



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 15 December 2010

Session 3

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Scottish Parliament

Wednesday 15 December 2010

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

Time for Reflection

The Presiding Officer (Alex Fergusson):

Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Canon Ian Paton of Old St Paul's episcopal church here in Edinburgh.

Canon Ian Paton (Old St Paul's Episcopal Church, Edinburgh): Today is my son Christopher's 13th birthday so, as a father, I am about to enter the teenage years. Why am I telling you this? First, it is so that I will gain your immediate sympathetic attention but, secondly, it is to invite you to think with me about being a teenager.

Being teenage is like a today that is all about tomorrow, even when you do not want it to be. Teenage life is full of expectations, hopes, questions and anxieties—thrown at you by parents and teachers, your peers and your friends—about exams, careers, relationships and who you are.

Perhaps politics can also seem like a today that is all about tomorrow. Our expectations and hopes are laid on your shoulders, and our questions and anxieties are, too. We know the problems that you are tackling on our behalf today, but who knows what problems will come tomorrow? For you, as for our teenagers, vision and reality, hopes and anxieties, all come together as you contemplate our future.

In the Christian calendar, Advent, the four weeks leading up to Christmas, is the season for contemplating the future; not just Christmas, but the Future—with a capital F. We look for hope in that future, and we try to be more accountable to it. You don't have to believe in the second coming to know that judgment of the present lies in the future and that it is tomorrow that will judge today, so in Advent we celebrate the gifts that help us to act today out of a belief in tomorrow—desire for justice, hope for humanity, joy in life—and we seek to share those gifts with others.

In thanking you for the privilege of being with you, I wish you a very happy Christmas and a good new year, I wish my son a happy birthday and I ask, if you will allow me, with this traditional Christian prayer for Advent, to pray for us all to be blessed today as we contemplate our tomorrow.

Almighty God,
give us grace to cast away the works of darkness
and to put upon us the armour of light,

now in the time of this mortal life
in which thy Son, Jesus Christ,
came to us in great humility;
that, in the last day, when he shall come again
in his glorious majesty to judge both the living and the
dead,
we may rise to the life immortal:
through him who liveth and reigneth with thee
and the Holy Spirit, one God, world without end.
Amen.

The Presiding Officer: Thank you.

Business Motions

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-7606, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out revisions to the business programme for today.

14:04

The Minister for Parliamentary Business (Bruce Crawford): In moving the motion, I inform the Parliament that the reason for it is to allow a Scottish Government debate on a ministerial appointment.

I move,

That the Parliament agrees the following revisions to the programme of business for Wednesday 15 December 2010—

(a) after

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

insert

followed by Scottish Government Debate: Ministerial Appointment

(b) delete

5.00 pm Decision Time

and insert

5.20 pm Decision Time

Motion agreed to.

The Presiding Officer: The next item is consideration of business motion S3M-7600, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Forth Crossing Bill.

14:04

Bruce Crawford: In moving the motion, I should explain to members that, because of the number of people wishing to speak on the bill, decision time will be at 17:20.

I move,

That the Parliament agrees that, during Stage 3 of the Forth Crossing Bill, debate on groups of amendments shall, subject to Rule 9C.12.5, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 and 2: 25 minutes

Groups 3 and 4: 35 minutes.

Motion agreed to.

Junior Scottish Minister

The Presiding Officer (Alex Fergusson): Under rule 4.8.2 of the standing orders, I wish to formally notify members of the resignation of Stewart Stevenson as a junior Scottish minister.

The next item of debate is, therefore, a debate on motion S3M-7603, in the name of Alex Salmond, on the appointment of a junior Scottish minister. Members should note that the question on the motion will be put immediately after the debate and not at decision time.

14:06

The First Minister (Alex Salmond): I am pleased to seek the Parliament's approval of the appointment as a minister of Angela Constance. It is, of course, appropriate that Parliament should have the opportunity to debate recent changes to the Scottish Government's ministerial team.

First, I would like to pay tribute to Stewart Stevenson. When I replied to his resignation letter at the weekend, I wrote that he had always pursued any task with diligence and devotion. I might have added "dignity and determination". As a minister, Stewart brought forward the strategic transport projects review, developed our approach to planning reform and took forward the Forth replacement crossing project to the point of parliamentary endorsement, which I hope it will receive later today. Above all else, I should say that his successful championing of our world-leading climate change legislation is an achievement of which any politician in any Parliament would be immensely proud. *[Applause.]*

Stewart Stevenson's successor to the transport and infrastructure portfolio, Keith Brown, also brings with him a substantial record from local government as a councillor and a council leader, and Parliament and the Scottish Government, as a member and as the Minister for Skills and Lifelong Learning. As has been well documented in the press, Keith previously served as a royal marine as part of 45 Commando, which fought in the Falklands war—an experience that might stand him in good stead in the days ahead.

I have heard it said that the extremity of the Scottish climate should lead us to focus less on climate change, as if there were an either/or choice. I disagree fundamentally with that. I would have thought that the extremes of our climate serve as a reminder of why we must act on climate change. They remind us of the importance of climate and of why it should remain a key priority for this Parliament and this Government as we build on that world-leading legislation. To ensure that the policy remains a top focus for this

Administration, it has been combined with the environment portfolio, under Roseanna Cunningham.

Keith Brown's move to transport means that we need a new minister to take over the skills and lifelong learning portfolio, and I am pleased to nominate Angela Constance for that role. Angela has proved herself to be an extremely able parliamentary performer in committee and in debates in the chamber and, before becoming an MSP, she was a mental health officer in her native Livingston.

I am told that the appointment, subject to parliamentary approval, of Angela to the Government team will make the MSP block a much quieter place. That is not a reference to Angela but to three-year-old Cyrus, who has made quite a home for himself in this Parliament.

I believe that Angela Constance will be an asset to the Government in the skills and lifelong learning brief, and I welcome her warmly to the Administration, pending parliamentary approval.

I move,

That the Parliament agrees that Angela Constance be appointed as a junior Scottish Minister.

14:09

Des McNulty (Clydebank and Milngavie) (Lab): I thank Stewart Stevenson for his work as Minister for Transport, Infrastructure and Climate Change, and for the courtesy that he showed to me and to other Opposition spokespersons during his tenure. It was no easy task to pilot the Climate Change Bill through a subject committee in which the Government had two votes and the Opposition the whip hand. However, even as the bill was extensively amended, Stewart Stevenson retained his equanimity and good humour, and collectively we ended up with legislation of which the whole Parliament can be proud.

To replace Stewart Stevenson, the First Minister has chosen an ex-marine—I presume not just because he is the handiest with a shovel, but because he is capable of taking forward the resilience agenda for this winter. In education, Keith Brown's talents were sometimes overshadowed; the great panjandrum is not inclined to share the limelight. However, he can now don his high-visibility jacket and hard hat in the few months that remain until his ministerial career comes to an end on May 6. In the meantime, I wish him well in his new post.

I also wish Angela Constance well as she becomes minister for skills and lifelong learning. I presume that the reason why she is not also designated as schools minister, as both her predecessors were, is that the SNP has so far

commissioned only one new school. Three ministers and only one new school is a less-than-outstanding record, but at least Pumpherston and Uphall Station community primary school near Livingston—the only new school for which the ground has been broken—is in Angela Constance's constituency. Perhaps she should have been designated in the singular—the school minister. That might have reminded other members, and the rest of Scotland, that nearly a quarter of children are being educated in schools that the Scottish Government has rated as unsuitable due to the failure of the SNP's Scottish Futures Trust.

I urge Angela Constance, who has won the respect of colleagues—she has respect on the Labour side of the chamber, as she does on the Government side—to apply herself to the tasks of creating more apprenticeships, improving the quality and range of vocational educational opportunities and ensuring that resources are used effectively by Skills Development Scotland.

If she acts diligently on those matters, she will have the support of members on the Labour side of the chamber. If, on the other hand, she is pressed into service as an apologist for the many broken promises of the current Administration, such as the trashing of the class-size pledge, the Liberal Democrat-like betrayal over student debt, the numbers of qualified teachers who are left without jobs, the mismanagement of the implementation of curriculum for excellence—*[Interruption.]*

The Presiding Officer: Order.

Des McNulty: I tell Michael Russell that I could go on.

If that is the case, we will have robust exchanges.

14:12

Murdo Fraser (Mid Scotland and Fife) (Con): We are here today because of the resignation of Stewart Stevenson as transport minister. Mr Stevenson was fond of regaling us with tales of all his previous employment, from airline pilot to inventor of the internet, but the man who has had every job now has no job.

On a personal level, we should recognise Mr Stevenson's contribution as a Government minister and accept that he acted honourably in resigning when he did. In reality, however, he had little choice. What cost him his job was not the severe weather, but his inadequate response to it. The lesson of his resignation is that on occasion, a little less arrogance and bombast and a little more humility are required from Government ministers. That is a lesson hard learned by the former

transport minister, and one to which his boss should pay attention.

I remind the First Minister that Mr Stevenson had to resign not because he had lost the confidence of Opposition parties, but because he had lost the confidence of the public, and even—if our friends in the press are to be believed—the confidence of members on the SNP side of the chamber, including his ministerial colleagues.

I congratulate Keith Brown on his new position. The former royal marine is noted for his pugilistic style, and I am sure that next time we have a transport crisis, Labour Party press officers will be keeping out of his way.

I also congratulate Angela Constance on her appointment to Government in an important role, to which she will bring her experience as a social worker. According to one jobs website that I looked up, social workers assist people in managing their daily lives, coping with issues, navigating relationships and solving personal and family problems. It sounds like she would have been better suited to working for Ed Miliband.

I wish both ministers success in their new roles. If I had one word of advice for them it would simply be this: it is always worth paying attention to the weather forecast.

14:14

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): In this short debate, the Liberal Democrats make it clear that we will not oppose the appointment of Angela Constance to the Government. It would be churlish, to say the least, to oppose what is probably the last-ever SNP appointment to Government. I could be wrong, of course, because it is still more than three months until dissolution, so there could be more ministerial resignations and dismissals to come, and more hurried replacements from the SNP back benches, so there may still be time for Michael Matheson, Alasdair Allan and my fellow north-east MSP Brian Adam—I do not know what he has done wrong—to make it to the Government payroll, but we will have to wait and see.

I noticed that with the departure of Stewart Stevenson after the serious debacle of last week, the First Minister accused others of political game playing. I seem to remember that the SNP was quite adept at that when it was in opposition; it often made trivial calls for ministerial resignations. I well remember one in which Fergus Ewing called for the resignation of a Labour minister after the minister failed to wear a hairnet on a visit to a fish-processing plant.

This resignation was over a serious issue, when the transport minister confessed to deep regret—

[Laughter]—which is more than I can hear from the SNP back benches, over his lack of support for members of the public who were trapped overnight in the snow and the fact that he called the reaction of the authorities to the situation “first class”, when it was clearly not.

I wish Keith Brown luck in his new role. There is clearly a consensus across the chamber that he has a tough job ahead of him.

Lastly, I welcome Angela Constance to her new role. Some people less generous than myself might question whether working for Mike Russell represents a promotion or a punishment. However, for the good Government of Scotland, the Liberal Democrats wish her well in the short time that she has left to make an impact, and we look forward to May next year when we hope to support a completely new ministerial team.

14:16

The First Minister: It must be difficult for the Opposition to respond to a debate such as this. They must decide whether to be graceful or to be funny or, in the case of the three speeches that we have heard, none of the above. Des McNulty at least made an attempt to start off in graceful fashion, but he got waylaid about schools—I say “waylaid” because Keith Brown was the Minister for Skills and Lifelong Learning; he was not the schools minister. However, since Des McNulty raised the question of education, this is probably a suitable point at which to remind him that we have built or refurbished 330 schools. We know that that cannot be what Labour had planned because, after all, its manifesto said that it would build or refurbish 250, so the fact that there are 330 makes the case for a substantial achievement in that direction.

The last point that I make to Des McNulty is that the Committee of Public Accounts, I think, of the House of Commons has exposed the farrago of the private finance initiative. Even a Tory-dominated committee has come to a conclusion on the scandal of the Edinburgh royal infirmary and the other PFI projects under Labour, so I doubt whether any serious person will revert to that policy.

I expected more from Murdo Fraser. After leaving all the magnificent talent in the whole of the Tory list trailing in his wake, I would have thought that he would have been in a charitable mood following the high anxiety of recent days, but clearly he is not.

In the same vein, I say to Mike Rumbles that this Administration has had three ministerial departures, compared with 17 in the first four years of the Labour-Liberal Administration and 11 in the second session of Parliament. Amid all the

range of talent that that Administration called on—17 members in the first session and 11 in the second session—the only person who was never called upon to serve as a minister in eight years was Mike Rumbles. Maybe humility is called for.

The Presiding Officer: That concludes the debate on the appointment of a junior Scottish minister.

The question is, that motion S3M-7603, in the name of Alex Salmond, on the appointment of a junior Scottish minister, be agreed to.

Motion agreed to.

That the Parliament agrees that Angela Constance be appointed as a junior Scottish Minister.

Damages (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-7566, in the name of Bill Butler, on the Damages (Scotland) Bill. We are very tight for time today, so timeous speeches are called for.

14:19

Bill Butler (Glasgow Anniesland) (Lab): I am pleased that we are debating the Justice Committee's stage 1 report on the Damages (Scotland) Bill. I thank the committee for its detailed consideration of the bill, and express my gratitude to the committee clerks, the Scottish Parliament information centre and the non-Executive bills unit for their assistance. I place on record my appreciation for the role of Thompsons Solicitors, which has assisted me in the preparation of the bill and the accompanying documents for the bill's introduction, including the financial memorandum, and my thanks to Clydeside Action on Asbestos and the Clydebank Asbestos Group. For completeness, I thank the Minister for Community Safety, Mr Ewing, for the constructive approach that he has taken at all times during the bill's progress. If the bill proceeds to stage 2, I am certain that that constructive engagement will continue.

The bill, which was introduced on 1 June 2010, has a clear purpose: to implement the recommendations of the Scottish Law Commission's "Report on Damages for Wrongful Death", which was published in September 2008. In Scots law, when an individual suffers an injury or contracts a disease as a result of the actions or omissions of another person or a legal entity such as a company, damages can be claimed from the wrongdoer. The law makes specific provision for cases of personal injury that result in premature death, whether the death is immediate or more protracted.

The Damages (Scotland) Act 1976 is the main legislation that addresses damages for wrongful death. In its report, the Scottish Law Commission concluded that there is general acceptance that the 1976 act

"has become over-complex and, indeed, contains inaccuracies as a consequence of the numerous amendments made to it."

Accordingly, the commission's major recommendation was that

"the 1976 Act should be repealed and replaced by new legislation which will restate the current law with greater clarity and accuracy."

The commission's report is a considered one that builds on the existing legislation. Indeed, the commission recommends that only five

substantive changes be made to the existing law. Notwithstanding that observation, members should be under no misapprehension: reform is urgently needed because of the nature of the cases and the number of people who are affected. Every year, hundreds of people in Scotland are wrongful death victims or become ill with fatal work-related diseases. On average, every year 30 people die in Scotland in workplace accidents. In 2008, 272 people died on Scottish roads. Between 1 January 2009 and 20 April 2010, 210 people with mesothelioma and 58 people with asbestos-related lung cancer sought assistance from Clydeside Action on Asbestos. In numerous other fatal accidents that were unrelated to work or road-traffic accidents, the deceased person was the victim of another's negligence. Most such deaths become claims and then court actions. Year on year, they add to the volume of wrongful death cases in which claims are made.

It is accepted that wrongful death cases are among the most difficult and anxious cases with which personal injury practitioners deal. Such cases tend to be hard fought by insurers and defenders, which can mean that they take longer to resolve. As well as dealing with their bereavement, families have the practical burden of financial hardship to shoulder, and the unknown and often daunting legal process to face. If the reforms in my bill can reduce the uncertainty and delays to which families and victims are subjected, the Scottish Parliament will have met a need that has perhaps been understood only by victims and those who have assisted them.

Let me turn to two of the bill's most significant amendments to the existing law. The first concerns section 1(6)(c) of the bill, which gives effect to Law Commission recommendation 4 by providing that, in calculating an award for damages by way of solatium, the court is to deduct 25 per cent of the amount that the victim could have been expected to earn or to receive in benefits during the loss period, to represent the victim's living expenses during that period. It would be fair to say that that part of the bill has provoked most disagreement. In its report, the Justice Committee noted:

"There was a roughly even split among witnesses on this proposal, with disagreement focusing on the extent of the problems with the current law; the extent to which the proposal would bring greater certainty, speed up settlements and avoid the need for intrusive questioning; whether 25% was the right proportion; whether it should be a rebuttable presumption rather than a fixed amount; and how often a fixed deduction would lead to over- or under-compensation."

