an agreement has been reached between all the agencies involved. Christine May, who is sitting behind me in the chamber, can give Sandra White chapter and verse on the developments that are to take place and the resources that are to be made available. Instead

of all trainees being sent to Manchester as a matter of course, the first group of trainees will go to the Randolph Wemyss memorial hospital in Fife. Everyone in the chamber ought to know about that welcome development, which many members have campaigned for and of which the Health Committee was made aware.

David McLetchie said that the increase in resources did not lead to a corresponding increase in productivity. That is simply not true. I notice that David McLetchie never stays to listen to what back benchers have to say—yet again, he has walked out on a debate. I point him to a report that Dr Andrew Walker, the Health Committee adviser, prepared for the committee, in which he considered a range of conditions from hip and knee replacements to angioplasty and cataracts. The figures show the real productivity increases from 1997 to 2003, including, in some instances, a fivefold growth in the number of procedures that are carried out each year. It is disingenuous of Mr McLetchie once again to distort the facts. However, as the journalists always say, why let the facts stand in the way of a good story? Mr McLetchie needs to be taken to task on the issue.

Mr Monteith rose—

Helen Eadie: The British Medical Association Scotland and the Royal College of Nursing Scotland kindly sent members some useful information, which supports my argument that the changes that are taking place are making a difference. The BMA and the RCN highlight initiatives that are improving patients' access to hospital services. Some of those initiatives are preventing hospital admissions—after all, that is the name of the game. The BMA is clear in saying:

"The telemedicine unit based in the A&E Department of Aberdeen Royal Infirmary provides a direct link for GPs in community hospitals to A&E specialists who can offer advice on treatment. The sleep clinic at the Edinburgh Royal Infirmary is providing patients with equipment to enable them to manage their conditions at home and, in Dumfries and Galloway, dermatologists are encouraging patients to manage their own conditions and provide regular telephone consultations preventing the need for patients to travel, often great distances, for outpatient appointments."

I will now take Brian Monteith's intervention.

Mr Monteith: The member drew the attention of the chamber to the fact that David McLetchie has temporarily excused himself from the debate. Clearly, the evidence is there on his desk that he is coming back, but will she tell me why the Minister for Health and Community Care is not in the chamber for such an important debate? We have only the junior minister—perhaps health is a junior item on Labour's agenda. [*Interruption.*]

Helen Eadie: I am getting all sorts of advice, but I have absolute confidence in the approach that

our ministers take to partnership and equal responsibility. The Deputy Minister for Health and Community Care has more than shown that she is up to the challenge. She is one of the best deputy ministers that the Parliament has had—of that I have no doubt.

As ever, the Tories have focused disproportionately on acute services when, as we know, the report rightly emphasises the fact that 90 per cent of the care that is provided to patients in their local communities takes place primarily in general practice. I make that accusation not only of the Tories but of the SNP. Yet again, Bruce Crawford distorted the facts this morning; like others, he does not let the facts stand in the way of a good story. He knows, as Scott Barrie and I do, that there will continue to be a casualty service at the Queen Margaret hospital. We will continue to campaign for the resources that Fife needs in order to get the right for Fife solutions. There are big challenges and we have to tackle them.

The debate this morning has not been about the issues; it has been about political capital gathering. Members of the Health Committee have been well informed through our discussions with our constituents and our visits across Scotland. The issue is much too important to be used as a political football. It is time that members of the Scottish Parliament reached consensus on the need to press forward together to ensure that the health service in Scotland is one of the best in the world. That is what we have to deliver for our people in Scotland.

10:53

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): The Kerr report is excellent and will provide the blueprint for the next 20 years. I admit that I was scared to read it when it first came out. My experience of reports is that they either gather dust on the shelf or destroy things for the future. I hope that we can learn from the past.

The first report that I remember as a young doctor was the Salmon report. Although I never read it, I suffered from the implications of its implementation when I was an anaesthetist in the Southern general hospital. Experienced nurses were taken out of their own wards and put in charge of about eight wards. Patients who were undergoing emergency anaesthetic and surgery had to stay in the recovery room an awful lot longer than would previously have been the case, because we had to ensure that they were safe to return to their ward. Two young nurses were looking after what was like a Nightingale ward and, although they were keen, they were terrified out of their wits—the only person looking after them was a senior nurse on a rotating shift. As a result of the Salmon report, we lost matrons, whom everyone

now wishes we could bring back. I would like to think that we will gain knowledge from the Kerr report and think about it with due care and attention.

When I think back to my time in anaesthetics and theatre in the Southern general, I remember the Monday orthopaedic list. It started at 9 am, when the first patient was put on the table; the last patient probably came off it at 9 pm. That was because we had to add in the emergency work from the night before and from that morning, as well as feeding through our elective cases. That happened practically every Monday. The Kerr report tries hard to separate elective work and emergency work, which is an important point.

I wonder why it has taken so long for everybody to realise that doctors and nurses cannot work efficiently on long hours. It has been 40 years since I qualified, but only now are decent hours being applied to doctors, as a result of the working time directive, which will make a lot of difference to how we implement the report.

Much has been said about recruitment, retention and the fact that young doctors who want to start their careers leave medical school with adequate qualifications but cannot get places. The situation is similar for nurses. In addition, all allied health professions say that there are people who want to do the job but do not have a job.

I say that the Kerr report is a good report because it sets out the way in which I worked for 25 years in general practice and therefore I understand it. Its proposals describe the way in which Stobhill hospital, which provided secondary care, and the doctors round about it, who provided primary care, worked together. We had integrated working care, in which the patient came first. We had no waiting lists of any significance. We looked after our patients, who were seen as urgently as they needed to be seen; we could pick up the phone and speak to a consultant and, if we required results, we got them back very quickly so that we could keep the patient in the community.

There was no difficulty with our trying to keep our patients in the community and in their own homes, which is where they wanted to be. Nurses are necessary for that to happen. I am sad to say that, in the 1990s, there was a move to take away our district nurses. We had wonderful district nurses and health visitors, who are needed to help to keep people in the community. When they are scarce, it becomes unsafe for patients to come out of hospital quickly. General practitioners need hospital beds for patients who need to go into hospital for assessment. Stobhill had a general hospital side to it, but we always said to the hospital, "For goodness' sake, send them out as quickly as possible; we're very willing to look after them."

The other thing that I love about the report is that it takes account of chronic conditions. We cannot ignore all the chronic conditions, as we seem to be doing at the moment by not getting our chronic pain clinics up and running. According to the McEwen report, we could save about £1,000 a patient on drugs if we could get such clinics up and running. We would also free up some time for general practitioners and consultants in the hospital service.

We need more doctors in primary care and we need more nurses, pharmacists, physiotherapists and speech therapists—you name it, we need it. I also note that, as the RCN highlighted, we need to improve the health of children. Therefore, I would like school nurses and school medical examinations to be reinstated.

GP fundholding was a two-tier system and I do not want it back. Foundation hospitals might easily end up doing the easy work and leaving the NHS with the rest. We need quality and continuity of care and patient safety. There are too many stories of patients from the private sector ending up in the NHS needing to be fixed after things have gone wrong. I am suspicious of joint ventures—everybody knows that—and a lot of people and bodies, including the BMA and the RCN, have written to me saying that they are anxious about them.

No doctor whom I ever knew would have invented NHS 24, but we now have it. That shows what happens when we rush into implementing throughout Scotland an idea from south of the border when we are not organised to do so. NHS 24 is well organised and has wonderful information technology, but it has stolen staff from the working sector. I honestly think that anybody who is going to work in NHS 24 should have another job in the acute sector.

I would certainly not get rid of private care, but it does not train doctors and nurses.

10:59

Jackie Baillie (Dumbarton) (Lab): I welcome every opportunity to debate health matters and I came to the debate genuinely interested in whether the Tories had any insights to offer on the Kerr report. Their first offering was to complain that we were not going to debate it soon enough. Given that they said little on the substance of the report, today's debate was a wonderful opportunity for them to lay out their policies.

So what did we hear? Mr McLetchie—who is still absent—talked about reform and choice. I have no problem with either of those concepts, but all we heard from him was a tired, recycled agenda, which was rejected at the ballot box a mere month ago. Yes, there would be choice, but it would be

choice for the few who have access to substantial sums of money and who statistically enjoy better health anyway because of the level of their incomes. People could get the patient passport, which sounds good but would not cover the full cost of treatment. What would happen to somebody who does not have thousands of pounds salted away? To be precise, nothing. The Tories made no mention of people on lower incomes or of the link between poverty and health inequality. Moreover, there was not one word on those matters in their manifesto, because they do not understand them and do not really believe in the ethos of the NHS.

The rejection of the Tories at the ballot box is now the subject of intense media speculation. The Tories are riven by internal dissent and questions of who is up and who is down. I will offer them some free impartial advice, which I am sure that they will not take. Some members might recall the Clash, a popular beat combo from the late 1970s and the early 1980s. One of their songs could have been written for the Tories; it has the lyric:

“Should I stay or should I go now?”

First, we had James Gray as shadow Secretary of State for Scotland. He is gone. He lasted all of a week and was savaged, we are told, by Brian Taylor—surely not that nice man Brian Taylor. Secondly, there was Margaret Goodman, who was deputy chair of the Scottish Tories. She, too, has gone and her parting advice was

“keep topping up the formaldehyde”.

Who will be next? Will it be Michael Howard, David McLetchie or Brian Monteith? Brian Monteith in particular might want to consider the song's next line—

Mary Scanlon: On a point of order, Presiding Officer. Is Jackie Baillie speaking to the motion on the Kerr report on the future of the health service or has she chosen to debate the Conservative party's internal structure?

The Deputy Presiding Officer (Murray Tosh): She certainly began with reference to the debate. She may have strayed, but I suspect that she might be about to tie the next line of the song back into the debate. If she is not, perhaps she should jump a page or two.

Jackie Baillie: As ever, you are extremely perceptive, Presiding Officer. I will give members the next line of the song, because it is worth hearing. It runs: “If I stay there will be trouble”. Brian Monteith should take that as a warning and get out now.

Unlike the Tories, I welcome the values that underpin Professor Kerr's report. Those values are at the heart of our NHS, which is about being fair to all and personal to each. Duncan McNeil is

absolutely right that the patients' interests must be firmly at the centre of our national health service.

That ethos was not evident in NHS Argyll and Clyde, where boundaries mattered much more than geography and patient flow. That is not a criticism of front-line staff who, throughout the piece, continued to deliver excellent care for our local community. I welcome the deputy minister's initial comments on the provision of emergency services, which build on that commitment to us all. I also welcome the support from her and the minister for the integrated model of care that clinicians are developing at the Vale of Leven hospital. That model will provide access to safe and sustainable services on a 24/7 basis that fits with the framework that Professor Kerr has laid out. It also fits well with the principle of delivering services as locally as possible and as specialist as necessary. However, there must be complete transparency in determining what services should be concentrated, which should happen only where a clear clinical benefit has been demonstrated and patients have been involved in the dialogue. I commend the framework that Professor Kerr sets out, which will deliver that transparency.

Annabel Goldie's comments about NHS Argyll and Clyde were disappointing. Her support for keeping the trusts is completely misjudged. The Tories created the conditions for the problems that we are now experiencing in Argyll and Clyde. If Annabel Goldie had seen the internal bickering and systems failure, which were all too evident, even she would not stick to the Tory ideological nonsense that has never served patients well.

I look forward to having a real debate in the autumn, not this shadow-boxing in which the Tories trot out their tired policies. Those policies were rejected by all at the ballot box. How many times do the Tories need to be told?

11:05

Carolyn Leckie: I did not get the chance earlier to explore fully the topics in the Tory motion, particularly foundation hospitals. Rather than creating opportunities for the development and progression of the NHS, foundation hospitals take us back to before 1948. David McLetchie—who is still not in the chamber—said that people who support a publicly owned and delivered, comprehensive and universal NHS are stuck in a 1948 time warp. The Tories are stuck in a pre-1948 time warp. The idea is that foundation hospitals will control their own resources, but that was exactly the policy that created and perpetuated inequalities before 1948, which was what Bevan and all those who supported the creation of the NHS were trying to eradicate.

Foundation hospitals suck in resources and staff and perpetuate inequalities in the NHS. People who least need the care get most care. Allyson Pollock has done a lot of research to expose the fact that, with foundation hospitals, divisions in the delivery of health care become worse and the inequalities get wider. Foundation hospitals might be the answer for the Tories' big business pals, but they are not the answer for patients.

There are some contradictions in the Kerr report. I think that it was Kate Maclean who said that some people have pounced on sections of the report to justify their analysis. That selectivity does a disservice to the necessary debate on the report.

It has been claimed that the report will secure local services and some people hope that Kerr offers solutions for the problems facing hospitals such as Stobhill. However, paragraph 57 of chapter 8 of the report offers this advice for the NHS:

"Regional planning should enable demand across a wider population to be met by streaming hospitals for particular specialties or groups of specialties."

Earlier in that paragraph, Professor Kerr says that hospitals in the central belt are within 30 minutes of one another. That can be interpreted as a centralisation agenda, which has serious implications for the ability of Stobhill and similar hospitals to maintain their status as general hospitals. We need to explore that matter in a lot more detail.

Dr Turner: At present, Stobhill is very much required, because Glasgow royal infirmary is not coping. Centralisation of orthopaedics to the Glasgow royal infirmary resulted in increases to the orthopaedics waiting list in Glasgow, which was already 10,000. I think that Stobhill might stay.

Carolyn Leckie: I absolutely agree with Dr Turner's analysis, but I advise her not to make the mistake of thinking of Kerr as a saviour. There is plenty in the Kerr report that could justify the centralisation of the NHS for those who want to promote that agenda.

I turn to the subject of diagnostic treatment centres. The experience in England should make us very concerned about the impact of independent treatment centres on patients. The centres, which are separate from the NHS, carry out low-risk, low-cost procedures, to the detriment of the NHS in their area. In many cases, contracts with the private sector come first.

Brian Adam: Will Carolyn Leckie give way?

Carolyn Leckie: No—I am sorry.

The NHS has the capacity to carry out the required procedures but, because there is a

contract, that takes precedence. Patients who would rather have their care provided by the NHS are prevented from doing so because of the contract. NHS providers have to carry out the high-risk, high-cost procedures and they end up, in the words of Allyson Pollock in a recent article in *The Guardian*, getting “squeezed out” of the NHS market. I suggest that members explore that matter.

The Deputy Presiding Officer: You have one minute left.

Carolyn Leckie: Private practices leach training, experience and public education from the NHS for their own profit at the expense of NHS patients.

I do not have much time to cover maternity issues. It is interesting that they have been excluded from the Kerr report, yet the models for maternity care that were proposed in the report from the expert group on acute maternity services very much resemble the models that have been proposed for acute care in the Kerr report. I therefore assume that Kerr has accepted the EGAMS model for maternity care. I would like to explore that whole issue in more detail, but, as I said, I do not have time.

Things can go wrong, despite the most robust risk analysis. I am concerned about the geographical separation of elective care from emergency care.

The Deputy Presiding Officer: Please wind up now.

Carolyn Leckie: I will conclude, Presiding Officer.

We need to read between the soundbites of the Kerr report. Nobody will disagree with the sentiment behind the phrase

“fair to all, personal to each”,

but the devil is in the detail. We need an NHS that is universal, comprehensive, free and fit for the 21st century.

The Deputy Presiding Officer: You must close now.

Carolyn Leckie: The NHS must meet the aspirations of the visionaries in—

The Deputy Presiding Officer: You really must close now. We do not have the time for this. I am sorry, but I have to take your sound off you.

11:12

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Mr McLetchie—who I see is now back in the chamber—began his comments by correctly stating that there was more to debates

on health than statistics. Taken out of context, statistics can skew the debate, and they can be meaningless to many of our constituents. There are some statistics that are very relevant to our constituents, however, and which they fully understand: those concerning people who are on in-patient and day case waiting lists for a very long time. Mr McLetchie referred to such people as “languishing on long waiting lists”, and I agree with that description.

Mr McLetchie also made much reference to the situation south of the border. Let us do that, too. Mr McLetchie did not explain why, in England in 1994, 19,800 people waited 15 months or more on in-patient waiting lists. According to the most recent indicators from the Department of Health, 12,538 patients south of the border waited between eight and nine months for admission. According to the most recent indicators for Scotland, no one waited more than nine months on an in-patient or day case list.

Why can Mr McLetchie not explain that? It has happened because we are making a difference for individual people in Scotland, who used to have to wait for a very long time. That has been the right approach. The minister was right to strive to reduce the targets even further. Mr McLetchie repeated the Conservatives’ policy—which is in their motion—of privatisation, fragmentation and competition. In their purest form, those would not reform the NHS, but remove the NHS.

Any brave individual who wishes to look in more detail at the Conservative party policy will find that its proposals fudge many of the issues and are inconsistent. The Conservatives want foundation hospitals, free from government interference and open to competition. They also want a national tariff to determine unit costs for treatment. Why? Why not let the market determine costs? Why have a national tariff? Why have bureaucrats determine unit costs?

The main inconsistency in Mr McLetchie’s approach and in the Conservatives’ policy is that they want hospitals to be independent, yet they have the cheek to say that the core principles of the NHS would be safe under the Tories, and that the service would be free at the point of use and available to all, while hospitals would also be accountable.

Mr McLetchie stressed accountability; Miss Goldie stressed accountability; other Conservative members stressed accountability. However, page 47 of the Conservative policy paper “The Right to Choose”, under the heading, “32. How will each hospital be governed?” says:

“Each NHS hospital will operate as a company limited by guarantee”.

How can that be accountable to the communities that they seek to serve? How can they operate under a national pricing structure and be accountable at the same time? Miss Goldie denied that that Tory policy paper existed. The policy is a dangerous model and a fudge, and has at its core a deeply unfair and regressive factor—*[Interruption.]* Perhaps Miss Goldie did not deny that the paper existed, but I suggest that she should read it.

Even more damagingly, the NHS under the Tories would subsidise private care and treatment for those who can afford it, not the people whom Ms Scanlon talked about. The Tory policy paper, which obviously does exist, but which the Tories have not read, asks the simple question:

“Isn’t the entitlement to take half of the NHS tariff to hospitals that charge patients a subsidy to the rich who can already afford private healthcare?”

Its answer is:

“It is true that people who currently pay for private healthcare will benefit from lower costs. They have paid their taxes and are entitled to a contribution to their healthcare”—

but not, I suggest, through a private health care system subsidised by taxes paid by poorer people, who contribute a far greater proportion of their income through taxation than do the richest 20 per cent of the population. Why should that group’s private health care be subsidised by people who cannot afford it?

Mr Monteith: The member accuses us Conservatives of wanting to subsidise the independent or private sector. However, does not the Liberal Democrat-Labour coalition have a policy whereby it is necessary to fund 100 per cent of the cost of operations for NHS patients in the independent or private sector? Is that not privatisation?

Jeremy Purvis: Mr Monteith denies the fact that that treatment is within the NHS and free to the patient, not half price to the patient and subsidised by poorer people, which is unacceptable to the majority of people in Scotland.

Mike Rumbles, Duncan McNeil, Fergus Ewing and others raised real issues arising from the Kerr report. Fergus Ewing, in a constructive contribution, expressed many views that I share on rural general hospitals. There is a need for further clarification in that area and definition of the characteristics and concept of the rural general hospital. The suggestion in the report that an RGH would provide emergency medical care, locally based routine elective care and care for chronic illness was interesting, but it would require us to build structures with both community hospitals and centres of excellence. As has been said, interdependency in a hospital is also important—

for example, maternity services linked with paediatrics linked with anaesthesia—and the cumulative effect could be worst in cases such as John Farquhar Munro described in Skye.

The Kerr report mentions, but does not major on, health links with other agencies, which is a crucial area that we need to debate, especially with local authorities, over the summer. I would welcome a fuller debate on that subject after the summer recess.

11:18

Roseanna Cunningham (Perth) (SNP): There have been a few entertaining speeches this morning, and I particularly enjoyed Jackie Baillie’s three-minute riff on the Tories’ troubles.

I welcome the fact that the Conservatives allowed their time to be used for a debate that the Executive has so far refused us. I am somewhat surprised at Labour members, including Helen Eadie and Kate Maclean, who seemed to think that we need further consultation on what has already been a long consultation. Do we then consult on the consultation on the consultation? Sooner or later we have to get on with it and do something.

I welcome the fact that the Tories have given their time; sadly, I cannot welcome the terms of their motion or their contributions. I listened to David McLetchie praising his party’s record, but it did not accord with anything that the rest of us remember happening in practice. With respect to Annabel Goldie, I have to point out that David McLetchie said nothing that was in any way new to anybody.

As for the Scottish Socialist Party, I have to advise members that Carolyn Leckie is in a bit of a huff because she did not get any support for her amendments at the Health Committee on Tuesday. There is little that I can say about a policy that would close down all private providers—including, presumably, the local chiropodist and Chinese herbal medical centre. That seems an extraordinary position for the SSP to take.

When the Kerr report was published, my initial reaction was that it was an anticlimax; it was a real case of “What’s new?” and “What now?”. There is not much in the report that has not been said before. I agree that there has been a lot of consultation to get to this point, but a lot of what the report says was being said anyway. Much of what Kerr has to say is basically an endorsement of the recommendations and conclusions of the Health Committee’s report on workforce planning in the NHS, which focused on many of the same issues, including the important issue of staffing. As convener of the Health Committee I point out that

our report came out months earlier and at a substantially lower cost to the taxpayer. I wish that our committee system, which is often referred to as the jewel in the Parliament's crown, got a bit more recognition.

Mr McNeil: I am happy to give the Health Committee credit—and take some of it myself—for driving the agenda on when the previous convener of the committee dragged her feet on it. However, surely Roseanna Cunningham is being disingenuous in describing Professor Kerr's report as similar to the committee's report. There are common themes, but Professor Kerr takes us further and offers us options and solutions, which we on the Health Committee have not yet done. We look forward to taking evidence from him.

Roseanna Cunningham: I suggest that Duncan McNeil read the whole of the committee's report, because as I recall, it did suggest options and solutions.

Leaving aside the comments that I have made, I accept that the Kerr report raises important questions, and that a great deal of detailed work was done in the various sub-committees, which none of us has gone through in its entirety. The minister needs to start answering some of those questions. It is time the Executive told us when and how it intends to deliver the health service fit for the future that we all want to see.

In her opening speech, the deputy minister talked about being pro-patient choice and pro-diversity. I welcome those sentiments, but as many members have said, the problem is that that is not being translated into any reality that ordinary people experience.

Professor Kerr supports diagnostic and treatment centres in the NHS. I listened to Labour members laughing when my colleague Stewart Maxwell talked about that being SNP policy—but it is, and if Labour members agree with it, why do they not just say so instead of laughing? They call for consensus, but when they see that there is consensus it does not make them happy.

One of the key messages that comes through clearly from the Kerr report is the importance of providing health services as locally as possible. Like Fergus Ewing—who had clearly taken his happy pills this morning—I would have preferred a clearer definition of what core services are, which the report acknowledges that the public want to see delivered as close to home as possible. I assure members and the minister that throughout Scotland—and certainly in my constituency—they will find a determination that such services should and must include both maternity services and accident and emergency services, which are precisely the services most under threat. Everybody recognises that there are specialist

services that can best be delivered in a few centralised centres, but when it comes to giving birth or receiving urgent treatment people want to be as close to home as possible.

I now turn to waiting times. The reality in Scotland is that too many people are waiting for too long to get the treatment that they need. The figures for Tayside NHS Board show that the average out-patient can now expect to wait 72 days for an appointment—17 days longer than last quarter, 22 days longer than last year, and 26 days longer than in 1999. For in-patients the picture is no better, with average waiting times of 61 days—18 days longer than last quarter, 16 days longer than last year, and 26 days longer than in 1999.

Labour and the Liberal Democrats can try to spin their way out of that reality, but the fact is that they have now had eight years to make a difference. Despite a few successes, there are too many areas in which they continue to fail. The Tories offer no alternatives except privatisation, the SSP is, frankly, on another planet, and the debate supports my view that only the SNP has a clear and realistic view of the NHS's future. Support the SNP amendment.

11:24

Rhona Brankin: The commissioning of the Kerr report in April 2004 was a proactive move by the previous Minister for Health and Community Care and the Scottish Executive to take an overview of the changing demands on Scotland's health service.

By better understanding those demands and the system's response to them, Professor David Kerr has produced a modern and rational model of the health service that has the potential to put NHS Scotland at the forefront of European health care.

Contrary to Mr McLetchie's assertion about tariffs, the Minister for Health and Community Care made it clear in his statement to Parliament on 15 December 2004 that the Executive was considering costing systems to promote equity and efficiency. If Mr McLetchie did not understand those words I am sorry, but it was hardly a secret.

Further, also contrary to what Mr McLetchie said, we are pro-reform, pro-diversity of provision and pro-patient choice. Most important, we are pro-NHS.

David McLetchie: Will the member give way?

Rhona Brankin: I will make some progress on my speech and give way later.

On foundation hospitals, we believe that the Scottish health service will be better served by developing integration and co-operation than by

competition. The conditions in Scotland are not the same as they are in the rest of the UK, and we cannot simply lift models from elsewhere. I was heartened to see that that was recognised by Professor Kerr in his report.

We have made it clear that we expect boards to develop their service change proposals with reference to the Kerr report. With regard to the Argyll and Clyde situation, when the consultation on boundaries is complete, any proposed changes would be expected to reflect the Kerr proposals. The overriding ethos of the report is that safe high-quality care should be delivered as close as possible to home. However, services can be maintained only with redesign. Where there is evidence that greater volume secures better patient outcomes, we should ensure that that happens, even if it means concentrating services such as cardiac surgery and some cancer surgery. In that regard, I can tell Mr Rumbles, who talked about neurosurgery, that we are currently considering the proposals made by Professor Kerr, who has done some good work on that difficult topic.

The Kerr report also makes a number of suggestions for maintaining the vast bulk of unscheduled care locally, but suggests that every hospital will not provide the whole range of emergency medical services. Local services will develop, but that will mean change.

I welcome the work in the report on the delivery of remote and rural health care, which was mentioned by several members, including Fergus Ewing and John Farquhar Munro. That takes us in the opposite direction from centralisation. In response to Fergus Ewing, I say that the rural general hospital model has much to commend it, as has the recognition that we need to do more to provide appropriately trained rural health care specialists.

Eleanor Scott (Highlands and Islands) (Green): Will the minister outline what discussions her department is having with professional bodies to ensure that those general physicians and surgeons are supported by their professional peers, as that does not seem to be the direction in which things have been moving?

Rhona Brankin: Ministers have regular discussions with bodies representing professionals in the NHS. Mr Kerr has already started discussions with NHS boards and we will continue to discuss the recommendations in the Kerr report, including those on remote and rural health care.

Carolyn Leckie alleged that the Kerr report opened up NHS Scotland to privatisation. We remain absolutely committed to an NHS free at the point of need. However, that will not stop us from considering models that allow us to deliver better

and faster treatment for those who need it. We put patients before ideology.

On Stewart Maxwell's points about treatment centres and health inequalities, which are the subject of the SNP's amendment, I have made it clear that we welcome the emphasis in the Kerr report on separating planned care from emergency care. We expect proposals to be brought forward for regional planned care centres. I have also already discussed the inequalities work in the report, which we committed to taking forward on 25 May.

Stewart Maxwell made allegations about the poaching of NHS staff. I have no evidence of that happening in Scotland. If Mr Maxwell does, I would be obliged if he would share it with us.

Mr Maxwell: The allegation was made by the minister's colleague, Robin Cook MP, in an article in *The Guardian* in April. He said that up to 70 per cent of the staff of the private diagnostic and treatment centres could be seconded from the NHS. Perhaps Ms Brankin could respond to that allegation, which is Mr Cook's, not mine.

Rhona Brankin: I have not seen specific allegations about the poaching of NHS staff in Scotland. Of course, if I receive any such allegations, I will consider them carefully. However, it is absolutely not the intention that that should occur.

Sandra White mentioned maternity services in Glasgow, and I am sure that she will welcome the £100 million that is being provided to create a new children's hospital in Glasgow, which will be co-located with acute and maternity services in order to provide a gold standard of care.

I would like to say that I welcome the changes in medical training for students at St Andrews University.