The committee's conclusion, which is contained in paragraphs 103 to 107 of its report, reflects the divided nature of the evidence that was submitted to it. The committee says that it

"recognises that a strong case has been made for the merits of a fixed 25% deduction for the victim's living expenses ... However, the Committee also acknowledges the ... main objection to this proposal, namely that a fixed deduction is to some extent arbitrary"

and could

"lead to a degree of over-compensation in some ... circumstances and under-compensation in others."

It remains my sincere view that the fixed 25 per cent rule on the victim's living expenses is correct. I accept, of course, that we are not dealing with an exact science, but as Lord Drummond Young, Mr Garrett and others said in evidence, there is always a difficulty in calculating an individual's living expenses. There is an arbitrary aspect, but one should take a broad approach.

I believe that the fixed 25 per cent rule will speed up the process and minimise intrusive questioning. I should add that I remain concerned about the suggestion of a rebuttable presumption, which could take us backward and undermine what the bill seeks to do. Nevertheless, let me make it crystal clear that I take seriously the committee's admonition to engage constructively with the Scottish Government in consideration of the question. I promise that I will work with the minister to see whether a workable compromise can be found. I give that commitment unreservedly to Parliament.

The second significant amendment to the existing law is in section 7(1) and is in accordance with recommendation 11(a) of the Scottish Law Commission report. The section makes provision for use of a fixed proportion of the victim's net income to simplify the calculation of damages that are payable to relatives for loss of financial support. Under section 7(1), the courts will be required to assume that 75 per cent of the victim's annual income is the amount that the victim spent on supporting his or her spouse, civil partner or cohabitant and any dependent children. Further—and this is important—the court will have to disregard entirely the income of the person making the claim.

As the Justice Committee's report states at paragraph 145, the proposed 75 per cent figure is

"the obvious corollary of the proposal ... to have a fixed 25% deduction".

Therefore, the concerns about section 7(1) are, in essence, the same as those that have been raised regarding the 25 per cent deduction, and I have the same whole-hearted commitment to work with the Government and members to see whether those concerns can be addressed at stages 2 and 3. Incidentally, I welcome the committee's view that it is appropriate that the income of relatives should be disregarded.

The constraint of time leaves me no opportunity to refer to other significant issues and areas of the bill, such as the withdrawal of certain relatives' existing rights to claim damages, the use of the multiplier in calculating damages, the exemption relating to mental illness and the financial implications of the bill. I anticipate that members will wish to raise other salient matters that are referred to in the committee report during the debate. I will endeavour to respond to those issues in my summation.

I move,

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

The Presiding Officer: I call Bill Aitken to speak on behalf of the Justice Committee.

14:27

Bill Aitken (Glasgow) (Con): As Mr Butler said, the bill has its genesis in a Scottish Law Commission report dated 2008. In turn, Bill Butler picked up the issue and brought it before the Parliament, seeking to legislate by means of a member's bill. The Justice Committee met on 10 separate occasions to consider the bill and took evidence from 12 witnesses. The witnesses included Lord Drummond Young, the chairman of the Scottish Law Commission; representatives of the Faculty of Advocates and the Law Society of Scotland; the Minister for Community Safety; various representatives of the legal profession; and, of course, Bill Butler. I thank all those who gave evidence to the committee and congratulate them on the quality of that evidence. At this juncture, I also thank the clerking team, and particularly Andrew Mylne, for all their work.

The Justice Committee has become fairly adept at identifying early in the process of any proposed legislation the issues that are likely to be controversial. That was the case with the bill. As Bill Butler identified, the first point that caused concern and difference of opinion surrounds the calculation of the award for solatium. Bill Butler has picked up and run with the Law Commission's recommendation that the court should deduct 25 per cent of the settlement amount as representing the victim's living expenses. There can be no doubt that that represents a good starting point, but there was mixed evidence on the issue.

It is certainly the case that, as a result of the Court of Session judgment by Lord Uist in the case of *Brown v Ferguson*, most cases have followed that formula and settled at about that level. However, the law has become slightly confused following a judgment in the case of *Guilbert and others v Allianz Insurance plc*, in which Lord Kinclaven took a different view. In neither case did the losing party seek to take the

matter to the division, which is perhaps unfortunate in that some clarity could have been introduced.

There are certainly arguments in favour of the 25 per cent figure. First, there can be no doubt that it would restrict the need for what can sometimes be an intrusive examination of family accounts at a time when the relatives are understandably distressed. That view was taken by Thompsons Solicitors, and Lord Drummond Young highlighted that the measure might be

"a worthwhile price for getting rid of the need for an intrusive and upsetting investigation".—[*Official Report, Justice Committee*, 14 September 2010; c 3442.]

That said, it was pointed out by Gordon Keyden of Simpson & Marwick Solicitors that such inquiries might well be necessary in any event to deal with other aspects of the claim.

On the question of the obviation of delays, again, the evidence was mixed. The real issue is one of fairness. Would the figure be fair in assuring that compensation was obtained at the proper level or are there risks of overcompensation or undercompensation in the case of the deceased partner being a high earner? It is fair to say that some members of the committee were persuaded in favour of the 25 per cent deduction while others were not. Others felt that the compromise that originally came from the Government's own consultation paper might be the way forward, whereby the 25 per cent deduction would be put in place, but as a rebuttable presumption. It is one of the issues that, to my mind and in the view of the majority of the committee, need further exploration. I know that Bill Butler and the Scottish Government have already made arrangements for early dialogue, assuming that the bill passes stage 1 today.

One of the other issues of difficulty surrounded compensation for non-patrimonial losses. However, there seems to be some controversy within the legal profession as to what that should be termed, and the committee did not consider it to be an all-consuming issue.

The proposed exclusion of mental disorder resulting from bereavement was much more taxing, and the Law Commission had very sound reasons for including the provision in the bill. Again, there are two conflicting decisions of the outer house of the Court of Session—in the cases of *Gillies v Lynch* and *Ross v Pryde*. In the absence of a firm judicial view, it is the committee's belief that section 4(3)(b) should be removed from the bill altogether, which would leave the flexibility that is necessary either to introduce separate legislation on damages for psychiatric injury, or to obtain a decisive ruling from the division.

The other principal issue, which is very much related to the 25 per cent deduction, relates to relatives' claims for patrimonial loss. The committee largely viewed the two matters as being complementary and analogous, and the arguments were similar.

The fourth issue that was identified was the application of the multiplier relating to relatives' claims for patrimonial loss. The committee was surprised that there was such a disparity of views among witnesses. Having listened to the alternative arguments, the committee concluded that there was a better argument for running a single multiplier from the date of the court order rather than from the date of death.

Finally, difficulty was experienced with regard to the definition of relatives who are entitled to claim. There is acceptance of the fact that we no longer live in a society that is dominated by the nuclear family; however, it is fair to say that the general weight of evidence was against defining the relatives who would be entitled to claim as members of the victim's immediate family. A number of instances were cited in which difficulty could arise.

The many difficulties in the path of the bill could be obviated if people made wills. A disturbingly large number of people die intestate.

The Presiding Officer: I must hurry you.

Bill Aitken: There is merit in the bill, and the committee's view is that it should pass this hurdle today. Nevertheless, there is a lot more work to be done on it.

14:33

The Minister for Community Safety (Fergus Ewing): The bill seeks to replace the Damages (Scotland) Act 1976, as recommended by the SLC in its "Report on Damages for Wrongful Death". The stated aim is to modernise and simplify the law in this area. In more human terms, it is about trying to facilitate fair compensation, and the Government shares that aim.

In December 2009, I announced our intention to consult on issues relating to damages for personal injury, including the commission's recommendations on wrongful death, psychiatric injury and time bar. There would have been real merit in such an approach because of the connections between those areas. However, in January this year, Bill Butler lodged a final proposal for the Damages (Scotland) Bill and we changed our plans to accommodate that. We consulted on wrongful death issues alone so that we could engage constructively with work on the bill, and the results of that consultation inform our approach.

There seems to be a consensus that the 1976 act should be replaced. However, like the consultations that were undertaken by Mr Butler before the bill was introduced and by the Justice Committee thereafter, our exercise revealed deep divisions on fundamental issues—not a simple division between pursuers and defenders, but divisions among a whole range of stakeholders. Therefore, like the Justice Committee, we conclude that key issues require further consideration.

Some of the bill's provisions run the risk of delivering unfair outcomes. I cite the provisions that would deny some relatives the right to claim for patrimonial loss. Even if a young person had evidence to prove reliance on the financial support of an aunt or uncle, a claim for compensation would be prohibited. We cannot support that.

Similarly, it is unlikely that we can agree definitively to exclude damages for a mental disorder that is induced in a relative by a victim's death. That is not because we are sure that the provision is wrong, but because we are not yet convinced that it is right.

It might, however, be possible to reach agreement on the issue of the multiplier. The weight of independent expert opinion seems to favour reform so that a multiplier would apply from the date of settlement of a claim rather than the date of death.

There appears to a greater challenge in achieving confidence in the bill's central provisions, which would introduce a one-size-fits-all set of fixed rules for dealing with the income and expenditure of pursuers. In essence, those provisions state that for every family—regardless of its composition—it can be assumed that an individual will spend one quarter of his personal net income on himself and the remainder on family and household expenses, and that that will never be affected by how much the other members of the family earn. The SLC acknowledged that such a broad-brush approach would lead to cases of undercompensation and overcompensation, but it also judged that that is a price worth paying for the benefit of speedier settlements with less intrusive inquiries.

The difficulty is that we have little hard evidence to quantify how much inappropriate compensation would occur, and how much more quickly and less intrusively settlements might be reached. Testing the validity of the judgment that underpins the bill's central provisions is, therefore, difficult.

In the absence of robust evidence—and picking up on an idea initially floated by the Law Society of Scotland—we considered whether the standard rules could be framed as rebuttable presumptions, allowing an opt-out for exceptional cases. We

continue to look at that, although we acknowledge that any such move would need to be carefully circumscribed to avoid compromising the benefits of the provisions.

My remarks have focused on the recipients of compensation. I have two further remarks to make before I close.

First, payment will usually come not from those who have inflicted a fatal injury but, indirectly, from citizens through their insurance premiums, which might arguably be reflected in increased settlements.

Secondly, the financial memorandum says that statement of funding policy might enable the United Kingdom Government to require the Scottish Government to recompense it for any additional costs that it incurs as a result of the bill. David Mundell wrote to me yesterday, to inform me that the Scottish Government's opinion that the statement of funding policy would not apply here is "not necessarily shared" by the Treasury and other UK Government departments. My officials have been invited to pursue the issues with his.

There is uncertainty, too, about forum shopping issues.

I will truncate my speech and conclude by thanking Mr Butler for his approach to his bill. We will continue to work constructively with him. I appreciate the way in which he has conducted the bill process; it is a credit to him. I also thank the Justice Committee for a useful report. I hope that we have a consensus on which to build and which, with co-operation from all sides, should allow us to find a way through the difficulties that I have set out.

The Presiding Officer: I must ask that future contributions to the debate be limited to four minutes, please.

14:38

Richard Baker (North East Scotland) (Lab): I am pleased to be able to contribute to today's brief debate, which touches on issues of complexity and great importance. Someone who is facing death because of the actions or negligence of others, or those who are seeking damages for the loss of a loved one, should not have to endure an unnecessarily protracted and demanding legal process to obtain the damages to which they are entitled. Today, too many individuals and families in Scotland face those difficulties. Bill Butler seeks to change all that through his bill, and he is to be congratulated on his work on the issue.

I thank the Justice Committee for its stage 1 report, which reflects the fact that there are still points to be debated and room for amendment. Indeed, on issues such as the exclusion of

damages for mental disorder from the process and the definition of relatives who are entitled to claim, I have an open mind ahead of stage 2.

The report also highlights points of agreement on important issues. I believe that the case against disregarding the income of the surviving relative is weak. The current approach does not reflect today's reality: most often, both partners are employed. Lord Drummond Young put it very well when he said:

"In effect, to maintain the household at the existing level"—

of income—

"the survivor needs his or her own income as well as the deceased's income".—[*Official Report, Justice Committee*, 14 September 2010; c 3443.]

I do not accept the argument from the Forum of Scottish Claim Managers that that would result in "gross overcompensation", particularly as we start from the position that bereaved families are being undercompensated. That is the inescapable truth that lies at the heart of the Scottish Law Commission's proposed reforms.

The most vexed question, to which the minister referred, is the standard 25 per cent deduction for living expenses. That measure offers the most hope for simplifying and curtailing the legal process. The figure has been debated, but it was reached after due consideration by the Scottish Law Commission. It might well result in more generous compensation in some instances, but not in excessive compensation. The crucial point is that it will counter current arrangements that undercompensate pursuers.

That argument was well put by solicitor advocate Frank Maguire in his evidence. He made the point that most fatal damages claims involve people who suffer from mesothelioma. A dying victim is likely to be unwilling or unable to extend negotiations or to take the matter to court; in effect, they are forced by circumstances to accept a larger deduction for living expenses than is fair or appropriate. The current situation makes undercompensation far more likely.

A 25 per cent deduction opens the possibility for lower legal expenses to be incurred in determining the level of damages and for less time to be spent in court. That must be beneficial for all parties, and particularly for victims at what is a distressing time.

On the introduction of a rebuttable presumption in relation to a 25 per cent deduction, the fear is that that would take us back to a protracted legal process. I am not attracted to that proposal, unlike the minister, but I am pleased that he is prepared to discuss the matter with Bill Butler.

It is important that we make progress on the bill. It is two years since the Law Commission reported

and I believe that more individuals and families in such sad situations should benefit from new legislation that is passed in the Parliament. I hope that we will proceed with changes that will make significantly easier a process that is stressful for people who have suffered great wrongs and who are entitled to damages.

14:42

John Lamont (Roxburgh and Berwickshire) (Con): The ability of a citizen to recover damages from another person because of an injury or a death that that other person caused involves a controversial area of our law that is certainly not without its failings. We all agree that the subject must be dealt with appropriately and effectively.

The issue of damages is no stranger to the Parliament. It was dealt with through the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 and the Damages (Asbestos-related Conditions) (Scotland) Act 2009.

I, too, congratulate Bill Butler on ensuring that his bill has reached stage 1. I commend him for his hard work and the dedication that he has shown on the bill's journey thus far.

In Scots law, when an individual suffers an injury or contracts a disease as the result of an act or an omission by another person, or as the result of the acts or omissions of a legal entity such as a company, damages can be claimed from the wrongdoer. Damages that are awarded for personal injury are intended to restore the victim to the position that he or she was in before the wrongful act or omission took place, to the extent that a financial award can achieve that aim. It is important to remember that the damages that are awarded are not intended to penalise the wrongdoer.

The bill implements the Scottish Law Commission's recommendations, which were outlined in its "Report on Damages for Wrongful Death". Mr Butler's bill does not differ from the Law Commission's draft bill, which was produced alongside that report, except in one aspect.

The Scottish Conservatives agree with the bill's general principles and will vote in favour of it at decision time. However, the bill is not without its problems, and I will focus on a couple of issues, the first of which is the provision for calculating an award of damages for patrimonial loss—in Scots law, the sum of money to be paid to the injured party by the responsible party that is over and above the compensation that is paid for injury to feelings or emotional distress. The bill proposes a fixed 25 per cent deduction from the amount that the victim could have been expected to earn or to receive in benefits during the lost period, to represent the victim's living expenses in that time.

The proposal is based on the view that a fixed reduction would reduce the need for intrusive questioning about family budgeting and speed up the settlement of claims. Although that is a noble aim, concerns have been raised over the arbitrary nature of a fixed 25 per cent reduction that takes no account of individual circumstances and which could lead to overcompensation in some cases and undercompensation in others. Indeed, it has been suggested that the proposal violates the fundamental principle that a victim should be compensated only for the loss suffered.

An option that the Justice Committee considered during its stage 1 evidence taking and which the Scottish Government brought forward in its consultation paper was to put the 25 per cent deduction into statute, but as a rebuttable presumption. That appears to be an attractive compromise if it ensures the avoidance of the distress caused when family accounts have to be gone through at a time when relatives feel particularly vulnerable. The proposal would also enable defenders to oppose settlements where the 25 per cent figure was thought not to be appropriate.

The definition of those entitled to a recovery is another difficult area. The proposal in the bill would remove the existing right of certain relatives, beyond those defined as members of the immediate family, to claim for damages if they could show that they had been supported by the victim. We recognise that a line needs to be drawn to prevent unfounded claims. The compensation is a finite amount of money; it should not be diluted or diverted from family members to compensate casual acquaintances. I believe that more work will need to be done to expand the definition without casting the net too widely.

The Presiding Officer: You must close, please.

John Lamont: I have another opportunity to speak in the debate, Presiding Officer. I have no more to add other than to confirm that the Scottish Conservatives will support the bill at stage 1.

14:46

Robert Brown (Glasgow) (LD): I congratulate Bill Butler on his persistence and skill in bringing forward the Damages (Scotland) Bill. We do not always appreciate the amount of time, skill and determination that it takes to take a member's bill through the Parliament without the normal support that a minister gets for Government bills. I say to the Presiding Officer and the business bureau that the timescale that has been allowed for the debate on such a complex issue is not at all satisfactory. I hope that the bureau will look at that.

Giving justice to those whose loved ones have been killed as a result of the negligence or breach

of a statutory duty of others is a difficult exercise. It has been the subject of judicial decision and a number of attempts at reform by legislators. The principal act in that regard is the Damages (Scotland) Act 1976, which has been regularly amended.

In the short time available to me, I will concentrate on the most significant issue in the bill: the proposal in section 1(6) that a standard amount of 25 per cent should be deducted, as living expenses, from earnings or other income that the victim was likely to receive had he or she not died or had their life not been shortened. The provision replaces the current law under which cases are settled on an individual basis but influenced by the formula that was defined primarily in the 1990 case of *Brown v Ferguson*.

I must confess that—like, I think, most of the committee—I found the issue very difficult. The arguments for change were that detailed inquiries into household expenses were intrusive, the resultant calculations were arbitrary, and the whole exercise delayed settlement. There is some truth in all of that. On the other hand, there are many other necessarily intrusions, not least into the nature and extent of personal services that relatives provide. Such issues are among many that have to be resolved in negotiation, or by the court in cases that go to court. As we have heard, and as the committee touched on, cases rarely go to judicial decision on that particular point.

If the traditional calculation is incidentally arbitrary—I stress “incidentally”—the 25 per cent proposal is, by its very nature, arbitrary, too. There was a heavy emphasis in the evidence that we received on mesothelioma resulting from exposure to asbestos. Undoubtedly, deaths caused by mesothelioma are not to be wished on anyone and bring many pressures on claimants. However, it would be very unsatisfactory to try to define different causes of death and apply different rules to them. The question has to be: what provision would fit people who die in a road-traffic accident or an industrial accident or by way of industrial disease? Bill Butler helpfully gave us some of the numbers on that issue.

There is no question but that many mesothelioma cases involve older pursuers. Much of the statistical evidence came from the principal trade union lawyers who deal with such cases. We heard the hypothetical case of a young scaffolder with six children who is killed in an industrial accident. Under the 25 per cent rule, he would be undercompensated. That case was by no means, as some suggested, an unusual case that should be disregarded under the principle that hard cases make bad law. On the contrary, when I was in practice, I dealt with several scaffolding accidents—admittedly, perhaps those involved

fewer children. Sadly, building industry accidents are a phenomenon that occurs far too often in Scotland—indeed, it occurs more often in Scotland than in other countries.

In the end, I have come to the view that there is merit in the 25 per cent deduction as a rule of thumb, but that it must be possible to alter it in exceptional cases, however those are defined. I do not accept that that would open up every case to intrusive examination. As the minister said, the formulation of the provision on the exceptions should be examined closely. The issues here are a mirror image of the arguments about the victim’s living expenses—the 75 per cent provision at the other end, under section 7(1).

The bill raises important issues of some complexity. On some, there may be no totally satisfactory universal solution; on others, the bill marks a clear improvement. Like other members of the committee, I am happy to recommend to Parliament that the bill should have the opportunity to proceed to stage 2. I hope that further discussions between Bill Butler and the Government may resolve some of the issues.

14:50

Stewart Maxwell (West of Scotland) (SNP): I thank all those who gave evidence to the committee, the committee clerking team and SPICe for all their assistance, and Bill Butler for all his hard work to get the bill to this stage. I echo Robert Brown’s comments about the difficulty and hard work that that entails.

The issue of the 25 per cent deduction took up much of the committee’s time in debate and argument. I was going to quote paragraph 52 of the committee’s report, but Bill Butler has already done so. The fact that there are a wide variety of views on the bill, especially on this issue, has already been mentioned. In effect, there were three options before the committee: to agree to the deduction of a fixed amount for living expenses and on what the figure should be; to reject the idea completely in favour of negotiation between the parties, which is the status quo; or to support the idea of a fixed figure but with some flexibility—in other words, a rebuttable presumption.

Although some members of the committee thought that the correct approach was to have a fixed figure, others thought that that would result in an unfair outcome in some cases, where there would be either overcompensation or undercompensation. The hypothetical scaffolder and his family whom Robert Brown mentioned were referred to by Simpson & Marwick, but that was only one example of possible undercompensation or overcompensation.

Despite concerns that it could undermine the purpose of the fixed figure, and after hearing the evidence and debating the point at length, the committee agreed that the suggestion of a fixed figure with a rebuttable presumption is perhaps the best solution, although it requires some detailed work by Bill Butler and the Government. However, recognising the force of the argument that such a proposal, if unfettered, could lead to little improvement on the current position, the committee accepted that a rebuttable presumption should be used only to deal with cases in which 25 per cent is clearly not the current figure for the deduction of living expenses. Although the drafting of such an amendment may be difficult, that seems to the committee to be the best way forward. Resolution of the problem is crucial if I am to support the bill after stage 1.

It was difficult to reach a conclusion on the proposed exclusion of mental disorder in section 4(3)(b). I fully appreciate the reasons why Bill Butler thought that it was appropriate and necessary to include the provision in the bill. However, given the complexity of the issue and the requirement for this area of law to be examined at much greater length, I must support the committee's conclusion that section 4(3)(b) should be removed at stage 2. As paragraph 127 of the committee report states, the sensible way forward is

"to leave the law in this area essentially unchanged until there is either a decisive Inner House ruling on the matter or until separate legislation on damages for psychiatric injury can address the issue in a more considered and comprehensive way."

I realise that some people will be disappointed by that conclusion, but I think that it is correct at this time.

Whether the partner's income should be wholly or partially excluded from any calculation was an issue of contention for some witnesses and in some of the evidence that was given to the committee, but there was a fair degree of unanimity in the committee that the correct way forward was to disregard the surviving partner's income in any calculation. I thought that it was a fairly straightforward argument that, if a known amount is lost due to an unlawful death, that amount should be compensated for and the partner's income is irrelevant. Some witnesses felt differently.

Despite the arguments that were put forward by those who opposed the disregarding of the partner's income, I remain of the view that the partner's income is irrelevant and that taking it into account can lead to unjust outcomes.

Paragraph 138 of the committee report says:

"Thompsons said it was 'difficult to understand the logic or fairness' of the current rule, which could lead to a

surviving spouse with no income obtaining full compensation for loss of support, and a surviving spouse with his or her own income obtaining no compensation, even though in each case, the loss of income to the household was the same."

The Deputy Presiding Officer (Alasdair Morgan): The member will need to conclude now.

Stewart Maxwell: I support the general principles of the bill, although a number of areas still need to be resolved at stage 2.

14:55

Des McNulty (Clydebank and Milngavie) (Lab): Like other members, I congratulate Bill Butler on taking the bill to this stage. I hope that it goes further and becomes law in due course.

In 2006 I considered introducing a bill to amend the Damages (Scotland) Act 1976, prompted by the particular circumstances of sufferers of mesothelioma whose cases were heard by the courts before they died and whose relatives were disqualified from seeking compensation. We considered a general revision of the damages legislation in that context. In the event, it was decided to home in on the particular problems around mesothelioma. That led to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007, which was passed unanimously by the Parliament, much to its credit.

The way in which the 2007 act highlighted certain inconsistencies in damages legislation provided the opportunity for the Scottish Law Commission report and for Bill Butler's bill. I very much welcome his bill because in a sense it extends in a sensible, considered way and to a wider category of people some of the principles that we agreed, and the approach that we took, under the 2007 act.

Those who suffer from asbestos-related conditions will benefit from the Damages (Scotland) Bill—perhaps not those who suffer from mesothelioma, who are already protected under the 2007 act, but those who suffer from other asbestos-related conditions, such as asbestosis, that unfortunately can lead to death.

Many other people have injuries as a consequence of industrial accidents, and there are people who suffer following road-traffic accidents. Those people require a clear, cogent pathway, where the parameters in which compensation can be dealt with should be rendered clear. I understand that that is work in progress, and that there are still disagreements and controversies about aspects of the precise scope and exact wording of the legislation. However, it must surely be right that, if the existing legislation is unsatisfactory, it is the duty and obligation of the Parliament to clarify the situation and make it

abundantly clear to everyone—including claimants, their lawyers, employers and parties to any case—the basis on which compensation may be pursued, and the rules governing that. If there are inconsistencies—as there undoubtedly are; we can see that from the committee’s report and from the Law Commission’s report—they should be addressed. We need to iron out unfairnesses in the system so that it becomes more transparent and clear for everybody.

Various campaign groups played an active role in the mesothelioma campaign, such as Clydeside Action on Asbestos, the Clydebank Asbestos Group, the Scottish Trades Union Congress and Thompsons Solicitors, which were very much involved in the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill. Those same bodies have also been very much involved with Bill Butler in developing the bill that is before us, and they have thereby performed a valuable service to the Parliament by drawing various matters to our attention and seeking our support in finding a resolution.

Again, I commend Bill Butler for introducing the bill and wish him well in his efforts to get it approved by the Parliament.

14:59

Mike Pringle (Edinburgh South) (LD): I, too, congratulate Bill Butler on all his hard work on the bill, and I echo all the comments that my colleague Robert Brown made.

I agree that the law on damages for wrongful death needs to be modernised and consolidated. However, as I think the majority of members acknowledge—all those who have already spoken do—we cannot make progress unless the bill addresses the significant divisions of opinion on the key proposals for reform that were expressed in evidence to the committee.

I start with the issue of the victim’s claim. As the committee correctly recognised, there will always be a trade-off between the merits of simplicity and certainty on the one hand, and the flexibility that is needed to ensure that victims of wrongful acts are correctly compensated on the other. As the proposals stand, I am concerned that adopting a fixed figure of 25 per cent for the proportion that is to be deducted from a victim’s income for the lost period sits too far towards simplicity, and that the bill suffers from inflexibility as a result.

As Bill Aitken and others have said, a way forward on the issue could be the introduction of the 25 per cent figure as a rebuttable presumption rather than a fixed position in all cases. That would provide both a solid guideline for the judiciary and a yardstick to help victims in what will often be a difficult time for them. At the same time, it would

maintain the flexibility required to allow for exceptions.

The committee report was succinct in expressing the principle that should support a revamped damages system:

“to restore the family’s finances to what they would have been had the wrongful death not taken place”.

I suggest that it is that principle, rather than a strictly mathematic one, that should underpin any bill.

On relatives’ claims, I want to address the question of who is entitled to claim patrimonial loss. As several members have argued, including my colleague Robert Brown, restricting entitlement to claim patrimonial loss to the immediate family runs the risk of narrowing the current definition, which I believe must be avoided.

There is a question of balance. A definition is right and necessary for clarity, but any legislative attempt, whether intentional or otherwise, to narrow the current definition of who can claim would be a step backwards. That obviously leads to a second question, which is whether the current definition needs to be extended. I would not be against that concept in principle, but I share the committee’s concerns that no such proposal has been consulted on and any definition would be difficult to establish. As I said, it is a matter of balance.

As I said, the law on damages for wrongful death has needed modernisation for a long time—the Scottish Law Commission makes that clear in its 2008 report. If we are going to take the necessary step forward, using either the Damages (Scotland) Bill or a future bill, that must be a step forward for all victims. Everyone affected by financial loss as a result of wrongful death should be entitled to the closure that compensation offers.

I support the general aims of the bill, but I share the concerns expressed by the committee on several points of detail. Should the bill pass stage 1—as I said, I will certainly support it this evening—I suggest that, in the limited time available, Bill Butler must work constructively with the minister to address the issues raised by the committee in its report.

15:02

Nigel Don (North East Scotland) (SNP): I start by congratulating Bill Butler on his pursuance of the subject. Without his determination, we simply would not have got here. I am also grateful to colleagues for addressing many of the points of detail in our report, which means that I will not do so. Instead, I will pick up four matters of principle that have emerged through the process that we have been through as the Justice Committee, and

I will ask one or two folk who are outside the committee to consider some of the issues that the process has thrown up.

Of course, there are no personal comments in this contribution. Responsibility lies where it lies, and we need to try to find ways through the issues.

The first point is that the bill has come to the Justice Committee relatively late in the session. As it happens, we have agreed to make it our member's bill priority. I am therefore sure that we will have time for it, and I am glad about that. However, I am conscious—Bill Butler will be the same—that other bills in the Justice Committee portfolio will probably slip as a result of the timetables that we have been given. That raises an important point that I want to make: if everything is referred to the Justice Committee, we will lose members' bills—we might have lost the Damages (Scotland) Bill if we had thought that others were a higher priority. We need to grasp that important matter as a Parliament.

Secondly, this is one of several bills that have come from the Scottish Law Commission. It is fair to say that in this session we have made considerable progress in dealing with them, and I hope that the commission is happy with that, but we still do not have a mechanism in principle to deal with the good work that comes from the Scottish Law Commission to the Parliament. I put that issue before the chamber. I am not sure who should be responsible—the Presiding Officer, the Parliamentary Bureau or the Government—but we have to grasp the issue. The Scottish Law Commission is doing good and professional work, but unless we are careful some of it will simply be missed and not brought forward fast enough.

Thirdly, I bring to members' attention a small point in the bill: the use of discounts—or multipliers—and the consideration of the time between the date of the victim's death, the date of settlement and the lifespan of any beneficiary thereafter. We have had some argument about which multiplier we should use and have been referred to the Ogden tables but, very late in our evidence taking, we came to the conclusion—at least, certainly, I did—that there should be two multipliers or two applications of the Ogden tables. We have the problem of deciding how to address and bring into the discussion an issue that has come late in our evidence taking.

Fourthly, I will consider an issue to which Bill Aitken referred: the difficulties in Scots law when we have conflicting decisions. *Brown v Ferguson* and *Guilbert v Allianz Insurance plc* are conflicting High Court decisions on damages. Equally, whether psychiatric loss should be included in non-patrimonial loss is subject to conflicting outer

house decisions: *Gillies v Lynch* and *Ross v Pryde*.

I am concerned that, as far as I can see, we have no mechanism in Scots law for resolving those difficulties, other than by introducing legislation to the Parliament. That is wholly unsatisfactory because, unless legislation comes through the Parliament, we find ourselves in conflict with one of the meanings of the rule of law, which is that people have a right to know what the law is. Conflicting High Court decisions mean that we do not know what the law is. We must address that at some stage.

15:06

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to contribute to the stage 1 debate on the Damages (Scotland) Bill. I thank Bill Butler for his hard work in introducing the bill. He has provided a convincing, rational and passionate case for the proposed legislation.

I recognise that the member, the Scottish Government and the committee all wish to secure fair compensation for those who are in the hugely difficult position of having lost in tragic circumstances a loved one upon whom they relied for financial support. However, some key disagreements remain about how that can best be achieved. As members can see from the stage 1 report, although the committee supports the bill proceeding to stage 2, committee members do so with differing levels of enthusiasm.

There are differing views on whether the bill should proceed as a separate piece of legislation or whether the Scottish Law Commission's three sets of legislative recommendations on damages should be advanced together. However, we would find the time to deal with the second option only in the second half of the next parliamentary session at best. Therefore, the decision comes down to a judgment on how urgent the need for legislation is and to what extent, and how many, families will continue to be disadvantaged or placed in extremely difficult circumstances without the bill.

The committee remains divided on whether the benefits outweigh the risks. On balance, I believe that there is a strong case for pursuing the bill in this parliamentary session. I am not convinced that further delay or the amalgamation of the bill with the Scottish Law Commission's other recommendations would lead to any better legislation.

The level of confidence in the extent and depth of the research is one of the problematic issues that the committee has faced in addressing the bill. Mr Butler argued at the outset of the process that there was no need for further consultation on the bill proposal. That argument was rejected by

the majority of the committee, a decision that Mr Butler later endorsed.

Extensive consultation has now been undertaken. However, during stage 1, the case for additional evidence and further research was stated. At the heart of that was the committee's problem in coming to a firm view on the merits or otherwise of a fixed 25 per cent deduction for the victim's living expenses.

I am persuaded by the arguments in favour of a fixed 25 per cent deduction, principally because it would reduce the need for intrusive questioning at an extremely difficult time—a set of circumstances that often leads to people being prepared to settle for less than they may be entitled to. It could also speed up the settlement of claims.

The committee accepted the reality of undercompensation, but remained divided on whether a fixed 25 per cent deduction would be the correct response. However, it appears to me that the evidence supporting the 25 per cent deduction came from actual cases whereas the argument against a fixed deduction was largely based on hypothetical cases. All eventualities must, of course, be considered, but there is also a need for a degree of pragmatism.