On waiting times, I am pleased to say that the position continues to improve. I note that members of the Opposition parties have not welcomed that fact, but I cannot say that I am surprised. During the six months from September 2004 to March 2005, the number of out-patients with a guarantee waiting for a first out-patient appointment with a consultant following referral by a general practitioner or a dentist fell by 31,113—a reduction of 42 per cent. That leaves us well placed to deliver a maximum six-month waiting time for in-patients and out-patients by December 2005, and to reduce those times further, to a maximum of 18 weeks, by December 2007. That is good news for patients.

Because of the time, I cannot answer all the points that were raised in the debate. The Kerr report is about the future of Scotland's health service, and it will not be used to reopen decisions

that have already been taken. I believe that it gives us the opportunity to provide the people of Scotland with a world-class health service, if we can accept that improvement requires change.

11:32

Mrs Nanette Milne (North East Scotland) (Con): Although the Executive was hoping to postpone a debate on this subject until after the summer recess, I hope that the minister will agree that we have had an interesting discussion this morning about the many issues facing the NHS in Scotland today and about Professor Kerr's proposals for its future structure. Of course, we have also heard the usual dogma from the usual suspects and the deliberate misinterpretation of our commitment to the principles of the NHS, which has never been in doubt.

I must take issue with Helen Eadie, who accused Conservatives of not attending health board meetings. Since I became an MSP two years ago, I have attended virtually every meeting of Grampian NHS Board that has been open to MSPs.

The Kerr report has been eagerly awaited by patient groups and health professionals across Scotland. We felt that it was only right for the Parliament to give its response to the report at the earliest opportunity.

The Kerr plan might well address the next 20 years, but there are issues that need to be dealt with urgently and people expect to know without delay what the future holds for them, particularly with regard to their local health care facilities. The anticipated Kerr report has been the excuse for indecision for long enough. Now that we have it, people expect some action. The report addresses some of the most fundamental issues facing the NHS in Scotland and, by considering the service as a whole, it gives a unique perspective on its possible future direction. The needs of an aging population, a growing incidence of chronic disease, workforce issues brought about by demographic changes and the European working time directive have all challenged the status quo to the extent that it is, quite simply, no longer an option and change is unavoidable. We welcome the focus of Professor Kerr's report on primary care services, its recognition that 90 per cent of health care is delivered at community level and its recommendation that patients' health should be looked after as close to home as possible. An increasing emphasis on good local management and the self-management of chronic disease could free up acute hospital services.

Carolyn Leckie: On the provision of primary care, one of the report's recommendations is that community health partnerships should take the

budgets for secondary care as part of the proposed tariff scheme. Does Nanette Milne recognise that as the resurrection of GP fundholding, and will she congratulate the Executive on resurrecting it?

Mrs Milne: The report is in the name of Professor Kerr, not the Executive. Nevertheless, I think that fundholding was a very good system that worked well.

The proposals for the provision of community care as close to home as possible would help to combat bedblocking, which currently chokes up the system. People are undoubtedly better off in a community setting, wherever possible, away from hospital-acquired infections and closer to their family and friends. The proposals for rural general hospitals modelled on existing good practice and for generalist as well as specialist training of health staff are what the public want to hear. Few would disagree that highly specialist services need to be centralised, although I reiterate the concerns that have been expressed about patient welfare should specialties such as neurosurgery become overcentralised.

Professor Kerr's recognition of the role that the independent sector can play in expanding capacity is welcome and vindicates our position, which was derided for a long time by the Executive parties and is still derided by the SNP, which has accused us of privatising the NHS. Professor Kerr's promotion of information technology as a major plank of good health care in the future is also welcome and long overdue.

Mike Rumbles: Will the member take an intervention?

Mrs Milne: I am a bit pushed for time.

It is several years since health centres in my native city were wired up to hospital labs and X-ray departments so that results could be accessed as speedily as possible. Sadly, however, the equipment to complete that exercise has not been forthcoming.

We will be delighted to see patients truly at the heart of the NHS. After all, as Mary Scanlon pointed out, that is precisely where they were under the fundholding policy that was introduced by the Conservative Government.

Jeremy Purvis: Will the member give way?

Mrs Milne: No.

That policy was working, but the Labour-Lib Dem Executive could not swallow the fact that anything that the Tories did was working, so the Executive dropped it.

We welcome many of Professor Kerr's proposals, but they will not on their own solve the problems in the NHS. It is still, largely, a monopoly

provider of health care, with decisions made by the Executive at the centre and services developing in response to directives and targets that are set by politicians rather than in response to the demands and needs of patients. Until that situation is reversed and patients, together with their GPs, are given the means to purchase their care where they choose to receive it, the Kerr proposals will be difficult to implement because the capacity in the system is not always where it is wanted and needed.

We have concerns about the report's implementation for several reasons. Current staffing problems are a major worry and will, at best, take many years to correct. Without local teams of health care professionals, local services simply will not be available. We are also concerned that the deficiencies in the NHS 24 service are putting patients at risk and causing them a significant amount of distress at times when they are vulnerable—not because of the staff who are operating the system, who are an extremely dedicated group of health professionals who are doing their best with inadequate resources, but because the system was not tried and tested adequately before it was rolled out. It has been unable to cope with the pressures that have been put on it as a result of the new GP contract and receives far more out-of-hours calls than it can deal with. That has resulted in long delays and call-backs for patients who seek medical help. The situation must be addressed at the earliest opportunity.

Patients in many areas—especially rural areas—are unhappy with the new out-of-hours arrangements and do not understand why the changes were made or why the new GP contract has come about. When the GP contract was debated, I warned the then minister that it would be essential to explain the out-of-hours system to patients via a major public awareness and information campaign. However, he did not listen and left it to the health boards to do that job. That clearly has not worked.

We are also concerned that the technology and equipment for carrying out diagnostic tests in community hospitals and health centres may not materialise—especially given how, for example, Greater Glasgow NHS Board has struggled to replace its out-of-date computed tomography scanners despite ministerial pledges that that would be done. We also have serious concerns that care for the elderly in our communities will not be adequate unless and until the Scottish Executive allocates sufficient funding to allow independent care homes to expand their capacity or even just to stay open. The situation is already at crisis point and it will not improve until the Executive accepts the case for providing funding that matches the cost of care.

Although we are happy with much of what Professor Kerr recommends for the NHS of the future and are pleased that the Executive is, at last, abandoning its ideology and looking to the independent sector to expand health care facilities for NHS patients, we remain convinced that money that is poured into an unreformed NHS in Scotland will never produce the results that people expect and deserve. As long as everything flows from the top down, the service will be incapable of autonomous development. Centralised planning and micromanagement through targets and directives, in an attempt to improve performance, results in rigidity of the system, inefficiency and waste. Managers spend their time trying to deliver the centrally imposed targets on which they are judged and are accountable to their political masters rather than to their patients and the professionals who look after them. That leads to low morale among staff and dissatisfaction with the service.

That is not what patients want, and they are saying that loud and clear throughout the land. They must be the driving force for the development of services within the NHS. They must be given the resources to achieve that, and health care providers must be given far greater freedom to respond to patients' needs. Professor Kerr's proposals give the Executive a great opportunity to raise standards in the NHS. That is a massive challenge but, if the Executive rises to it, it will have our full support. I support the motion in David McLetchie's name.

Question Time

SCOTTISH EXECUTIVE

General Questions

11:41

Kerb Crawling

1. Bill Butler (Glasgow Anniesland) (Lab): To ask the Scottish Executive when it intends to legislate against kerb crawling. (S2O-7043)

The Deputy Minister for Justice (Hugh Henry): The Executive remains fully committed to criminalising the offence or nuisance that is caused by kerb crawling. We are currently considering the report of the expert group on street prostitution in the light of consultation responses, and we hope to indicate the way forward shortly.

Bill Butler: The minister will know that certain areas in Glasgow are plagued by the activities of these individuals and that the lives of the people who live and work in those neighbourhoods are severely affected. He says that the Executive is fully committed to criminalising the offence. When can we expect legislative action to deliver on the partnership commitment to deal with men who engage in this activity?

Hugh Henry: We are fully aware of the problems that are caused in many communities by such activity, which is why we gave the commitment to tackle kerb crawling. We find the recommendations of the working group useful in that, for the first time, there is discussion of criminalising the activities of men and not concentrating solely on punishing women in relation to prostitution. We know that, in certain areas, many of these men are causing problems certainly to the women who are working as prostitutes but also to local residents. They inflict fear and alarm on women who walk in those areas minding their own business, and it is right that we should start to focus on their responsibility. The working group has recommended that men who are kerb crawling should be criminalised.

We are reflecting on the best way forward. We give a commitment to Bill Butler and to Parliament that we will fully implement our proposals to tackle kerb crawling this parliamentary session. I hope that, in the near future, I will be able to introduce proposals that will build on the work of the expert group and will ensure that kerb crawling is tackled, that there is legislative action and that men are faced with the consequences of their actions.

Bill Aitken (Glasgow) (Con): Is the minister aware that, in the past, when kerb crawling has become a problem in Glasgow, the perpetrators to whom he has referred have sometimes been charged under the common-law offence of breach of the peace? Might that not be an expedient interim measure for coping with what is undoubtedly a growing problem in certain residential areas?

Hugh Henry: It is still open to the police to charge someone with breach of the peace if the conditions of that offence are met. I am sure that the police will act appropriately in any such circumstances. However, it is right to consider whether there are wider aspects of the problem that do not meet the specific criteria for breach of the peace. We would want to consider whether nuisance, fear and alarm or offence were caused and whether, by widening the criteria, we could effectively put a stop to such activity.

Roads (Isle of Mull)

2. George Lyon (Argyll and Bute) (LD): To ask the Scottish Executive whether it is aware of the concerns of people on the Isle of Mull regarding Argyll and Bute Council's proposals to impose maximum plated weight restrictions on the island's roads. (S2O-7008)

The Minister for Transport (Nicol Stephen): The Scottish Executive is aware of those concerns and understands that the council's proposals are at an early stage.

George Lyon: The minister will be aware that the Scottish Executive has powers to authorise signs that do not conform to the regulations, where that is justified for traffic management and safety reasons. Will he guarantee that, if Argyll and Bute Council were to ask the Scottish Executive to use those powers, he would look seriously at granting such a request?

Nicol Stephen: Of course we would. There has been considerable concern about the matter and I am told that more than 300 local residents have written to the Executive roads department about it. Draft traffic regulation orders have yet to be published by Argyll and Bute, but it is correct that if a roads authority wishes to impose weight restrictions that do not conform to the regulations, they would be able to seek the authorisation of Scottish ministers for that. We would treat any such application on its merits.

Maureen Macmillan (Highlands and Islands) (Lab): Does the minister not agree that the real problem is the state of the roads on Mull? That is why the weight restrictions are being imposed. The roads are single track and Argyll and Bute Council does not have enough money in its roads budget to make proper repairs. Considering that a

great deal of money was spent to remove the tolls from the Skye bridge, does the minister not agree that the island of Mull has as much right as the island of Skye has to an infrastructure that is fit for the modern age?

Nicol Stephen: I agree that investment in our local roads network is important and that is why we are giving additional funding to local authorities to improve the condition of local roads. Some £60 million in additional grant-aided expenditure will go to local authorities for roads purposes.

It is important to point out that local residents and businesses should be involved in the consultation process and in making decisions on the issue. The roads have been used for the purposes of tourists and transport of freight in the local economy for many years. It is ultimately for the local council to decide whether it imposes restrictions on those roads or whether it improves them.

Mr Jamie McGrigor (Highlands and Islands) (Con): Is the minister aware that Mull is one of the jewels in Scotland's tourism crown and that Duart Castle on Mull is one of the most popular tourist attractions in Scotland, but there has recently been a drastic cut in the number of buses going to the castle because of the condition of the roads? What will the Scottish Executive do to improve the roads on Mull so that the tourist buses and essential lorries that bring goods to local residents get to the places to which they intend to go?

Nicol Stephen: There are no current restrictions and I encourage the tourists who wish to visit Mull to continue to do so in ever-growing numbers. The challenge for us is to maintain and improve the roads on Mull in the future. That is why the funding that we provide to the local council and, ultimately, the decisions made by the local council about how it distributes its roads funding throughout the council area are very important.

Rates Exemptions (New Businesses)

3. Mike Rumbles (West Aberdeenshire and Kincardine) (LD): To ask the Scottish Executive how much it would cost to give business rate exemptions to all new businesses in their first two years. (S2O-7012)

The Deputy Minister for Finance and Public Service Reform (Tavish Scott): Business rates for new businesses will vary from property to property. The information that would be needed to provide a reliable estimate of the cost of giving them exemptions is not held centrally. The Executive is of course engaging with business organisations in a number of ways to build Scotland's competitiveness.

Mike Rumbles: Does the minister agree that that assistance is probably the most important new

initiative that could be taken to improve the survival rates of businesses in their first two years, which is when they are most vulnerable?

Tavish Scott: Scottish ministers, including the Deputy First Minister and Minister for Enterprise and Lifelong Learning and the Minister for Finance and Public Service Reform, are in constant discussions with a range of business organisations to discuss many ideas that are proposed. I recognise fully that at election times there are many new ideas and it is important that they are always well thought out.

Mr John Swinney (North Tayside) (SNP): Now that both of the aspirants for the leadership of the Liberal Democrats in the Scottish Parliament are committed to reducing business tax, will the minister tell us when we can expect an announcement of the Executive's position on business tax and the subsequent reductions before the 2007 elections?

Tavish Scott: These are all very excitable issues that will be dealt with properly and appropriately by Government in due course.

Murdo Fraser (Mid Scotland and Fife) (Con): We seem to have a growing consensus in the chamber that Scottish businesses are suffering from a competitive disadvantage from the high levels of business rates. Is it not about time that the Executive started listening to the business community and indeed to leadership candidates in the Liberal Democrats and took action on the matter?

Tavish Scott: I fear that Mr Fraser gave away the game there—it appears that a leadership contest is also pending in other parties. Mr Fraser needs to recognise that the employment rate in this country is above that of the United Kingdom and is at its highest since records began. Only Denmark from the European Union 25 nations has a greater proportion of its people in work. Youth unemployment in Scotland is down by 57 per cent since January 1999 and long-term unemployment is down by 70 per cent since January 1999. There has been significant progress across a range of measures that relate to our competitive position. These matters are under constant review and are always being developed by ministers.

The Presiding Officer (Mr George Reid): Question 4 has been withdrawn.

Olympic Games

5. Iain Smith (North East Fife) (LD): To ask the Scottish Executive whether it will support the bid by St Andrews Links Trust for St Andrews to be the Olympic golf venue if London is successful in its attempt to host the 2012 Olympic games and golf is included as an event at these games. (S2O-7013)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): Yes. The home of golf would be an ideal venue for what would be the first ever Olympic golf tournament held in the United Kingdom.

Iain Smith: I thank the minister for her support. Does she agree that a successful bid to host the Olympics in the UK can only be good news for Scottish sport? Does she join me in condemning Scottish National Party politicians such as Alex Neil who seek to undermine the London bid with short-sighted attacks on how the games might be funded? Does she further agree that politicians who purport to speak for St Andrews would serve the community better if they backed the Olympic golf bid rather than damaging the reputation of St Andrews by seeking cheap publicity by blowing out of all proportion the row over Jack Nicklaus?

Patricia Ferguson: It is obviously up to individual members how they conduct themselves and on which issues they decide to major. However, it is certainly wrong to underestimate the potential benefits to sport, business and the health of our communities of a successful Olympic bid. Given that golf tourism is worth some £300 million per annum to the Scottish economy, any action that damages our reputation as a friendly, welcoming golf destination is of course unhelpful.

Volunteering

6. Donald Gorrie (Central Scotland) (LD): To ask the Scottish Executive what steps it is taking to encourage more people to volunteer for projects in their communities. (S2O-7007)

The Deputy Minister for Communities (Johann Lamont): We are encouraging more people to volunteer, particularly those from disadvantaged backgrounds, through the Scottish Executive volunteering strategy. We are dismantling barriers to volunteering, such as lack of awareness of volunteering and how to get involved. We are improving the experience that volunteers have by developing the skills of volunteer managers to recruit and support volunteers. We are encouraging more young people to volunteer through project Scotland and millennium volunteers. To those ends, the Scottish Executive funds the national network of volunteer centres, Volunteer Development Scotland, project Scotland and a number of specialised projects.

Donald Gorrie: That is encouraging. Will the minister consider re-examining the working conditions and rules of public servants—whether in the civil service, local government or the health service—to make it easier for them to volunteer? That would set a good example.

Johann Lamont: I suspect that it goes far beyond my remit to encourage Donald Gorrie in

the notion of my power over the civil service. However, volunteering is a very positive issue for the Parliament and the Executive. We recognise that it is one of the strengths of our communities and we fund it significantly. Last week was volunteers week, during which I, like many others, visited a number of initiatives that reflected on the goodness in our local communities, where people contribute so much. Anything that creates a barrier should be dismantled. I am more than happy to address anything that weakens the capacity of people to support others in their local community through volunteer activity.

Linda Fabiani (Central Scotland) (SNP): During the voluntary sector debate on 19 May, the Minister for Communities said:

“The current distinction between core and project funding is regarded by all the partners, including SCVO, as unhelpful.”—[*Official Report*, 19 May 2005; c 17116.]

The Scottish Council for Voluntary Organisations has since said to me that that does not explain its position. Will the Minister for Communities reconsider his statement and respond to me, perhaps by letter at a later date?

Johann Lamont: It is clear that there is a partnership between the SCVO, the Convention of Scottish Local Authorities and the Scottish Executive to address funding issues. If the SCVO believes that its position has been misrepresented, it might have been helpful for it to direct its comments either to the Minister for Communities or to me, especially because we are working in partnership on funding matters. I do not believe that there is a division. I believe that there is a genuine commitment among the three partners to ensure that the voluntary sector is appropriately funded, that it is sustainable and that it is able to do what it does best, which is work within local communities to support those who are most in need.

Young People

7. Alex Neil (Central Scotland) (SNP): To ask the Scottish Executive what its latest estimate is of the number of 16 to 19-year-olds who are not in education, training or employment. (S2O-7034)

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Based on the “Annual Scottish Labour Force Survey 2003/04”, the Scottish Executive estimates that 35,000 young people aged 16 to 19 are not in education, employment or training.

Alex Neil: I point out that that represents 13 per cent of all 16 to 19-year-olds in Scotland and that that is higher than the figure in 1999, when the Executive came to power. When will the minister do something about the problem and get those

young people into education, training or employment?

Allan Wilson: I know that the member has some prowess in the field of economic development, but he obviously has very little in the field of statistics. As he knows, we have virtually eliminated youth unemployment. Worklessness is a different matter altogether. For a substantial proportion of that estimated number of young people, no intervention is either necessary or desirable. For another sizeable number—probably 7,000 to 10,000—employment or training in the conventional sense is not an option, because they are sick, disabled or looking after family or home. We have to develop completely different approaches to reduce that number, which is why in the autumn we will produce an employability framework that will set out our strategy for giving opportunities to that group of people.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): Does the minister recognise that the downturn in the manufacturing industry and low business growth rates limit the opportunity of young people in my constituency of Greenock and Inverclyde to gain access to the successful modern apprenticeships scheme? Will he give an assurance that he will look into that matter, with a view to improving the situation?

Allan Wilson: There are pockets of economic inopportunity throughout Scotland that desire specific measures, which the employability framework will target. We must ensure that the economic and employment opportunities that are now available in many parts of Scotland are extended to those parts of Scotland, such as Greenock and Inverclyde and my constituency in North Ayrshire, where there is a lack of economic or employment opportunity for young people who are actively seeking employment.

Scottish Science Advisory Committee

8. Phil Gallie (South of Scotland) (Con): To ask the Scottish Executive what confidence it has in the chair of the Scottish Science Advisory Committee. (S20-6993)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace): I assure Mr Gallie that ministers have full confidence in Professor Wilson Sibbett.

Phil Gallie: I am delighted to hear that, but in that case why is the Executive not listening to the recommendations of its scientific adviser, particularly on renewable energy? The scientific adviser points out that the Executive's targets on renewable energy are totally unrealistic and that there is a great need for nuclear energy developments to proceed now and not later. Why

will the Executive not listen to its adviser, in whom it has confidence?

Mr Wallace: I can answer that simply. We have neither sought nor received formal advice from Professor Sibbett on energy issues. He was appointed as an independent adviser to the Executive on science; his remit extends to advice on Scotland's science strategy, but not on particular science issues. Of course, the point of having an independent adviser is that there is a degree of independence. However, we are exercising our independence, too. I strongly advise Mr Gallie that I have every confidence that the 40 per cent target for 2020 that we have set for renewable energy is achievable and that it could well be exceeded.

First Minister's Question Time

12:00

Cabinet (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-1696)

The First Minister (Mr Jack McConnell): At the next meeting of the Cabinet, we will discuss our progress towards building a better Scotland. Undoubtedly, we will congratulate VisitScotland and the other organisations that are involved in our tourism industry on the outstanding figures that were announced yesterday, which are a credit to the industry and to the successful policies that we have pursued.

Nicola Sturgeon: I remind the First Minister that, following the tragic death of two-year-old Andrew Morton, he said:

"in irresponsible hands, an air-gun is a lethal weapon."

Three months later, why has next to nothing been proposed to stop air-guns falling into irresponsible hands?

The First Minister: That is outrageous and completely and totally untrue. The Violent Crime Reduction Bill, which the Home Secretary announced yesterday, will legislate specifically on one of the most dangerous loopholes in existing law, as a result of which it is unclear whether shooting from inside one's property to outside is an offence in Scotland and elsewhere in the United Kingdom. It is not possible for me to comment on specific cases, but we are all perfectly aware of how often such incidents occur and that they occur in too many communities, which shows why legislation on the matter is important. We have said that we do not believe that the bill will go far enough, which is why we need to find a workable system that will reduce the availability and use of air-guns even further in Scotland's communities and reduce the potential for similar incidents in the future. We will find such a solution, but we will do so properly and in discussion with the Scottish police forces and the Home Secretary.

Nicola Sturgeon: Given that, in the three months leading up to yesterday's publication of the UK bill, the First Minister manifestly failed to persuade the Home Office to take tough action to restrict the sale of air-guns, what makes him think that he will be any more successful in the few weeks following the publication of the proposals?

If he thinks that he will be successful, I have a further question. In March, the First Minister said

that he wanted either a ban on air-guns or a licensing scheme. Will he give a personal guarantee that measures will be announced either to ban air-guns outright or to license them strictly? Will he deliver on his promise, or does he just talk tough and act soft?

The First Minister: I absolutely refute the suggestion that nothing has been done. Extremely constructive discussions are taking place with the Home Office. We have the clear objective of reducing the availability and use of air-guns in Scotland in a way that the police forces and others believe is workable in practice.

We have received firm recommendations from the Association of Chief Police Officers in Scotland—as the Home Office received recommendations from the Association of Chief Police Officers south of the border—which is against even a licensing scheme. We are not yet at all convinced by that argument, but if there is to be a scheme that limits the availability of air-guns or in some way registers their use and allows us to monitor their ability and deal with those who would misuse them, we must ensure that it is practical and that it can be operated properly with the full support and assistance of police forces and, almost certainly, local authorities.

That is exactly what we will do: we will put in place a workable scheme, reasonably and sensibly and in a way that is sustainable for the longer term, but without using the sort of rhetoric that Miss Sturgeon seems to want to use.

Nicola Sturgeon: It was the First Minister who engaged in rhetoric in March when he promised action on air-guns. He can talk as tough as he wants to, but the reality is—as we saw yesterday—that the Home Office has already made up its mind. The Home Office's consultation paper states:

"We do not ... believe that there should be a system of licensing or further restrictions on the sale of air guns".

Why is the First Minister softening his position to suit the Home Office? Why does not he demand powers for the Parliament to act to clear our streets of lethal air-guns and to protect the communities that need us most?

The First Minister: If there was ever rhetoric—and shameful rhetoric at that—it was in the contribution that Miss Sturgeon has just made. It is absolutely shameful to use the death of youngsters and incidents that damage the lives of youngsters and others in Scotland to return—as Miss Sturgeon did at the end of her questions—to the issue that matters most to the Scottish nationalist party: the United Kingdom's constitution and how further tension and dispute between the Scottish Parliament and the Parliament in London

can be created. That should not happen—we should treat the issue more seriously than that.

We are absolutely determined to take the action that is required to ensure that Scotland has a registration or licensing system that ensures that fewer air-guns are available and that their availability is monitored or that people cannot have air-guns unless they have a legitimate use for them. We will pursue the matter rightly and properly in discussions with Scotland's police forces, which have made strong representations against the scheme in question. We do not agree with them and we are determined to find a solution in discussions with them. We will also try to find a solution with the full co-operation of the Home Secretary and those in the Home Office, who will hear our arguments, listen, learn and take our arguments seriously.

Nicola Sturgeon: What matters to me is that the Parliament should act to stop any more children being killed by air-guns. Why is it okay for the Scottish Parliament to have power to restrict the sale of knives but not air-guns? The First Minister must answer that question. He promised an outright ban or a licensing system. Will he give a guarantee today that he will deliver on that promise rather than go soft on the yobs who terrorise our community with air-guns?

The First Minister: The Scottish National Party's conversion to treating the issue seriously is synthetic and shameful. It could not be bothered even to respond in the Scottish Parliament or at Westminster to the Home Office's consultation on air-guns. Even its central desire to make air-guns into an argument about the Parliament's powers rather than to take action on them was not mentioned in any representations to the Home Office by the party's members of Parliament or its members of the Scottish Parliament. Rhetoric alone is the SNP's answer. The Minister for Justice and others are working with the Home Office to deliver a scheme that will ensure that the availability and use of air-guns in Scotland will be further limited, as we promised, and to ensure that such a scheme will be in place with the full co-operation, assistance and support of Scotland's police forces and those who would have to implement it.

Prime Minister (Meetings)

2. David McLetchie (Edinburgh Pentlands) (Con): To ask the First Minister when he will next meet the Prime Minister and what issues will be discussed. (S2F-1697)

The First Minister (Mr Jack McConnell): I expect to meet the Prime Minister at Gleneagles in July at the very latest.

David McLetchie: The rising security costs in connection with the G8 summit are a matter of legitimate public concern, but does the First Minister agree that we have two responsibilities in that regard? One responsibility is to ensure that the Prime Minister and other world leaders can debate important issues, such as international aid and the removal of tariff barriers, and the other is to ensure that the public in Scotland—our citizens and visitors—are adequately protected. Does he agree that one factor that is driving up policing and security costs in connection with the G8 summit is the possibility that 1 million people will descend on Edinburgh at the behest of Sir Bob Geldof? Does he agree that such a call is irresponsible and that people should come to Scotland only if they have somewhere to stay and are intent on peaceful protest?

The First Minister: I agree that the G8 is very important for the issues that Mr McLetchie identifies. I welcome the continuing conversion of Conservatives to those issues and hope that their support will be maintained beyond the publicity around the G8 summit and will not just be evident in the run-up to it.

I absolutely agree that we need to ensure that any demonstrations, protests or events in advance of or during the summit are well organised and peaceful. I absolutely agree that anyone who comes to Scotland to demonstrate or to voice their opinion in advance of or during the G8 summit should come with peaceful intent. I implore anyone who wants to come to Scotland to cause trouble, create disruption or deflect attention from the vitally important issues that will be debated at the summit to stay away so that we can ensure that we strike the right balance between peaceful protest and making the right decisions for the long term for Africa and the rest of the world.

David McLetchie: I am sure that the First Minister will acknowledge that one of the earliest international initiatives on debt relief for developing countries was taken by Mr Major when he was Prime Minister of this country.

To return to the issues of security and policing, I hear what the First Minister says and agree with his sentiments—we do not want violent protest in this country at the time of the G8 summit. However, does not the First Minister agree that it might be naive to assume that all will turn out well? Can he assure people in Scotland that although we do not want to turn our country into an armed camp for the duration of the G8, plans are in place to deal with the type of violence, rioting and looting that we have seen at previous G8 summits?

The First Minister: We must differentiate between different organisations and different kinds of people. The people who are involved in the

make poverty history campaign are peaceful, law-abiding people who care desperately about the situation in Africa and elsewhere and who want the leaders of the eight richest countries in the world to take action on that situation. I believe that, right up to the G8, they will want to lead and organise peaceful protest that is well co-ordinated with the authorities in Edinburgh and elsewhere. All the evidence so far suggests that that is the case. A considerable number of discussions are taking place behind the scenes and even in public about the required arrangements. The level of co-operation is increasing by the day, so it is perfectly possible for us to welcome peaceful protesters with open arms and to ensure that they can voice their opinion to the leaders of those countries.