The committee has considered the merits of the Scottish Government's proposal for a rebuttable presumption, and encourages further exploration of that option if it can provide flexibility without undermining the benefits of the fixed reduction. That is a difficult task, which has now been passed to stage 2.

I appreciate some members' cautiousness about the range of the evidence that was presented to the committee. However, I am not convinced that the remaining divisions can be addressed by pursuing further research or evidence. We might have pretty much reached the extent of the research that is available on the issue. It might be that some are still unhappy with the depth of the research that is available, but we are in danger of going round in circles with no resolution. As Mr Butler said in evidence:

"There comes a point when it is necessary to cut to the chase and recognise that there is a body of evidence."—
[*Official Report, Justice Committee, 28 September 2010*; c 3550.]

I support that view.

If we start from the premise that, although there might be concerns that the evidence is not as wide ranging or as varied as we would like, it is as good as we are going to get, the issue comes down to whether a compromise can be reached on the key issues that are identified in the stage 1 report to allow the bill to proceed further. I welcome the commitment that the minister and Mr Butler have

made today to work together to attempt to reach a compromise.

The Damages (Scotland) Bill is the first member's bill that I have been involved with at stage 1, and I appreciate the committee's constructive and thoughtful approach to it. Although, as a committee substitute, I was not involved with the bill from the start, I look forward to that constructive approach being continued at stage 2.

15:10

Stuart McMillan (West of Scotland) (SNP): I am happy to take part in this debate on the stage 1 report on the Damages (Scotland) Bill, which is being promoted by Bill Butler. I commend him for his efforts and determination thus far.

Members will be aware of my interest in damages issues and my involvement as a member of the Justice Committee when it examined the Damages (Asbestos-related Conditions) (Scotland) Bill earlier in the session. Although I am not a member of the committee any more, I signed the proposal for Bill Butler's bill after meeting him some months ago, and I have been keeping an eye on the bill's progress through the committee. I am keen to ensure that members of the public can have confidence in the Parliament and its course of action in dealing with damages issues. In my opinion, the Parliament has dealt with the issues fairly and justly, and thankfully previous bills have succeeded. I am, of course, referring particularly to the asbestos-related legislation in the current and previous sessions.

The committee has recommended that the bill should proceed to stage 2, but members have spoken about a few issues that need to be resolved. I do not intend to go over old ground, but I will touch on one issue that I found of interest in the committee's report. With every paragraph, I was becoming more convinced that the 25 per cent compensation payment was the way forward, but then I got to the arguments against, and I thought that they were also logical and correct. I can therefore understand why the committee has recommended that Bill Butler and the Scottish Government should meet and attempt to resolve that vital issue. I was happy to hear Bill Butler's comments on the matter earlier in the debate.

For me, this important aspect of the bill comes down to a couple of key points. The first is that we need to ensure that the claimant obtains their damages with as little delay as possible while also ensuring that they obtain a fair and equitable result. Secondly, we need to ensure that the fair and equitable damages award is just that for those who have to pay out. People might ask—I do not

know whether the issue was raised in the private sessions—whether it would be such a bad thing if the surviving relative or family was overcompensated by a small margin. After all, they have lost a loved one, and no amount of money will ever replace them, especially when they have been taken tragically through a wrongful death, but a slight overcompensation might not be a bad thing.

There are various other issues in the bill that I would like to discuss, but time constraints prevent me from doing so.

I fully appreciate that the bill, although short in page numbers, is not short in terms of the issues that it highlights and the questions that it raises for the committee, the Government, the Parliament and wider Scotland.

I do not think that I am speaking out of turn when I say that every party in the Parliament wants to ensure that damages legislation is robust in order to protect our citizens. It could be argued that all three Scottish Law Commission reports on damages should be rolled up into one larger bill, and who knows what will happen post the election in May? However, the here and now dictates that the bill is trying to provide some solutions. It is clear that there are issues that require to be addressed, and I am sure that Bill Butler will have been working on them in anticipation that the bill will move on to stage 2. I will vote for the bill to proceed but, for the good of the bill and what it aims to do, it needs to address the many points and questions that the committee has raised. If it does that, it will be a thoroughly useful addition to the statute book.

The Deputy Presiding Officer: We move to the wind-up speeches.

15:14

Robert Brown: In opening, I would like to make a couple of general comments. The bill is obviously about compensation-for-death cases, in which context all sorts of sympathies, emotions and horrible situations for families come into play, but it is important to remember that the job of the justice system is to do justice and to facilitate fair compensation, those issues notwithstanding. These are matters of judgment. In one or two speeches, there was just a hint that it was a bad thing that there were uncertainties and conflicting decisions in the law. That is obviously a bad thing to an extent, but the law is not a fixed, final sort of entity.

Various attempts have been made, from the work of Gaius and Justinian in the days of Roman law to the development of the Napoleonic code, to create an all-encompassing and finalised provision, but such attempts do not solve the

problems; they just add to the difficulties and change the basis of interpretation. The law is an evolving thing. However, in response to Nigel Don's point, it is fair to say that the damage to mental health that is done by the death of a relative and the *Brown v Ferguson* dispute are important issues, on which we need to have some clarity in the law if we are to move forward.

We face another dilemma in properly hitting the right balance between doing justice and officious fiddling. Such issues have emerged during the bill's consideration. Some parts of the bill will undoubtedly do good, but on others there are distinctly mixed views about the way forward.

When I was in practice, the solatium for the emotional stress and suffering that resulted from the loss of a spouse was typically around £14,000. In total, death claims would usually be much more substantial because of claims for loss of support, services and other expenses, but it was nevertheless extremely difficult to explain to a relative that our society valued a human life at no more than £14,000.

The bill proposes a number of miscellaneous but interconnected changes. The committee rightly recommended that the mental disorder issue should be left to be dealt with in separate legislation that is properly considered and consulted on. It is difficult to fiddle about with that area without having much fuller evidence. The committee was also unpersuaded of the case for a new name for the grief and loss of society heads of damages, because it seemed to me and to others that the current heads of damages are perfectly well understood—the mental disorder issue aside—and that changing the names would risk unintended consequences. Whether it is known as solatium, loss of society or, as the bill suggests, a “grief and companionship award” is inconsequential.

The important issue of the 25 per cent, which lies at the heart of most of the disputes that surround the bill, has already been touched on.

I have a brief point to make on the victim's living expenses and the income of the partner. Although I agree with others that it is appropriate to separate that out and to remove it from the calculation, it cannot be removed entirely because of the need to look at household expenditure and costs of that sort. Bill Butler would no doubt say that that works both ways, but it is an important point nevertheless.

On the definition of relatives who are entitled to claim, I simply say that I support the current law. I am not persuaded by the bill's proposal to narrow the current definition, nor by the suggestion that it should be widened. It is a proper part of a legal system to define who is close enough to the victim

to be given a right to damages in the event of traumatic death. It is not the job of the law to provide a right to damages in all situations, however remote the connection between the parties.

One final general issue is whether the bill should proceed to finality in the present session of Parliament or whether it would be preferable for a composite bill that took on board the other Scottish Law Commission reports in this area to be introduced at a future date. It is understandable that the Scottish Government believes that more research is needed, but it might be overstating the case a little. Like Claire Baker, I am not totally persuaded that much new would come out of that. I rather think that I would be reluctant to go against the Government's view, given the complexity of the issues. At present, however, I commend Bill Butler's efforts and urge Parliament to support the bill at stage 1.

15:19

John Lamont: This has been a useful debate, and has highlighted the need to reform the way in which Scots law deals with damages. A number of useful speeches have been made, most of which have centred on two key points: the 25 per cent deduction for living expenses and the proposed changes to the definition of relatives who are able to claim damages.

Stewart Maxwell's speech was useful in highlighting the committee's concerns about the 25 per cent loss of earnings deduction. Mike Pringle highlighted the need for reform but expressed the concern that the proposed approach—particularly in relation to the 25 per cent rule—might be too simplistic. I share those concerns and am therefore sympathetic to the rebuttable presumption. The Justice Committee's report stated:

"If a rebuttable presumption could be drafted in such a way that it provides flexibility only when it is needed, without undermining the benefits of a fixed deduction in the majority of cases, it might still offer the best way forward. The Committee therefore urges Mr Butler and the Scottish Government to engage constructively in consideration of this question."

The Scottish Conservatives see that as an attractive compromise, as in most cases it would avoid the distress caused by having to go through family accounts when the relatives are feeling particularly vulnerable, but at the same time it would enable defenders to oppose settlements where the 25 per cent deduction was not appropriate. The rebuttable presumption would also be an invaluable tool where families felt that they were being undercompensated. We urge Mr Butler and the Scottish Government to work together on the issue to try to find a way forward

that will ensure that no family has to go through unnecessary distress and that they are protected and given the right level of compensation.

Before I close, I want to deal with the definition of relatives and their ability to make a claim. Part of the difficulty with the bill is the requirement for a degree of ambiguity. The bill must allow for flexibility, as people have different personal circumstances. However, it must also provide protection, to ensure that those who need and deserve compensation receive it quickly and painlessly. Section 14 would remove the rights of certain relatives to claim for damages, even if they could show that they had been supported by the victim. Of those who would not be able to claim, the Justice Committee was given the example of a niece or nephew who was supported through university by their aunt or uncle.

Although we do not want to prevent those who have entitlement to claim from doing so, we also recognise that there is a finite amount of compensation. The Justice Committee report says:

"real injustice could result if too much were taken away from family members to compensate relatively casual acquaintances."

One way of addressing that problem would be to limit the right to claim to those who are able to establish a substantial loss of support. A definition of "substantial" would be required to ensure that the net was not cast too widely or not widely enough, as that could provide further difficulties.

I am pleased that Bill Butler has indicated a willingness to resolve difficulties with the Scottish Government and others to take matters forward, and I again congratulate him on bringing the bill to this stage.

15:22

James Kelly (Glasgow Rutherglen) (Lab): Like others, I pay tribute to Bill Butler for bringing this important bill to the chamber and for his hard work on and dedication to it, which was clear to anyone who watched his efforts at the Justice Committee when he gave evidence. He clearly has not only a lot of knowledge of the issues but a tremendous amount of commitment. I also want to put on record my thanks to the Justice Committee clerks and my fellow committee members for the work that they have done on the bill.

This is clearly an important issue. The Law Commission identified it as such and said that there was a need for the Damages (Scotland) Act 1976 to be reformed.

There can be no worse thing than to lose a relative in an industrial accident, but having the

rigmarole of going through an extensive compensation case cannot help.

It is quite clear from the evidence that we heard and from the Law Commission's report that the system is not working effectively. We owe it to the hundreds of victims throughout Scotland—whom Bill Butler referred to—to act and put in place a more efficient system that works more quickly and is less stressful and emotionally painful for relatives. We need some simplicity.

The debate and the Justice Committee report have thrown up a number of key issues, among them the 25 per cent deduction for living expenses, and the corollary of that, which is the 75 per cent that represents the money that the victim spent supporting the family.

The committee heard conflicting evidence on the 25 per cent figure—some members have spoken about the conflicting case law. However, I agree with Robert Brown that we must consider other matters in order to take a position. I am persuaded on the 25 per cent figure; I give a lot of weight to the evidence from Thompsons Solicitors on the need to specify a figure. It would offer certainty, speed up the process and save time and resources. That would ultimately help to deliver a less stressful system for victims. There is a duty on us in the Parliament to try to do that.

Having a rebuttable presumption has been another controversial issue. I am not sympathetic to a rebuttable presumption, on the basis that it could open the floodgates for challenges to compensation claims. That would result in cases taking longer, and it would not deal with the issues that the bill was introduced to address. However, I recognise Bill Butler's genuine offer to enter into discussions to reach a compromise on that, which I am sure that the minister will try to accommodate. I hope that we can address the issues that have been raised in this debate and the committee report, and seek to progress the bill in the current session of Parliament.

15:26

Fergus Ewing: This debate has been useful. It was led by Bill Butler and included a contribution from Bill Aitken, who ably set out the committee's position. It also included contributions from members on all sides of the chamber that highlighted the two strands of what we are seeking to do. There is the emotional strand, as we are trying to ensure that those who have lost a loved one through the negligence of a third party receive fair compensation. As human beings, we all respond to that pull. There is also the intellectual strand, as we must ensure that we pass legislation that is correct and based as far as possible on

accurate evidence, which we must do our reasonable best to seek out.

I am happy to pay tribute to Bill Butler for his work in focusing attention on the issue. We have had an excellent constructive dialogue from the outset, which I am sure will continue.

I will cut to the chase and be candid. We need greater confidence that it is right in each and every case to assert that the fatally injured person spent around 25 per cent of his net income on himself. As far as the Government is aware, no firm evidence has been produced to prove that that is the right level in the average case, nor to indicate how much variation from the average there might be. The Scottish Law Commission did no more than

"suggest that 25% falls within the range of what might be considered reasonable",

in its "Report on Damages for Wrongful Death". It also acknowledged that there is an "absence of accurate figures" to substantiate the 25 per cent figure.

Members have referred to the evidence from Thompsons, and we are grateful for the effort that the firm has made. However, none of that evidence appears to demonstrate clearly that 25 per cent of net personal income is what people always or normally spend on themselves. Indeed, it would be a somewhat odd and unduly uniform world if every person spent exactly the same amount of money on themselves. It does not feel right that that would be the case, given the vagaries of human nature and the differences in spending practices that we know there are between people.

We also need greater confidence that it is right in each and every case to conclude that the surviving spouse's income should be entirely disregarded. That proposal seemed to elicit the most vehement opposition from defenders, even from those such as Aviva and the Forum of Scottish Claims Managers, which were prepared to make concessions elsewhere.

Lest it be thought that only defenders had concerns, I note that, in relation to the risk of overcompensation, the judges of the Court of Session advised that

"to ignore completely the income of a surviving spouse or partner, which may be substantial, gives rise to such a risk."

However, I accept that the Justice Committee was not persuaded by such concerns and I will certainly reflect on that.

Mr Butler may feel that my plea for more evidence may be becoming a little bit repetitive, but I submit that we cannot make legislative bricks without evidential straw. Evidence is essential if

we are to gain the confidence that is necessary for fixing a one-size-fits-all rule in statute for a generation. Where might such evidence come from? It seems not unreasonable to expect that pursuers' agents may have relevant data on file, given that we are told that they have had to be ready to prove personal expenditure levels in all past cases. If that does not prove possible, given that we do not have time for fresh research, it might be helpful to know whether there is evidence that the approach that we are being asked to adopt has been successfully adopted elsewhere in the world. Unless such evidence is available, we might need to consider the merits of introducing rebuttable presumptions instead of rigid rules.

Presiding Officer, I note that my time has expired, so I will ignore the final four or five pages of my speech and reiterate my pledge to every member of this Parliament—but most especially to the member in charge of the bill, Mr Butler—that we will, in the way that we have set out today, do our best, working with all parties and all MSPs, to seek to find a solution that achieves fairness.

15:31

Bill Butler: This has been a considered and detailed debate on a very serious area of law. I welcome members' thoughtful contributions and the constructive tone of all the speeches. I will try, in the time available, to respond as best as I can to the issues that members have raised.

Before I start on that, I reiterate the pledge that I gave in my opening speech to work constructively with the minister, committee members and all members across the chamber to see whether we can get to a piece of legislation that is resilient and evidence based.

As the minister rightly said, the bill's aim is fair compensation for victims of wrongful death. We can all agree with that. The bill seeks to give certainty, minimise intrusive investigation and expedite the awarding of appropriate damages. We can all agree with those general aims and objectives. However, there is the question of the 25 per cent deduction for living expenses and the obverse 75 per cent calculation for the amount spent on supporting relatives. Getting to a place where all of us—or certainly the majority of us—agree on the way to meet the concerns of both those who fear undercompensation and those who fear overcompensation will be a real challenge, but that is the task that we face. I do not pretend that it will be an easy one. Members of the committee and, especially, the minister know that it will be difficult. Indeed, Lord Drummond Young said in his evidence that the problem with a rebuttable presumption

“is that it would still be necessary to perform the upsetting and difficult exercise of going through the household

accounts ... with the surviving spouse or another member of the family. In one sense, things would be worse than they are at present. Currently, the exercise is done at the outset of proceedings ... If there is a rebuttable presumption, in many cases the exercise would be performed at a later stage ... under pressure of demands for information from the defender”.—[*Official Report, Justice Committee*, 14 September 2010; c 3444.]