On the other hand, at an international summit of this sort there is always the threat of a very small minority—perhaps even a small handful—of people who want not only to disrupt the event or the country in which it is being held but to cause significant damage. All our preparations, even those made more than 12 months ago, have been designed so that the potential for that is minimised and we are as well prepared as we possibly can be and so that we use the intelligence and the professionalism of our police and security services to ensure that Scotland is well protected, the summit is well organised and the reputation of Scotland is enhanced and not damaged by the event.

David McLetchie: We all share the First Minister's aspirations and hopes for a peaceful outcome to the summit and for substantial progress in the decisions that are made at it. However, I refer to the situation that might pertain in Edinburgh not at the make poverty history march on 2 July, but at the events during the following week that are the primary source of concern to civic leaders. We cannot expect individual businesses or shops to decide whether it would be appropriate for them to close when such large numbers of people are present. The Institute of Directors is reported to have said that it believes that much of central Edinburgh will, in effect, shut down for the week of the summit. What is the Scottish Executive's advice to city-centre businesses and shops? Should they close or not? If the First Minister is, understandably, unable to give us a direct answer to that today, will he assure us that those businesses and the people who work in them will receive guidance on such matters immediately before the start of the week's events?

The First Minister: We need to get this into perspective. As I said in the chamber last week, we need everyone, especially the Scottish media, to calm down and to stop winding up people's fears when it is completely unnecessary to do so. Edinburgh receives hundreds of thousands of

visitors every year. There is absolutely no reason to suggest that someone who attends the pop concert in London on the Saturday afternoon and then comes to Edinburgh on the following Wednesday will be any different from any of the young people from elsewhere in the United Kingdom and from across the world who come to Edinburgh every year for the hogmanay celebrations. There is no reason to suggest that the church attender in Sussex who has read about the make poverty history campaign and decides to come to Edinburgh for the week of the G8 summit to attend events here and to watch what is happening will be any different from the person from the same village who comes to Edinburgh in August every year to attend the world's greatest cultural festival.

We must get the issue in perspective. Yes, there may be a small minority who—not because of anything that has been said by Bob Geldof or the make poverty history campaign but because of the international organisations to which they belong—want to do what they have done at other summits, where they have caused disruption and damage. However, everything is being done, and has been done for months now, to ensure that the prospect of that happening in Scotland is minimised.

I do not believe that businesses in any part of Scotland should see the G8 summit as anything other than a massive opportunity to increase their trade at that time of year and to showcase their goods and the great benefits of coming to Scotland. I hope that businesses across Scotland will see the summit for the fantastic commercial opportunity that it is. At the same time, I hope that everyone in the Parliament, in the Scottish media and in the Scottish population will see the summit for the fantastic opportunity that it is to change Africa and to change the rest of the world.

Margo MacDonald (Lothians) (Ind): Will the First Minister inform us whether we will receive more than the £20 million that has been given by the Chancellor of the Exchequer to cover the extra policing costs? Is he now satisfied that the Foreign Office is picking up the tab as it should have done in the first place?

The First Minister: The Foreign Office and other United Kingdom departments will pay the bills for those elements of the summit for which they are responsible; we will pay the bills for those elements of the organisation of the summit for which we are responsible. We will use the resources that we receive, and have received every year since devolution, from the UK Treasury for such events—for which we get a formula share from the rest of the UK. This year, we will also have the additional £20 million that the chancellor agreed to back in March to help us with the costs

for what is a particularly extraordinary and important event.

Secretary of State for Scotland (Meetings)

3. Shiona Baird (North East Scotland) (Green): To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-1701)

The First Minister (Mr Jack McConnell): I have no immediate plans to meet the Secretary of State for Scotland formally.

Shiona Baird: This week, the Royal Society and scientific academics from all the G8 nations issued a statement that pressed the G8 leaders to take urgent action on climate change. The Parliament's Environment and Rural Development Committee has also recommended that the Scottish Executive should set targets for reducing climate-damaging gases. Ahead of the G8 summit, will the First Minister take this once-in-a-political-lifetime opportunity to set an example to the world, especially George Bush, by announcing a Scottish target for reducing climate change gases?

The Presiding Officer (Mr George Reid): I call the First Minister.

The First Minister *rose*—

Shiona Baird: I do not want to hear that a review is in progress. We are looking for statesman-like commitment from the First Minister.

The Presiding Officer: You can hardly answer the question for him.

The First Minister: I am afraid that the member is about to be disappointed.

First, we already contribute to a target that includes Scotland, as we contribute to the United Kingdom target for the Kyoto agreement. We have worked hard towards meeting that target and we will continue to make our contribution. We are open to the idea of having some specific Scottish target or targets as well, which is why we have instituted a review of our climate change programme. The review is now under way. Such a serious subject requires proper analysis, so those who contribute to the consultation need to be taken seriously. We will not suddenly make an announcement before the end of the consultation to tell people that their responses have been worthless. We will listen to the responses and announce the outcome of the review, on the basis of the consultation, as soon as possible.

Shiona Baird: I accept that we must take a considered approach to the subject. However, the people of South Uist and equally low-lying communities elsewhere in Scotland are facing devastating consequences for their lifestyle. In the next few weeks, we will be at the forefront of the

world's media and would like to show that we can lead the way. Will the First Minister consider making a statement to Parliament about the robust targets for reducing emissions of climate change gases that Scotland intends to set? Is he prepared to do that before the recess and ahead of the G8 summit?

The First Minister: I will be happy to discuss with the Minister for Environment and Rural Development how he intends in advance of the G8 to promote the work that we are already doing to deal with climate change here in Scotland. On Monday, Mr Finnie made a speech on the subject, and I am sure that he will make many others in the course of the month. I will need to discuss with him whether he will be able to make one to Parliament.

Road User Charging

4. Maureen Macmillan (Highlands and Islands) (Lab): To ask the First Minister what impact the road user charging scheme, proposed by the Secretary of State for Transport, will have on Scotland. (S2F-1703)

The First Minister (Mr Jack McConnell): Nicol Stephen has already announced that we see merit in the concept of road pricing in Scotland, as part of a United Kingdom approach that could involve restructuring and reducing taxes on motoring. However, there is a considerable amount of work to be done on the practicalities and on the implications for Scotland of any UK scheme. We will continue to engage with the UK Department for Transport as its analysis develops.

Maureen Macmillan: Does the First Minister agree that, if congestion charging replaces the tax on petrol, people in rural areas, where cars are a necessity for travel, will benefit and the socioeconomic prospects of areas such as the Highlands and Islands will be boosted? Will he assure us that, where congestion charges bite, there will be sufficient investment in public transport and cycle paths and encouragement for park-and-ride schemes, so that people who must travel to cities and larger towns for work and services have a real alternative to the car?

The First Minister: The member raises two important issues. The Secretary of State for Transport has initiated a debate on road user charging. The proposal relates to the very long term—there will be a 10 to 15-year lead-in time for decisions and implementation—so we have considerable time ahead of us in which to consider a road user charging scheme. I see further improvements in public transport systems in Scotland as an absolute prerequisite for any such scheme, and I am sure that the same is true elsewhere in the United Kingdom.

When we debate road user charging, I would like us to recognise the great benefits that it might have for those who live in rural areas. Undoubtedly, the current system of motoring taxation, which places a greater penalty on petrol use than on car ownership, has a bigger impact on rural Scotland than on urban Scotland. For rural Scotland, the scheme could be a very good idea, but I want us to think through carefully the impact that it might have on businesses and individuals in urban Scotland and the main networks. We should not rush into implementing such a dramatic proposal without thinking through all the consequences.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Does the First Minister agree that, although a road user charging scheme may be introduced in 2020, many businesses, especially in the haulage industry in Scotland, face a serious threat in 2005? I invite the First Minister to play the role of Baldrick to Westminster's Captain Darling and to ask him to send to Field Marshal Blair back at Chateau Downing Street a simple message—that too many Scottish businesses are being sent over the top, too many Scottish jobs are being sacrificed by General Brown and it is time that we had a cunning plan.

The First Minister: That is probably one of the daftest and most incomprehensible questions that we have had at question time for quite a while. It is hard to know where to start in picking out bits that can be answered.

I will say one thing to Fergus Ewing. There is a genuine debate to be had about urban and rural areas and the road user charging proposal; about the practicalities of such a scheme and whether it would be workable and desirable; and about the levels of pricing that might be involved. Fergus Ewing's constituents in Inverness East, Nairn and Lochaber will be surprised to hear that he is so opposed to a proposal that would benefit them directly and very surprised to hear that, for the sake of an Opposition press release, his instinct was to say no right away.

Murdo Fraser (Mid Scotland and Fife) (Con): Does the First Minister accept that there may be advantages to rural Scotland from such a scheme, but only if it is revenue neutral over the piece and if it replaces in their entirety fuel duty and road tax?

The First Minister: Clearly the scheme will be much more acceptable, certainly to road users, if it is revenue neutral or if it offers a gain or an incentive to motorists. That would make it much more attractive. The issue will have to be raised in the debate that the Secretary of State for Transport launched this morning.

Euro (Economic Impact)

5. Phil Gallie (South of Scotland) (Con): To ask the First Minister what effect the downturn in the value and stability of the euro will have on the Scottish economy. (S2F-1699)

The First Minister (Mr Jack McConnell): Exchange rates are one of a number of factors that impact on open economies such as Scotland's. The impact of changes to rates will be influenced by other factors too.

Phil Gallie: My question also referred to stability and I do not think that economies are stable when countries such as Italy and Germany are querying the value of having the euro.

Does the First Minister agree that the strength of the Scottish economy parallels the strength of the United Kingdom economy? Does he recall the words of Mr Blair in 1997, when he boasted that the UK's economy was the strongest in Europe? Does he welcome the fact that that boast was based on our currency—the pound sterling—and is he grateful to the Major Administration that ensured that that was the case?

The First Minister: I was not going to do this, Presiding Officer; I was going to be charitable and not mention it, but I have to mention it now. Mr Gallie was a member of Parliament who supported the Major Government when black Wednesday happened and the British economy lost thousands of millions of pounds because of the mismanagement of the economy by the Government and the Cabinet—a Cabinet that Mr Gallie supported time and time again.

The British economy is currently more stable and successful than it has been for decades; we have the lowest and most consistently stable interest rates and inflation rates that the country has seen for decades; and we have the lowest rates of unemployment and the highest rates of employment that the country has seen for decades. Success in the UK economy is giving Scotland a chance to prosper. That is happening on the back of the stability of the UK economy and on the back of the innovation, knowledge and skills of the people of Scotland.

Alex Neil (Central Scotland) (SNP): I want to ask the First Minister about the impact of the instability in euroland, which was highly predictable, on employment and growth. In particular, I want to ask about the state-aid action plan that the European Commission announced yesterday. Will the First Minister ensure that the new rules on state aid help rather than damage jobs in Scotland?

The First Minister: We continue to have discussions with ministers in London and at European level. We have discussions not only on

individual state-aid issues but on the overall strategy and on the consistency of application of state-aid rules. We want to ensure that we in Scotland are not disadvantaged by those rules; that is clearly a central part of our case.

It would be interesting for us all to find out what the Scottish National Party's policy is today. I know that establishing a position on the constitution, the treaty, membership of the European Union, the euro and all of those big, important issues can sometimes be a bit difficult for the SNP, but finding out whether the view is the same in the front row of the Opposition benches as it is in the second row would be particularly interesting.

Irene Oldfather (Cunninghame South) (Lab): Does the First Minister agree that membership of the European Union provides substantial benefits to the Scottish economy, which would be put at risk by the pick-and-mix attitude of the Opposition parties on Europe? In particular, does he agree that the tariff-free access that Scottish business enjoys to 455 million consumers across the European Union provides substantial benefits for Scottish manufacturing, jobs, tourism and exports? Does he agree that, whatever the difficulties experienced during the treaty negotiations, peace is a prize worth fighting for?

The First Minister: If I had been asking the questions and Irene Oldfather had been answering, I could not have given a better answer. I absolutely agree with everything that she has just said, but I would like to make two points.

First, those who are responsible in the European Union need to respond to the outcome of the referenda in France and Holland on the proposed treaty. They must recognise not only that having an enlarged European Union is important for the future of the continent and that consistency of decision making is sometimes important at European level, but that people have powerful identities and strong national democracies that must also be recognised inside the union. Getting the right balance is a challenge to which we will continue to make a contribution.

Secondly, the difficulties around the constitution, the treaty and the decision-making structures for an enlarged European Union should not be an excuse for people in this country to call for Britain or Scotland to pull out of the European Union. Nothing could be more damaging for Scottish jobs and the Scottish economy, and any such plea should be rejected.

Fresh Talent Initiative

6. Christine Grahame (South of Scotland) (SNP): To ask the First Minister how the Scottish Executive intends to measure the success of the

fresh talent initiative and how the Executive will make the resulting information available to MSPs. (S2F-1710)

The First Minister (Mr Jack McConnell): Population statistics are already published on an annual basis by the General Register Office for Scotland.

Christine Grahame: I will not thank the First Minister for that answer. If the number of lame excuses that the First Minister gives this Parliament were matched by the number of people settling in Scotland each year, I am sure that we would not have a population crisis.

How satisfied is the First Minister that the low targets that he set for bringing fresh talent to Scotland—only 8,000 a year—will be met? At what stage is he prepared to put his hand up, face reality and say that the fresh talent initiative is dead in the water, blocked by London, thwarted and emasculated?

The First Minister: I suspect that Christine Grahame was absent the last time Sandra White asked the same question, otherwise she would know what is coming. The reality is that Scotland's population statistics have not been better since the 1950s, and that is one of the great marks of Scotland's success. I know that the nationalist party wants to run the country down, make everybody miserable and make us all feel inferior, as if we are all failing, but the rest of us in Scotland want to be cheery about our country. We want to recognise when success is happening and celebrate it. Unlike the picture that Christine Grahame and Alex Salmond paint, the truth is that, in 2004—the last year for which statistics are available—we had a population increase in Scotland of 21,000, and a net gain from the rest of the United Kingdom of 15,000 for the first time.

I am not talking only about inflation, employment and interest rates when I say that we now have the best figures that we have seen in my adult life. In the whole of my life since the early 1950s, Scotland has never had population figures such as we have. We should be celebrating the statistics and telling people what a great country this is. If the nationalist party would do that, it would not be in decline.

12:34

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Environment and Rural Development

The Deputy Presiding Officer (Trish Godman): Question 1 has not been lodged.

Flooding (Tayside)

2. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the Scottish Executive what action it is taking to help prevent future flooding damage to homes and businesses in Tayside. (S2O-6999)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): We are providing grant support to councils at the increased rate of 80 per cent of eligible costs of approved flood prevention schemes in Tayside and throughout Scotland, and we are working with a range of stakeholders to improve awareness of and preparedness for future flood risk, particularly in the light of climate change.

Murdo Fraser: The minister might be aware that residents at Dalguise on the River Tay suffered severe flood damage in January. As a result of damage to the flood banks, there is a likelihood of further flood damage in the future. What steps will the Executive take to support Perth and Kinross Council if it decides to promote a flood prevention scheme in that area?

Lewis Macdonald: I am certainly aware of the matter, as Mr Fraser wrote to me about it earlier this year. The position is simple. Councils have discretion to take action on flood protection in any circumstances in any place. The grant support for flood prevention schemes, to which I referred, does not cover agricultural land. However, a scheme on agricultural land that is designed to protect non-agricultural properties will potentially attract grant support, on the basis of the assessment of costs. In any case, the local authority has discretion to take any measures that it wishes to take to deal with flooding.

Green Space (Urban Areas)

3. Michael Matheson (Central Scotland) (SNP): To ask the Scottish Executive what action it is taking to promote green space areas in urban landscapes. (S2O-7032)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): We are supporting a range of actions to promote green space and environmental improvements in urban

areas. They include the community regeneration fund and the associated regeneration outcome agreements for disadvantaged neighbourhoods; the woods in and around towns initiative, which is led by the Forestry Commission Scotland; and the greenspace for communities initiative, which is core funded by Scottish Natural Heritage and draws support from local partners for the work of the local greenspace trusts. In addition, planning policy seeks to protect and promote open space in urban areas.

Michael Matheson: Is the minister aware of Falkirk Council's innovative proposal to transform a massive section of land between Falkirk and Grangemouth into a new commercial, recreational and environmental growth area? A key part of that proposal is the development of a large eco-park. Does the minister agree that a key part of promoting such sustainable developments is recognition of the interplay between their environmental, social and economic benefits? Will he join me in congratulating Falkirk Council on pursuing the development? How will the Executive ensure that other councils promote such developments?

Lewis Macdonald: We certainly want local authorities and others to come forward with projects and programmes that recognise the balance between environmental, social and economic initiatives. The measures to which I referred in my initial answer—such as the regeneration outcome agreements, which are particularly pertinent to urban areas—encourage environmental investment as part of social and economic regeneration.

Pesticide Use

4. Fiona Hyslop (Lothians) (SNP): To ask the Scottish Executive what guidance it intends to issue on the use of pesticides, in light of the findings of the Geoparkinson study. (S2O-7025)

The Minister for Environment and Rural Development (Ross Finnie): The Executive has no plans to issue any specific guidance. The independent Advisory Committee on Pesticides has not specifically considered the Geoparkinson study, but last November it considered a report by its medical and toxicology panel on the possible links between pesticides and Parkinson's disease. At its meeting, the committee concluded that although the review indicated a correlation between recalled pesticide exposure and Parkinson's disease, it did not point to a particular toxic mechanism or a hazard from a specific compound or group of compounds.

However, as a matter of prudence, the committee advised that further mechanistic and epidemiological research should be carried out on the association between pesticide exposure and

Parkinson's disease. The tender process for that work has just concluded and the research proposals are being peer reviewed with a view to the work being commissioned later this year.

Fiona Hyslop: I thank the minister for his considered response. Does he support the view of David Coggon, who is the chairman of the British Government's Advisory Committee on Pesticides, that such research should track individual pesticide usage, given that the Geoparkinson study that has just been produced said that high-exposure users such as farmers are 43 per cent more likely to develop Parkinson's disease? Campaigners such as Alex Horne of Armadale who have pursued the issue for many years would like not only more research, but guidance and advice to farmers and gardeners about exposure to pesticides and the potential dangers.

Ross Finnie: I am happy to take that on board. I hope that Fiona Hyslop will understand that the difficulty with the initial response was that although it found a correlation with recalled pesticide exposure, it did not get the link. That makes it difficult for us to issue guidance. Immediately that we have the research findings, if they point to a clearer link, such as that which the member suggests, we will not hesitate to issue guidance as required.

Climate Change

5. Sarah Boyack (Edinburgh Central) (Lab): To ask the Scottish Executive what action it will take following the publication of the "Report on the Inquiry into Climate Change" by the Environment and Rural Development Committee. (S20-7042)

The Minister for Environment and Rural Development (Ross Finnie): We are considering carefully the recommendations that are made in that excellent report by the committee under Sarah Boyack's equally excellent chairmanship. We will set out the action that we plan to take when we respond formally, in line with parliamentary procedure.

Sarah Boyack: I welcome that unusually positive response, which will be logged for the future. What plans does the minister have to promote action on climate change by the business community and to make that community see carbon reduction as an opportunity rather than a threat? Does he have thoughts about how Scotland might gear itself up to take advantage of any deals that may be struck on climate change at the G8 summit? I am thinking in particular of opportunities for Scottish businesses, such as those in the renewables industry.

Ross Finnie: I see that positive responses do not always generate a positive reaction, but never mind—I will persist in a positive vein.

As usual, Sarah Boyack makes an excellent point. Given the contribution that industry makes to emissions, it is extremely important that we engage with it on seeing its contribution to dealing with climate change as an opportunity and not as a threat. As the member knows, as part of our revision of the climate change programme and—I hope—in response to the Environment and Rural Development Committee's report, the energy efficiency review will not just point out mechanistic issues, but try to capture the business community's imagination. Business can play a big role in action on climate change if it grabs the opportunity that is available in economic and—more particularly from our perspective—environmental terms.

We are at a reasonably advanced stage of our climate change programme review and we have the benefit of the committee's substantial report, so I hope that we will cover not only the G8 summit's outcomes, but our consultation and—crucially—that we will incorporate the committee's recommendations in making a positive response to whatever emerges from the G8 summit.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I will continue on this jolly theme. The First Minister said today that he would consider an Executive statement on climate change before the G8 summit. When will the Minister for Environment and Rural Development consider that and when might he make a statement?

Ross Finnie: I think that the First Minister undertook to make the statement, so it would be inappropriate for me to tell him when to make it. I listened with care to his response; he said that he would consider the matter. I am sure that that was said in good faith.

As for a more substantive response, we as a Parliament have set great store by trying to establish an evidential base on which to move forward. We have the committee's excellent report and evidence from the consultation process to consider, and there is the G8 summit itself. Of course there can be a statement, but it seems to me that we must consider all those things if we want to make a proper and considered substantive response that will take us forward.

Nora Radcliffe (Gordon) (LD): Scotland is making excellent progress towards its 40 per cent renewable energy target, but the Department of Trade and Industry has admitted that it will not meet its 10 per cent target. Will the minister ensure that the review of renewables obligations will provide real support to the invaluable marine energy sector? What action has the Executive taken to evaluate the potential of specific renewables obligation certificate support for marine output, as recommended in the report by

the forum for renewable energy development in Scotland's marine energy group?

Ross Finnie: My colleague the Deputy First Minister and Minister for Enterprise and Lifelong Learning is engaged in the DTI's review of renewables obligation certificates. Much practical and academic evidence has been produced that shows that, as things are currently structured, adequate support may not be being given to developing technologies and that there may be a case for extending that support to ensure that ample support and incentives are given to developing technologies beyond the current situation. Currently, wind power has an advantage as a result of the maturity of its technology, but the Scottish Executive is clear that we wish to have a basket of available technologies to meet our renewable energy target.

Sewage Sludge

6. Mr Adam Ingram (South of Scotland) (SNP): To ask the Scottish Executive when it will bring forward a specific sustainable strategy for the treatment and disposal of sewage sludge. (S2O-7026)

The Minister for Environment and Rural Development (Ross Finnie): The Scottish Executive's policy is to establish arrangements that ensure that sewage sludge is treated or disposed of without threat to the environment or to human health under the relevant waste management regulations.

Mr Ingram: Does the minister acknowledge the justifiable public concern that sewage sludge that is being disposed of in land in Scotland is neither treated to kill off pathogens nor tested to determine heavy metal levels? Does he acknowledge that current practices are financially driven, with Scottish Water seeking to avoid landfill tax and contractors seeking to maximise the tonnage that they can dispose of without regard to environmental benefits?

Ross Finnie: I do not accept that interesting summary, although I appreciate that the member has a real interest in the matter and I acknowledge that he has pursued it diligently. However, the taking of sewage to landfill and taking it for agricultural use are controlled by a range of regulations. I do not accept that people can use such methods without due regard to the licensing authorities or to the regulations. I accept that the member, like other members, has produced instances in which those regulations have been obviated and action has had to be taken, but I do not accept that sludge is taken to land without there being a clear regulatory process.

Chris Ballance (South of Scotland) (Green): As we speak, raw sewage sludge is being spread

over land at Beoch and at Newcastleton. I assume that we all find that to be absolutely unacceptable. Will the minister undertake to ensure that the practice of spreading raw sewage sludge on to land does not continue, whether or not it is allowed? Will he undertake to ensure that the practice ceases?

Ross Finnie: It is all very well for the member to take the position that we should do nothing with sewage, but I am not sure whether that position is entirely practical or practicable. All I am saying—and as I said to Adam Ingram—is that whether people take sewage for agricultural purposes or to land, there is a clear regulatory framework that they must abide by. It is not about a simple ministerial direction. If the member wanted a change in the law, the matter would have to be considered, but it is not a question of my intervening in an existing regulatory procedure simply to direct an end to the practice. The landfill, incineration of waste and other regulations, including the Waste Management Licensing Regulations 1994, all exist to ensure that we protect human health and the environment.

Christine May (Central Fife) (Lab): I am grateful to the minister for his comments. Does he accept that, for the many of us who represent constituencies that have new sewage treatment works, safe disposal of the waste product is a matter of great concern? In his discussions with the relevant bodies, will he undertake to ensure that we do not leave ourselves with no option for the disposal of sewage sludge? Will he ensure that whatever option is agreed to is safe, poses no danger to health, does not pollute the atmosphere and represents the most environmentally sound disposal method that is available?

Ross Finnie: I assure the member that my department and my colleague Lewis Macdonald are in discussion with the Scottish Environment Protection Agency and that SEPA, in turn, is in discussion with operators who might be able to provide a sewage disposal service, to ensure that operators understand the regulatory framework and the opportunities that their becoming engaged in the process would bring for their businesses. I give the member comfort by assuring her that I share her view that it would be much to our benefit in Scotland if we had access to a wider range of sewage disposal methods. I cannot simply turn that on, but Lewis Macdonald and I and our officials are engaged with commercial operators, to encourage them to understand the opportunities, what is involved and the regulations, to try to overcome their fears that their investment might not be recovered, because we certainly wish there to be a wider range of sewage disposal facilities.

Aquaculture

7. Richard Baker (North East Scotland) (Lab):

To ask the Scottish Executive what progress is being made in improving the international competitiveness of Scottish aquaculture. (S2O-6996)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): I expect to receive shortly a comprehensive report from the regulatory review team, which has been looking at ways of making the regulatory regime more fit for purpose without compromising environmental or consumer concerns. The international comparative cost study, which we are part funding, will reach its conclusions soon and allow us to make further progress in increasing the competitiveness of Scottish aquaculture.

Richard Baker: How will the Scottish Executive ensure that the anti-dumping measures that have been proposed to create a fairer market in fish farming will provide not only a level playing field for indigenous Scottish companies, which is vital, but a context in which multinational companies that are located in Scotland can continue to thrive?

Lewis Macdonald: I am aware of the views of multinational companies that are located in Scotland and I will meet such companies in the next few days to discuss issues to do with competitiveness. It is clear that free trade must also be fair trade and the measures that are being pursued through the European Union are intended to protect small companies in the marketplace from unfair trading practice in the EU. The measures will also ensure stable prices and stability in the marketplace, which will benefit all the producers who operate in Scotland, whether they are multinational or Scottish-owned companies.

Alasdair Morgan (South of Scotland) (SNP): Would the industry's competitiveness be assisted if Britain, or indeed Scotland, were a member of the euro zone?

Lewis Macdonald: On our position in relation to the European markets, the key issue is that we already have a premium for Scottish products, as a result of our good reputation for the environmental quality of our water, for example. Our priorities in carrying that forward are to ensure that the European market remains fair and, of course, to ensure that we maintain our excellent reputation for high environmental standards, which assists in the marketing of Scottish produce.

Health and Community Care

Consultants (St John's Hospital, Livingston)

1. Bristow Muldoon (Livingston) (Lab): To ask the Scottish Executive what progress has been

made by Lothian NHS Board in recruiting additional consultants to support the obstetrics and gynaecology department at St John's hospital in Livingston. (S2O-7066)

The Deputy Minister for Health and Community Care (Rhona Brankin): I understand that consultant interviews were held on 26 May and that two excellent candidates were appointed to support the obstetrics and gynaecology service at St John's hospital in Livingston. I understand that it is anticipated that the new consultants will take up post in the autumn.

Bristow Muldoon: I thank the minister for her very positive answer. Does she agree that, given that West Lothian and western Edinburgh have relatively young and growing populations, it is excellent news that NHS Lothian is showing a commitment to the maternity and gynaecology services at St John's and that the appointment of those consultants will ensure a long and stable future for those services?

Rhona Brankin: Over the past five years the number of births at St John's has risen steadily: the figure is now approximately 2,800 per annum. That mirrors the significant rise in population in the area. The appointment of the two consultants mirrors the similar investment made last year in neonatal and paediatric services at St John's hospital. That sends a clear signal of the importance attached to St John's hospital by NHS Lothian. That commitment is mirrored by Scottish ministers.

Fiona Hyslop: The minister may be aware that one of those statistics is me, as I gave birth at St John's last year.

I very much welcome the news about the permanent appointments. Is the minister aware that more than 1,000 deliveries a year at St John's are of women who live in Edinburgh and choose to travel to West Lothian because of the quality of care that they receive? Will she ensure that the health service extends that message of support directly to the hospital so that it knows that there is a strong future for maternity services at St John's?

Rhona Brankin: I am always delighted to hear about high-quality services. I am happy to do that.

The Deputy Presiding Officer: Question 2 is from Ms Alexander, but she is not in the chamber.

Arbuthnott Formula

3. Jackie Baillie (Dumbarton) (Lab): To ask the Scottish Executive what progress it is making on the review of the Arbuthnott formula for allocating funding to NHS boards. (S2O-7040)

The Minister for Health and Community Care (Mr Andy Kerr): The NHS Scotland resource allocation committee was set up earlier this year to

improve and refine the Arbuthnott formula. The members have been appointed for a fixed term until 31 March 2007. The committee has already met on several occasions, but I do not anticipate that it will report its recommendations to me until late 2006 or early 2007.

Jackie Baillie: It will come as no surprise to the minister to hear that many of us want the Arbuthnott formula revised to take proper account of deprivation. Will the minister acknowledge that there is a well established link between poverty and ill health? Will he also acknowledge that for many communities in the west of Scotland there needs to be additional recognition of the cost of poverty to the NHS and that sooner rather than later that should be reflected in the funding provided for health boards?

Mr Kerr: I agree with Jackie Baillie's substantive point. However, the Executive has focused across all portfolios on the recognition that health and poverty are linked. That is why we work across ministerial boundaries to ensure that we take a cross-cutting approach that addresses issues such as transport, employment, mental well-being, community confidence, and investment in education and health. I think that that is the solution to health care and health improvement issues here in Scotland.

We should celebrate the success of the Arbuthnott formula. It has ensured that resources are allocated in a more accurate and meaningful way. The indicators, which include mortality, the unemployment rate, the number of elderly people living on income support and the number of deprived households, are a major feature of the Arbuthnott formula. The purpose of the committee—which coincidentally meets today for the fourth time—is to address those points. Let us leave it to the committee to come back to me and report on matters in a considered way. I will duly report to Parliament.

Mary Scanlon (Highlands and Islands) (Con): In the light of the review of the Arbuthnott formula, I draw the minister's attention to the fact that NHS funding in the Western Isles, where there are 11 inhabited islands, is £691 per person per year more than NHS funding in Argyll, where there are 25 islands. I understand that in the early days Arbuthnott funding took account of road miles but not sea miles. Will that be reconsidered in the review?

Mr Kerr: The member is correct about the calculation: it was based on road miles per 1,000 population, if I remember correctly. That point has been made to me on a number of occasions by a number of members. Such matters are exactly what the committee will meet to address. Of course, there will be difficult decisions for us all because the allocation of resources—based upon

different priorities—means a change in how we spend the money. Such decisions should reflect Jackie Baillie's point about deprivation and also remote and rural issues. Let us hear from the committee that has been established to review the formula. I will report back to Parliament in due course.

Type 1 Diabetes

4. Kate Maclean (Dundee West) (Lab): To ask the Scottish Executive whether it is aware of the challenges of managing type 1 diabetes and, in particular, the difficulties faced by young people in trying to control the disease. (S2O-7055)

The Deputy Minister for Health and Community Care (Rhona Brankin): The Executive is well aware of the challenges facing the 23,000 people with type 1 diabetes in Scotland. The 2002 Scottish diabetes framework led to significant improvements, especially in managed clinical networks, clinical management systems and eye screening. We are reviewing the framework. The consultation process highlighted the particular problems facing people with type 1 diabetes, which will be addressed in the refreshed framework.

Kate Maclean: Examples of good practice for young people, such as the sweet talk project based at Ninewells hospital in my constituency, which involves texting patients as young as eight with daily reminders to take insulin, to test their blood sugar levels and to eat and exercise sensibly, are to be commended. However, there is no consistent approach throughout Scotland for young people who are transferring from children's to adult services. Those moves happen when they are around 13 or 14 years old, which is a very vulnerable time for young diabetics. Does the Scottish Executive have any plans to address the problem?

Rhona Brankin: Kate Maclean raises an important issue that has been raised in Dundee. Her point underlines the importance of providing effective, accessible and sympathetic services to young people with diabetes and illustrates the value of our decision to deliver the comprehensive programme to detect and treat diabetic retinopathy. As part of the review of services, we will consider the issue that the member raises. Diabetes services in Dundee are a shining light for services in other parts of Scotland and I hope to visit them in the near future.

Mr Stewart Maxwell (West of Scotland) (SNP): Kate Maclean is right to highlight the inconsistency of treatment across Scotland, which other members have noted. She is also right to talk about the problem of children moving from children's diabetes services to adult services. Like

me, many members will have encountered that problem in their constituencies.

The minister will recall that some weeks ago I asked her a question about insulin pump therapy—question S2O-5947. At that point, she agreed that there was an inconsistency and that the service across Scotland needed to be improved. She subsequently wrote to me on the point. What action has she taken to deal with the inconsistency and the fact that services are not as good as they should be? What action will she take in the near future to improve services?

Rhona Brankin: The member wrote to me recently on the issue. Insulin pumps are an effective treatment option for some people with type 1 diabetes. They are not a cure or an easy option, but they are valuable for some people. The eligibility criteria for the treatment are set out in National Institute for Health and Clinical Excellence guidance. We expect NHS boards to implement that guidance, and recently they were reminded of their obligation to do so. We will follow up that reminder to ensure that appropriate arrangements are put in place.

Mrs Nanette Milne (North East Scotland) (Con): The October 2004 report, “To make myself understood”, by Diabetes UK Scotland found that one in four patients believed that care had got worse since the introduction of the 2002 diabetes framework. What action has been taken since then to raise the level of care?

Rhona Brankin: We are reviewing the framework and there has been a consultation. We need to ensure that we are providing the very highest level of care. If there are particular problems, I would be happy to address them in writing. We are sure that we have a good service in Scotland for people with diabetes. In fact, we believe that we are leading the way in the UK.

Kerr Report (Implementation)

5. Jim Mather (Highlands and Islands) (SNP): To ask the Scottish Executive whether, when implementing the recommendations of the Kerr report and, in particular, the recommendation that training arrangements should be developed to ensure a steady supply of remote and rural practitioners, it will consider the methodologies presented to the Finance Committee by Professor Michael Barber on 17 May 2005. (S2O-7031)

The Minister for Health and Community Care (Mr Andy Kerr): With due respect to the member, in my statement to Parliament on 25 May I indicated that I welcomed the findings of the Kerr report. We are considering the report in greater detail and will bring forward an implementation plan in due course.

Jim Mather: I welcome the aspiration that is contained in the minister’s answer, but I wish to press him on one issue. Will project management of the Kerr report recommendations include all the features of Professor Barber’s methodology—tight milestones and trajectories, monthly reports, stocktakes, priority reviews and delivery reports—to ensure that full value is delivered in a timely and appropriate way?

Mr Kerr: I am always interested in learning from all parts of the world, including down south. In Scotland we have comprehensive sets of indicative data on the performance of our health service, but we always seek to improve them.

I have read the presentation that was given to the Finance Committee. I found it extremely interesting and, yes, it will come into our thoughts as we develop our own models and systems. That is not to say that our health care systems in Scotland have been lax; however, we seek to learn from all.

Dental Services (Isle of Lewis)

6. Mr Alasdair Morrison (Western Isles) (Lab): To ask the Scottish Executive whether it will provide an update on the provision of dental services on the Isle of Lewis. (S2O-7065)

The Deputy Minister for Health and Community Care (Rhona Brankin): I welcome the efforts of Western Isles NHS Board. The board is implementing a range of measures to address the levels of access to NHS dental services. An example is the purchase of the Bayhead dental practice, which will be transferred to the board on 1 July. From July, the practice will have five dentists providing services. An advice line was set up on Monday to provide advice on how to access NHS dentistry for both routine and emergency services.

Mr Morrison: I thank the minister for that encouraging update. When we faced the challenge of diminishing dental provision in Lewis, Andy Kerr, Rhona Brankin and Tom McCabe in his previous capacity, all personally sanctioned the purchase of the practice in Bayhead in Stornoway. We all appreciated that flexibility and flair.

I urge Rhona Brankin to liaise with Western Isles NHS Board so that a dialysis unit can be established in the islands. I am sure that the minister would agree that it is far from acceptable that dialysis patients travel to Inverness and Glasgow twice a week to be dialysed. We all accept the need to travel to mainland centres of excellence for major medical procedures, but dialysis can be safely delivered on the islands—

The Deputy Presiding Officer: Mr Morrison, you are getting your Ds mixed up. We are talking about dental services, not dialysis.

Mr Morrison: Indeed—I am talking about innovation, Presiding Officer. I urge the minister to liaise with the board in the same sensible way as the Executive liaised on dental services.

Rhona Brankin: If we are talking about creativity and innovation on the part of Western Isles NHS Board, I will say that we would be delighted if the board were able to provide that innovative service in future.

The Deputy Presiding Officer: Question 7 has been withdrawn.

Kerr Report (Mid Scotland and Fife)

8. Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): To ask the Scottish Executive how the proposals in the Kerr report will improve services for patients in Mid Scotland and Fife. (S2O-7005)

The Minister for Health and Community Care (Mr Andy Kerr): As I said, I welcomed the publication of the Kerr report in my statement to Parliament on 25 May. We intend to bring forward an implementation plan in due course.

“Building a Health Service Fit for the Future” is a detailed report and it is impossible for me to list here all the ways in which it will improve services for patients in Scotland, including those in Mid Scotland and Fife. However, I can pick out some of the key benefits. There will be better proactive, co-ordinated and managed care for the elderly, the frail and those liable to frequent hospital admission; better support for self-care; quicker access to planned care, including diagnostic tests; dedicated resources to provide anticipatory care in deprived areas as a means of reducing health inequalities; and sustainable local solutions for the vast majority of unscheduled care.

Taken as a whole, the report’s recommendations give us the opportunity to prepare for an aging population with increasingly complex sets of long-term conditions.

Mr Arbuckle: Many people have rightly welcomed the Kerr report. I particularly welcome the policy of keeping services as local as possible. The minister has said that implementation will happen “in due course”. However, I am being asked about the definition of “in due course”. Is there a timetable for “in due course”?

Mr Kerr: On 25 May, I said that we had to lay out the path towards the NHS’s information technology structure. In the near future, I intend to issue documents relating to the tendering process for that service. I have already met Highland NHS Board to discuss the implications of Kerr, and next Monday I will meet with board chairs, also to discuss the implications of Kerr.

Professor Kerr described this as the work of a decade, but that is not to say that there are not

aspects of the report that we must start work on right now.

The report provides a framework for the delivery of services in local communities and for the taking of services out of the acute setting so that they can be delivered in the community setting. We acknowledge the challenges mentioned in the report on how to stream patients within health care systems to ensure that planned elective care can be carried out effectively and that accident and emergency services, trauma services and 24/7 services can be provided effectively.

I believe that Kerr is being implemented now in relation to some of our early-action points. However, we clearly have to consider the full roll-out of Kerr, and such matters will be discussed in the Parliament in due course.

Bruce Crawford (Mid Scotland and Fife) (SNP): From the point of view of Mid Scotland and Fife in particular, I am glad that the minister will be meeting the board chairs. That will be very useful. I wonder whether he could reflect on what the Kerr report says about accident and emergency services. I think that it says, roughly, that they should be built around existing units. I spoke to the Deputy Minister for Health and Community Care this morning about the proposal to move the accident and emergency unit from Dunfermline to Kirkcaldy over the long term. Will the minister discuss that with the board chair from Fife when he meets board members and will he ask them whether they will consider reviewing that option?

Mr Kerr: That is the very reason why we should not pick and mix from the Kerr report. If Mr Crawford reads the Kerr report he will find that it says that we should allow facilities such as diagnostic and treatment centres to deliver planned elective care in such a way that our existing diagnostic and treatment centres have a 2 per cent cancellation rate on operations. That way, they can focus simply on planned elective care, uninterrupted by A and E trauma. That allows the work on waiting times and waiting lists, in which we all have a great interest, to be done.

The report indicates what communities should reasonably be able to expect from emergency care provision and it includes a number of scenarios. I said on 25 May that the report has a lot of great things in it. The consensus around it was magnificent and the community engagement that David Kerr undertook was valuable, but there are still tough decisions to be made. If Bruce Crawford’s position was agreed and the proposal was reviewed, holding back the service where it currently exists, we would not make the same progress on planned elective care. Those are the tough decisions that boards have to make in the interests of communities to ensure that we can fulfil the Kerr ambition. I am sure that we will do

that, but those matters are for boards, as they are closer to the ground. Let us not pick and mix from the Kerr report. It presents us with what is arguably a once-in-a-lifetime opportunity to fix our health service in such a way that we can meet the needs of the population in 2031, never mind right now.

National Health Service Boards (Meetings)

9. Mr Brian Monteith (Mid Scotland and Fife) (Con): To ask the Scottish Executive how often the Minister for Health and Community Care meets individual NHS boards. (S2O-7002)

The Minister for Health and Community Care (Mr Andy Kerr): I meet NHS board chairs and board members on a regular basis. For example, on Tuesday 7 June, I met the board of NHS Highland to discuss Professor David Kerr's report. This summer, I shall be holding annual reviews, in public, with each of the 15 NHS boards and with most of the special health boards.

Mr Monteith: The minister may care to meet Lothian NHS Board, for the *News of the World* has revealed documentary evidence of the chairman and officials of Lothian NHS Board giving preferential treatment to Labour MPs, MSPs and councillors, including the blind copying of e-mail correspondence between the board and a Conservative councillor who was legitimately raising his ward constituents' concerns. Does the minister agree that that is shameful behaviour and will he use his powers to hold that health board to account?

Mr Kerr: It is down to NHS Lothian to respond to the specifics of the matter that the member raises and I am sure that it will respond in detail with its take on the reports in the *News of the World*. In general—not referring specifically to NHS Lothian—I expect politicians to engage with the communities that they represent in a way that allows them effectively to hold boards to account. That is what I also see from my reading about the situation at NHS Lothian. I believe, however, that it is down to NHS Lothian to respond to the specific points about political patronage.

School Nurses

10. Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): To ask the Scottish Executive how many school nurses there are; whether it considers that there are sufficient numbers of such nurses; whether it has a target for the number that there should be, and what its policy is in this regard. (S2O-7020)

The Deputy Minister for Health and Community Care (Rhona Brankin): The Scottish Executive remains committed to building the capacity of the NHS workforce in Scotland.

Although there is no specific target associated with school nurses, the latest figures show that, at September 2004, there were 423 headcount qualified school nurses working in NHS Scotland.

Fergus Ewing: I am sure that the minister and the Parliament would wish to acknowledge the excellent role that school nurses play and the wide range of services that they now operate. Is the minister aware that, in England, the Labour Government is committed to there being one school nurse for every secondary school catchment area? Will the Executive match that commitment?

Rhona Brankin: I am delighted to acknowledge the excellent work that school nurses do and the importance of their role. That is why "A Scottish framework for nursing in schools", which was published in March 2003 and which sets out the future direction for school nursing in Scotland, recognises the vital role that nurses play in supporting vulnerable children and young people. It provides a clear description of the nursing service that should be delivered to children and young people in Scottish schools.

Business Motion

14:55

The Deputy Presiding Officer (Trish Godman): The next item of business is consideration of business motion S2M-2939, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 of the Charities and Trustee Investment (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Charities and Trustee Investment (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Groups 1 and 2 – 15 minutes

Groups 3 to 5 – 50 minutes

Groups 6 to 9 – 1 hour and 15 minutes

Groups 10 to 13 – 1 hour and 35 minutes

Groups 14 to 18 – 1 hour and 55 minutes.—[*Ms Margaret Curran.*]

Donald Gorrie (Central Scotland) (LD): I do not oppose the motion; I just want assurance that if, as is possible, some groups of amendments take longer than anticipated to deal with and others take less time than anticipated to deal with, there will be flexibility in the use of the timetable.

The Deputy Presiding Officer: The chair has discretion and we will keep an eye on that as stage 3 proceeds.

Motion agreed to.

Charities and Trustee Investment (Scotland) Bill: Stage 3

14:56

The Deputy Presiding Officer (Trish Godman): The next item of business is stage 3 of the Charities and Trustee Investment (Scotland) Bill. For the first part of the stage 3 proceedings, members should have a copy of the bill, the marshalled list, the supplement to the marshalled list and the groupings of amendments.

On amendments, an extended voting period of two minutes will be allowed for the first division. Thereafter, a voting period of one minute will be allowed for the first division after a debate on a group. All other divisions will last 30 seconds.

Section 1—Office of the Scottish Charity Regulator

The Deputy Presiding Officer (Murray Tosh): Group 1 relates to matters to which the Office of the Scottish Charity Regulator must have regard in exercising its functions. Amendment 1, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie (Central Scotland) (LD): The purpose of amendment 1 is to redress what most people consider to be the bill's general thrust. People think that the bill is about regulating charities and, by implication, that it could be regarded as being slightly anti-charity. I know that that is no one's intention, but I wanted to include in the bill some wording that would make that clear.

According to amendment 1, OSCR would have to have regard to

“the desirability of promoting—

(a) philanthropy,

(b) voluntary activity, and

(c) the health of the charitable sector.”

It is important that people continue to have the confidence to give their money and time to charities and that the charitable sector as a whole will blossom and flourish.

There are always technical arguments about whether such a provision should be included in legislation, but it is important that we make it clear that the bill is pro-charity. I will listen with interest to what the minister has to say. If she says the right things, I will not press amendment 1.

I move amendment 1.

The Deputy Minister for Communities (Johann Lamont): I trust that I can rise to the challenge of saying something that is sufficient to make Donald Gorrie act against his instincts.

Donald Gorrie made the point that he believes that the general thrust of the bill could be seen to be negative and, by implication, that it is anti-charitable sector. I argue that the bill's thrust is against the corrupt use and abuse of the word "charity", and against abuse of people who give of their time and resources to support good works. It is entirely right that, in regulating the sector, we will strengthen it rather than weaken it.

I acknowledge that amendment 1 is linked to the Communities Committee's recommendation in its stage 1 report that the Executive should consider including in the bill

"more general reference to promoting a flourishing charitable sector in Scotland".

I do not denigrate the thinking behind the lodging of amendment 1, but the bill has always been intended to help the charitable sector in Scotland to flourish by providing a robust but not overly onerous regulatory regime that will give the public confidence in donating to charity. That is the whole point of the bill.

We do not, however, believe that the bill should dictate how OSCR exercises its functions. OSCR is the independent regulator and should be concerned first and foremost with compliance with the law as set out in the bill. We intend that benefits to the sector will flow from that, in that public confidence will be increased and clarity will be provided to charities about what is required of them. Indeed, it is evident that the sector itself also has a responsibility to encourage the existence and development of a flourishing sector.

Although we agree whole-heartedly with the sentiment behind Donald Gorrie's amendment, we do not believe that it should be stated on the face of the bill. The argument is not technical; we genuinely believe that there is a broad range of roles for OSCR and for the sector that are entirely determined by the existence of the legislation. I urge Donald Gorrie, who has listened attentively, to seek to withdraw amendment 1.

15:00

Donald Gorrie: The minister gets an alpha minus. I will not press amendment 1. With Parliament's leave, I will withdraw it.

Amendment 1, by agreement, withdrawn.

The Deputy Presiding Officer: Group 2 is on guidance. Amendment 46, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie (Glasgow) (Green): Donald Gorrie's amendment 1 nodded in the right direction; the sentiment behind amendment 46 is similarly intentioned. The placing of a duty on OSCR to consult representatives of the charity sector on guidance that will have a significant

impact on the sector is a slightly stronger formulation than that which Donald Gorrie used. He said that OSCR

"must have regard to the desirability of promoting"

certain qualities in the sector. I do not expect a wave of support to come crashing down on me, as Donald Gorrie also somehow missed out on such a wave.

The intention behind amendment 46 is for the bill to lead to stronger and more constructive relationships between the regulator and the sector. It is possible to promote that kind of good practice through consultation and by working together in a number of different ways. It need not be on the face of the bill. It has been suggested that a concordat between the regulator and the sector could achieve that end.

Agreement to amendment 46 would make it crystal clear to all concerned that, where decisions have a significant impact on the sector—I am not talking about every little matter—the organisations concerned should expect to be consulted. Amendment 46 would not in any way undermine the independence of OSCR as a regulator. I hope that the minister will be open to the amendment.

I move amendment 46.

Christine Grahame (South of Scotland) (SNP): I support amendment 46. I refer Parliament to the spirit of the committee's stage 1 report. In paragraph 21 of the executive summary, we say:

"The Committee ... encourages the Executive to ensure that charities have the advice and support necessary to help them adapt to the new regulatory framework."

The committee also made it plain that it did not want a burden to be placed on OSCR for specific guidance, but that charities should be given more general guidance about the appropriate direction in which to go, thereby helping them to avoid falling foul of regulations. The Scottish National Party supports amendment 46.

The Minister for Communities (Malcolm Chisholm): A similar amendment was lodged at stage 2 and the committee rejected it because it would have resulted in OSCR having to consult every time it issued any guidance. Although amendment 46 would not cause that problem, we will continue to resist such an amendment to the bill; its potential to cause difficulties outweighs any benefit. As the bill stands, there is nothing in it to prevent OSCR from producing guidance: in fact, OSCR already produces guidance on the current legislation and we expect it to continue to do so. It is entirely unnecessary to include a permissive provision.

On consultation, OSCR is already under a duty to consult on guidance on how it determines charitable status. It will also consult on some of the other guidance that it will issue. In deciding on

the guidance on which it is to consult, OSCR—as a public body—is under a duty to be proportionate, accountable, consistent and transparent. Not only is it unnecessary to place a duty on OSCR to consult, to do so could have a negative impact on OSCR’s regulatory function if, after repeated challenges of its assessment of what is significant under such a duty, OSCR were obliged to consult on even minor administrative guidance. Therefore, I ask Patrick Harvie to seek to withdraw amendment 46.

Patrick Harvie: I am not convinced that amendment 46 leaves open the possibility that OSCR will be forced to consult on every minor issue; the phrase “significant impact” is fairly clear. Therefore, I will press the amendment to a vote.

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy 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)
 Cunningham, Roseanna (Perth) (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)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Leckie, Carolyn (Central Scotland) (SSP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Stevenson, Stewart (Banff and Buchan) (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)
 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)
 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)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 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)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 72, Abstentions 0.

Amendment 46 disagreed to.

The Deputy Presiding Officer: Group 3 is on OSCR's regulatory powers. Amendment 20, in the name of the minister, is grouped with amendments 27, 58, 33, 59, 64 and 45. If amendment 58 is agreed to, amendment 33 will be pre-empted.

Johann Lamont: I am sure that the committee agrees that, over the piece, the bill has been a good piece of work, in that there has been a lot of constructive discussion and debate as the bill has progressed through its stages. However, there was a lot of wrestling and disagreement over mismanagement and misconduct, which is the issue that we seek to address in this group of amendments. I hope that members will forgive me if I take a bit of time to elaborate on the Executive's position on those matters, as they are at the centre of some of the concerns about the bill.

The group is about OSCR's regulatory powers and the enforcement of trustee duties. There was a huge concern that, if trustee duties were considered to be too onerous, people would be deterred from taking up the responsibility of being trustees at all and that there would be a consequential impact on charities. That is a concern that we all share, and it is certainly not the Executive's intention to do anything to deter people from acting as trustees, so we were keen to find a way to make it clear that the regulatory framework was proportionate.

During stages 1 and 2 of the bill, there was significant discussion about what actions ought to be taken if breaches of charity trustee duties became apparent and about the definition of misconduct and the circumstances in which OSCR and the courts should take regulatory action against a charity trustee—or any other person—who breached any of the bill's provisions.

There was concern that making the duties of charity trustees and the consequences of breach too onerous could discourage volunteers or anyone else from taking on a role in charities. On the other hand, the bill is intended to establish a robust regulatory regime from which the public can take reassurance that any charity is well regulated, so that they can therefore have confidence when donating to or volunteering for a charity. It is at the heart of the bill that we strike the balance between not deterring those who wish to give of their time and re-establishing and sustaining confidence in the sector.

Existing charity law refers to both misconduct and mismanagement, allowing ministers, through OSCR, and the courts to take action in the event of either arising. The bill as introduced sets out that any breach of the provisions by a charity trustee is to be treated as misconduct. For clarification, mismanagement is defined in the bill as being included within misconduct. At stage 1,

many of those who gave evidence suggested that they considered mismanagement to be more related to mistakes and minor breaches than misconduct, which was considered to cover intentional breaches. That distinction is not necessarily sustained, however, even if it is how people feel about those two words. I do not want to dance on the head of a pin as far as that is concerned, although the issues are substantial. The distinction is not substantiated by the dictionary definition. The dictionary establishes that the words "misconduct" and "mismanagement" do not distinguish between intent and error. Amendments based on that understanding consequently do not achieve what was desired and give rise to unintended difficulties.

Many people felt that OSCR and the courts should be able to take regulatory action only in serious or intentional cases. The Executive has argued that it is more appropriate for the bill to be unequivocal and that any breach is misconduct, but that OSCR will, in practice, take only action that is necessary. The Executive attempted to reassure the Communities Committee at stage 2 that when OSCR took action, it would do so proportionately. As a public body, OSCR has a duty to act proportionately and reasonably under common law, and its decisions and processes may be subject to appeal or judicial review.

Despite the power of the argument that the Executive presented to it, at stage 2 the committee agreed to amendment 149, which amended section 65(4) so that any breach of the trustee duty

"may be treated as being misconduct",

rather than

"is to be treated as being misconduct".

In light of our concerns, I indicated to the committee that we would wish to return to the matter at stage 3. I wrote to the convener, explaining why we would wish to reverse that amendment at this stage.

At stage 2, the committee also agreed to amendment 5, which changed the definition of misconduct in section 103 so that it did not include minor mismanagement. The Executive understood why that was done, and although I do not wish to minimise the concerns that were reflected in that amendment, the Executive was concerned that, together with amendment 149, which was agreed to at the preceding committee meeting, amendment 5 had the effect of undermining OSCR's discretion, removing clarity and making effective regulation more difficult.

Neither of those amendments offers charity trustees the sort of reassurances that the

committee sought, because it is still within OSCR's discretion to decide whether or not a breach is misconduct, and even minor breaches—other than those related to bad management—can still be considered misconduct. It is normal practice in legislation that action can be taken by a regulator in any case of a breach of the law. As I argued in my recent letter to the committee, if action cannot be taken following a breach of legislation, there is little point in its being set out as part of the law; in practice, that merely amounts to guidance.

The amendments that we are proposing seek to impose specific requirements in the bill that OSCR must act proportionately and reasonably. Amendments 27 and 20 have been lodged to reassure members that actions against breaches of trustee duties and other cases of misconduct will not be taken unless they are really deemed necessary. That lies at the heart of the committee's concerns. Amendment 27 specifically restricts OSCR's section 31 powers to suspend a charity trustee unless such action is necessary and reasonable.

Amendment 20 is a more general provision that requires OSCR to act in accordance with best regulatory practice when carrying out all its functions. That provision is similar to the duty that has been proposed for the Charity Commission for England and Wales under the Home Office's recently reintroduced Charities Bill. The criteria that are used to describe best regulatory practice—proportionality, accountability, consistency, transparency and targeting—are those that are recommended for regulation and enforcement by the better regulation task force, and they have been widely accepted. OSCR's decisions are also subject to review and appeal, and it is under a duty to publish a report whenever it takes regulatory action under sections 30 and 31.

Donald Gorrie's amendment 58 appears to have the same intended effect as our amendments 20 and 27. However, amendment 58 is limited to instances in which OSCR may consider action against charity trustees; it does not address the instances in which OSCR may consider action against the employees of charities. I believe that OSCR needs to act proportionately in respect of both charity trustees and charity employees. Our amendment 20 achieves that; amendment 58 does not.

15:15

Amendment 58 could cause other problems. It would restrict OSCR's powers to take action against a breach of the charity trustee duties to ensure that they are appropriate and proportionate. That would be fine, but by also relating that restriction to the human resources of

the charity, it would provide an unacceptable defence against breaching the law. The charity trustee duties are set out in the bill because they are important.

I turn to Donald Gorrie's amendments 59 and 64. I understand that amendment 64 is intended to replace amendment 59, so I shall limit my comments to it. Amendment 64 seeks to place all charity trustees under a duty to take such steps as are reasonably practicable to ensure that any breach of a charity trustee's duties is corrected by the trustee concerned and is not repeated and that any trustee who has been in serious or persistent breach of either or both duties under sections 65(1) and 65(2) is removed as a trustee. That complements the powers that OSCR has and I encourage the Parliament to support the amendment.