It seemed to Lord Drummond Young that that would be the worst of all possible worlds. I would still tend to agree with that, if the provision were simply to be phrased as “on special cause shown”, and I think that the minister agrees with me that that is too wide. We must try to find a form of words such that we draft a piece of law that will delimit the right of defenders to say that there is a rebuttable presumption there that they wish to follow. We do not want an open door to all defenders, as that would be worse than the situation in the law that is extant. That is clearly a difficulty, but I will work closely with the minister, committee members and all other members to overcome it.

Let us turn from difficulties to points of agreement. Many members, including the minister, Richard Baker, John Lamont and Mike Pringle, have talked about the definition in section 14 of relatives who are entitled to claim. I agree with members that the definition is too narrow and restrictive, and I am more than willing to work closely with colleagues to find ways in which we can amend it. The committee helpfully said in paragraph 190 of its report that, taking all of the factors into account, including the unfairnesses with regard to nephews and nieces that Stewart Maxwell alluded to in the committee, we should perhaps go back to the status quo. I am not averse to that. I think that we can progress that matter.

Bill Aitken, the minister and Nigel Don mentioned the application of the multiplier. I tend to agree with paragraph 169 of the report, which states:

“the Committee is satisfied that there is a better argument for running a single multiplier from the date of the court order than from the date of death.”

I know that the minister said that there is still work to be done on that, but I think that the general thrust of the committee's observation is correct.

On mental disorder, paragraph 127 of the committee's report states:

“the Committee believes the better course would be to remove section 4(3)(b) altogether, so as to leave the law in this area essentially unchanged”.

It is my intention to lodge an amendment to remove section 4(3)(b). I hope that that will take away that difficulty.

Members have mentioned other issues, and I am sorry that I have not been able to touch on

every issue. However, it is positive that there is almost total agreement about the disregard of the spouse's income.

We all want to provide justice and dignity for victims and their loved ones, and we all agree that the current system can be improved so that it provides a fair level of compensation in cases of wrongful death without the need for unnecessarily long and distressing court cases. Members must put the needs of victims first, and the sensible proposals in the bill need to be implemented urgently. I appeal to all members to support the bill at stage 1. Together, we can make it work and improve the law of Scotland.

Forth Crossing Bill: Stage 3

15:38

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is stage 3 proceedings on the Forth Crossing Bill. Members should have with them the bill as amended at stage 2, the marshalled list and the groupings, which I, as Presiding Officer, have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. There will be a voting period of one minute for the first division after a debate, and 30 seconds for all other divisions.

Section 70—Control of noise: Control of Pollution Act 1974

The Deputy Presiding Officer: Group 1 is on notices and orders in relation to noise from the carrying out of the Forth crossing works. Amendment 2, in the name of Margaret Smith, is grouped with amendment 3.

Margaret Smith (Edinburgh West) (LD): My amendments 2 and 3 are on local authorities' rights relating to noise and vibration during the construction period.

It is clear that the scale and nature of the scheme and its proximity to homes mean that my constituents, particularly in Queensferry and Kirkliston, will be affected by construction noise for many years. More than 95 per cent of the affected homes are in my constituency area. The issue does not affect other councils to the same extent and scale as it affects the City of Edinburgh Council. For those constituents, concerns about the impact of construction noise have not lessened during the parliamentary process.

In advance of publication of the bill, at least some comfort was afforded by the fact that legislation was already in place that could be used to challenge construction and practices if noise disturbance was too great. The relevant acts are the Control of Pollution Act 1974 and the Environmental Protection Act 1990. Under the 1974 act, a local authority can serve a notice on a contractor should noise be deemed to be excessive. Such complaints usually come to light through a member of the public contacting their council. The council first decides if the complaint is justified and, if it is, officers can take action. The role is that of an independent arbiter, who is as likely to advise a member of the public who makes a complaint that the activity is reasonable and necessary as they are to do anything else. Those safeguards are currently provided in law across Scotland.

However, the bill as introduced would have removed those safeguards completely, so that local authorities would have had none of the powers under the acts to which I referred. I objected to that, as did many local authorities, the local community council and others. I did not see why my constituents—residents who will be affected by bridge and road construction for five or six years—should not have the same recourse to safeguards that are provided in law as have been available in relation to all previous transport projects that the Parliament has dealt with.

Following the stage 2 process and negotiations, Transport Scotland shifted its position and decided that local authorities' powers under the 1974 and 1990 acts would not be repealed, but would be limited under sections 70 and 71. The limitation is that compliance with ministers' duties in relation to noise in the code of construction practice is a special defence against any notice that is served. The essence of that is that, although local authorities will have their powers in theory, Transport Scotland is trying to limit some of the protections in practice. The introduction of that special defence limits the way in which authorities can take action should there be any problems.

That breaks the status quo of legislation that has been passed by the Parliament to date. At the assessor hearings, Transport Scotland said that the proposals in the bill are an improvement on the 1974 act, but that is not the City of Edinburgh Council's view. The bill as it stands will provide a defence that acting in accordance with the code of construction practice prevents action from being taken. There are weaknesses in the code of construction practice that might inhibit attempts to protect the public. The code can exist outwith the 1974 act and provide a management tool for the promoter that would complement that act, rather than substitute for it.

For such a large project with such a lengthy construction process, it is essential that my constituents have full recourse to an independent professional should they have cause to complain about noise. During the assessor hearings, Stephen Williamson, the head of the noise section at the City of Edinburgh Council and for whom our shorthand is "the noise man from Edinburgh", was asked whether, if the bill was enacted and the code of construction practice enforced, the public in the vicinity of the project would be protected adequately against noise and vibration. He said:

"We do not believe so, because the bill does not give the local authority sufficient room to take action and there is a broad envelope for what the code of construction practice permits. Fundamentally, the employer's representative decides whether works should go ahead. There is a requirement for said person to take on board the local authority's views, but the code says only that they must 'take appropriate consideration' or 'take account' of those

views; nowhere does it say that they must follow the local authority's advice."

He continued:

"The management plan and the code of construction practice that have been brought together are good documents for any contractor to use. They contain the kind of measures that we would advise contractors to take, but do not replace the local authority's power to intervene and take action on the public's behalf."

As things stand, the best practical means defence in the bill and the code is the only protection that is afforded to the public. However, built into that term are requirements to consider excessive costs, for example. I understand that decisions will be taken at the extremes. For some incidents at some times, it will not be appropriate to stop work. I do not believe that a local authority professional would think it appropriate to stop concrete being put into piles in the middle of the river, for example. We should not worry about that, because local authorities are used to working with contractors on large civil engineering projects and to exercising those powers.

The City of Edinburgh Council has signed up to the Government's enforcement concordat, so its first step is not to go wielding the notice book about, but to meet and discuss the issue informally with the contractors to find a way forward. The Parliament building was subject to public complaint; the council headquarters at Waverley court were built not far from here and were also subject to complaint; and the A720 city bypass was built entirely at night and again was the subject of public complaint. Those were large projects, but not once did the council feel it necessary to serve a notice. It worked informally with the contractors to find a way forward and to reduce disturbance to the public.

To put the issue in context, in the past financial year, the City of Edinburgh Council served four notices against construction sites but received 371 complaints. Deciding whether disturbance is acceptable comes down to a judgment call. My fear, which is shared by the City of Edinburgh Council, is that without any independent arbitration, decisions to go ahead will be taken by the representatives of the contractors and Transport Scotland. If a decision cannot be reached by working together, I would rather that the final decision on whether action needs to be taken rested with an independent officer in the local authority, rather than the employer's representative.

Ultimately, I do not see why this biggest of all projects should be treated differently and why my constituents should not have recourse to the statutory powers that are available to other communities in the very unlikely event that resolution cannot be found informally. I would like

local authorities' powers to remain, without anything in the bill reducing authorities' ability to use them properly. I want my constituents to be treated exactly the same as every other set of constituents who have been affected by the public infrastructure projects that have come before and been voted through the Scottish Parliament in the past.

I move amendment 2.

15:45

The Minister for Transport and Infrastructure (Keith Brown): These amendments reopen matters that were previously determined at stage 2. However, they are critically important and I want to be stark in saying that, if passed, the amendments will generate significant risk and uncertainty—risk and uncertainty for the contractor and a likely increase in the contract price; a resulting significant financial risk to a future Government, the Parliament and the taxpayers of Scotland; and uncertainty in the process for local authorities and the public.

As members will be aware, noise and vibration matters have been subject to detailed scrutiny ever since the bill's introduction in November last year. We have worked closely with the City of Edinburgh Council, West Lothian Council and Fife Council to develop an appropriate noise control regime. The aim is to have in place a regime that will meet the national objectives of having the project built on time and on budget; will allow independent oversight of construction by the local authorities; and, perhaps most significantly, will provide safeguards for members of the public. That regime is now incorporated within the code of construction practice.

Members who have followed the bill's progress will note that the issue of noise was subjected to detailed scrutiny at stage 2. The assessor, Professor Begg, sat for 11 days during which noise management was discussed extensively. The evidence included a full, comprehensive and detailed exposition by all concerned parties of the issues that Margaret Smith now wishes to be reconsidered. In his report, the assessor noted the merits of our proposals and recommended our approach to the committee, which gives full effect to the noise management process now defined; fully involves the local authorities as integral members of the noise liaison group, scrutinising the contractor's proposed construction methods before they are approved; and—this relates specifically to Margaret Smith's amendment 2—retains the ability of the local authorities and the public to have a statutory mechanism by which to challenge independently the contractor's undertaking of construction works. Also, under our proposal, the local authorities will gain an

additional statutory mechanism to ensure the implementation of the noise management processes. Let us not forget that, at stage 2, as Jackson Carlaw can attest, the committee endorsed that approach. Accordingly, the assessor and the committee—the two parties most intimately involved in consideration of the bill—supported the comprehensive proposals that we have put in place.

Our approach provides consistency across the project, which lies within three local authority areas, and provides certainty for the public. It also provides a significant benefit to the management of risk and the price of the contract, as it will provide the contractor with the knowledge that his or her operations will be disrupted only if he or she operates outwith the framework of the code of construction practice. That code has been amended to reflect local authority concerns. I confirm that we are not removing local authority powers to take independent actions afforded in the Control of Pollution Act 1974. Both the councils and the public will retain a statutory mechanism by which to challenge independently the contractor's undertaking of construction works. The councils will also have an enhanced role through the code of construction practice.

I do not believe that the amendments have wholesale support from local authorities. I remind Margaret Smith that Fife Council did not object to any of the proposals during the parliamentary process and that West Lothian Council stated, on 13 September, at the assessor hearing:

"As the Transport Scotland team has correctly pointed out, what it is proposing in the code of construction practice is better than what exists purely under the 1974 act. That is what we as the local authority would expect on a project of this size."

Margaret Smith seeks to overturn the process within the code of construction practice that has taken more than a year to achieve; to overturn the consistency that will apply across all three local authorities for controlling noise and vibration; to overturn the findings of the assessor; and to overturn the considered views of the committee. Having overturned those things, she wishes to introduce significant risks and uncertainties. Surely, the introduction of risk and uncertainty cannot be the considered view of the Parliament. I strongly urge Margaret Smith to withdraw her amendments. If she does not withdraw them, I urge all members to resist these amendments, the consequences of which will fall on a future Administration.

Margaret Smith: I begin with the issue of risk and uncertainty. In my opening comments, I tried to quantify the potential with information that I received from City of Edinburgh Council. It would never enter into the situation lightly. I mentioned

the city bypass and the Parliament building and so on, which were major projects that managed to go ahead while councils across Scotland kept their statutory powers, working within them to come to informal arrangements that commanded public support because they were subject to independent scrutiny and arbitration and involved professionals in City of Edinburgh Council, or whichever local authority it might be. Because of the minister's comments, I am concerned that the Parliament will see giving such environmental protection to my constituents as somehow not worth the risk and uncertainty involved, although it was perfectly okay to take such a risk in relation to all the previous transport bills that have come before and been passed by the Parliament.

On the detailed scrutiny, during the past week I have been told by the outgoing and incoming transport ministers and have seen Transport Scotland's comments that the councils were signed up to the deal that was worked through at stage 2. I have followed up on that and it is quite clear that neither City of Edinburgh Council nor Midlothian Council is content and that they still want to have the full powers that they had under all the earlier bills.

Keith Brown: Will the member take an intervention?

Margaret Smith: I just want to make one other point. Although it is interesting to know what Fife Council or West Lothian Council thinks about the issue, I ask members to remember that somewhere in the region of 95 per cent of the residents who will be affected by the bill and the six years of construction are in the City of Edinburgh Council area, not in Fife or West Lothian.

Keith Brown: The assessor sat and considered the City of Edinburgh Council's arguments and then made his decision. Is it not the case that City of Edinburgh Council accepted that decision and has not made any representations since that time?

Margaret Smith: In the conversations that we have had with City of Edinburgh Council, it has not accepted it. There was an understanding that once the process had gone through the assessor and the committee, decisions would be taken by the assessor and the committee. I questioned my colleague who was on the committee. The same understanding that the councils were content that both transport ministers have put to me, in good faith, is not the case, because the councils—including the fundamental one in this regard—are not content.

The minister talked about consistency among the three councils that are affected by the bill. I am trying to find an approach that will deliver consistency with every other transport project that

the Parliament has passed and will give the same protection to my constituents in Queensferry and Kirkliston as has been given to other constituents around Scotland during the past decade of the Parliament. That is consistency that we should all support.

The Deputy Presiding Officer (Trish Godman): Are you pressing or withdrawing your amendment?

Margaret Smith: I press amendment 2.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

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

15:53

Meeting suspended.

15:58

On resuming—

The Deputy Presiding Officer: We come to the division on amendment 2.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)

Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 13, Against 93, Abstentions 0.

Amendment 2 disagreed to.

Section 71—Statutory nuisance: noise under the Environmental Protection Act 1990

Amendment 3 moved—[Margaret Smith].

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)

Grahame, Christine (South of Scotland) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 94, Abstentions 0.

Amendment 3 disagreed to.

After section 74

16:00

The Deputy Presiding Officer: We come to group 2. Amendment 4, in the name of Margaret Smith, is the only amendment in the group.

Margaret Smith: I hope that amendment 4 will get a few more than 14 votes—just as long as we keep moving in the right direction.

Amendment 4 simply makes additions to the list of those who are to be kept informed of the progress of the works. In such a large-scale project, it is crucial that affected communities are kept fully informed of the progress of the works. That is essential for residents in setting expectations—[*Interruption.*]

The Deputy Presiding Officer: I am sorry, Miss Smith, but there is far too much talking in the chamber. If it is really necessary, take it outside the chamber, please.

Margaret Smith:—on disruption, noise, what might be happening in their street and so on. It is also important that businesses and tourism interests in the area are kept informed.

As I have said previously—I will return to the point later today—concerns have been raised about previous consultations, information, exhibitions and so on. It is clear that there is widespread concern locally about the impact of the scheme on residents and businesses. Over the past months and years, I have worked with residents and businesses on this. Given that this is a £2 billion project, it is important that the economy in and around Queensferry, Fife, the Lothians—including West Lothian—and Edinburgh takes advantage of the project if it possibly can. I am thinking of everybody from local contractors, shops and so on. It is therefore essential that the Government keeps organisations such as the Queensferry Business Association and other community and business organisations informed as the project progresses.

Amendment 4 also contains a proposal to ensure that locally elected members are kept informed, so that we can properly represent the communities that we were elected to work for. It is clear that the bill will be agreed to today. For my constituents, that means years of disruption. It is essential that local and regional MSPs are kept informed so that we can continue to hold ministers to account as effectively as possible on the project.

I move amendment 4.

Keith Brown: I thank Margaret Smith for lodging amendment 4, which seeks to place a duty on ministers to provide information to specific groups and individuals. The provision of information is critical to the success of the project. The recognition of the need for information to be

provided to relevant parties at appropriate times is a matter on which there is no difference between myself and Margaret Smith.

The amendment re-articulates some but not all of the requirements that are contained in the code of construction practice. That does not mean that the many other provisions in the code in respect of information, liaison or engagement are of any less importance. Notwithstanding the amendment, I confirm categorically that ministers are still required to comply with all aspects of the code. That said, I confirm that the Government is content to accept amendment 4.

The Deputy Presiding Officer: Before I call Margaret Smith, I use my power under rule 9C.12.5 to extend the time limit for the debate on this group to prevent such debate being unreasonably curtailed. Do you wish to add anything, Miss Smith?

Margaret Smith: I very much welcome the breadth of the minister's response and I thank him for his support. I press amendment 4.

Amendment 4 agreed to.

The Deputy Presiding Officer: We come to group 3. Amendment 5, in the name of Mary Mulligan, is the only amendment in the group.

Mary Mulligan (Linlithgow) (Lab): Members may be aware that my preferred course of action—it was clearly the course of action that has the most support among my constituents—is for a direct road link between the new Forth crossing on the south side of the river and the M9. I still believe that that is the best option not only for my constituents in Newton and the surrounding area, but for everyone who wants to use the M9 westbound, including people who travel to and from the Falkirk and Stirling areas and to and from Lanarkshire.