Amendments 33 and 45 reverse the changes that the committee made at stage 2. We trust that, as we have provided the reassurance in the bill that OSCR must act proportionately, members will understand the logic behind those amendments. Under amendment 20, OSCR will have a general duty to act proportionately in all its functions. Under amendment 27, OSCR's specific powers to suspend a person from being in management or control of a charity are subject to its being able to justify that the person has not acted honestly and reasonably in relation to the misconduct concerned and ought not to be excused. I urge members to accept Executive amendments 20, 27, 33 and 45 and Donald Gorrie's amendment 64, and to reject the other amendments in the group.

I move amendment 20.

Donald Gorrie: I will take this bit by bit, because, as Johann Lamont said, the issue to which this group relates is at the heart of the bill.

The amendment that is now amendment 64 started off as amendment 59. It suffered the usual fate of my amendments and was rewritten by the wise people who do those things. I suppose that it has been improved, although I cannot honestly say that I know why. I am going with amendment 64—one has to go with the flow.

The point of amendment 64 is simple, and Johann Lamont set it out correctly. If a trustee of a charity finds that another trustee who is the treasurer or holds some other post is failing to do his job by not sending in the accounts on time, it is up to them to put the screws on that other trustee to ensure that the accounts are sent in on time next year. If a trustee is failing in his duties seriously and persistently, it is the duty of the other trustees to remove him. That seems fairly straightforward and the Executive supports it, which is fine.

I turn to the issue of proportionate regulation, which my amendment 58 tries to achieve. To give the Executive due credit, after discussing the issue with committee members it lodged amendments 20 and 27, which achieve most of what we were on about in raising the question of any penalty being proportionate to the wrongs done. We felt that the bill did not distinguish between somebody who had put in their accounts a day late and somebody who was off to the Bahamas with all the money. We want there to be proportionate penalties or disciplinary action against trustees. Executive amendment 20 meets that aim reasonably well as it states:

“regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed”.

If a small charity is slightly incompetent about its accounts, it gets a stern letter saying, “Look you really have to brace up and do this better next year.” That is proportionate to the offence.

Amendment 27 deals with whether OSCR can suspend a charity trustee. It states that if

“the person has acted honestly and reasonably in relation to the misconduct concerned”

he or she will be excused.

The two Executive amendments 20 and 27 are helpful. Members will not be surprised to hear that I think that my amendment 58 is better, but I recognise that the world is as it is and I will go with the flow and not move amendment 58.

However, I feel strongly about the Government’s amendments 33 and 45. Those amendments seek to overturn the amendments at stage 2 that related to misconduct. This is not a party-political issue; it is a common-sense or how-one-sees-the-world issue. As I see the world, misconduct is quite different from mismanagement. In support of that view, I will pray in aid a senior civil servant, Mr A J MacDonald, who is a civil service commissioner. This very important gentleman wrote a report for the benefit of Mr Elvidge, who runs our civil servants, as a follow-up to the report of the Fraser inquiry. In his report, Mr MacDonald clearly distinguishes between misconduct and mistakes in administration. For example, he says:

“there are, in my view, no instances of ‘misconduct’ which would cause me to advise you to consider disciplinary proceedings against any official”.

That means that there was no misconduct. He goes on to say:

“Mistakes were made in the administration of the Holyrood Project”.

He is talking about the way in which the project was mismanaged, rather than a matter of misconduct. The problems were a matter of poor administration rather than misconduct. The

judgment of officials might or might not have been satisfactory but the matter was not one of misconduct.

Although I could bore members with many more quotes, I will not. However, it is quite clear that, in the eyes of that civil service dignitary, there is a difference between misconduct and mismanagement. I still feel that there is an issue. I will not make a big political point about it, but I might well abstain when it comes to voting on amendments 33 and 45. The Executive has a genuine point of view on which it has been advised, and it will therefore go ahead and do its thing, but it is wrong.

I hope that members will support amendments 64, 20 and 27. They can make up their own minds about amendments 33 and 45.

Christine Grahame: The Scottish National Party supports amendments 20 and 27. I note that amendment 58 has been supplanted by amendment 64, which we also support.

I have the same concerns as Donald Gorrie has with regard to amendments 33 and 45. The committee was clear that there is a world of difference between mismanagement and misconduct. Mismanagement might be so gross that it can be interpreted as being misconduct, but there are minor errors that cannot be called misconduct. The SNP will not be supporting the Executive’s amendments 33 and 45, which seem to fly in the face of the rather decent-spirited amendments that were agreed to at stage 2 and which reflected the strong views of the committee, whose stage 1 report says:

“The Committee recommends that the Executive should amend the definition of “misconduct” in section 103 to reduce the possibility of those charity trustees who make relatively minor and genuine errors of mismanagement having action taken against them.”

That was a unanimous recommendation and, as far as I know, the committee’s view has not shifted.

Scott Barrie (Dunfermline West) (Lab): Members who have not followed the bill in as great a level of detail as committee members have might be slightly confused about the amount of time that we seem to have given this afternoon to the words “mismanagement” and “misconduct”. However, I stress that the point is not anorakish or semantic. The committee’s position reflects concerns that were raised with the committee by many witnesses and which were highlighted by a number of the committee’s members who spoke in the stage 1 debate.

We have all struggled to find a way around the issue, given that we were dealing with the bill as it was and the fact that the Executive believed mismanagement and misconduct to mean the

same thing, while almost everyone else thought that there was a clear distinction between the two terms. The debates and amendments on the issue at stage 2 reflected many people's desire to encompass that distinction in the bill.

As Johann Lamont said in her opening remarks, amendment 20 goes a considerable way towards helping us out of the difficulty that we appear to be in over this issue by making it clear that OSCR should act proportionately and be accountable. Agreeing to that amendment would go some way towards resolving some of the difficulties that some of us have had over the issue.

We must make it clear that we have laboured this point so consistently and strongly because we do not want to dissuade anybody from becoming a charity trustee. We certainly do not want to encumber people with a bad reputation because of a genuine error that may be construed, in other circumstances, as the action of someone who was at it. It is that distinction that we want to make.

Amendment 20 goes some way towards achieving the right balance and is a welcome addition at this stage. It is worthy of support.

Mary Scanlon (Highlands and Islands) (Con):

I am happy to follow my committee colleagues and speak to the amendments, as have others, in a non-party-political way. This has been a serious issue for the committee, and I seek further clarification from the minister on amendments 27 and 45.

I, too, will be a bit of an anorak. The "Oxford English Dictionary" defines misconduct as:

"Improper or unacceptable conduct or behaviour."

It defines mismanage as:

"To manage badly or wrongly".

I am not sure that we have the solution to the problem today.

Amendment 27 states:

"OSCR's power to suspend a person by giving notice under subsection (4)(a) or (b) does not apply if OSCR considers that the person has acted honestly and reasonably in relation to the misconduct".

How can someone honestly and reasonably indulge in unacceptable or improper behaviour? I find that difficult to understand. I understand that a person could act honestly, reasonably and innocently in relation to mismanagement, but could they act honestly and reasonably in relation to misconduct? The definition of misconduct does not sit fairly and squarely with honest and reasonable behaviour. Someone cannot honestly and reasonably behave in an unacceptable and improper way.

If amendment 45 were agreed to, the bill would read, "misconduct' includes mismanagement".

Does that mean honest and reasonable misconduct or downright serious, unforgivable, unacceptable or improper behaviour? I have serious problems with the amendments. It seems that we would be making misconduct acceptable. Amendment 27 states that misconduct is acceptable, as it attaches the words "honestly" and "reasonably" to it.

I seek further clarification from the minister on the matter. I would like to support amendments 27 and 45 but, like Donald Gorrie, I may have to abstain on the issue.

Linda Fabiani (Central Scotland) (SNP):

As Mary Scanlon says, there is a difference between misconduct and mismanagement. What the terms mean to potential trustees and the general public is important. I do not accept the argument that misconduct and mismanagement mean the same thing, and I believe that the vast majority of people do not think that they mean the same thing. I do not care about all the talk from the civil servants and the semantic dancing that is going on here. As far as I am concerned, if someone is accused of misconduct there is a perception that they have knowingly done something wrong.

I ask every MSP to consider what their own position would be if they were a charity trustee who was reported as having been guilty of misconduct. They would have the press all over the place, looking to see whether they had filched money, taken a holiday abroad or whatever. Mismanagement is a different thing. Someone who has submitted their accounts a day late has mismanaged and pays the penalty for that. Misconduct is completely different. I refuse to accept that the might of the civil service down the road could not come up with an acceptable way of reflecting the unanimous view of the Communities Committee.

15:30

Johann Lamont: It is obvious that consensus has managed to break down for a little while before we move on to more positive matters.

It is not the view of the civil service down the road that it is seeking to ensure that its will prevails over that of the Parliament. The Scottish Executive has come to a view, which it has expressed through its amendments, about how to address the concerns that have been raised. Members can criticise the Executive for that, but the situation has not arisen because civil servants want to dance on the head of a pin. I assure Linda Fabiani that although I might not have applied my intellectual faculties to the matter in the way that she would wish me to, I have actually tried to apply them, as have people throughout the Executive. Therefore, she can take dispute with

me, rather than try to take the argument somewhere else.

Linda Fabiani and others have said before that they do not accept that, for the purposes of the law, mismanagement is regarded as a subset of misconduct. We can take a view one way or the other on whether we want to believe that, but we must determine how the law would be interpreted if a case came to court.

Although we do not want to deter trustees from taking an active part in the work of charities, there is another side to the matter. We must not create the impression that being a trustee brings no consequences and responsibilities with it if there is wilful misconduct, and trustees have a responsibility to try their best not to make mistakes.

I am intrigued that Donald Gorrie brought into his defence someone who reported on the Fraser inquiry report—I contend that that was a challenging comparison. The civil service commissioner to whom Donald Gorrie referred said that misconduct was distinct from blameworthy behaviour. However, the civil service commissioner was clear at the start of his report. He makes certain assumptions about culpability when he sets out his approach to determining whether misconduct has taken place. That he does so is evidence of the fact that any judgment about intent or error is not inherent in the term “misconduct”. If it were, he would not have needed to set out that statement at the start of his report.

In some ways, the example of the Fraser inquiry and what it reported on highlights the fact that sometimes there is a false distinction between the consequences of misconduct and those of mismanagement. If anything were to happen in the Parliament as a consequence of a mistake rather than as a result of wilful error, there would still be a significant impact on the Parliament. Equally, we all accept that mistakes made over time would have an impact on a small charity, regardless of the motive of the people who made the mistakes. That is what we are wrestling with today, and what the Executive has wrestled with.

We were concerned about the committee’s approach at stage 2 in trying to include in the bill a way of recognising and addressing the problem. We contend that the committee’s approach was not the right way to address the problem because it would not give the reassurance about the position of trustees that people sought. Indeed, it would create in the legislation extra layers before OSCR could take action.

It is important that OSCR acts proportionately when it takes action. OSCR would be expected to act proportionately if someone did not put a stamp on an envelope or forgot to post their accounts. If

a charity has a series of problems because a range of mistakes have been made, we would not expect OSCR not to intervene. However, the way in which OSCR intervened would still have to be proportionate.

I urge people not to think that there is a huge division in the chamber, but to recognise that we are wrestling with two distinct matters: the effective management of charities; and support for people who want to become active in charities. If we support the Executive amendments, the Executive will address those concerns with the committee and give strength to OSCR’s role while making it clear that our expectation of OSCR is that it should act proportionately. I urge members to support amendments 20, 27, 33, 45 and 64.

Amendment 20 agreed to.

Section 7—The charity test

The Deputy Presiding Officer: Group 4 is on the charity test and charitable purposes. Amendment 21, in the name of Scott Barrie, is grouped with amendments 2, 47, 3, 4, 48 and 5.

Scott Barrie: The effect of amendment 21 would be to extend the definition of “the advancement of education” in the list of charitable purposes in the bill to recognise the significant contribution that youth work makes through the provision of non-formal education opportunities to promote and support the development of young people.

Amendment 21 is similar to an amendment that I lodged at stage 2. When the Deputy Minister for Communities spoke to that amendment, she suggested that I had not provided an adequate definition of youth work. She also expressed concern that the amendment, rather than widening the definition of education, might narrow it by excluding other types of non-formal education. Clearly, that is the opposite of what I was trying to achieve.

Amending the definition of education in the bill’s list of charitable purposes would complement the Scottish Executive’s commitment, which it made in “A Partnership for a Better Scotland”, to develop and launch a national youth work strategy before the end of the current session of Parliament. Amendment 21 should be seen in that context. If we extend the definition of education, we will not only recognise the significant contribution that youth work makes but help it to meet future challenges by making it more attractive for external funders to support and nurture the sector.

I am aware that section 7(2)(m) in the list of charitable purposes refers to

“any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.”

It may well be that the Minister for Communities thinks that that is enough to cover the issue that I raise. If so, I will welcome his further reassurance on the point. It would also be helpful if he could confirm that his understanding of the definition of education includes not just schools but education in its widest sense. That will go a long way to clarifying the point that I raise.

Amendments 2 and 47 deal with amateur sport, and I know that other members will speak to them extensively. There has been a lot of lobbying from sporting organisations about the outmoded and outdated use of the word “amateur”, and we need to consider the matter. Amendments 2 and 47 are worthy of consideration and support.

I move amendment 21.

Donald Gorrie: I have some sympathy with amendment 21 and I hope that the minister will be able to give reassurances on the point.

On amendments 2 and 47, I hope that all will end satisfactorily. As Scott Barrie said, there is a great deal of concern in the sporting world about the use of the word “amateur”. Many British, Scottish and international sporting bodies have dropped the word from their titles because it is an outdated term. I lodged amendment 2, which seeks to leave out the word “amateur”, but Karen Whitefield subsequently lodged amendment 47, which seeks to leave out the term “amateur sport” and include the term “public participation in sport”. Amendment 47 is a reasonable amendment, which achieves what I was trying to achieve. I understand public participation to mean people who are on the park doing the thing, not people who are watching it on the telly in the bar or people in the crowd. I assume that that is how “public participation” is to be understood. I am content to support amendment 47 rather than amendment 2.

The Executive’s amendments 3 and 4 seek to include in the list of charitable purposes the “organisation of recreational activities” as well as the provision of facilities. They stem from an amendment that I lodged at stage 2 and withdrew—because I am a nice sort of guy—under pressure from the deputy minister, so I am pleased to have converted her to the right cause. I will support amendments 3 and 4 because they help to deal with the issue that I raise in amendment 48. The bill says that a sport must involve “physical skill and exertion”. Personally, I have little physical skill but I used to be quite good at exertion; brute force and ignorance are what one needs for middle-distance running, and I had that. I do not have physical skill, but I admire people who do. A sport can involve physical skill but not breaking into a sweat. For example, snooker, billiards, pool, gliding, croquet, angling, target shooting and other activities that I will not bore members with are recognised by

sportscotland as sports, but most people would agree that they do not involve physical exertion. However, the bill will still cover those sports if we agree to amendment 4, which proposes to add “or activities” after the word “facilities”. I am content not to push amendment 48 if amendments 3 and 4 cover the matter properly.

The Communities Committee did much good work on the charitable purposes and greatly improved them. Even the English have copied some of our proposed charitable purposes, so if we can educate them, we are really in business.

Karen Whitefield (Airdrie and Shotts) (Lab): I lodged amendment 47 following representations by sportscotland and the Scottish Sports Association, which expressed concerns about the use of the term “amateur”. As Scott Barrie said, the term “amateur” is outmoded and has no place in a modern sporting context. Sport seeks to improve how it works and part of that involves professionalisation of the governing bodies and the employment by organisations of qualified coaches and youth and volunteer development officers, for example. Far from holding back good sporting activities, those people are helping to increase participation and to ensure that participants develop their potential to the full.

Of course, a strict interpretation of the term “amateur” would rule out clubs that use professional coaches and other professionals to develop their sports. That would have a negative effect on the future of sport in Scotland. It is right that such activities are allowed to continue and that we encourage sport in Scotland in that.

The term “amateur” is little used today. The Commonwealth Games Council for Scotland used to confine competition in games to amateur athletes, but that requirement has been removed. The Olympic movement, which was founded on amateur participation, has also reflected changes. The word “amateur” cannot be found in today’s Olympic charter. The list of other sports professional bodies that have done likewise goes on.

If we are serious about helping Scottish sport to develop in the 21st century, we must reflect how sport in the 21st century operates and recognise the benefits of participation in sport. Removal of the term “amateur sport” to be replaced by the words “public participation in sport” would be a sensible and positive step forward, on which I thank sportscotland and the Scottish Sports Association for their support. I urge members to support amendment 47.

The Deputy Presiding Officer: I advise members that, as little time is left to complete this group and the next group, I exercise my rights under rules 9.8.4A(c) and possibly (a) of standing

orders to extend the timetable at the end of this section. Members should understand that if we do not make up the time on later groups, that will impact on the final debate on the bill.

15:45

Malcolm Chisholm: The bill was amended at stage 2 to include a charitable purpose that would cover charities that are recognised under the Recreational Charities Act 1958. Amendments 3 to 5 respond to the concern that was expressed at stage 2 that that purpose was not broad enough to cover bodies that arrange recreational activities but do not own the grounds on which they take place. The deputy minister agreed that we would consider that further. Having done so, we believe that the purpose should be extended to include organising recreational activities as well as providing facilities.

Amendment 21, in the name of Scott Barrie, is similar to one that he lodged at stage 2. We support what he is trying to do and fully recognise the importance of non-formal education and youth work. The purpose of “the advancement of education” already covers all forms of education, including non-formal education through youth work, as proposed in the amendment. Many charities that have a wide range of education purposes are already charities under the current law, and we certainly intend that that will continue. We are concerned that referring to specific forms of education in the bill could lead to the inference that other forms of education are not included. That is not to detract from the value that we place on youth work or non-formal education; it is merely that we do not wish that purpose to be artificially restricted. I hope that I have reassured Scott Barrie that our intention is certainly not to prevent bodies that provide non-formal education and youth work from becoming charities. I fully support the role that they play and repeat that non-formal education and youth work are already covered by the purposes.

Amendments 2 and 48, in the name of Donald Gorrie, and amendment 47, in the name of Karen Whitefield, deal with the purpose of

“the advancement of amateur sport”.

The inclusion of amateur sport as a charitable purpose originated as an extension of “the advancement of health” purpose. For that reason, the current definition of which types of sport are considered to be charitable purposes is the same as that in the bill as drafted. They are restricted to sports that involve “physical exertion and skill”. We are opposed to amendment 48, which would change the wording to “physical exertion or skill” because physical exertion is integral to the link with healthy activity.

Mary Scanlon: Will the minister clarify whether any amendment in the group might impact in any way on the charitable status of private sports clubs?

Malcolm Chisholm: I am not aware that that is relevant. However, if information is available to me, I will obviously give it to members later.

The current provision would exclude sports such as chess, snooker or darts. Amendment 48 would allow those activities to be charitable under the sports purpose, and we want to resist the amendment because we are keen to maintain the link with the encouragement of healthy activity.

The word “amateur” was included in the purpose to reflect the fact that it is the promotion of sporting activity by the general public that makes sport charitable. We do not believe that the use of the word “amateur” bars a club from employing a professional to coach and play for a team, as long as that is done to advance amateur sport. We understand the arguments that have been made by sportscotland and others about the use of the word “amateur” being outmoded, but we do not believe that amendment 2, which would remove the word “amateur”, is the whole answer. That would not mean that high-profile professional sports clubs could automatically be charities, as they would in any event be barred by the asset distribution test in section 7(3)(a), but it could allow bodies that promote or support such clubs to be charities. We do not believe that those bodies are, or should be, charities. Instead, we prefer the wording that is used in amendment 47, which is aimed more clearly at the reasons why sport is a charitable purpose—that is, it is as an extension of “the advancement of health” purpose and bodies that encourage the general public to get involved in sport should have charitable status.

I ask Scott Barrie to seek to withdraw amendment 21, Donald Gorrie not to move amendments 2 and 48, and members to support amendment 47, in the name of Karen Whitefield, and the Executive amendments.

The Deputy Presiding Officer: Christine Grahame should make her comments very brief.

Christine Grahame: I will be terribly brief.

I cannot accept the minister’s position with respect to amendment 48. I understand that snooker is a sport, but the physical exertion that is involved is tiny—men simply lean over a table and push a little ball about. Therefore, the word “or” is more appropriate than the word “and”. *[Interruption.]* I cannot see the definition.

I would like members’ attention again. My second point is on amendment 47. I have only a tiny amount of time to speak—I will then let another member say something. I have difficulties with Karen Whitefield’s proposal that the purpose

should be “public participation in sport”. If a person stands and shouts their lungs out in the hope that Scotland will score a goal, that is public participation in sport in my book, but I would not say that it is a charitable purpose. The definition is slack. I was content with the “amateur sport” wording that we started with and to leave it to OSCR to decide whether there was too much professionalism and therefore whether something was no longer a charity.

Dennis Canavan (Falkirk West) (Ind): I have considerable sympathy with amendment 47, which fits in well with the Executive’s declared policy of encouraging more sports participation by the general public. However, will the minister tell us whether the removal of the word “amateur” might open up a loophole that some people might exploit? I accept that the lines between amateurism and professionalism are not as clearly defined as they used to be, but some sports clubs are professional by nature. For example, most senior football clubs are professional clubs and some are big business. Not many clubs, if any, make a handsome profit or pay a handsome dividend to their shareholders, but some pay out huge—in some cases excessive—amounts of money to their players. As I understand it, currently even a professional football club can set up a separate charitable trust for a charitable purpose, which might fall into any of the categories in section 7(2), such as the advancement of sport or the relief of poverty. However, I question whether the professional activities of such clubs should be allowed to have charitable status. I ask the minister to tell us whether amendment 47 might create a loophole in that regard, but apart from that I am very much in agreement with the spirit of amendment 47.

Scott Barrie: On the points that Christine Grahame and Dennis Canavan made, the important point that we should bear in mind is that amendment 47 was lodged in response to representations from the sporting community.

Christine Grahame *rose*—

Scott Barrie: I listened to what the minister said about the value that the Executive places on youth work and other forms of non-formal education and I take on board his assurance that such areas will not be excluded from the definition of charitable purpose and that non-formal education will be fully encompassed by section 7(2)(b), which provides for the charitable purpose of “the advancement of education”.

On that basis, I ask the Parliament’s agreement to withdraw amendment 21.

Christine Grahame: On a point of order, Presiding Officer. I simply want to make the point that I do not recollect the suggestion being made by sportscotland to the Communities Committee.

The Deputy Presiding Officer: That was not a point of order; it was an observation.

Amendment 21, by agreement, withdrawn.

Amendment 2 not moved.

Amendment 47 moved—[Karen Whitefield].

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 74, Against 39, Abstentions 0.

Amendment 47 agreed to.

Amendments 3 and 4 moved—[Malcolm Chisholm]—and agreed to.

Amendment 48 not moved.

Amendment 5 moved—[Malcolm Chisholm]—and agreed to.

The Deputy Presiding Officer: Group 5 is on the charity test and excluded bodies. Amendment 49, in the name of Patrick Harvie, is grouped with amendments 50 to 52, 18 and 63. On this grouping I can allow only Patrick Harvie to speak and the minister to respond.

Patrick Harvie: I will try to be quick. Like the other amendments that I have lodged, my amendments in the group originate from the Scottish Council for Voluntary Organisations, which is the representative body of the charitable and voluntary sector in Scotland. My amendments cover three broad issues. I expect some of them to be resisted as the arguments have been rehearsed previously, but I hope that some of them will elicit a little more sympathy.

Amendment 49 would change the charity test in one small way in that a body would fail the charity test if its income or property—rather than its property alone—were distributed, or if its constitution allowed for its income or property to be distributed. The amendment would provide an additional safeguard and I hope that it will be seen as a constructive addition to the bill.

Amendments 50 and 51 are about the principle of independence. It is important to note that in general the bill has managed to achieve a central place for the idea that charities are independent. The bill has managed to preserve that principle, but certain aspects of the provisions could be improved. Independence for charities should mean independence from government at all levels. Amendment 50 would add local authorities, so that if charities were under the direct control of local authorities, that situation would have to change. It seems no more reasonable that local authorities should control an organisation that has charitable status than that other levels of government should do so. It is important to note that the amendment would not change the power of ministers to exempt certain categories, so that where councils would be unable to continue to provide a certain level of services if charitable status were lost, the matter could be addressed through ministerial order.

Amendment 51 deals not with direct control but with the appointment of trustees. The argument will be familiar to those who have been involved in the consideration of the bill. The idea comes from the original McFadden report recommendation that no more than a third of trustees should be appointed by public bodies. I do not expect any last-minute conversions on the issue, but I feel that the point of principle about public appointments undermining the independence of charities should be aired in our debate today. I look forward to hearing the minister's comments.

Finally, amendment 52 is about the disposal of property. The amendment reflects an important principle. It would ensure that property that may have been given to an organisation specifically because it had charitable status should not be distributed to non-charitable bodies. The SCVO has expressed serious concerns about the ministerial power on the issue and I am happy to give voice to those concerns in the chamber.

I move amendment 49.

Johann Lamont: Presiding Officer, this is a series of significant amendments so, although I shall try to speak at a canter, I hope that you will allow me leeway to make the points that need to be made.

Amendment 18 ensures that ministers can alter any enactment for the purposes of preventing a body from failing the charity test because its constitution allows asset distribution for a non-charitable purpose, as set out in section 7(3)(a), as well as because its constitution allows ministers to control its activities, as set out in section 7(3)(b). That will allow ministers to remove or alter any power in an enactment that allows a body to distribute its assets for a non-charitable purpose and will therefore allow it to meet the charity test.

Section 7(3)(a) prevents a body with a constitution that allows it to distribute or otherwise apply any of its property from being a charity. Amendment 49 would add to that section any income as defined under paragraphs (a) to (c) of section 19(1). That is unnecessary as the definition of property already includes any income the body receives. The addition of a separate reference to income in section 7 could cast doubt on what is meant by property elsewhere in the bill.

16:00

Section 19 includes a specific reference to the type of property that is subject to the section, because it is intended to ring fence the charitable assets and any income accrued from charitable assets of a body that is removed from the register, so that they can continue to be used for charitable purposes, and to exclude assets acquired after the body ceased to be charitable. That provision is not relevant to section 7. Any income received by a charity would automatically become the property of the charity and would be a charitable asset, so property does not need to be defined in the same way.

Patrick Harvie is right to say that there is an important debate to be had on the issue of independence and its significance to the sector. Amendment 50 would mean that a body would fail the charity test if a local authority had a power of direction over it. We believe that the independence of such bodies at local level is best assured by the

trustee duties to act in the interest of the charity. Those will be strengthened if the Parliament agrees to amendment 57, in the name of Donald Gorrie, which deals with conflicts of interest.

Amendment 51 reflects the recommendation in the McFadden report that only a third of a charity's trustees should be allowed to be appointed by a third party. We have always argued and—Patrick Harvie may not be surprised to note—we continue to believe that what is important is not how a charity trustee is appointed but how they behave once in position. Amendment 57 provides further reassurance that if a conflict of interest arises, a trustee should put the interests of the charity first or refrain from taking part in any discussion or decision.

Amendment 52 would prevent ministers from exempting bodies from the asset distribution test that I have outlined. The amendment would prevent the five national collections non-departmental public bodies from remaining charities. During discussions of the status of those bodies at stage 1, it was argued that charitable status was extremely important to them and to Scotland, and that it should be protected. It was also argued that, because of the national importance of the collections that they hold, control of those collections should remain in the hands of ministers. The constitutions of the bodies provide that, if they cease to exist, their assets revert to ministers. That provides valuable protection, ensuring that nationally important collections remain in the hands of the nation. We would resist any change to the provision.

Amendment 52 would prevent the five bodies from retaining their status as charities. If amendment 51 is not agreed to, amendment 52 will fall. However if amendment 51 is agreed to and amendment 52 is not, some of the five national collections bodies will fail the test, because ministers appoint their trustees.

Amendment 63 would insert in section 103 a definition of a public body. The only references in the bill to public bodies relate to co-operation in section 20 and information-sharing powers in section 24. The definition that is set out in the amendment could cause problems for the operation of those sections, as it would exclude any public body established by enactment, including many regulators that also oversee charities, such as the Scottish further and higher education funding council and the care commission. OSCR itself would not be included in the definition.

I have two further points to make about independence. First, direction at ministerial level is enshrined in law, so it is distinct from local authority powers of direction. Secondly, any exemption that is applied by ministers will be

subject to affirmative decision by the Parliament. I hope that that gives members the comfort that they seek. Clearly, this is an issue that has exercised members' minds from the bill's early stages.

I ask Patrick Harvie to withdraw amendment 49 and not to move the other amendments in his name. I ask the chamber to support amendment 18.

The Deputy Presiding Officer: Mr Harvie, there is no time for you to do anything other than indicate whether you intend to press or to seek leave to withdraw amendment 49.

Patrick Harvie: Given the minister's explicit assurance that income is covered, I seek permission to withdraw amendment 49.

Amendment 49, by agreement, withdrawn.

Amendment 50 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Deputy 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)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 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)
 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)
 Canavan, Dennis (Falkirk West) (Ind)
 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)
 Glen, Marlyn (North East Scotland) (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)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 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)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 80, Abstentions 0.

Amendment 50 disagreed to.

The Deputy Presiding Officer: I hope that, while the clock was running down during that division, Mr Harvie was considering his plans for amendments 51 and 52. Mr Harvie, will you be moving amendment 51?

Patrick Harvie: I am afraid so.

Amendment 51 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Fox, Colin (Lothians) (SSP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Leckie, Carolyn (Central Scotland) (SSP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 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)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)

Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 10, Against 104, Abstentions 1.

Amendment 51 disagreed to.

Amendment 52 not moved.

The Deputy Presiding Officer: Thank you, Mr Harvie. Let us be grateful for small mercies. [Laughter.] When I said that, I was thinking only about the timetable.

Section 8—Public benefit

The Deputy Presiding Officer: Group 6 is headed “Charity test—public benefit”. Amendment 53, in the name of Mary Scanlon, is grouped with amendment 54.

Mary Scanlon: With amendment 53, I seek to delete the words

“including any charge or fee”,

which were inserted by an amendment moved by John Home Robertson at stage 2. Throughout the bill’s progress, I have raised concerns over the phrase “unduly restrictive” in relation to public benefit. Many witnesses, including from OSCR, have explained how the term is likely to be interpreted. That has given some reassurance, although the phrase “unduly restrictive” is open to wide and variable interpretation. However, I have no doubt that the meaning will become enshrined in law as precedents are set.

The advancement of education is enshrined in a 1601 statute as a charitable purpose. There is no need for secondary justification for tax purposes. However, the addition of the words “any charge or fee” over and above “unduly restrictive” is a step too far.

The issue behind John Home Robertson’s amendment was independent schools. It is surely for parents to decide whether they wish to make financial sacrifices to pay for their children’s education on top of what they pay in income tax and council tax; it is surely for parents—not politicians or the Office of the Scottish Charity Regulator—to decide whether they are getting value for money.

All independent schools operate on a not-for-profit basis. Any revenue surpluses are ploughed back into investment in the provision of high-

quality education, so how can OSCR say that a fee is too high? How can OSCR decide whether the education of our children is too high quality? If the overheads of some of our old independent schools, in their historic buildings and grounds, require a higher fee, it is surely for the parents to decide whether the money is worth paying. We are talking about the one chance that every parent gets to educate their child.

Section 8 challenges the basic tenet of individuals to exercise freedom of choice on how much of their own money they wish to spend and how they wish to spend it—whether it be on their children’s education or to pay for treatment in an independent hospital. The inclusion of section 8 brings the politics of envy and not the politics of reason. The end result could be the loss of charitable status for tax purposes. Fees would have to be raised by up to 5 per cent, meaning that there would be less money to pay for bursaries to support those from less well-off families. The result would be elitism and exclusion, not the choice and inclusion that we have at present.

Independent schools should be deemed as charities, as they save the taxpayer £150 million a year. They contribute hugely to the quality of Scottish education and Scottish life. They cannot be deemed to be “unduly restrictive” on the basis of a charge or a fee. As I said, the advancement of education is a charitable purpose and requires no secondary justification. All surplus income is reinvested into serving pupils with the best education.

Inland Revenue issues are the responsibility of the Westminster Parliament. Amendment 53 refers to the loss of rates relief and anything else that relates to the Scottish Parliament.

I move amendment 53.

Donald Gorrie: There are two separate issues and my amendment 54 tries to tease out what counts as “unduly restrictive”. I shall be interested in what ministers have to say in response and I would like them to give assurances on the points that I raise.

A housing association clearly benefits its tenants, but it could be argued that it does not provide public benefit. Similarly, it could be argued that a faith charity that is restricted to members of that faith is “unduly restrictive”. It could also be argued that a regimental association or a former pupils association was “unduly restrictive”. I think that all those organisations can be genuine charities and can benefit the community. Amendment 54 says that an organisation can be a bona fide charity if its membership is restricted but it benefits the people in the group that it is supposed to benefit and does not discriminate unfairly between them, especially if

“the community as a whole benefits directly or indirectly”.

Various people have criticised the wording of the amendment, as they always do, but I think that the idea behind it is important and I hope that the minister will make it clear that, even without amendment 54, “unduly restrictive” will be interpreted in a reasonable fashion.

I turn to amendment 53, in the name of Mary Scanlon. I supported John Home Robertson’s amendment at stage 2, because the issue goes wider than fee-paying schools and covers a whole range of organisations, clubs, societies and associations. For example, a golf club that charges a modest fee and operates as a community enterprise can be a bona fide charity. However, a golf club that charges high fees and might not allow people in would not, in my view, be a charity, although running such a club is a perfectly respectable activity. The level of charges is a legitimate point for OSCR to take into account.

The issue of fee-paying schools has aerated some people in the press. It is worth making it clear to members that the Inland Revenue is a United Kingdom enterprise and tries to run things on a level playing field across the UK. The procedures of the Inland Revenue, as supported by legal judgments in the past, are such that, where there is a diversion between Scottish law and English law, English law is followed. Therefore, if by any remote chance OSCR were to interpret the bill as indicating that some fee-paying schools did not provide public benefit—and that is up to OSCR’s chief executive and her colleagues—so long as the Westminster law, as interpreted by the Charity Commission for England and Wales, accepted fee-paying schools as charities, the Inland Revenue would go with the English decision.

People should not get too excited about the subject. A lot of people in the fee-paying sector genuinely feel that they can demonstrate a public benefit and I feel that there is no risk of their losing charitable status, but that is up to OSCR. We are trying to supply an independent organisation with sensible rules and I believe that we are achieving that.

If the minister says the right things, I will not press amendment 54, but I shall certainly vote against amendment 53.

The Deputy Presiding Officer: I call John Home Robertson, to be followed by Christine Grahame, but I can give you only a minute each.

16:15

Mr John Home Robertson (East Lothian) (Lab): That is disappointing.

I have been accused of many things in my life, but never before have I been accused of indulging

in the politics of envy. Amendment 53 would delete the change that was made by the amendment that I moved at stage 2 on 20 April, which was agreed to by eight votes to one. The single vote against it was Mary Scanlon’s. My amendment sought to make crystal clear the meaning of the public benefit test in section 8. I wanted to emphasise that public benefit means just that—benefit to the public, not benefit that is restricted to people who can afford to purchase a particular service. The provision of benefits for financially exclusive groups of people is not what any reasonable person would recognise as a public benefit. As amended at stage 2, section 8 sets a realistic and fair test for OSCR, the independent regulator, to apply. The same test will apply to all charitable organisations, not just schools.

I read in today’s press that some people are already looking for loopholes that might enable organisations that do not pass the public benefit test—and therefore do not satisfy the criteria for registration as Scottish charities—to get charitable tax relief. That would be an absurd state of affairs, but it raises bigger questions for the Inland Revenue than it does for us. It might be a useful start to establish that Musselburgh Grammar School, which is genuinely a public school, should not have to pay more rates than Loretto School, which is not quite so public, as is the case at present.

My former colleagues at Westminster are about to resume their consideration of the charities legislation for the rest of the United Kingdom. I suggest that they would do well to adopt the sound principle that we are establishing on the basis of wide political and public consensus here in Scotland. I urge the Parliament to reject amendment 53.

Christine Grahame: We need a little more light and a little less heat. Section 8 applies not just to independent schools, but to a wide spectrum of organisations, of which private hospitals and sports clubs are just two examples. The issue is proportionality. The test is whether the payment made is so great that it is unduly restrictive, which means that the organisation that charges the fee is not inclusive. That is a matter not for the Parliament, but for OSCR.

Mention has been made of the Inland Revenue. I understand that, as Donald Gorrie highlighted, the Inland Revenue will completely ignore the position that OSCR takes on charitable status in that it will treat organisations that have been disarmed of charitable status as if they were charities. I think that that is something to get excited about. It makes me despair when Westminster is prepared to override the will of the Scottish Parliament to do something for Scotland. That is not a constitutional point; it is a fact.

The Deputy Presiding Officer: You must finish now.

Christine Grahame: The only reason why I feel that amendment 54 cannot be supported is that its use of the phrase “directly or indirectly” in paragraph (c) of the subsection that it seeks to insert is very woolly.

The Deputy Presiding Officer: I ask the minister to be brief.

Johann Lamont: I will be as brief as I can.

Since the bill was introduced, an attempt has been made to turn its passage into an argument about people’s views on a particular part of the independent sector, which of course is highly diverse. That is not what the bill is about. The issue of how people choose to spend their money on their children would be more appropriate to raise in a debate about education. We are talking about the regulation of charities and those organisations that are entitled to call themselves charities.

Amendment 53 seeks to reverse an amendment that was made at stage 2. It would remove the reference in the public benefit test that highlights the fact that, in deciding whether a body provides public benefit, OSCR can consider whether any charge or fee is unduly restrictive. The Executive did not object to that amendment at stage 2 because it did not alter the public benefit test. It was always intended that OSCR would be able to consider charging as part of the test and the amendment made that clear in the bill. That does not mean that a body will automatically fail the test because it charges a fee, but OSCR will have to have regard to that issue.

I hope that I can reassure all charities that charging a fee so that access is granted to services will not automatically prevent bodies from being deemed as charities. Whether charitable status is granted will depend on individual circumstances and OSCR will consider each body on a case-by-case basis.

Amendment 54 is intended to address an issue that Donald Gorrie raised at stage 2. He seeks to clarify that the public benefit test does not prevent a body that is targeted at specific groups from being deemed as charitable. I assure him that, as it stands, the bill does not prevent that. That is made clear by the fact that the public benefit provision refers specifically to circumstances in which the benefit is provided only to a section of the public.

Although I have no difficulty in offering reassurance on the point, I have some concern about the possible impact of amendment 54 as drafted. Because it outlines which conditions should never be considered as unduly restrictive,

OSCR could find itself unable to deny charitable status to bodies with a discriminatory membership condition that would otherwise have been considered to be unduly restrictive. Moreover, some membership bodies that charge different rates for students or older people, for example, might be viewed under the provision as discriminating between members.

As I said, the public benefit test as it stands will include those bodies that are targeted at specific groups. I hope that what I have said will reassure Donald Gorrie. On that basis and because of the possible problems that I have highlighted, I ask him not to move amendment 54.

I emphasise that at the heart of the purpose of the public benefit test is the desire to give confidence to the charitable sector and to those who wish to give of their time and money. There is no presumption against or in favour of any group. Equally, any group that seeks charitable status should be able to establish public benefit. I am confident that OSCR, as an independent regulator, can take a rational, dispassionate and objective view of these matters. I believe that the public benefit test, as identified in the bill, gives sufficient guidance on the matter.

The Deputy Presiding Officer (Trish Godman): As we have run out of time, I ask Mary Scanlon whether she wants to press or withdraw amendment 53.

Mary Scanlon: I would like to press amendment 53.

The Deputy Presiding Officer: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)

Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)

Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 17, Against 98, Abstentions 0.

Amendment 53 disagreed to.

Amendment 54 not moved.

Section 13—References to charitable status

The Deputy Presiding Officer: Group 7 is on references to charitable status. I am afraid that we will have to move very quickly on the group. Amendment 6, in the name of the minister, is grouped with amendments 7 to 11.

Malcolm Chisholm: All the amendments in the group are aimed at the provisions relating to references made about a body's charitable status. Amendment 6 corrects an inconsistency in section 13. Section 13(4) does not refer to bodies that are "established under the law of Scotland",

which is referred to in section 13(2). Amendment 6 corrects that omission and brings subsections (2) and (4) into line with each other.

Amendments 7 to 11 will allow OSCR and the Court of Session to act against charities that falsely represent themselves, or that are so represented by persons, as Scottish charities or registered Scottish charities. Without that provision, the requirement that charities are not to describe themselves as Scottish charities or registered Scottish charities is unenforceable. The bill already contains similar provisions in relation to bodies that represent themselves as charities or are so represented.

I move amendment 6.

Amendment 6 agreed to.

After section 18

The Deputy Presiding Officer: Group 8 is on the removal of charities from the register. Amendment 22, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: Amendment 22 is a humble and practical amendment that I hope will find favour—indeed, I think that a similar amendment that I lodged at stage 2 found favour with some committee members. The amendment simply seeks to provide for a list of charities that are defunct or have been removed from the register.

Members may wonder what the purpose of the amendment is. One often thinks of the student with no money who tries to find a charity to help them. A charity that was set up some time ago may still be lurking somewhere; even if it is no longer functioning, it may still have assets that, under its charitable purposes, are directed specifically to a football bursary, let us say. The student might not know that the charity existed and might have great difficulty finding it. However, if OSCAR kept a list, anyone who sought to find out whether a defunct charity or a charity that had been removed from the register still had assets would be able to find such bodies centrally and, perhaps, access them.

When I raised that idea in committee, the minister rejected my amendment, saying that

“such a list is unnecessary, as section 47 allows financial institutions to inform OSCAR of any dormant charity accounts.”—[*Official Report, Communities Committee, 27 April 2005; c 2095.*]

That is simply allowing; it is not compelling. If we were to compel, a comprehensive list would be available to the whole of Scotland. I cannot understand why the minister is so resistant to that idea. The amendment seems sensible and practical. The measure would be useful to many people throughout Scotland and I look forward to hearing what the minister has to say about it.

I move amendment 22.

Johann Lamont: I am overwhelmed by members' humility.

Christine Grahame lodged a similar amendment at stage 2 but withdrew it after the Executive agreed to consider the issue further. Following careful consideration, I still fail to see what benefits amendment 22 would bring.

Although the bill does not place a duty on OSCAR to maintain or publish a list of defunct charities or charities that have been removed from the register, nothing would prevent OSCAR from creating a list of charities that have been removed from the register if it wished to do so, as I have said before. Indeed, it is anticipated that OSCAR

will maintain such a list. However, to require OSCAR to do that has the potential to cause confusion, particularly as the amendment provides for a single list of charities that are defunct and of those bodies that are no longer charities. If OSCAR maintained the information voluntarily, it could separate the bodies and have two lists. Moreover, if the list led some people to the mistaken belief that a particular body was still a charity, OSCAR could suspend the list, whereas, because the amendment would oblige OSCAR to keep a publicly available list, OSCAR would be unable to react in that way if a problem were to arise.

It has been argued that a list would provide greater clarity but, given that the only real charities will be those bodies that are named on the register, the situation is arguably already very clear: any body that did not appear on the register would not be a charity. If it was necessary to establish whether a body had previously been a charity, OSCAR could specifically be requested to provide that information. In any event, OSCAR is required to publish a report on each case on which it takes action, which would include action that results in removing a charity from the register.

It has also been argued that a list of defunct charities would facilitate the revival of such charities or the redistribution of their assets. However, provisions in the bill allow OSCAR to deal with charities that would previously have lain dormant, so a list of defunct charities is unnecessary. Assets of a charity that is removed from the register are protected by section 19 and dormant charities are covered by regulations under section 48. Under the accounting regulations, it is proposed that any dormant or defunct charity will still have to submit its accounts to OSCAR. If it has failed to do so or, on examination of the accounts, there was concern, OSCAR could apply to the Court of Session to reorganise the charity under section 41 to enable its resources to be applied for charitable purposes to better effect. The Executive believes that those provisions mean that the number of defunct charities should be relatively few, which makes a list of them unnecessary.

There is a risk that requiring OSCAR to produce and maintain such a list could be an inefficient use of its resources. OSCAR should retain the flexibility to produce lists if it feels that there is sufficient demand, but it should not be under a duty to do so. Therefore, I humbly ask Christine Grahame to seek agreement to withdraw amendment 22.

The Deputy Presiding Officer: Does Christine Grahame wish to press or withdraw the amendment?

Christine Grahame: I wish to press it.

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)

Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Glen, Marlyn (North East Scotland) (Lab)
 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)
 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)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 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)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 47, Against 62, Abstentions 0.

Amendment 22 disagreed to.

Section 19—Removal from Register: protection of assets

The Deputy Presiding Officer: Group 9 is on removal from the register and the protection of assets. Amendment 55, in the name of Patrick Harvie, is in a group on its own.

16:30

Patrick Harvie: Many of the arguments on this subject were rehearsed when we discussed one of my previous amendments. The issue of the protection of assets concerns charities that are

removed from the register and organisations losing their charitable status. I hope that the minister can respond on the principle of protecting assets and distributing them only to other charities. That does not relate to organisations whose existence will continue, including the national collections. I look forward to the minister's response.

I move amendment 55.

Malcolm Chisholm: Section 19 sets out procedures for protecting the assets of a charity that is removed from the register. It requires the body to continue to apply its assets in line with its charitable purposes, following removal from the register. Section 19(8), which amendment 55 seeks to remove, was intended to allow ministers to disapply the provisions by order in special circumstances. Ministers would have to have good reasons to exempt a body that was losing its charitable status from section 19, and any order that was made would be subject to the affirmative procedure, and would therefore have to be justified to and considered by Parliament. It is important to be able to disapply section 19 so that if, for example, a non-departmental public body lost its charitable status, property that had been obtained with public funds could remain under that NDPB's full control. I ask Patrick Harvie to withdraw amendment 55.

Patrick Harvie: I will press the amendment.

The Deputy Presiding Officer: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 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)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)

Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 9, Against 101, Abstentions 0.

Amendment 55 disagreed to.

Section 24—Disclosure of information by and to OSCR

The Deputy Presiding Officer: Group 10 is on the duty of auditors. Amendment 23, in the name of the minister, is grouped with amendments 24, 25, 28, 29, 56, 31, 31A, 32, 39, 40 and 42 to 44.

Malcolm Chisholm: The central amendment in this group is amendment 31. It inserts into the bill a duty for auditors, independent examiners and reporting accountants to report to OSCR matters of material significance to the exercise of OSCR's functions under sections 28, 30 and 31. The new section introduced by amendment 31 will also allow those who examine a charity's accounts to report any other matter that they believe to be of relevance to OSCR's functions, but which is not covered by that duty. Amendment 42 ensures that a report made in accordance with that duty must be in writing.

The amendments have been lodged in response to calls from the Institute of Chartered Accountants of Scotland and the Communities Committee that the bill as introduced did not give those examining a charity's accounts enough guidance or protection to enable them to report matters to OSCR. I have some more details on those amendments, but I will turn instead to amendment 31A. It removes the reference to an external examiner who has been appointed to audit or examine independently a charity's statement of account being appointed by the charity mentioned in subsection (2) of the new section introduced by amendment 31. We lodged amendment 31A after it was pointed out to us that not all charities appoint their own external examiner.

Amendment 56 is similar to one that was lodged at stage 2, and will not be necessary if the Executive amendments are agreed to.

Amendment 25 links the removal of the restrictions on disclosure because of an obligation

of confidentiality under section 25 to the new duty to disclose inserted by amendment 31. In doing so it answers ICAS's concerns that the provision did not extend to reporting accountants examining the accounts of a charitable company.

Amendment 28 inserts further provisions into section 38 so that the duty to report and the removal of confidentiality also apply to auditors, independent examiners and reporting accountants when OSCR's functions have been delegated to Scottish ministers or another public authority.

Amendments 23, 24, 29, 32, 39, 40, 43 and 44 are technical and their purpose is to reposition existing provisions as a consequence of the new section proposed in amendment 31.

I urge members to support the Executive amendments in the group. I ask Donald Gorrie not to move amendment 56, as it will no longer be necessary.

I move amendment 23.

Donald Gorrie: I am happy to satisfy the minister. My amendment 56 had the same objective as the Executive amendments; the minister has produced voluminous amendments that cover the issue much better. They provide the protection that the auditors felt they required from being sued for breach of confidentiality if they reported adversely on a charity to OSCR. I will not move amendment 56.

The Deputy Presiding Officer: Minister, you will not have anything to add to that.

Amendment 23 agreed to.

Section 25—Removal of restrictions on disclosure of certain information

Amendments 24 and 25 moved—[Malcolm Chisholm]—and agreed to.

Section 28—Inquiries about charities etc

The Deputy Presiding Officer: Group 11 is on inquiries about charities. Amendment 26, in the name of John Home Robertson, is in a group on its own.

Mr Home Robertson: Amendment 26 would provide explicitly for OSCR to make inquiries about any charity in response to information or representations that it might receive from any source about that charity. It would provide for OSCR to take action on information received from whistleblowers, but I stress that OSCR would have full discretion to decide whether to act on such information. The amendment is not intended to be a charter for malicious clypes.

We all want to improve the reputation of Scottish charities. That is one of the key objectives of the bill. We know from experience that virtually all the

charities in Scotland, big and small, are good, efficient and conscientious organisations—genuine charities. That makes it all the more important that any organisations that do not come up to those high standards should be dealt with promptly and fairly to safeguard the reputation of all the good charities.

I have been in elected office for a long time—some would say far too long.

Members: Hear, hear.

Mr Home Robertson: I knew members were awake. During that time I have come across just two cases involving questionable charities. People tried to blow the whistle, but under the old arrangement, nothing happened. I went into some detail about the Atlantic Salmon Conservation Trust (Scotland) and the Algrade Trust in the Communities Committee, and what I said can be found at column 2100 of the *Official Report* of the committee meeting on 27 April 2005. That is on the record, so I will not repeat it now. The point is that I tried to raise questions about the Algrade Trust and the Atlantic Salmon Conservation Trust (Scotland) as the local MP, but as far as I know, nothing was done about either case.

I am grateful to the minister for undertaking to reflect on the case for a whistleblower provision in the bill when she replied to the debate in the committee. I hope that OSCR will ensure that appropriate inquiries can be made into such matters in future, and I offer amendment 26 to the Parliament as a way to ensure that that can happen.

I move amendment 26.

Johann Lamont: John Home Robertson's amendment 26 would set out in the bill that OSCR may make inquiries either of its own accord or as a result of representations by the public. It is likely that a large proportion of the inquiries that OSCR undertakes will be sparked by a complaint or inquiry by the public. One of the aims of the bill is to reassure the public by providing an independent regulator to whom they can turn if they are concerned about a charity's activities. As the bill stands, any member of the public may make a complaint to OSCR that could lead to an inquiry. It is nevertheless important to retain a degree of discretion for OSCR, and to state that it does not have a duty to investigate every complaint. There is, after all, always a possibility of vexatious or malicious complaints. OSCR will be accountable and will have to be reasonable in deciding not to investigate a complaint. Given the arguments made by John Home Robertson both today and at stage 2, which are on record in the *Official Report*, and the fact that amendment 26 sits well with the objectives of the bill, we agree with it and urge the Parliament to support it.

Amendment 26 agreed to.

Section 31—Powers of OSCR following inquiries

Amendments 7, 8 and 27 moved—[Malcolm Chisholm]—and agreed to.

Section 32—Suspensions and directions: procedure

Amendment 9 moved—[Malcolm Chisholm]—and agreed to.

Section 34—Powers of Court of Session

Amendments 10 and 11 moved—[Malcolm Chisholm]—and agreed to.

Section 38—Delegation of functions

Amendment 28 moved—[Malcolm Chisholm]—and agreed to.

Section 39—Bodies controlled by a charity

Amendment 29 moved—[Malcolm Chisholm]—and agreed to.

Section 43—Reorganisation: supplementary

The Deputy Presiding Officer: Group 12 is on the reorganisation of charities. Amendment 30, in the name of the minister, is in a group on its own.

Malcolm Chisholm: The amendment removes the exclusion preventing local authority charitable trusts from being reorganised under sections 40 and 41 of the bill. It follows concerns raised by OSCR, and will allow local authorities to apply to OSCR to approve a reorganisation scheme, under the new legislation, of many charitable trusts held by them. We understand that several local authorities have indicated that the provision would be of significant benefit, and it will allow more efficient operation of many small trusts.

I move amendment 30.

Amendment 30 agreed to.

Section 45—Accounts

Amendment 56 not moved.

After section 46

Amendment 31 moved—[Malcolm Chisholm].

Amendment 31A moved—[Malcolm Chisholm]—and agreed to.

Amendment 31, as amended, agreed to.

Section 56—Conversion of charity which is a company or registered friendly society: applications

Amendment 32 moved—[Malcolm Chisholm]—and agreed to.

Section 65—Charity trustees: general duties

The Deputy Presiding Officer: Group 13 is on the duties of charity trustees. Amendment 57, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: The purpose of the amendment is to make it clear that when, as quite often happens, a person is put on to a charity as a charity trustee from another body—which might be the local council, a chamber of commerce, a church, a school or whatever—their first duty is to be a charity trustee rather than to look after the interests of the other body. The amendment is supposed to cover the issue of the independence of arm's-length companies and other charities of that sort. The issue is quite clear and the wording of the amendment has had the acceptance of those up aloft. I therefore hope that members will vote for it.

I move amendment 57.

Johann Lamont: As I mentioned in an earlier discussion, Donald Gorrie's amendment is helpful. It clarifies in the bill how conflicts between the interests of the charity and that of any person responsible for appointing a trustee should be dealt with. We believe that the amendment reflects current good practice relating to how such conflicts are dealt with by charities. Putting the text of the amendment in the bill will help to reassure the public of the practical independence of trustees in whose appointment an outside body or person has had a role. We therefore encourage Parliament to agree to it.

Amendment 57 agreed to.

Amendment 58 not moved.

Amendment 33 moved—[Malcolm Chisholm].

The Deputy Presiding Officer: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 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)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 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)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 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)
 Maclean, Kate (Dundee West) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Ballard, Mark (Lothians) (Green)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)

Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (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)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Fox, Colin (Lothians) (SSP)
 Gorrie, Donald (Central Scotland) (LD)
 Leckie, Carolyn (Central Scotland) (SSP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 74, Against 26, Abstentions 6.

Amendment 33 agreed to.

Amendment 59 not moved.

Amendment 64 moved—[Donald Gorrie]—and agreed to.

Section 66—Remuneration for services

16:45

The Deputy Presiding Officer: Group 14 is on the remuneration of charity trustees. Amendment 34, in the name of the minister, is grouped with amendments 35 to 38.

Johann Lamont: This is an important group of amendments that have generated a great deal of discussion and debate. I hope that you will give me sufficient time, Presiding Officer, to outline what we seek to do. The amendments deal with the section of the bill that relates to remuneration for services. The remuneration of charity trustees has been much debated during the progress of the bill. I am grateful to those who gave evidence to the Communities Committee and to members of the committee for their input, and I am pleased that there is now agreement on the way forward.

Some people in the charity sector strongly believe that, to cement their position in the voluntary sector and to avoid any conflict of interest, charity trustees should not be remunerated for any work that they carry out as charity trustees. That view is held by some members of the Opposition parties. The contrary argument is that the level of service that is required of the trustees of some charities demands payment, otherwise people would not

agree to be charity trustees in the first place. That is particularly true for larger charities. Many charity trustees are paid or receive a benefit for their services as trustees. For instance, many student associations pay students to be a charity trustee—for example, the treasurer—of their association. That covers lost income and allows them to take a sabbatical from their studies for a limited period.

It might be helpful if I clarify the existing position in charity law in Scotland. There is currently no restriction on the payment of charity trustees or those who are in control of charities provided that there is express legal authority for such payment to be made. The authority for payment can be included in a charity's constitution or in another enactment, or it can be given by a Court of Session order. If authority by one of those means exists, a charity may remunerate a person who is carrying out the normal duties of a charity trustee; a person who is providing additional services that a trustee would not normally provide; or a trustee who is also an employee of the charity.

The bill will tighten up the circumstances in which a charity trustee may receive remuneration in the future. Although there is a view that the payment of trustees should not be the norm, we need to provide sufficient flexibility to allow the bill to suit the wide range of charities in the sector. Permitting remuneration only in highly defined circumstances is the best way of achieving that.