Unfortunately, it appears that that course of action has been rejected. My amendment 5 is about trying to give some respite to my constituents in Newton from the increased traffic that they will experience both during the construction of the crossing and afterwards.

The minister may well tell me that the bill already provides mitigation measures. I will give just two reasons for believing that amendment 5 is necessary. Unfortunately, this demonstrates local people's lack of confidence in Transport Scotland. The relevant discussions took place behind the scenes, and people believe that there is still a need for a decisive response from the minister.

In some discussions of mitigation measures in which I have been involved, there has been some dispute about whether the measures will be the responsibility of the local authority. I remind members that the road that will take national traffic

is not an A-road but a local road, maintained by the local authority.

It was suggested in some discussions that some of the additional traffic will be from a major development in the neighbouring village of Winchburgh and should, therefore, be paid for by the developers in Winchburgh. I make clear that there would be little additional traffic from Winchburgh if the new crossing were not being built where it will be built, without a direct link to the M9.

The mitigation measures will not reduce the increase in traffic that Newton village will experience as a result of the new Forth crossing, but they may slow it down, make it safer for villagers to go about their business and help with noise and vibration. For that reason, I ask members to support amendment 5.

I move amendment 5.

Keith Brown: I thank Mary Mulligan for her explanation and recognise her concern. That is why we have given a clear commitment to fund improvements at Newton. I am happy to state on the record that the Scottish ministers will fulfil the commitments and undertakings that have been given, as set out in the register of commitments and undertakings. Accordingly, I am happy to confirm that the proposed measures for Newton will be fully funded by Transport Scotland and delivered by West Lothian Council.

I am sure that Mary Mulligan will welcome the restatement of that commitment. Unfortunately, I cannot accept her amendment. First, it places commitments that are given to local authorities in a different class from those that are given to other parties such as householders and, therefore, provides for a distinction where none exists. Secondly, having made that distinction by virtue of referencing local authorities specifically, it could generate an unintended consequence. A future Administration might argue that, because local authorities are expressly mentioned but others are not, it was the Parliament's intention that somehow ministers should be under an obligation to honour only commitments that have been made to local authorities. Because other parties or individuals are not mentioned, one could surmise that any commitment that has been made to them has a somewhat lesser status.

With that explanation, I trust that Mary Mulligan will appreciate why I cannot support the amendment. However, I stress again that I am committed to funding improvements at Newton.

Mary Mulligan: I hope that the minister will understand that the amendment is framed as it is because the road in question is maintained by the local authority. However, I am grateful to him for his reassurances with regard to mitigation

measures and seek leave to withdraw my amendment.

Amendment 5, by agreement, withdrawn.

Schedule 9—Land which may be acquired

The Deputy Presiding Officer: We move to group 4. Amendment 1, in the name of Stewart Stevenson, is the only amendment in the group.

Keith Brown: Amendment 1 is a minor technical amendment. Plot 1920, which is shown on parliamentary plan L19, is required for the construction of ancillary works and will bring into the ownership of the Scottish ministers the solum of parts of the M90 that are not currently in their ownership. The plot was included in the original parliamentary plans and the book of reference. The owners of the land were notified of the introduction of the bill and the inclusion of the land in it. However, due to an oversight, the plot was not mentioned and listed in schedule 9 of the bill. The amendment corrects that error.

I move amendment 1.

Amendment 1 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Forth Crossing Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-7593, in the name of John Swinney, on the Forth Crossing Bill.

16:09

The Minister for Transport and Infrastructure (Keith Brown): It is important to reflect, at stage 3, on why we introduced the Forth Crossing Bill. The problems with the Forth road bridge are well known. Should the crossing be restricted or not available, there will be dire economic and social consequences. That cannot be allowed to happen. Our manifesto therefore committed us to a replacement Forth crossing, and we took action.

In 2007, we developed our proposal. In 2008, we confirmed retention of the Forth road bridge as part of a public transport corridor. In 2009, we introduced the Forth Crossing Bill, which, this year, has been subject to detailed public and parliamentary scrutiny. The bill withstood that examination. In 2011, we will build. In only four years we have gone from initiation to construction. The Government recognises the issues. We have acted quickly, and we have delivered.

Like other members, I never forget that we are making legislation for and on behalf of the people of Scotland. Accordingly, we must engage with those who will be directly affected by it, and we have done so. We have listened, and we have reflected. As the committee graciously acknowledged in its report, we have made a host of significant, positive changes. They include changes to improve design, changes to improve mitigation and changes to improve monitoring, reporting and community engagement.

The hybrid bill procedures, which were applied here for the first time, present undoubted challenges, particularly for objectors. Substantial periods of time have been given to investigating complex matters, some of which are deeply sensitive for individuals. I am sure that we can all learn lessons from the process. However, the process has been thorough and exacting.

It is important to acknowledge the contribution of those who have shaped the bill and its associated code of construction practice. Although I will mention him again in my summing-up speech, I mention first the efforts and diligence of Stewart Stevenson in getting us to this stage. I also thank publicly the many individuals, community councils, local authorities, businesses and associations that have actively engaged in the process. We might not always have agreed, but their contributions and advice were much appreciated, and our proposals are better for that engagement.

It would be remiss of me if I did not mention the people within the Parliament who have done a lot of hard work to improve the bill, including the Finance Committee, the Subordinate Legislation Committee and the Transport, Infrastructure and Climate Change Committee, for their considered analysis. I also acknowledge the leading roles of Mary Mulligan and Margaret Smith in representing their constituents in Newton and South Queensferry. I am sure that the Parliament will join me in paying tribute to the skill and rigour of the Forth Crossing Bill Committee, expertly led by Jackson Carlaw, in scrutinising the bill.

This is a good bill. Together with the associated code of construction practice, the bill is the better for the exacting scrutiny to which it has been subject. The code sets out precisely how the contractor should undertake the works, and it enables full scrutiny and transparency of actions. In so doing, it rightly provides the highest possible levels of protection for the public.

The construction task itself will be huge. It will be, as has been said many times in the media, the biggest single project in Scotland for a generation. The bridge construction will take between five and six years, and our code of construction practice addresses mitigation measures to minimise disturbance over that period. We are also investing in public transport measures. We will implement bus hard shoulder running on stretches of the M90 and M9, and we are working with Fife Council to deliver Halbeath park and ride. Those and other measures will assist traffic flows during the construction phase and beyond.

We will set very high standards in the provision of information. I can confirm that we will establish a contact and education centre at the current offices of the Forth Estuary Transport Authority at South Queensferry, which will be a focus for interested individuals. We are providing accessible engagement and information, because information and providing public protection will be at the heart of this vital project.

The bill is absolutely necessary. The Forth replacement crossing project is absolutely vital for ensuring Scotland's economic wellbeing. Accordingly, I commend the bill to the Parliament.

I move,

That the Parliament agrees that the Forth Crossing Bill be passed.

16:13

Charlie Gordon (Glasgow Cathcart) (Lab): I welcome the minister to his new brief. I echo the thanks that have been expressed in the context of the Forth Crossing Bill for the work of Stewart Stevenson. The first cut of the design for the crossing perhaps contained an element of

overdesign, which can be an occupational hazard for engineers, and Stewart Stevenson played a particularly beneficial role in stripping away some of the less essential aspects of the project, focusing on something that would be more about fitness for purpose and better value for money.

As the minister said, the bill process has been lengthy and thorough. It has been a special process—a hybrid bill process—that right up to just a few minutes ago sought to meet the concerns of as many people who will be affected by it as possible, but of course the bill cannot please everyone.

We have heard opposition to the principle of the bill. Such opposition often fits into wider views that oppose most new road capacity, but in this case we are dealing not with new capacity but with the replacement of existing capacity that there is a real and present danger could be lost.

There are those who would rather that we did not have to take the decision, at least not now, but as a Parliament we cannot buck a big decision with major implications for Scotland's economy. The long-term repair of the existing Forth road bridge may well involve many years of lane closures, and the opportunity cost per day of lane closures on the existing bridge is in the region of £700 million. That is the nub of the matter.

Patrick Harvie (Glasgow) (Green): If—I acknowledge that this is an if—Charlie Gordon comes in a year or a year and a half to see dehumidification reports that suggest that either repair or closure of the existing bridge would not have been necessary for another five or 10 years, what would be his regret about the opportunity cost of committing to the extra bridge?

Charlie Gordon: In that hypothetical situation, I would say that hindsight is 20:20 vision, but if we do not take a decision today we will be taking an unacceptable gamble with our national infrastructure and therefore with our national economy.

I am not aware of another fix for the existing Forth road bridge. I am not aware that the Scottish Government or Transport Scotland has had for consideration alternative repair options that do not necessitate years of lane closures on the existing bridge, although I would be happy to take an intervention on that point.

There we have it: this is the nub of the matter. It is decision time, and we have to be clear. The last time that the bill team gave evidence at the Transport, Infrastructure and Climate Change Committee, it gave us the pretty convincing impression that it may be able to let the main contract for the project by April. I think that it will be a close-run thing, and the timeline might raise other issues, but I would not want members to be

mised. There is no comfort option of voting for the bill with the thought that we can second-guess any decision about actually committing financially to the main contract. Labour is absolutely clear on that point.

Today is crunch time, and I do not think that we should be taking a gamble on our national economy.

16:18

Jackson Carlaw (West of Scotland) (Con): I, too, welcome Keith Brown to his new ministerial post. Although I am leading for the Conservatives, I will combine my remarks with observations as convener of the Forth Crossing Bill Committee.

The bill was introduced in November last year, passing stage 2 only last month. Now, some 13 months after its passage began, we will conclude stage 3. By most legislative standards, that is a long time for a measure, which itself is the first hybrid bill to be introduced to the Scottish Parliament.

Through its passage—until today at least—the bill has been led by the former minister Stewart Stevenson. On a personal note and for the record, I say that I found Mr Stevenson at all times to be courteous, well briefed and concerned for the communities involved, as well as being seized with an understanding of the importance and scale of a new Forth crossing. I am in no doubt that the bill could have foundered had an inappropriate approach been adopted, and it is a tribute to Mr Stevenson that he understood that and ensured its smooth passage. I think it is too much for him to expect that it may come to be known as the Stevenson bridge, but he should be content to know that his contribution was a vital component to holding it together, just as the steel will be in holding it up.

I also thank the clerks—Sarah Robertson and her colleagues—who managed the extraordinary volume of material at the various stages of our proceedings effectively and with aplomb. I point out the effective way that Sarah disappointed those members who, only partly in jest, thought that a tour of bridges around the globe would be the most appropriate fact-finding expedition. Instead, she substituted that with a minivan tour around the precincts of the likely route on a bitterly cold and windswept day.

I add my thanks to Hugh O'Donnell, David Stewart and Joe FitzPatrick—my colleagues on the committee. As the bill was a hybrid bill, it was necessary for all members of the committee to be present at all of its meetings, and they did that without fail.

Even more importantly, I pay tribute and offer my congratulations to the many individuals and community groups who actively engaged in the process throughout. For most, that involved a very substantial personal commitment. It was, in every sense, worth while. Much-deserved success was achieved in improving many of the bill's provisions. A bewildering array of issues was outstanding at the conclusion of stage 1, but any comparison with the schedule that went before the assessor, Hugh Begg—whom I also thank—demonstrates the substance of that success.

In the event, not every objection or alternative proposal could succeed—many were contradictory. However, it was important to the committee that it facilitate an opportunity for everyone to challenge the promoter and present their case. The committee believes that, after a shaky start, the promoter—Transport Scotland—engaged in the process after stage 1 and it looks forward to that engagement continuing during the construction process if the bill is passed later this afternoon.

The Forth Crossing Bill was the first hybrid bill to be introduced to the Scottish Parliament, and the committee is keen that its experiences be communicated. Therefore, we will send a short report to the Standards, Procedures and Public Appointments Committee at the end of the parliamentary session.

On completion of the bridge, Scotland will have a new Forth crossing and will have three adjacent bridges from three centuries. That will be an extraordinary and physically visible testament to our nation's engineering and construction heritage. I am sure that it will be an iconic location for observers and travellers the world over.

I will make one final and personal observation. At various stages, the committee was invited to argue for the inclusion of a public transport strategy in the bill. We resisted, but the future disposition of the existing Forth crossing will become the focus of a subsequent public debate.

In essence, we provide the new crossing not as a replacement, but in addition to the existing bridges. In short, it is required because it is not possible to undertake necessary remedial repairs to the existing Forth road bridge and keep it operational in any meaningful way during a prolonged period of at least seven years. However, those repairs can be initiated on completion of the new crossing, and the life of the existing Forth crossing can be extended by many decades at least.

What will the public expect from that further investment? For the moment, a proposal for a dedicated public transport corridor is loosely advanced. That proposition seems to me to be

publicly unsustainable. The idea that the existing crossing will enjoy a future in which nothing other than a bus or two crosses over every half hour or so is patently ridiculous.

Of course, we have many years ahead during which the new crossing will be built and, thereafter, the existing crossing will, potentially, be subject to thorough refurbishment. Although the need to agree the future public purpose of the existing bridge is, therefore, not immediate, it should be the subject of an informed public debate.

Scotland will have a new Forth crossing that enjoys the support of all the main parties that are represented in the Parliament. How we pay for it is now for the Government to determine. Together with my Conservative colleagues and my colleagues on the Forth Crossing Bill Committee, I look forward to the project receiving the endorsement of the Scottish Parliament at decision time tonight.

16:23

Hugh O'Donnell (Central Scotland) (LD): I am pleased to open on behalf of the Liberal Democrats in this debate. We will support the bill at decision time.

Colleagues from the committee will perhaps recollect that I recounted a story about the history of the bridge of Arta in Greece in the early stages of our deliberations. The story simply concluded by saying that, if the bridge was not completed, the engineers who were responsible for it would be sacrificed to the appropriate gods. We are not quite at that point yet, so I mention that story to say that we should not let Transport Scotland or the contractors off the hook easily.

On a serious note—this begins to sound a little like an Oscar speech—I thank my colleagues on the committee although, for the most part, we were led very ably and constructively by the clerking team. I suspect that I now know more about the technicalities of bridge building and the geological structures and wildlife around the Forth estuary than any person would ever need to know, but it has been interesting and a steep learning curve.

The other thing that I need to do is to congratulate the objectors, as the new minister rightly did in his remarks. They were courteous and polite at all times, and notwithstanding the challenges that face objectors to a project of such a scale, some of whom are individuals, they were well informed, they had the technical knowledge, and it was impressive to listen to the evidence that they gave in the face of the range of expertise that was before them.

As colleagues have said, there is little doubt that the economic consequences for Scotland of not taking the bill forward would be as close to disastrous as we could get, and given the present circumstances, that is saying something. The evidence that we took made it clear that the uncertainty about the medium to long-term future of the existing bridge has made doing nothing untenable.

In fairness, we were impressed by the Government's commitment to the bill and the project. There are one or two other things that we would have liked to have seen in it. Charlie Gordon mentioned a couple of those in his comments on access to public transport. We were particularly keen on the cycleways. There are reasons why they were stripped out, but on reflection that might have been a missed opportunity.

At current estimates, the cost of the bridge is tagged at £543 million. We know that some of the criticism has been about a £2 billion bridge. It is important to be clear that the difference between the two sums is because of the cost of the project and the cost of the bridge, but what has stuck in people's minds is the £2 billion figure. In some ways, it is a moot point because, at current estimates, £2 billion is probably what we will have to spend, but there needs to be at least an attempt at some education to make people understand what we are getting for that level of expenditure.

To be fair to the Government, and in light of the general tendency for public projects to eat money, overly so, it has made a commitment to keep the costs as a level 3 item in the budget so that the Parliament's Finance Committee can keep a close eye on things at every stage. That is to be welcomed.

As I said, the objectors are to be commended. Jackson Carlaw touched on that in his remarks. The promoter, Transport Scotland, has re-engaged with them, but initially it was not particularly clever about some of the engagement that it took forward. Provision of information and consultation are not necessarily the same thing, and initially at least the promoter was inclined to provide information that presented a situation in such a way that people perceived that it was a done deal into which they could have no input. Subsequently, the work of the committee, Transport Scotland and the objectors undermined some of that.

We are pleased that the bridge will be built. We believe that it will benefit the whole of Scotland's economy. As Jackson Carlaw said, the bill is the first hybrid bill that the Parliament has seen. It has been a very steep learning curve for me and, I think, my colleagues on the committee. I look

forward to seeing how the project progresses over the coming years.

16:28

Tricia Marwick (Central Fife) (SNP): It is a pleasure to welcome my friend Keith Brown to his new post and to acknowledge the work that Stewart Stevenson has done.