Amendment 34 and amendment 35, which is consequential on amendment 34, will clarify the position. Amendment 34 will add a new subsection to set out clearly that a charity trustee cannot be remunerated for their services as a charity trustee, for other services or for services as an employee of the charity unless the strict conditions in section 66 are complied with. The conditions are that the maximum payment must be reasonable and set out in a written agreement and that the charity trustees must be satisfied that the payment is in the interests of the charity. Also, only a minority of charity trustees may receive remuneration, and there must be no provision in the charity's constitution that expressly prohibits the payment. The bill will also ensure that payment cannot be made to persons who are connected to charity trustees unless the same conditions apply. That will prevent a charity from being controlled by charity trustees who pay their close family for providing services to the charity, for instance.

It would be wrong for us to remove existing rights for some charity trustees who already have a right to be paid, or for whom Parliament or the Court of Session has decided that payment is appropriate. That was covered in section 66(5) of the bill as introduced. Discussion during stage 1 indicated concern that the provisions were not tight enough, so the Executive's amendments 36

to 38 will clarify that the exemption from having to meet the conditions in that section for a charity whose existing constitution allows payment will apply only where payment is specifically allowed by an “authorising provision”. There had been concern that some charity constitutions might contain non-specific, wide-ranging provisions allowing any payment that the charity trustees considered to be in the interests of the charity. The constitution will now be required to refer specifically to the payment or remuneration of a charity trustee and the provision will apply only to charities with an authorising provision in their constitution prior to the introduction of the bill on 15 November 2004.

A slightly separate but related issue is whether the employees of a charity should be allowed to serve as trustees of their employer. In an ideal world, it might be preferable for those controlling a charity to be entirely independent of those employed by it, but neither we nor the charitable sector live there.

I am aware that the rules that we are setting in this bill must be suitable for the wide range of charities in the sector. It is accepted that we expect more and more of our charities—more efficiency, more effectiveness and for them to be more businesslike. In some cases, it is particularly useful for the employees of a charity to be represented on the controlling body. For example, many further education colleges and universities have both academic and non-academic staff members on their board of management. That is also of wider value. It is desirable for employees to have an input in deciding the direction of their company, and perhaps that should also apply to charities.

With the amendments, the bill will give us an appropriate, flexible system that will provide reassurance to charities and the public that their funds will be used sensibly and transparently but will also help the sector to be more businesslike and effective in its operations.

I move amendment 34, and urge members to accept the other Executive amendments in the group.

Amendment 34 agreed to.

Amendments 35 to 38 moved—[Malcolm Chisholm]—and agreed to.

Section 67—Remuneration: supplementary

Amendment 39 moved—[Malcolm Chisholm]—and agreed to.

Section 75—Appeals to Scottish Charity Appeals Panel

The Deputy Presiding Officer: Group 15 is on the Scottish charity appeals panel. Amendment

12, in the name of the minister, is grouped with amendment 19.

Malcolm Chisholm: The amendments address whether the Scottish charity appeals panel should be allowed to award expenses or compensation. The issue was debated by the committee at some length at stage 2.

Following further consideration, the Executive has decided that the Scottish charity appeals panel should have the power to award expenses but not compensation. That is in line with the views expressed by the committee in the debate.

Accordingly, amendment 12 will remove the subsection in section 75 that prevents the panel from awarding expenses to OSCR or to any person who appeals a decision. Amendment 19 will add a power to the provisions in schedule 2 to allow ministers to set out that the panel may award expenses to both OSCR and the appellant in certain circumstances. That is important to safeguard against malicious or vexatious appeals. The detail on making awards of expenses will be set out in the rules on the practice and procedure of the panel, which will be made following consultation with the Council on Tribunals.

I move amendment 12.

Amendment 12 agreed to.

Section 78—Interpretation of Part 2

Amendment 40 moved—[Malcolm Chisholm]—and agreed to.

Section 84—Regulation of public benevolent collections

The Deputy Presiding Officer: Group 16 is on regulation of public benevolent collections. Amendment 13, in the name of the minister, is grouped with amendments 14 and 15.

Malcolm Chisholm: Amendments 13 to 15 relate to the bill’s provisions on public benevolent collections. They were drafted after concerns were raised in relation to similar proposals in the Home Office Charities Bill.

Section 84(2)(c) allows a benevolent body to hold a collection on land that it owns or occupies without obtaining local authority consent if the body must expressly or implicitly allow public access to the land. There is concern that land that a benevolent body occupies but to which the public have access by virtue of an enactment, such as the Land Reform (Scotland) Act 2003, would not be covered. Therefore, the occupier would be required to obtain local authority permission for the collection that they wished to hold on the land. That is a valid concern, so we have lodged amendment 13, which seeks to extend section 84(2)(c) to cover the situation.

Amendments 14 and 15 are consequential on amendment 13.

I move amendment 13.

Amendment 13 agreed to.

Amendments 14 and 15 moved—[Malcolm Chisholm]—and agreed to.

Section 92—Extension of general powers of trustees

The Deputy Presiding Officer: Group 17 is on the investment powers of trustees. Amendment 60, in the name of Christine Grahame, is grouped with amendments 41, 61 and 62.

Christine Grahame: I will move amendment 60, but I may have to seek leave to withdraw it. I want to hear what the minister has to say about his amendment 41.

Amendments 60 and 61 are Law Society of Scotland amendments and they are quite technical. Under old Scots law rules, there is a general rule against the delegation of trust duties. Current market practice has developed in such a way that, to comply with electronic market deadlines, individual shareholders have shares held in nominee names. If anything goes wrong with the nominee, the trustee could be exposed to unlimited personal liability. Therefore, amendment 60 seeks to give authorisation to trustees to have investments held by a nominee company. Under the same general rule against the delegation of trust duties, if anything went wrong with a third party, the trustee could be exposed to unlimited liability. Amendment 61 seeks to give authorisation to trustees to delegate investment decisions to a suitably qualified person.

Amendments 60 and 61 seek to give trustees the power to wield the wider investment powers that are contained in the bill. I look forward to hearing the minister advise whether his amendments deal with those issues.

I move amendment 60.

Malcolm Chisholm: During the consultation on the draft bill and the evidence taking by the Communities Committee and the Finance Committee, there were calls for a provision to allow trustees to appoint nominees in relation to trust investments. There were also calls for the bill to be amended to include a provision on the power of trustees to delegate decision-making powers. It was argued that that would bring improvements in both investment performance and income for some charities and trusts. The Communities Committee recommended in its stage 1 report that further consideration should be given to ensuring that trustees have the specific power to delegate investment of funds to fund managers. Amendment 41 provides a default power for

trustees to appoint nominees in relation to trust investments and to transfer the title of the assets to the nominees.

The purpose of Christine Grahame's amendment 60 is similar to that of amendment 41, but I believe that her amendment would be less effective than amendment 41 because it does not set out the key elements of the duty of care to which trustees must pay particular regard in exercising the power. Therefore, I ask Christine Grahame to withdraw her amendment 60.

Amendment 62 will provide a default power for trustees to delegate to agents the management of investments, including discretionary management of investments. The purpose of Christine Grahame's amendment 61 is similar to that of amendment 62, but I believe that it would be less effective than amendment 62 because it does not indicate that this is a clarification of the current law, nor that the law extends to the discretionary management of investments. The Executive amendments were drafted in consultation with the Scottish Law Commission and they have its support. Therefore, I ask Christine Grahame not to move amendment 61. I ask the Parliament to support amendments 41 and 62.

Amendment 60, by agreement, withdrawn.

Amendment 41 moved—[Malcolm Chisholm]—and agreed to.

Amendment 61 not moved.

Amendment 62 moved—[Malcolm Chisholm]—and agreed to.

Section 97—Population of Register etc

17:00

The Deputy Presiding Officer: Group 18 is on pre-existing charities that are included in the register and the powers of OSCR. Amendment 16, in the name of the minister, is grouped with amendment 17.

Johann Lamont: Amendment 16 is necessary to dispel any doubt about whether OSCR has the ability to remove charities from the register when they no longer meet the charity test. Although section 97 is aimed at achieving the transition from the current regulatory regime to that provided for under the bill, it is not a temporary provision.

The charities that transfer to the register from the current HM Revenue and Customs index—the former Inland Revenue index—will be able to continue to operate as charities under the bill. Like any new charities that will be recognised and registered after the bill is passed, they will cease to be charities only if they decide not to continue as charities, when they can apply for removal from

the Scottish charity register under section 18, or if it appears to OSCR, following inquiries, that they no longer meet the charity test, when they will be removed from the register. Amendment 16 is intended to make it clear that section 97 does not make charities' status unassailable and that OSCR can remove them in the same way as it will be able to remove new charities from the register.

The first half of amendment 17 mirrors amendment 16, but the second part attempts to include text from stage 2 amendment 93. The amendment would require OSCR to inform an existing charity that it believed that the charity did not meet the charity test and to listen to the charity's response before using its power in section 30 to remove the charity from the register.

I understand and agree with the intention of amendment 17, but it is unnecessary, as section 30 provides OSCR with an alternative power to direct a charity to take such steps as it considers necessary to ensure that the charity meets the test. Therefore, OSCR can issue a charity with such a direction before deciding whether it needs to remove the charity from the register.

In practice, if a straightforward way exists to ensure that a charity can continue to meet the charity test, OSCR is unlikely to remove it from the register without giving it a chance to remedy the problems and time to respond. That is particularly the case since amendment 20 provides that in performing its regulatory functions, OSCR must be proportionate.

OSCR is also required to prepare a report on the subject matter of inquiries that result in the removal of a charity from the register. Any decision by OSCR to remove a charity from the register can, of course, be reviewed or appealed if the charity disagrees with OSCR's decision. Removal from the register does not occur until the time that is set out under the appeal mechanism has passed. If a review or appeal is requested, it must run its course before the charity is removed. That gives a charity time to consider OSCR's decision and to respond to or remedy the problems that have been identified. Therefore, I ask Donald Gorrie not to move amendment 17.

I move amendment 16.

The Deputy Presiding Officer: I call Donald Gorrie to speak to amendments 17 and 16 very briefly.

Donald Gorrie: Amendment 17's purpose is to give a second kick at the ball to existing charities that might not satisfy OSCR's new rules. The amendment would give them a second chance. The minister gave a satisfactory explanation of the various consultation procedures that OSCR will follow with organisations if they are in danger of not qualifying. In the light of that, I am happy not to move amendment 17.

The Deputy Presiding Officer: I am sure that the deputy minister has nothing to add to that.

Amendment 16 agreed to.

Amendment 17 not moved.

Section 98—Notices, applications etc

The Deputy Presiding Officer: I invite the minister to move amendments 42, 18 and 43 to 45 en bloc.

Christine Grahame: No.

The Deputy Presiding Officer: The minister must move the amendments before I can ask whether members object.

Amendments 42, 18 and 43 to 45 moved—[Malcolm Chisholm].

The Deputy Presiding Officer: Any member who wishes to object to a single question being put should object now.

Christine Grahame rose—

Linda Fabiani: We object.

The Deputy Presiding Officer: I will put the question on each amendment in turn.

Amendment 42 agreed to.

Section 100—Ancillary provision

Amendment 18 agreed to.

After section 102

Amendment 43 agreed to.

Section 103—General interpretation

Amendment 44 agreed to.

The Deputy Presiding Officer: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

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)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)

Fox, Colin (Lothians) (SSP)
 Glen, Marlyn (North East Scotland) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 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)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

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)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)

Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 65, Against 30, Abstentions 17.

Amendment 45 agreed to.

Amendment 63 not moved.

Schedule 2

SCOTTISH CHARITY APPEALS PANEL

Amendment 19 moved—[Malcolm Chisholm]—and agreed to.

Charities and Trustee Investment (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-2773, in the name of Malcolm Chisholm, that the Charities and Trustee Investment (Scotland) Bill be passed.

17:07

The Minister for Communities (Malcolm Chisholm): The Charities and Trustee Investment (Scotland) Bill aims to provide a regulatory framework—with an independent regulator—that is clear and proportionate, that allows charities in Scotland to flourish and which gives the public confidence in the charity brand following previous instances of misconduct that have served to undermine public confidence in donating. The bill, which the charity sector has called for for a long time and to which we gave a commitment in our partnership agreement, is good for the charity sector and for Scotland. We all want an environment in which charitable activity can flourish.

The bill is the result of extensive consultation, which the Communities Committee recognised and commended. I would like to record in the *Official Report* the Executive's thanks to all those who took part in the consultation and to those who have contributed to the bill's development. I also thank the Communities Committee and its staff for their hard work and their careful scrutiny of the bill. Last, but by no means least, I thank the Executive bill team and Johann Lamont, who did a lot of work at stage 2, as well as before and after it. The bill is now much stronger as a direct result of so many people having taken the time and opportunity to engage constructively in its development. I look forward to that engagement continuing as we move towards implementation of the act and development of the secondary legislation.

Dr Sylvia Jackson (Stirling) (Lab): I am sorry that I did not have the opportunity earlier to make the point that I am about to make. As the minister knows, the Subordinate Legislation Committee raised a number of issues, most of which have been addressed by the Executive. However, the committee is still concerned about section 82(5) of the bill which, as the minister knows, is on fundraising regulations and the power to create offences. The committee's view is that the power to create criminal offences should be in the bill and not left to regulations, and that the bill, as drafted, does not constitute good legislative practice. I would be grateful if the minister would spell out why it was decided not to amend the bill in that regard.

Malcolm Chisholm: In our response to the Subordinate Legislation Committee's stage 1 report, we confirmed that the power in section 82 would not specifically create a criminal offence. The regulations may provide for an offence, but that can only be provided for in accordance with section 82(5) through the sanction of a fine not exceeding level 5 on the standard scale. That was considered to be appropriate because we might need flexibility to deal with evolving fundraising methods in the future. It will allow the regulations to make different provision for different circumstances. Any regulations will be consulted on and will come before the Subordinate Legislation Committee. Once again, we have seen the strength of the Scottish Parliament's committee system, in that the Subordinate Legislation Committee was able to debate and grapple with important matters that were central to the objectives of the bill.

There was robust debate on the public benefit test, but there was little disagreement with the bill's central keystone, which is that every charity should be required to show that it provides benefit and that decisions on conferring charitable status should be taken case by case by an independent regulator.

During the parliamentary process, the Executive listened to the concerns of the Communities Committee and others about the list of charitable purposes. I believe that we now have the right list; it encapsulates the key purposes that the public think should be charitable purposes and is flexible enough to allow the test to evolve and grow.

The bill and the charity test provide a robust regulatory regime that will give the public confidence in the charity brand.

Patrick Harvie (Glasgow) (Green): Will the minister give way?

Malcolm Chisholm: I will do so in a moment.

The bill lays out clear rules about what constitutes a charity and gives the Office of the Scottish Charity Regulator the proper powers to deal with wrongdoing. The fundraising provisions provide further reassurance that people who donate to charity can have confidence in how their donations are used. They make provision for greater regulation and increased transparency in how the money from fundraising is raised.

Patrick Harvie: I endorse strongly much of what the minister has said, but concerns still remain among charities that have complex governance structures. Will the minister reassure such charities on how those structures are defined in the bill?

Malcolm Chisholm: Let me first say that, because I was looking round at the time, the last

word that I said before I took the intervention should have been “used” rather than “raised”.

On Patrick Harvie’s question, we believe that section 103 will provide a flexible definition that describes charity trustees broadly rather than narrowly, and in a way that is not prejudicial to charities that have complex governance structures. We believe that that addresses the difficulties that have been suggested by charities, such as the National Trust for Scotland, which have constitutions that set out unusual governance arrangements. It is right that the constitution of a charity should determine who is in general control and management of the administration of that charity.

I had better move to my conclusion so that other members can speak in this short debate. Much work remains to be done; we need to appoint the members of OSCR, set up the appeals panel and develop the various regulations that will provide the practical detail. I look forward to continuing positive and practical discussions on those issues throughout the process.

I am delighted to commend the bill to Parliament and ask members to give it their full support.

I move,

That the Parliament agrees that the Charities and Trustee Investment (Scotland) Bill be passed.

The Deputy Presiding Officer: I call Christine Grahame and I ask her to be as quick as possible.

17:12

Christine Grahame (South of Scotland) (SNP): I feel as if I should stand up and then sit down if I am to be as quick as possible.

The vast majority of volunteers in the charitable sector are excellent, dedicated and honest people. They work in a vast and varied sector, which ranges from wee shops that sell second-hand toys and furniture in order to help ill-treated animals—there is one such shop opposite my office in Galashiels—to mega-charities such as Oxfam. However, when a few bad apples contaminated the barrel, the repercussions on donations and on people’s attitude towards the sector were ill-deserved. The bill will remedy that situation by providing a framework and an independent office—OSCR—whose role, which should not be underestimated, will be to regulate and assist the charitable sector.

I believe that the Communities Committee strengthened the bill. We had the usual healthy tensions that should exist between a committee and a minister, such as the skirmish over a humble little amendment of mine, which I never expected to win. The distraction concerning the independent schools sector skewed things,

because the bill is vast and comprehensive and deals with much more than independent schools, including many things that are much needed in Scotland. The SNP will support the bill.

17:13

Mary Scanlon (Highlands and Islands) (Con): I, too, thank the clerks and—in this instance—the bill team. I also thank my committee colleagues who, except on one issue, all left their political hats at the door so that they could focus on passing decent charities legislation. I must also express my admiration—I am being very sycophantic today—for the way in which the ministers responded in a measured and considered manner to all but one of the amendments.

At stage 1, the Scottish Conservatives welcomed the bill’s general principles of reviewing and updating charity law. We commend the work of the voluntary and charitable sector, which provides services in a way that the state could not. We wish to encourage people to give to charities in the knowledge that the moneys that are received will be used for the purposes for which they were intended. We also welcome the full role of OSCR in regulating and investigating charities.

However, I must express one concern, which is relevant to most bills that we pass in Parliament. My concern is that so much of the spirit of understanding and of the practicalities of implementation and interpretation are written in guidance that is published at a later date, which may be months or more after the bill is passed. We often sign up to amendments and to legislation in good faith and are blissfully unaware of the regulations that will follow. When awkward questions were asked about the bill, the replies were often that the issue would be covered in guidance or that it would be up to OSCR to decide.

Unfortunately, the inclusion of the amendment on OSCR’s powers to determine public benefit in relation to a charge or a fee is the one aspect that we find, regrettably, to be unacceptable. Therefore, with regret, the Conservatives cannot fully support the bill because of that amendment. We cannot vote against the bill because of the support that I have given it throughout stages 1 and 2 and pre-legislative scrutiny, and because of the support that we have given to the general principles and the main content. We will therefore, with regret, abstain in the vote on the bill.

17:16

Donald Gorrie (Central Scotland) (LD): As other members have said, there is a long history behind the bill—I took part in a committee that discussed the issue more than 30 years ago. We

must pay tribute to Jean McFadden and her committee and to Jackie Baillie who, as a minister in the early days of Parliament, got the vehicle going.

This is a great day for Scottish charities as we pass this important bill. Consideration of the bill at stages 1 and 2 showed us working effectively; there was good consultation of all sorts of people in different parts of the country and many witnesses came before the committee.

Amendments were discussed thoroughly at stage 2. There were some good moments, such as when it was agreed that, in respect of amendments on payment of trustees, no members would press their amendments because we were coming from a variety of directions. The compromise that the minister has put forward today is very suitable.

The one sour note that I will sound is that we must reconsider timetables for bills' later stages. First, the discussion and negotiations about amendments prior to the stage 3 debate must be done better. It is not satisfactory to receive several pages of amendments on the closing date because that means that we cannot discuss them and negotiate. Secondly, some parts of the debate this afternoon have been ridiculously curtailed; more members should have been enabled to speak. We must consider that matter.

However, that does not detract from the importance of the bill and the great consensus behind it. On most issues, we have achieved a reasonable set of rules to put forward to OSCR. The members of OSCR must be elected and the organisation must take off thoroughly—it has started quite well. It is up to OSCR to interpret this reasonable bill in a reasonable manner so that an engine can be put into Scottish charities, which are such an important part of our life.

17:18

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

It is a great pleasure to speak in the debate. My interest in charities legislation and the need for it predates my election to Parliament in 1999. I know that many other members have also striven over the years to keep the subject on the agenda.

The bill is essential in order that we can restore public confidence in charities and the people who operate them. The generous people of Scotland have the right to expect that their hard-earned money is spent wisely and not misused, and that the people who operate charities are fit to carry out such duties. The bill will achieve all those things. It is long overdue, very welcome and will go a long way towards restoring public confidence in Scottish charities.

This Scottish Parliament has done Scotland proud with the bill. I plead with the Conservatives to set aside their narrow interests, to embrace the legislation as a good thing and to allow the Scottish Parliament to give unanimous support for charities in Scotland.

17:19

Karen Whitefield (Airdrie and Shotts) (Lab):

The bill will help to establish a framework that will provide greater clarity for Scottish charities and greater reassurance for members of the public who donate to them. The bill has been shaped by the views and experiences of the charitable and voluntary sector in Scotland. Even the independent schools, which may not be happy with the final shape of the bill, must concede that their views were listened to and taken into account during scrutiny.

The establishment of OSCR as a statutory body corporate with responsibility for delivering the key elements of the bill is a sensible way forward. Using the two-part test, OSCR will have sufficient flexibility to take a reasonable approach to determination of charitable status, which is to be welcomed. That is why today Mary Scanlon was so wrong to argue that there should be an exemption for independent schools. If she truly cared about the charitable sector in Scotland, she would have argued that it needs to be protected. Why did she not argue that the Red Cross, which provides health care services in Scotland, and the YMCA, which delivers education, should get the same exemptions as the independent schools and hospitals that she was so keen to protect?

As the convener of the Communities Committee, I would like to thank a number of people who have been invaluable in the process of scrutinising the bill. I start by thanking my colleagues on the committee, who worked through difficult issues tirelessly while also working on stage 1 of the Housing (Scotland) Bill. I thank the committee clerks for their constant support and advice during stages 1 and 2. I thank all those who gave oral and written evidence to the committee and thereby helped to broaden members' knowledge. I thank the staff of the Scottish Parliament information centre for the informative briefings that they provided to committee members.

Last and by no means least, I thank the Scottish Council for Voluntary Organisations for its determination to ensure that the bill came before Parliament and, more recently, for its assistance in facilitating pre-legislative visits. I am sure that I speak for all members of the Communities Committee when I say that those visits and the evidence that we heard in their course proved to be invaluable during our later deliberations.

I will welcome the passing of the Charities and Trustee Investment (Scotland) Bill today. It is yet another building block in Parliament's efforts to nurture and strengthen voluntary and charitable activity in Scotland. We all know the benefits of that activity, both to individuals and to the wider community. I am pleased to support the bill.

17:22

Linda Fabiani (Central Scotland) (SNP): I, too, welcome the principles of the bill. I am disappointed about the provisions relating to misconduct, because I think that we are storing up problems for the future. I cannot understand why we cannot continue to refer to "mismanagement" and "gross mismanagement", rather than to "misconduct" as a collective term. However, that is how the process works—we made our arguments and we were beaten on the issue.

The bigger picture—the bill as a whole—is much more important, which is why I am disappointed that Scotland's charities bill will not be agreed to unanimously. It is pretty shameful that poor Mary Scanlon has been left by herself to face the embarrassment of what the Conservative party is doing today. I guess that's life.

I give a broad welcome to the bill and hope—I am sure that it will—that it will work for the charitable sector in Scotland. Monitoring by OSCR, the Executive and Parliament will be necessary and will ensure that the bill works for a long time, to the benefit of charities in Scotland in the future.

17:23

The Deputy Minister for Communities (Johann Lamont): I thank all those who have been involved in getting us to where we are today. In particular, I thank the convener of the Communities Committee, committee members and the clerks for their hard work and the rigour with which they developed proposals relating to the bill. I also thank all those who managed to cope with my moving from poacher to gamekeeper during the bill process. It has been a long journey.

Duncan McNeil, in one of his grumpy modes, said that he did not see why we should thank everyone at the end of the day, because people were only doing their jobs. I was tempted to say that when we express thanks shortly before passing a bill it can be a bit like the Oscars. However, it is relevant for me to point out that, despite the noise and thunder at stage 1 from the SSP regarding one issue in the bill, the SSP was the only party that lodged no amendments at either stage 2 or stage 3. We had the old politics of debate by resolution, when the challenge that the Parliament presents to all of us is the hard

work of committees, of listening to interested groups and bodies, of working with one another within the committee structure and the chamber, and of recognising that there are diverse, wide-ranging and challenging interests across Scotland that deserve to be heard and to influence our legislation. I welcome the broad, deep and serious work that has been done by the vast majority of those who serve in the chamber. I am delighted to be part of the process today.

There was a lot of traffic and there were a lot of noises off in connection with the purpose of the bill. However, we know that legislation was important to the charitable sector; the sector itself asked for it. The bill is important for those who are active in the sector, for those who benefit from the sector, for those who wish to give of their time and money to the sector, and for the fundraising base of the organisations in the sector.

A flourishing charitable sector is important for the new way in which we do government, and I am genuinely disappointed that the Tories will not be able to support the bill as it stands. OSCR will be accountable to this Parliament. OSCR will be obliged to consult on its guidance and this Parliament has shown itself in the past to be very proactive—through its committee structure in particular—in pursuing issues with which it is uncomfortable. I therefore regret that the Tories will not support the bill.

Congratulations have been offered to many people, including Jean McFadden, on moving the debate forward. However, I hope that people will not take it amiss if I add congratulations to people such as Jackie Baillie—people who drove on the debate and encouraged others to take up the issue. In particular, I congratulate Margaret Curran who, when she was Minister for Communities, acted swiftly to deal with scandals over the financial mismanagement of charities. Those scandals were generating huge anxiety, which was beginning to erode people's faith. At one point, we were perilously close to seeing real damage being inflicted on the sector. Margaret Curran, knowing how hard a challenge it would be for us all, moved quickly to commit the Executive to a bill. She is to be congratulated on doing that.

Although we knew that legislation was necessary, we also knew that it would not be easy, because of the nature of the sector. The very things that we love about the charitable sector are the very things that make it difficult to legislate on. It is eccentric and it is odd. I congratulate the bill team on its capacity to respond to the very strange, different and unexpected things that came up as the bill went through its stages. The bill team was able to understand the eccentricities and the strengths of the sector, and the team,

together with many in this chamber, was able to respond.

This is a good day for the charitable sector and a good day for the Parliament. We now have an objective and independent regulatory system that is in a position not to presume for or against anyone. The only thing that organisations have to do is to meet the public benefit and charity tests. The vast majority of organisations that are currently charities will be able to meet those tests. Regulation and management of the sector will be not for us, but for OSCR, which is an independent body. That will be a great strength, both for the sector and for Scotland.

I am very happy to add my thanks to all those who have been involved, and to encourage support for the bill at decision time.

The Presiding Officer (Mr George Reid): Decision time is fixed for 17:30, so I suspend the meeting until then.

17:28

Meeting suspended.

17:30

On resuming—

Decision Time

The Presiding Officer (Mr George Reid):

There are five questions to be put as a result of today's business. In relation to this morning's debate on health issues, if the amendment in the name of Andy Kerr is agreed to, the amendments in the name of Stewart Maxwell and Carolyn Leckie will fall.

The first question is, that amendment S2M-2931.3, in the name of Andy Kerr, which seeks to amend motion S2M-2931, in the name of David McLetchie, on health issues, with specific reference to the Kerr report, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 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)
 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)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

Mulligan, Mrs Mary (Linlithgow) (Lab)
 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)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

ABSTENTIONS

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

The Presiding Officer: The result of the division is: For 66, Against 39, Abstentions 6.

Amendment agreed to.

The Presiding Officer: The amendments in the name of Stewart Maxwell and Carolyn Leckie fall.

The next question is, that motion S2M-2931, in the name of David McLetchie, on health issues, with specific reference to the Kerr report, as amended, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 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)
 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)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)

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)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Curran, Frances (West of Scotland) (SSP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

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)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (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)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 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)

The Presiding Officer: The result of the division is: For 65, Against 20, Abstentions 28.

Motion, as amended, agreed to.

Resolved,

That the Parliament commends the Kerr report, *Building a Health Service Fit for the Future*, and its emphasis on sustainable and safe local services and preventative care for the most vulnerable, which supports the Scottish Executive's goal of delivering care that is as local as possible and as specialised as necessary; welcomes the interim report of the NHS 24 review team and the public commitment of NHS 24 to implement the key recommendations as quickly as possible for the benefit of the people using the service, and is encouraged by the positive progress on waiting times and waiting lists.