The passing of the Forth Crossing Bill at 5.20 this evening will end the uncertainty for our businesses not just in Fife but throughout the east and north of Scotland because, make no mistake, the crossing is vital for the whole of Scotland's economy.

I thank the Forth Crossing Bill committee and clerks for carrying out their huge task so efficiently. I thank them, too, for coming to the right conclusion.

In 2004, FETA carried out its first internal inspection of the main cables on the Forth road bridge. It found significant corrosion and an 8 per cent loss of strength in the bridge. In December 2007, John Swinney announced that, having considered all the options, he had concluded that there should be a new cable-stayed bridge. In December 2009, a dehumidification project was undertaken to try to prevent further corrosion.

It is worth repeating some of that recent history of the bridge because, as John Swinney said in December 2007, doing nothing is not an option. That is true, because there is no guarantee that the dehumidification will work and, by the time we know whether it will work, it will be too late to start work on a new crossing. We simply cannot allow a situation to arise in which the existing bridge has to close to heavy goods vehicles or to traffic generally. If the bridge had to close completely or for remedial work to be carried out, as Alan Russell of Fife Chamber of Commerce said, it would cost the Scottish economy £1.5 billion a year.

The effect of closure on Fife would be devastating. Businesses would seek to relocate south of the Forth, and members of the public would not be able to get to work in Edinburgh and the Lothians. Congestion on other routes to the west over the Kincardine bridge would bring chaos to the towns and villages along those routes.

It is interesting that the people who have campaigned for years against a new crossing now argue that we should wait and see whether dehumidification works. We cannot wait and see. Even if dehumidification—that is the last time that I will attempt to say the word—works, the bridge has already lost more than 10 per cent of its strength. That strength cannot be replaced unless the cables themselves are replaced. Replacing the

cables would mean closing the bridge to allow the work to be done, which is simply not an option.

Today the talking is over. Today is the day that the uncertainty ends. There will be a new bridge and work on it will start next year. That is great news for Fife businesses and the people of Fife, and it brings the debate to an end. Now the work needs to begin.

16:31

David Stewart (Highlands and Islands) (Lab): I welcome the opportunity to speak in the debate.

Of course, it is a truism that the new Forth crossing is a vital infrastructure project but, as I said in the stage 1 debate, we need to have a balance—a balance that takes account of Scotland's strategic transport needs, the interests of residents of North and South Queensferry and beyond, and our climate change obligations.

I would like to focus my remarks on the financial aspects of the project. As we have heard, it is estimated that the bridge will cost around £543 million, which is approximately 26 per cent of the project cost. As Hugh O'Donnell said, the often-quoted figure of £2.3 billion is the estimated total, which includes the combined cost of the three separate contracts, risk allowance, optimism bias and VAT, which, as we all know, is to increase to 20 per cent in the new year. The original contract was priced when VAT was at 17.5 per cent. When he winds up, perhaps the minister could confirm whether the new VAT rate will mean a higher range of costs for the project. If that is the case, what will the new cost parameters be?

Optimism bias is an interesting concept, the definition of which should be pinned to the forehead of every new minister and official in charge of a public sector contract. Wikipedia defines it as

"the demonstrated systematic tendency for people to be over-optimistic about the outcome of planned actions ... Excessive optimism can result in cost overruns, benefit shortfalls, and delays when plans are implemented or expensive projects are built."

Keith Brown: The member should be heartened by the experience with the Clackmannanshire bridge, which was delivered on time and on budget.

As I may have other points to address when I sum up, I confirm that the new VAT rate will be applied to the project, but we have reviewed the matter and are confident that expenditure can be kept within the present envelope.

David Stewart: I appreciate that, but I saw a slightly worried look on the minister's face when I mentioned cost overruns. It was remiss of me not to welcome Mr Brown to his new position. In

addition, as a member of the Transport, Infrastructure and Climate Change Committee, I put on record my thanks to Mr Stevenson for the important contribution that he has made through his work on the project.

The issue of cost overruns was raised during committee evidence sessions. As we all know from the history of many—but not all—large public sector projects, not least the one that involved the construction of the Parliament building, it is extremely difficult to keep costs within budget, particularly in transport. Other factors that should be borne in mind during the Forth crossing project are the impact of the variable inflation rate on the cost of steel in the world market and weather conditions during construction.

There are a variety of concerns and unanswered questions, some of which I have given the minister advance notice of. Financial issues are one such matter. On such a huge project, how can we determine value for money? There are only two consortia, which comprise eight individual businesses in total. Does the minister seriously think that the successful tender will come in at less than the upper estimate of £2.3 billion for the total project, even with the caveats that I have mentioned? What if one consortium pulls out, as individual elements have done already? What effect will the capital spend on the bridge have on the rest of the capital programmes, such as health and schools? Will the proposed Calman borrowing powers be used for the project?

Like others, I take some comfort from the fact that the crossing will be a level 3 item in the budget and will therefore have a separate budget line. Stewart Stevenson made a commitment to report to the Transport, Infrastructure and Climate Change Committee every six months and to make a statement to Parliament at the point of engaging contractors. Will Mr Brown confirm that he will honour those commitments, and will he say when the contracts will be awarded? Is there a possibility that the award of contracts might slip until after next year's election? When will the project be advertised in the *Official Journal of the European Union*? How long does it need to be advertised for? Will that occur immediately after royal assent?

There will be an opportunity to create more construction jobs. How can we, as a Parliament, maximise jobs for the Scottish construction sector and involve smaller Scottish firms as well? Does the Government intend to use the adopt an apprentice scheme that was launched last year by Fiona Hyslop?

Finally, have Mr Brown's officials made a further application for EU trans-European transport network—TEN-T—funding under priority axis 13?

Grants are up to €1.5 million, so the funding is certainly worth looking at.

The bill is history in the making. If approved, it will commence the largest public sector infrastructure project since devolution. As a member of the committee, I thank the other committee members and Sarah Robertson and her clerking team. Finally, I would like to acknowledge the professionalism of the community councils, business groups and private individuals who submitted well-researched and polished evidence.

I commend the bill to Parliament.

16:36

Ted Brocklebank (Mid Scotland and Fife) (Con): I, too, welcome Keith Brown to his new ministerial responsibilities.

As a Fifer, I welcome the opportunity to speak in this historic debate, which will finally provide a sustainable future for crossings between Edinburgh and the east coast and, specifically, Fife. I have long argued that the kingdom has been poorly served on transportation issues. From the iniquitous road tolls to the campaign to dual the A92—a goal that has yet to be met—Fifers have had to fight at every turn to get a fair deal on road transport.

I was again reminded of how inadequately the transport needs of Fife and the east coast are understood or represented by the media when the road bridge was totally closed by snow for the first time in its history in the December 6 blizzards. The bridge remained closed from dawn right through the day, and I was one of the many thousands of motorists who were left stranded on the Fife side of the Forth. That evening, I checked the BBC Scotland television bulletins to find out the latest news on the bridge closure. Although the evening bulletins were virtually given over to the calamitous weather and how it affected the M8 and other major trunk roads, I heard not a mention of the fact that Scotland's major east coast artery had been closed for the whole day and no news of whether it would reopen the following day. Interesting news judgment from "Reporting Scotland"—or should I call it "Reporting Glasgow". What a difference a second crossing over the bridge would have made last Monday.

I pay tribute to my colleague Jackson Carlaw for his work as the convener of the bill committee and to other members and to the staff of the non-Executive bills unit for contributing to the process of establishing a new Forth crossing .

We will support the bill, as we did at stage 1. It is clear that building a new crossing is the most urgent infrastructure priority that we face in

Scotland, not just for the economy of Fife but for the economy of the country as a whole.

I note from the committee's stage 2 report that progress has been made in some key areas since May, when we last debated the issue. Most notably, significant improvements in engagement have been achieved between the promoter and objectors and, despite a predictable yah-boo response from the ForthRight Alliance, most people would accept that a new crossing is both desirable and necessary.

As was previously pointed out, a reinspection of the cables of the current bridge will not take place until the summer of 2012. Obviously, that could be brought forward and we could find out that, as in the scenario that was outlined by Patrick Harvie, the corrosion has been arrested. However, I absolutely believe that any delay would be folly. The Forth road bridge's future has been hanging over Scotland like a Damoclean sword for far too long. Fife Chamber of Commerce has already warned that, if the bridge had been closed for an estimated three-year period while further work was carried out, the damage to the Fife economy would be incalculable. Action is required now and that is why all responsible members should support the bill at decision time.

Returning to the committee's report, I see that one of the positive developments in the project is the improved and strengthened code of construction practice. That will help to address the very real matter of noise and vibration management control during construction, which was raised by Margaret Smith. Giving local authorities a greater voice in that regard will, one hopes, allay fears about the level of the noise distraction that will inevitably occur over the next five years. I note that the working hours have been amended by the committee, so construction from Monday to Saturday will start not at 7 am but at 8 am, and will now finish at 6 pm on Saturdays. Those seem to be sensible changes.

These are early days for the project, and the next five or six years will not be without their challenges. I recognise that the total cost of the new crossing could well be in excess of £2 billion at a time when public finances are being squeezed, but we are where we are. Today we can all make a difference by voting in favour of this major investment in Scotland's future. I commend the Forth Crossing Bill to members.

16:41

Margaret Smith (Edinburgh West) (LD): I welcome the transport minister to his new portfolio, and I thank him for taking the time to meet me yesterday at what I know is an incredibly busy time for him. I have been involved in

discussions, exhibitions, public meetings, parliamentary procedures and objections on this issue for more than five years. If I was to try to quantify the time that I have spent, it would run into hundreds of hours of my life; that is sad, but it is quite an achievement that I am still here. Despite the fact that the new minister has had only a few days to get his head round the issue, and not five or six years, he was willing to meet me yesterday and engage constructively in discussions, for which I pay tribute to him.

In dealing with this important national project, I have done my best to speak on behalf of my constituents—particularly those who are most affected by the proposals—while recognising the national significance of the scheme and the need for an on-going crossing, which is of such importance both economically and locally.

The proposal that any outgoing Government should sign off a contract in the weeks leading up to an election should probably be discussed among all parties, to make certain that anybody who goes into the project knows that they have the full support of whichever group of individuals might form the next Government.

I pay tribute to the people and the community groups of South Queensferry and Kirkliston, who have objected and spent the past few years engaging with Transport Scotland to try to improve the proposals. I thank the Forth Crossing Bill Committee, the other committees and the assessor. I also thank Stewart Stevenson for all his efforts in dealing with the project, even though I did not particularly agree with many of them.

I cannot begin to explain to colleagues the stress and concern that the affected residents feel. It is with a sense of disappointment and some anger that I say to members that many of my constituents feel that they have been ignored and let down by Transport Scotland, by ministers and by the Parliament. Even the bill committee acknowledged in its stage 1 report that Transport Scotland had got it wrong in its consultation with local residents; Jackson Carlaw referred to that again today. One example is that it was my clear preferred option and that of other members and, overwhelmingly, the local community that we should have a tunnel rather than a bridge. I am tempted to say to Ted Brocklebank that, if we had had a tunnel instead of a bridge, he probably would not have experienced the delay that he did a few weeks back. The fact that the committee believes that Transport Scotland improved its consultation and engagement efforts as time went on is cold comfort. Proper engagement and trust were needed at the beginning of the project, when the really big choices were being made.

The real choices—the key decisions—are taken long before a bill such as this one reaches

Parliament. We then continue to engage in an unequal contest between Government and citizen, Parliament and objector. On one side, there are professional transport engineers, civil servants, Queen's counsel and noise experts, who are all being paid handsomely for their services. On the other side, there are ordinary members of the public who are expected to compete, usually with little or no preparation time and with no professional support except for people such as Mary Mulligan and me. It is a very unequal contest.

When every single objection that is brought forward by an objector, including my own, is dismissed by the assessor, I believe that I am right to question the process as much as the policy. In the coming weeks, I will be happy to take part in a consideration of how the process might be amended and improved. There are those who will point to some of the changes that have been made by Transport Scotland behind the scenes, and I know from conversations with the committee clerks, who have worked incredibly hard on the bill, that concessions have been made, but I still believe that the scheme will bring years of disruption and that it will lead to a great deal of traffic congestion.

I remain concerned that, ultimately, the clamour will grow for the existing bridge, which will be the most expensive bus lane in the world, to be open to all road traffic and that the traffic crossing into west Edinburgh will rise dramatically. On-going discussions will be need about that.

As John Howison said, the new bridge is a "distress purchase". It is a distress purchase that has flaws, as it fails to integrate properly with public transport, opens up the possibility of increased traffic in local communities and will cost us a great deal of money without delivering a 21st century solution.

I certainly welcome the decision to listen to our calls to move the main works compound south of the river from the back of hundreds of homes at Springfield, but I am compelled to ask why anyone thought that that was acceptable in the first place.

I pay tribute to those in my own objector group who pushed successfully for better provision for cycling and pedestrian links but, in the main, it is disappointingly clear that the big issues, such as the roads, remain unchanged. This should have been an opportunity to build a future-proofed crossing fit for 100 years. Instead of a multimodal bridge being built, we have pared back on that. We were promised a direct link to the M9 but, sadly, we are not getting that either. Both Mary Mulligan and I have championed the idea of a direct link to the M9 and I am sorry that she was told that her amendment on the matter was inadmissible at stage 2, because of decisions

already taken at the assessor hearings at the earlier stages of stage 2.

Changes made by ministers to the original proposals mean that traffic will come closer to the town of Queensferry, with a resultant increase in noise and reduction in air quality and an increase in traffic heading into West Lothian. I remain concerned about noise. I have had my say on that already, but we may come to regret the decision that we have taken.

The residents of Queensferry and surrounding areas will face years of disruptions and construction traffic. It has a real impact on routes such as Station Road and the High Street and it will have an impact on businesses, so I am pleased that my amendment on proper information was accepted unanimously by Parliament and, indeed, I am pleased by the minister's comments, which went further,

I accept that there is a need to ensure that a road link is maintained over the Forth. Although we know that progress has been made on dehumidification, we do not know and will not know whether that has been totally successful until it would be too late to build another bridge if we left it to that point to make that decision. I have always accepted that. Not only have I had five or six years of dealing with this problem as it has progressed, in a former life I was a member of the Forth Road Bridge Joint Board, so the bridge and the crossings of the River Forth are of great interest to me, and I accept the arguments made by the bridgemaster and others.

The vast majority of MSPs will feel today that the national need for a road crossing at Queensferry is the most important and, indeed, the only issue on which they will vote when they pass the bill today. I understand and respect that view. However, I hope that colleagues will accept that it is also reasonable that, as the constituency MSP for the residents most affected, I continue to raise my concerns about the manner in which the scheme has been brought forward and about the very negative impacts that it will have on people's lives for years to come, as I have done in the past.

16:48

Patrick Harvie (Glasgow) (Green): Before I begin my well-rehearsed discordant note, I add my welcome to Keith Brown in his new role as the Minister for Transport and Infrastructure. I look forward to his appearances at the Transport, Infrastructure and Climate Change Committee, whether he is there to talk to us about public transport or the weather or to tell us what a wonderful new white elephant he has just been sold, because that is what is happening today.

It would be a failure of the Parliament if nobody made a speech disagreeing with the fundamentals. I agree with much of Margaret Smith's speech, but I do not share her final conclusion that we cannot afford to wait before we take the decision. I think that it would be wrong if the Parliament did not hear some expression of that argument during the debate. Nobody disagrees that a road crossing is necessary at—or roughly at—the place where the existing road bridge is, but I believe that the case in favour of an additional road bridge at that point is weak and that it has been weakening far more quickly than the cables on the existing bridge.

There have been complaints about capacity for many years. Some people, certainly north of the bridge, who relied on it daily argued for an extra bridge long before there was any concern or doubt about the state of the existing one. They have argued for more capacity. We all know that that would dump tens of thousands of additional cars into Edinburgh's already congested streets every day, and we should argue clearly against that.

Tricia Marwick: Many years ago, the Conservative Government proposed another Forth crossing. Patrick Harvie is not accurate in saying that those north of the Forth supported that call. Fife Council clearly opposed it. It is simply not true that people north of the Forth have always argued for more capacity.

Patrick Harvie: I did not say "always" or "all people", and I certainly did not say "Fife Council". I said that there have been people in Fife who have argued for more capacity. I think that Helen Eadie has explicitly made the case in the chamber in the past that she has always argued for additional capacity, and she is sticking to that. People have made that case, but the Government's proposal purportedly does not support it. Allegedly, the Government says that the existing bridge will become a public transport corridor only. Jackson Carlaw was perfectly right and honest to say that that position is absurd. The idea that the same commuters will queue up for the same amount of time on the same day to get over a bridge with the same road capacity and will spend the same amount of their lives in traffic jams getting stressed just the same without looking over their shoulders and saying, "Open the bridge," is absurd. Any Government will find it hard to resist the political pressure to increase the overall capacity for road traffic into Edinburgh, and there will be bad consequences as a result of doing that.