The Presiding Officer: The final question is, that motion S2M-2773, in the name of Malcolm Chisholm, that the Charities and Trustee Investment (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)

Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kane, Rosie (Glasgow) (SSP)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)

McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 98, Against 0, Abstentions 15.

Motion agreed to.

That the Parliament agrees that the Charities and Trustee Investment (Scotland) Bill be passed.

Myalgic Encephalomyelitis

The Deputy Presiding Officer (Murray Tosh):

The final item of business is a members' business debate on motion S2M-2852, in the name of Alex Fergusson, on a cure for myalgic encephalomyelitis. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes with pleasure that a scientific team from Glasgow University, headed by Dr John Gow, may have discovered a remedy for myalgic encephalomyelitis (ME) which could be available in as little as a year; further notes that the university has already patented the genes involved as a means of diagnosing the condition quickly and cheaply; recognises that this could represent a major step forward in the treatment and cure of this debilitating disease but notes with alarm Dr Gow's concern that he is "going nowhere" because his funding has run out, and considers that the Scottish Executive should take every possible step to ensure that this work can be continued in order that the 10,000 to 20,000 ME sufferers in Scotland can play a full part in the economic and social life of their country.

17:35

Alex Fergusson (Galloway and Upper Nithsdale) (Con): This is the second opportunity that I have had to bring the subject of ME to the Parliament for debate. I am very grateful to the members of all parties who, by signing my motion, have given me that opportunity.

The first debate, which was held in 2002, prompted the Scottish Executive to establish a short-life working group on ME; in fact, the group was originally described as a short-life action group, until the full implications of the acronym "SLAG" were realised. The group's report was published some 18 months later, following which the Executive asked all health boards to evaluate the situation in their areas and to report back. Well over another year later, they did so and their responses proved what we all knew anyway—that the health boards' efforts to diagnose and treat ME patients vary from the commendable introduction of a specialist nurse in the case of Fife NHS Board to no action at all in the case of Tayside NHS Board. In Dumfries and Galloway, staunch efforts are being made to establish a managed clinical network for ME patients, while in Orkney or the Western Isles, an ME patient will be hard pushed to find any sympathy at all.

Even ministers now accept that provision for ME sufferers in the national health service is haphazard at best. Rhona Brankin told the Health Committee:

"The information that we have received from the short-life working group and, subsequently, from NHS boards shows that provision is patchy—there is no doubt about that."—*[Official Report, Health Committee, 26 April 2005; c 1909.]*

The tragedy for ME sufferers is that it has taken almost four years for that to be acknowledged, during which time the number of sufferers has risen inexorably. During those four years, the established therapies of cognitive behavioural therapy and graded exercise have continued to fail abysmally to bring about any measured improvements; during those four years, we have continued to fail a growing patient group by sticking rigidly to the established—and establishment—thinking that ME is basically a psychological condition rather than a neurological disease, which no less a body than the World Health Organisation now recognises it to be.

Members might well think that I am somewhat biased in that statement and that the establishment has a much more open-minded approach than that. To prove that that is not the case, I quote what Dr Cornbleet, the minister's departmental adviser, said to the Health Committee:

"The treatments that clinical trials have verified as being of benefit are those that lie within the province of the psychologist and psychiatrist rather than the neurologist ... At the moment, the most appropriate referrals are to psychologists or psychiatrists."—*[Official Report, Health Committee, 26 April 2005; c 1912.]*

What Dr Cornbleet failed to say was that the number of patients who benefited from the treatments to which he referred—cognitive behavioural therapy and graded exercise—represented less than 10 per cent of the total number of patients who were involved in the trials and that a large number of patients got significantly worse. I am one of the many people who argue that if someone benefited from those therapies, they may well have had some form of chronic fatigue, but they did not have ME.

Although the Executive has given approximately £0.5 million to continue psychiatric research into the disease, it has given less than £10,000 to what I would call biological research. We need to ask ourselves one simple question. If our current approach to ME is sufficient and cost effective, why do we all know a family that is directly affected by the disease—I bet that that is the case—when 20 years ago, there was only a faint chance that we might have come across something that was rather cruelly called yuppie flu and which we did not take seriously at all? The answer is as simple as the question: it is because ME is on the increase, in spite of the best efforts of the establishment. In other words, I am suggesting that established thinking is wrong. It is time to admit that and to begin to think out of the box on ME.

Several years ago, the philanthropic Barclay brothers funded a research project—through the University of Glasgow—at the Southern general hospital. The project has been led by a number of

eminent neurological researchers whose names are revered by ME sufferers almost as much as they are disapproved of by the establishment. Drs Behan and Chaudhuri are but two of them. Several years on and, crucially, many funding streams later, the research is close to achieving a major breakthrough in identifying both a diagnostic test and a cure for ME through the relatively new science of genetics.

By studying the microarray analysis of gene expression in ME/chronic fatigue syndrome patients, the researchers have generated a comprehensive map of gene expression by whole-genome DNA microarray assay for people with ME/CFS. In the absence of Stewart Stevenson to explain to members what that means—I am sure that he would have done so—I will say it again more simply. The genes that are responsible for the disease have been identified. Equally, or even more importantly, a cocktail of drugs to counteract the genetic imbalance is also believed to have been identified. To put it at its most simple, a cure is on the horizon.

In Scotland, we stand on the brink of a medical breakthrough of world-wide importance. The University of Glasgow deemed the research to be of enough significance to patent, yet we are about to lose it through—members will have guessed it—lack of funding.

Just as all those years of research, which have always been done on a shoestring budget, are about to pay off, the shoestring appears to have broken. Latterly, the project has been part funded by Scottish Enterprise. The current project leader, Dr John Gow, applied to that agency again, but the application has just been turned down. Scottish Enterprise is to fund, through the University of Glasgow's research and enterprise department, an independent company to conduct market research into ME. I am sorry, but I find that project almost repulsive in nature. We do not need market research; we need biological research.

In an e-mail to me yesterday, Dr Gow said:

"This means that we have no clinician here to diagnose/treat patients and we have no funding for research staff or consumables. Many individual people and the ME Association/MERGE"—

which is a Perth-based charity—

"have been very kind and sent donations from £10 upwards. I now have a few thousand to keep my research assistant employed until the end of July. I will apply to other funding bodies for salaries/consumables but at the moment, everything stops at the end of July."

An estimated 15,000 to 20,000 Scots suffer from ME. Those people are desperate to return to school, college, university and the workplace to play a full part in the economic life of this country. I note the Executive's fresh talent initiative, but I

point out the vast number of ME patients who are already here and who are desperate and willing to use their talents fully and yet are unable to do so because all we can offer them is a bit of graded exercise and some psychological mumbo-jumbo.

The CFS Research Foundation's latest newsletter states:

"It is clear that in these patients the gene function has changed and these changes can be detected and measured."

This Newsletter is being written with a feeling of profound thankfulness."

That profound thankfulness could well be shattered next month for the lack of a comparative pittance. The minister has the power and the authority to ensure that that does not happen. I beg her to use it.

The Deputy Presiding Officer: I have a very long list of members who wish to take part in the debate. Speeches will be of three minutes only.

17:43

Christine Grahame (South of Scotland) (SNP): It is a pleasure to support Alex Fergusson on his long pilgrimage to have some serious effort put into providing a cure for ME. He knows that I became involved after a friend of mine was diagnosed with ME. My friend has ended up in a wheelchair. He can now manage things to some extent, but, as ME is a spasmodic illness, he has bad spells. I have said in the chamber before that sometimes, when he does things too fast, the electrics go awry and he has to spend hours trying to shave. It takes ages before he can work his way back again.

It has taken an inordinately long time to discharge the label of yuppie flu. Thankfully, that is no longer around, although the thought still lingers in some people's minds that people with ME are "at it". Perhaps a minority of people are, but someone cannot be "at it" when they are in a wheelchair or when, if they do something quickly, they are debilitated for a long time afterwards.

I will not go into funding; one of my colleagues will address that. I also cannot repeat the eloquent information that Alex Fergusson gave to the chamber today. I want to mention the impact on and the difficulties for people with ME in accessing benefits; an issue that I have raised previously in the Parliament. If we do not pursue a cure, sufferers will be disadvantaged in several ways, because the tests that are applied for disability benefits are not relevant to someone with ME. They might be asked if they can walk up stairs or do certain tasks; of course, on one day they are able to do them and pass the test, but they might not be able to function for many days and weeks thereafter. They face a double whammy: they

have an illness for which there is a possibility of a cure that is not being pursued and they are also denied the assistance that is given to others who have illnesses that are, in some respects, visible.

I welcome the debate. I am sure that Alex Fergusson will be successful one day, as his determination certainly bowls me over. I hope that it bowls the minister over.

17:45

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): It gives me great pleasure to support Alex Fergusson because, as a general practitioner, I have been in the position of wondering how to refer patients who suffer from ME.

ME is a terrible condition, because the family suffer. They look on, knowing that they cannot do much and that the national health service is not providing much assistance, which causes more unpleasantness.

Any illness carries with it psychological problems, especially if the sufferer cannot get any help. We have almost broken through and have nearly found a cure, so now is the time that we need to give support, and I sincerely hope that it will be like a steady drip that wears away a stone. We need a cure for people whose lives are being destroyed, especially young people who are not able to get to school. If somebody misses out at that time in their life, they sometimes miss out for the rest of their life and I would hate to think that that would happen.

I hope that the Kerr report's recommendations on chronic conditions will be implemented and that sufferers will be dealt with. We should be a caring nation and we cannot go on not caring for sufferers of chronic conditions. When we add ME sufferers to sufferers of multiple sclerosis, autism and other chronic conditions, it adds up to thousands and thousands of people—especially young people—whose lives are being ruined because we do not seem to want to do the necessary research and find out more about the conditions. It would be more cost effective in the long run if we did the research.

I praise Alex Fergusson for his tenacity, but nothing makes one more tenacious than having somebody in one's family who suffers from ME. It certainly sharpens the mind.

17:48

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am delighted to take part in the debate and I congratulate the convener of the cross-party group on ME, Mr Fergusson, on securing the debate. He does a tremendous amount of work on the cross-party group and has

done much to promote the issues surrounding the condition.

Until recently, the medical profession has not supported pleas from ME sufferers and has considered the condition to be more or less a yuppie flu. Whenever anybody presented themselves with ME, the doctors gave them the sloped shoulder, handed them a box of tablets and said that they would be all right the next week. The truth is that ME can strike at any time and can be most frustrating. Young adults who are fit, healthy and active are suddenly struck down and become lethargic, listless and morose. Great problems are created in families in which that happens.

Steady progress has been made on the issues through the cross-party group. That group has been assisted tremendously by the regular attendance, professional support and experience of the group members, many of whom have suffered from ME over many years or have witnessed members of their immediate family becoming listless, lethargic and morose. We are indebted to them for that professional support.

We have heard about the recent medical research, which appears to have developed a simple and effective cure for ME. That is excellent news, which must be publicised and promoted by health officials. It will be very much welcomed by the large number of people who have suffered with the condition over many years.

Now that we have established a potential cure for the ailment, which was, until recently, hardly recognised or accepted by many people in the medical profession, let us not miss the opportunity to lead the world in the research, development, treatment and cure of ME, which has been a scourge on our society for many years. I hope that the Executive can be encouraged to support financially the excellent work that has already proved to be so successful in the treatment of ME.

The information available to us suggests that only modest amounts of money are required to make the historic, groundbreaking research nationally and internationally recognised. The costs would be minimal, but the benefits to ME sufferers could be gigantic.

17:51

Mike Watson (Glasgow Cathcart) (Lab): I pay tribute to Alex Fergusson for moving with such alacrity to secure the debate following the announcement about the recent research by Dr Gow and his team at the University of Glasgow. Alex Fergusson's work in the cross-party group on ME has been prodigious. It may now be beginning to produce results.

I welcome Dr Gow's research. One of the comments that was made about it—I think by Dr Gow himself—was that it would allow patients with ME to live a “fairly normal” life. On the surface, that might seem to be a prosaic statement. In fact, it would mean a lot to ME sufferers if they were able to lead a fairly normal life. A diagnostic test has been developed, which can produce immediate yes or no results, instead of people having to wait six months, as they must often do currently. Alex Fergusson referred to the “biological research”, or neurological work that has been sadly lacking in the field of ME for so long. As John Farquhar Munro has just highlighted, that work might go no further for the lack of just a few thousand pounds.

The very definition of ME is an issue. Differences of opinion are widespread, and go right to the very top of the medical profession. Needless to say, the psychiatric lobby dominates that utterly. The point is that it is ME patients who are bearing the brunt of that dispute, which simply must be brought to an end. A much more balanced approach must be taken to research on ME. It is ironic—that is the kindest adjective that I could attach to this—that when some research is carried out it may not be concluded.

The World Health Organisation has classified ME as a neurological condition, but Scotland's chief medical officer, when he visited the cross-party group at the end of last year, made it clear that he declines to do so.

NHS Greater Glasgow has now established a group called the CFS/ME wellness enhancement programme. That is a breakthrough as, hitherto, the board had refused to use the letters “ME” in any of the discussions that we held with it on the matter. That is welcome. However, the emphasis is still on cognitive behaviour therapy and pacing—aspects that Alex Fergusson outlined in his speech. That approach must be addressed.

The Deputy Minister for Health and Community Care might not like this, but I will quote to her words that she spoke at the Health Committee on 26 April this year on the question of ME. She said:

“I think that there are strong grounds for viewing ME as a neurological condition ... my professional experience of contact with people who suffer from ME suggests to me that it is a neurological condition.”—[*Official Report, Health Committee*, 26 April 2005; c 1915.]

It is now time to build on those words and ensure that Dr Gow's research can be funded through to its conclusion. ME sufferers in Scotland have waited long enough. It is now time to open the door and let them walk through it, with the benefit of Dr Gow's research. I hope that the minister will act to ensure that that happens.

17:54

Robin Harper (Lothians) (Green): I am happy to support the second motion on ME in Alex Fergusson's name that we have debated. I remember that, during the first debate, I reflected on my experiences as a teacher of young people who suffered from ME. At that time, I called on the Executive to issue specific advice to teachers on helping young people who have ME, but it appears that nothing has happened in the interim. A survey of 445 members of the Association of Young People with ME showed that 80 per cent drop out or fall behind in their education because of their illness.

I was e-mailed only yesterday by a constituent whose son is now 20 and has lost seven years of his education because of ME—seven years of his life and 50 per cent of his possible education in school have been removed from him forever. It is vital that we protect the health of children who have ME. Experienced paediatricians confirm that teachers who do not understand ME are a key cause of relapses in young children.

I will make one point in the debate. My researchers checked with the Scottish Parliament information centre, which said that the Executive has not published specific guidance to teachers to support pupils who have ME, despite the call that was made in the previous debate. Will the minister ask the Education Department whether it will issue to all guidance teachers in Scotland specific instructions and advice for helping all pupils who suffer from ME?

It is possible that there is a specific reference to ME in the code of practice on additional support needs. I would welcome the minister's advice on that. Will the code of practice provide specific information on ME? I contend that it must. I thank Alex Fergusson for bringing the issue to Parliament's attention again and I support fully his call to the Executive to provide real funding for research, which could—at last—provide the answer for everybody.

17:57

Mr David Davidson (North East Scotland) (Con): I am proud to be a colleague of Alex Fergusson, who has been a passionate champion of the cause of ME sufferers since he was elected to Parliament. I also commend the work of the cross-party group on ME. I am sorry that I cannot attend its meetings as often as I would like to, because it is one of the most effective cross-party groups in Parliament.

We heard from Alex Fergusson about the managed clinical network in Dumfries and Galloway. If we can have one such network, why not have one for the whole of Scotland, rather than

operating health board by health board? We need joined-up thinking and application.

Many physicians and the World Health Organisation agree that ME is undoubtedly a neurological disorder. I wish that the minister would override some of the advice that she takes and broaden her mind a little on that.

It is all about research. One of the things that is being researched is the potential for a diagnostic test based on genetics. Without that test—I am talking not just about qualification for benefits and so on—general practitioners have no tools. It is starkly evident that very few GPs have any knowledge of what the condition is about and how to pick up whether somebody might have it. That is perceived as a lack of sympathy in the system, although I do not necessarily think that people genuinely believe that that is the case. The minister can influence that, if she so chooses.

The research is being conducted on a shoestring. When the possibility of developing a test and a cure is on the horizon, it is not the time to walk away and play Pontius Pilate; it is the time to reinvest. There should be checks and audits, but the research should be kept running and it should be supported.

Last night, two physicians came to talk to the cross-party group on diabetes. They brought up the realisation that many disorders are based on gene problems. The minister might care to listen to one small suggestion from me, which is that the Executive consider a linked centre—cross-unit, cross-university and not all based in one hall—for gene-based research with a rolling three-year budget. If one part of such a centre could deal with ME, I would be happy to see it as the primary one. We have to invest but, unless the Scottish Executive takes some responsibility, nothing will happen.

18:00

Ms Sandra White (Glasgow) (SNP): I congratulate Alex Fergusson on securing the debate. As Jean Turner said, his tenacity in pursuing the matter is most admirable. I have never seen anyone fight so much for something in the chamber or in a cross-party group. He obviously believes in the cause that he espouses.

Mike Watson mentioned something that I also want to pick up on, which is the fact that politics is being played by the medical profession in respect of ME. Doctors and professionals who do that should be ashamed of themselves and should think of patients rather than the medical profession. For the sake of the patients, they must stop playing politics with this issue.

I will read out just a few quotations from among the messages that I have received from people who suffer from ME:

“It is good to know that the MRC is giving some priority into research into ME.”

“I would like money for research spent on looking into the physical causes of ME.”

“There is an urgent need in my opinion that research be carried out”.

“There needs to be research into the physical causes of this illness”.

“There is a great need for better funding of research into the physical causes of this illness.”

Alex Fergusson explained eloquently just how badly people are suffering. He and other members will have met constituents who suffer from ME and their carers, and will have tried to explain to them that although we in Parliament are doing our utmost, our calls are falling on deaf ears in the medical profession. Now, unfortunately, we must tell them that Scottish Enterprise, via the Scottish Executive, is also deaf to our calls. The situation is a sad one for me and people to whom I speak.

Every one of the quotations that I read out mentioned research, yet today we are talking about a team that is perhaps only one year away from finding a cure for ME being pulled apart because of lack of funding. The group originally contained Dr Chaudhuri, who is a fantastic champion for ME and has bashed away at the medical profession to convince them that research into the condition is needed. Unfortunately, we have lost Dr Chaudhuri. I appeal to the minister to ensure that funds are made available to enable research to continue. We must not lose any more researchers, as we lost Dr Chaudhuri. We must be able to say to our constituents and to people in Scotland who suffer from ME that we are prepared to allocate a couple of thousand pounds in order to see the research through in an attempt to find a cure.

18:02

John Swinburne (Central Scotland) (SSCUP): Alex Fergusson is to be commended for securing this debate. I have been a member of the cross-party group on ME since first I entered Parliament in June 2003. During that time, I have become increasingly alarmed at the manner in which the establishment has ignored the problem of ME.

Myalgic encephalomyelitis—I think I got that right—has proved to be the most frustrating topic that I have ever encountered. I am appalled at the apparent lack of interest in this most debilitating problem among people who should be in a position to investigate ME thoroughly. If they have discovered, as I have, that there is no existing solution to the problem, they should have been

instigating research into ME with a view to finding a solution. That should have been done years ago.

In this place, we make great play of finding ways to grow the economy. What finer way to grow the economy could there possibly be than to come up with a remedy for ME and to return up to 20,000 people to the productive workforce?

I am moved by the news that the scientific team at the University of Glasgow, headed by Dr John Gow, has at long last given a bit more than a glimmer of hope to people who suffer from ME. We in the Scottish Parliament must bring pressure to bear on the people in authority to ensure forthwith that they fully finance the research.

The cost of incapacity benefit payments and medication for about 20,000 sufferers of ME could, conceivably, exceed £50 million a year. Surely it makes better sense to recognise the true extent of the problem of ME and to fund fully Dr John Gow's project. I hope that the Deputy Minister for Health and Community Care will tell us that she can come up with a financial solution.

18:05

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): One aspect of the Scottish Parliament that has impressed me is its concentration on the diseases that affect our society—or, I should perhaps more correctly say, on the measures that are being taken to highlight those diseases and how they can be tackled. The more people who know about ME, autism, diabetes and the many other ailments that affect 21st century society, the more able we will be to deal with the issues that they throw up.

Only those who are affected by ME know how that pernicious disease can tear their lives apart and affect their families and relations. I recently visited a fundraising coffee morning for ME in Fife and saw how people were coping with life after ME. Without exception, they were optimistic, but they wanted to see progress on finding a cure. That is why I am pleased to support Alex Fergusson's motion. I join my colleagues in congratulating him not only on securing the debate, but on leading the charge for further progress in dealing with the disease.

With the groundbreaking research in Glasgow, a door appears to be opening through genetic science, and we should push at that door and be prepared to pay to go through the opening to help those who have ME—that is not to mention the boost that would be given to Scotland's reputation in medical research if we supported the project. We should not forget that aspect.

I have been sitting here almost feeling sorry for the minister as everyone roundabout has made an appeal for money—

Alex Fergusson: Almost.

Mr Arbuckle: Yes, I am coming to the "but". But my sympathy lies totally with those who suffer from ME, and I join those who are asking for the project to be funded.

18:06

Chris Ballance (South of Scotland) (Green): I will aim to help you, Presiding Officer, by being brief. My main reason for standing up here is to add my name to the list of those who share the sentiments that are expressed in Alex Fergusson's motion. I support Alex Fergusson in the work that he has done to bring the issue to the Parliament and in the cross-party group on ME. The attendance at the last meeting of the group that I attended was huge. There is great interest in the cause.

The importance of diagnosis—particularly early diagnosis, which is part of what the research is about—cannot be overstated. It is vital that we get a system of quick diagnosis. It is also vital that we investigate causes and support patients.

Phil Gallie (South of Scotland) (Con): I did not intend to take part in the debate, but one aspect strikes me. Members have talked about the fresh talent initiative. Here, we have a research team that is succeeding, yet Scotland seems, again, to be turning its back on it. Many heartfelt words have been said about ME and the sufferers. Does Chris Ballance agree that we should be proud of research of that kind and should build on it?

Chris Ballance: Absolutely, I agree entirely. I hope that the minister will take on board the success of the work and its potential for the future.

It is important for patients that they are able to choose how they manage and work with their disease. Dietary management, homoeopathy and reverse therapy have proved beneficial to people who I know and constituents who have written to me.

I conclude by stressing to the minister that we must, please, have a positive response to the debate.

18:08

The Deputy Minister for Health and Community Care (Rhona Brankin): I, too, congratulate Alex Fergusson on his success in obtaining the debate. I am sure that his tireless efforts, as convener of the cross-party group on ME, to improve services for people with chronic fatigue syndrome and ME are greatly appreciated

by those who are affected by this complex and distressing illness. The number of members who have attended tonight's debate, at the end of a long day, shows the high degree of interest that the issue attracts in the Parliament.

Contrary to what Alex Fergusson says, the Executive takes CFS/ME seriously. We have taken and continue to take steps to improve services. I will say more about that later. We are supporting research that we hope will lead to improved treatments in the future.

However, the motion refers to a particular research project. The lead researcher, Dr Gow, is aware of the role played by the chief scientist office in the Scottish Executive Health Department in encouraging and supporting research into health and health care needs in Scotland. As Alex Fergusson knows, the CSO responds primarily to requests for funding for research proposals that are initiated by the research community in Scotland and would welcome proposals for innovative CFS/ME studies of a sufficiently high standard. I cannot discuss any specific applications in detail—the CSO rightly keeps applications confidential until decisions on funding have been reached—but I can say that the chief scientist office would be prepared to discuss Dr Gow's research further with him. All applications for CSO funding are assessed on their quality and relevance to the health of the people of Scotland, using a well-established and highly regarded system of peer and committee review. It is important to note that there are lay members on all the CSO's committees. I will ask to be kept up to date on that issue.

The chief scientist office works in partnership with the Medical Research Council to support research on CFS/ME. The report of the independent working group on CFS/ME to the chief medical officer in England in January 2002 identified a need for a wide-ranging programme of research, and the MRC was asked to develop a strategy for advancing biomedical and health services research in this area. That approach was endorsed by the Scottish short-life working group on CFS/ME, which was set up by the chief medical officer in Scotland following publication of the English report.

In taking forward the strategy, the MRC encourages research proposals in all aspects of CFS/ME, including studies into the causes of the condition as well as evaluations of treatments. Proposals that are received under the initiative will benefit from additional weighting when they are assessed in competition for MRC funds, as CFS/ME has been designated as a current priority area for research. Although scientific quality has to be the main criterion, CFS/ME is a priority area for research.

As has been discussed today, funding for two large clinical trials has already been approved as part of the CFS/ME strategy and the CSO is contributing £250,000 over five years towards the cost of one of them. However, the MRC remains committed to funding scientific research into all aspects of CFS/ME and is currently considering a number of other applications on which funding decisions will be taken shortly.

I say to David Davidson that it is not the case that the Scottish Executive does not support genetics in health care. In fact, we have recently funded a major initiative on genetics and health care throughout Scotland to the tune of £4.4 million. That is a hugely exciting development. Some very exciting work on genetics has gone on in recent years at the Roslin Institute in my Midlothian constituency. It is clear that research into genetics is hugely important for Scotland.

Robin Harper spoke about advice on CFS/ME. The widening of the definition of additional support needs in the Education (Additional Support for Learning) (Scotland) Act 2004, which comes into force later this year, could have potential benefits for affected youngsters. Some youngsters with CFS/ME come to the notice of teachers because they sometimes have an erratic attendance at school. I am happy to ask Peter Peacock, the Minister for Education and Young People, whether some specific reference to CFS/ME can be made in relevant guidance. Although I am not sure whether it is possible to make reference to all conditions, it would be useful to provide information for teachers. Having been a teacher who has worked with youngsters with CFS/ME, I am aware of the kind of difficulties experienced by such youngsters and their families.

Alex Fergusson: Is the minister aware of an initiative that was launched jointly last year by the Tymes Trust for ME sufferers and a Japanese company, the name of which escapes me? They put together an information technology distance learning package specifically designed for people with conditions such as CFS/ME. If she is not aware of that, will she undertake to look into it to see whether it might have application in the delivery of education to sufferers in Scotland?

Rhona Brankin: I am not aware of that initiative. I have been out of the teaching profession for a number of years, but if the member gives me some information on the initiative, I will be happy to consider it and discuss it with Peter Peacock.

On the wider issues of services for people with CFS/ME, we set up a short-life working group on chronic fatigue syndrome and myalgic encephalomyelitis and we asked NHS boards to advise us of progress on the planning of services for people with CFS/ME. As has been discussed, the responses from health boards showed that,

although they all took the report seriously, services remained patchy. In a way, that is understandable, because the boards were not all starting from the same place. Some of them had already begun work on improving services, but others were only beginning to scope out the problem. It was clear that much more work was needed, and we have now agreed to arrange a national assessment of needs.

We recently received the report of the working group on the management of chronic conditions, which was set up as part of the national framework for service change. Of course, that report relates to all long-term illnesses, but it has an important message on chronic conditions for all of us. We will consider its recommendations for improvements.

We have recently given grant funding to the voluntary organisation Action for ME to develop information packs for general practitioners. That work has already been done in England, and it is hugely important.

I am happy to reaffirm the commitments that I made to the Health Committee on 26 April. We will arrange for an assessment of needs as soon as possible and we will fund NHS Quality Improvement Scotland to produce a best-practice statement on ME as part of its current work programme. Finally, we will ensure that the good-practice clinical guidelines on CFS and ME that are being developed by the National Institute for Clinical Excellence are made available to the NHS in Scotland at the earliest opportunity.

Alex Fergusson: It would be churlish of me, as convener of the cross-party group on ME, not to acknowledge and be grateful for the steps that have been taken, albeit that they have been taken over a longer period of time than one would have wished. I acknowledge those steps entirely, but does the minister accept that if Dr Gow's research project comes to fruition and delivers the promise that it might deliver, all the steps that she outlined will be completely unnecessary?

Rhona Brankin: In an ideal world, we would not have to take any of those steps.

I finish by congratulating Alex Fergusson again on his success in securing what has been a stimulating, difficult and challenging debate.

The Deputy Presiding Officer: That concludes today's business. I feel that I should apologise to the members of the public who have just come into the gallery.

Meeting closed at 18:17.

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