Fears have been repeatedly stated and restated—and sometimes overstated—that the existing bridge will be closed. I have not seen any reliable suggestion that the existing bridge is expected to be closed at any point in the foreseeable future on which anyone can

speculate. I think that Keith Brown spoke about dire consequences. There might be dire consequences, but we do not know that yet. It is advisable to find out the state of the existing bridge, whether it might have to be closed to HGVs—not to commuter traffic; I have seen no reliable projection of that—and, if so, when. We do not know the answers to those questions. If we had a delay of only six months or so, we would be closer to having some confidence.

There have been fears that the existing bridge cannot be repaired. That is objectively wrong. I have no doubt that repairs would be disruptive, but building a new bridge is disruptive; indeed, any of the solutions will be disruptive. I am not convinced that, if repair options are being considered, all the options for minimising that disruption have been fully detailed. They have been outlined but not detailed. That is understandable because they cannot be detailed until the state of the existing cables is known.

Margaret Smith: Does the member acknowledge that the state of the anchorages is also an issue and that we know even less about them than about the state of the cables?

Patrick Harvie: I accept that, and my argument stands. We should find out the state of the existing bridge before we decide what we will do with it, whether we need to build a new bridge, or what level of disruption would be implied by repair.

There have also been fears about safety. The minister and his predecessor have said that those fears are misplaced, but sometimes those misplaced fears have been whipped up by the use of emotive images that conjure up the idea of rusting cables and an unsafe bridge. The bridge is not unsafe.

I have said before and say again that the timescale for the decision-making process, which is coming to an end, was designed not around the policy demands but around the timing of the election. I cannot countenance the idea of a £2 billion press release for the current Administration. We are not talking about just a £2 billion press release. If history gives us any lessons, we know that such projects often go well over budget. The issue is not just the bridge's price tag; there is an opportunity cost at a time when public transport spending is going down, huge investment, which is not available, is required in our energy system, and the housing budget is being cut by more than 30 per cent. I appeal to Labour members, who have argued against the cut in the housing budget and about its social cost, not just its economic cost, as the years go by. We have been told not to take a gamble with Scotland's economy. A £2 billion punt is being taken, and it is not just the economy that is being

put as a stake in the gamble; our social objectives are, too.

I will vote against the bill.

16:55

Mary Mulligan (Linlithgow) (Lab): I join other members in welcoming the minister to his new role. I congratulate my constituents in the village of Newton on the work that they have done in presenting the case for a direct link road between the new bridge and the M9. I thank the Forth Crossing Bill Committee for the way in which it received the community's representations on that and other issues.

For the past 18 months, I have represented constituents suffering from the impact of living alongside a building site while the Airdrie to Bathgate rail link was being constructed. Many people were greatly distressed by the process, so I can only imagine how bad it will be for people who are affected for six or maybe seven years by the construction of the Forth crossing. Although I recognise the need for and the benefits of a new crossing, I urge the minister to be vigilant as the project progresses and to deal timeously with problems that arise, whether they relate to noise, which Margaret Smith highlighted, or other issues. For people living in Newton and South Queensferry, problems will be very real.

Throughout the process, I have supported constituents who have argued for a direct link from the new crossing to the M9. At present, an unacceptable amount of traffic uses the A904 through Newton to travel between the Forth bridge and the M9. One need only stand in the village for a few moments before another huge lorry thunders by. We should remember that it is a local road that is maintained by the local authority. Indeed, it is advertised as a tourist route, although I cannot imagine tourists getting any pleasure from taking it. Our real concern is that, as the new crossing is further west towards Newton, more people will use the rat run and the quality of life for people who live just a few feet from the road will deteriorate still further.

This could be seen as a nimby issue, but that would be unfair because there are several features that move it beyond the local context. I will mention two. We will be asking drivers to use a state-of-the-art 21st century bridge and then, to access the M9 motorway, we will ask them to use a local road with twists and turns and dips in it that were impassable in last week's snow. Scottish Chambers of Commerce and the West Lothian Chamber of Commerce have said that we need a modern and efficient link to the motorway. If we listen to the business community's point that we

need a new bridge, why do we not listen to its point that we need a new link road?

The Scottish Government has missed an opportunity to save money through the link road, as it could have joined the motorway at the new Winchburgh junction, which would have saved the cost of a new junction and of adjustments at junction 1A. However, the Scottish Government and Transport Scotland rejected the possibility of the link road, which I very much regret. I believe that, unfortunately, they, too, will regret it in time, but they will not regret it nearly as much as the people of Newton will. They are the ones who will suffer most as a result of there being no direct link.

I want to flag up concerns about the hybrid bill process. Some members might ask why, if I was so convinced of the need for a bridge-M9 link, I did not lodge an amendment to have one built. The process means that I could not do that without halting the whole bill, and I did not want to do that. Therefore, we have a situation that is not acceptable. I appreciate that the committee has called for a report to review the process. I hope that my constituents and I will have a chance to contribute to that report.

I look forward to working with the minister during the construction process to ensure that people are not disadvantaged. I also look forward to the opening of the new Forth crossing.

16:59

Jim Tolson (Dunfermline West) (LD): I, too, welcome the new Minister for Transport and Infrastructure. I know that Keith Brown has been diligent in many things that he has done in the Parliament and I am sure that he will do his new duties as diligently as he has done many others.

The Forth replacement crossing will be an essential strategic link for the whole of Scotland. For many years, the current Forth road bridge has been operating grossly over capacity. Rather than have further delays, as some members have suggested, it is of the highest priority that we move the project forward with all possible speed. I say that not just for my constituents in Dunfermline West who commute across the existing bridge regularly, nor, as Ted Brocklebank suggested, for the people of Fife, but for the many people in Scotland—visitors and residents alike—for whom a reliable Forth crossing is an essential part of day-to-day life.

Although there are legitimate concerns about construction noise, we believe that the measures in the bill will reduce such effects as much as possible. In fact, much of the likely construction noise will come from the construction of the road rather than the construction of the bridge.

I would like the minister, in his summing up, to give further information on a point that he touched on earlier in relation to the park-and-choose options. He helpfully suggested that the Halbeath park-and-choose facility will go ahead. I urged his predecessor many times to proceed with the park-and-choose facilities at both Halbeath and Rosyth, because they will both make sure that more people use public transport not just from Fife, but from further north as well, reducing the impact of traffic on the new bridge. I ask the minister to clarify whether the park-and-choose facility at Rosyth will also go ahead.

The need for a new bridge is incontrovertible. Keith Brown, among others, said that having no crossing would lead to dire social and economic consequences. Indeed, as one member said—I cannot remember who it was—the effect on Fife of having no crossing could be a loss of £1.5 billion a year. As is often the case, Charlie Gordon made a moot and interesting point when he said that it would be an unacceptable gamble not to have a Forth replacement crossing proceed now. I agree 100 per cent with him. The effects on the Scottish economy, not just the Fife economy, would be extremely significant.

Tricia Marwick helpfully referred to the corrosion on the existing Forth road bridge, which we know has been significant. A loss of 10 per cent of the strength of the existing bridge is of great concern and, as she rightly said, that strength will not come back even if—and it is a huge if—the dehumidification works.

Hugh O'Donnell also touched on the economic need for a bridge.

The cost of the crossing has been mentioned by a number of members. Just over a quarter of the £2 billion is the cost of the bridge itself; most of it is the cost of the road construction, et cetera. Most of the concerns of Margaret Smith's constituents arise from that part of the project, and I understand why. I am sure that, if I were in her shoes as a local member on the south of the river rather than the north, I would have similar concerns on behalf of my constituents. I commend my colleague for so ably representing her constituents.

Dave Stewart made an interesting point about the optimism bias and the VAT rate. It is important that we get some answers from the minister on that. Everybody wants to make sure that, whatever its budget, the crossing comes in on budget and on time, providing the vital link to which I have referred.

Margaret Smith and Mary Mulligan both made important and interesting references to the earlier plans that had a direct link to the M9. I was quite a fan of that sensible idea. For a number of reasons,

however, all sorts of suggestions, including a direct link to the M9 and possible multimodal use of the new crossing, have had to be pared down to minimise the costs. There is also a cost balance to be struck in relation to quality.

In summary, with the possible exception of Margaret Smith—who has strong constituency concerns—and one or two others, the Liberal Democrat group will support the passing of the bill. It is the right decision for not just my constituents, but individuals and businesses throughout Scotland. I also look forward to seeing three iconic bridges spanning the centuries across the Forth at Queensferry in just a few years' time—a true tribute to the engineers, designers and politicians of the day.

17:04

Gavin Brown (Lothians) (Con): I commend the Forth Crossing Bill Committee for all its work, for which it has received plaudits from all sides. The bill that we have before us is unquestionably better as a consequence of that committee's work.

I, too, welcome Keith Brown to his role as minister. This morning, I was taken aback to hear what a great start he had made. I was listening to the news bulletin on Galaxy FM on the way in today, and it was said that the cost of the Forth replacement crossing would be £2.3 million, which I thought was a phenomenal piece of work by Mr Brown in just a matter of days.

The debate has, quite rightly, been consensual. It is right that it is consensual because of the size, scale and cost of the project. It is also right that it was kept consensual because the decisions that are taken today will affect the next Government for the entire parliamentary session and the Government that will start in 2015 for a fair bit of that parliamentary session.

As many members have said, the project is an urgent priority for Scotland. It was certainly the number 1 transport project in the Scottish Conservative manifesto at the last election.

Paragraph 4 of the policy memorandum talks about

“a continuing and reliable primary road link between Edinburgh and the Lothians and Fife and beyond in order to safeguard the economy, particularly of the east coast of Scotland.”

As other members have said, the crossing is an economic imperative for Scotland. Councils and chambers of commerce support it. Fife Chamber of Commerce's view was

“We will not rest until such time as the new crossing is in place”.—[*Official Report, Forth Crossing Bill Committee*, 24 February 2010; c 24.]

The decision that the Parliament takes today is important because investment decisions could be put on hold without a clear signal from the Parliament at decision time.

We have heard some of the arguments about why the bridge is so important and why it is needed, and we heard from Patrick Harvie some of the arguments against it. One thing is clear: the cables in the existing bridge have been weakened. The drying process might prevent or slow down the rate of corrosion, but it is obvious that the lost strength in those cables will not be recovered, no matter what happens. Tricia Marwick gave a loss of strength figure of 10 per cent. Others have given a higher figure; 10 per cent seems to be the lowest figure for the strength that has already been lost.

The committee's stage 2 report said that all committee members were convinced that there is no alternative to an alternative Forth crossing. That is absolutely right. I make no apology for reiterating Jim Tolson's reiteration of Charlie Gordon's point that to do anything other than vote for the bill would be to gamble with Scotland's economy in the medium term. That is not a gamble that the Scottish Conservatives are prepared to take.

At the start of my speech, I said that the bill is better because of the committee's work. It is also better because of Margaret Smith's amendment 4, which the chamber agreed to unanimously.

There is a cost to going ahead, but the cost of not going ahead will be far greater, which is why I will support the bill at decision time.

17:07

Charlie Gordon: This has been a good debate. The new minister has not put a foot wrong, which is more than I can say for myself. Earlier, I said that the opportunity cost per day of a lane closure on the existing bridge was nearly £700 million. It is not quite that much; it is £700,000—still a lot of money.

Jackson Carlaw, as convener of the hybrid bill committee, gave an interesting summation, but then the Tory transport spokesperson in him came to the fore and, not for the first time, he marched towards the sound of gunfire, saying that we need a debate about using the existing bridge for more than just public transport and cycling once the new bridge has been completed.

Hugh O'Donnell made the interesting suggestion that, if the project is not delivered on time and on budget, the Transport Scotland officials should be sacrificed ancient-Greek style. Labour reserves judgment on that proposal.

Perhaps more seriously, Mr O'Donnell suggested that cost control was an issue. We all worry about that for this and any other project, do we not? During the summer, I had a look at the site of the M74 completion project. I am pretty familiar with the contract for that project. It is perfectly possible to obtain closure on a contract when most of the risks are with the public sector, to control costs and—as in the case of the M74 completion project—to do so not just on time, but ahead of schedule. I think that the road will open in the summer, although exactly who will open it is for another day.

Tricia Marwick made her usual contribution on the new bridge, which she has consistently supported. In the stage 1 debate back in May, I suggested on the record that she was originally a Glaswegian but, after the debate, she corrected me on that privately. That is her loss. She made a strong point, which other members have repeated. She is sitting with the Conservatives now—they are cutting some kind of deal, perhaps to slam the door on Labour. Other members have taken up her strong point that, even if repair of the existing bridge is wholly successful, it has been irreversibly weakened by the difficulties that it has had in recent years.

Dave Stewart went into detail on optimism bias, at which John Swinney became quite enervated. From a sedentary position, John Swinney accused my colleague Mr Stewart of pessimism bias. I look around the chamber for Iain Gray or Frank McAveety to keep me right on my Gramsci, who I think referred to pessimism of the intellect and optimism of the spirit—I say that with apologies to Gramsci. I prefer to paraphrase Kipling. When it comes to optimism and pessimism, we should

“treat those two impostors just the same”.

We all know that Ted Brocklebank is a Fife nationalist, but he complained that he was stranded in Fife last week. What is wrong with that? That same week, I was stranded in Edinburgh—how do members think that I felt about that? He said that the BBC's “Reporting Scotland” programme should be renamed “Reporting Glasgow”. Tonight, for sure, it will be reporting Ted Brocklebank.

Margaret Smith and Mary Mulligan fought the good fight on their constituents' behalf. We should note what they said that their constituents thought were the shortcomings of the new hybrid bill procedure. We must all address those points in the future.

Patrick Harvie wanted us to take a gamble. Taking a gamble with the nation's infrastructure is not serious politics.

Patrick Harvie: Will Charlie Gordon give way?

Charlie Gordon: I am sorry—I am in my last few seconds.

Taking gambles is all very well when we calculate the risks, but when the consequences of losing are unconscionable, we have only one choice before us.

17:13

Keith Brown: I have enjoyed listening to the debate. If the truth were told, I have enjoyed listening more than speaking, because my voice is not doing well. I am glad that I have a couple of quiet days ahead of me on Thursday and Friday.

Before responding to individual comments, I will make some important points. It would have been better if more members had been in the chamber. As many members have, I record my thanks and admiration for the work that my good friend and colleague Stewart Stevenson undertook. If the bill is passed today, it will be due to a recognition of, and a worthy testament to, his drive, enthusiasm and dedication to the project. His involvement and leadership in delivering the project from development to design and through the bill process were considerable. I am sure that all members acknowledge his substantial contribution.

There is general consensus on the bill albeit, sadly, with one or two notable exceptions. I thank Parliament greatly for its interest and support. This is a proud day for Stewart Stevenson—it should be—for the Parliament and, most important, for Scotland. This is the day when Scotland commits to a world-class structure across the Forth. As a couple of members have mentioned, we will have three bridges—three iconic designs made over three centuries—in one splendid Scottish setting. This is not only about structures. Beautiful though they are, such structures are merely a means to an end in which our purpose is, of course, to secure our future economic and social wellbeing, thereby providing an inclusive and economically vibrant Scotland.

A number of points were raised in the debate and I will try to address them. In his summing up, Charlie Gordon referred to the Cabinet Secretary for Finance and Sustainable Growth as being “enervated”. I have never seen John Swinney enervated. I have seen him energised perhaps, but I have to say that: he is my boss. Charlie Gordon made a number of interesting points, to which I will come back. He also touched on points that members who spoke before him had made, not least of which were Jim Tolson’s points on the Halbeath junction and Rosyth. The Halbeath commitment remains in place and there will be further discussion on the matter with Fife Council. We cannot put a price on the works until we have

had that discussion. I cannot say just now whether we can commit to Rosyth. We do not yet have sufficient details from the council on that, but I am content to explore the option, while being mindful at all times of funding constraints. We will explore the option as best we can as things go on.

I say to Mary Mulligan that we are providing a link from the new bridge to the M9, using the existing asset of the M9 link. I remind her that we are making improvements to traffic management in Newton: we will sign traffic from the M9 through to Newton. I mentioned earlier the funding commitment that we will make.

I say to Dave Stewart that we are confident that we will be able to sign the contract in April; we are very confident on that and we want to do it because we can then commence work in the summertime. David Stewart also asked about EU funding applications. We have done that but, unfortunately, we were unsuccessful. He also made a point on regular updates to committees. I will continue the commitment that Stewart Stevenson gave previously; Dave Stewart will be aware of the updates that Stewart Stevenson has already given. We will provide six-monthly updates.

Dave Stewart also spoke of his concern about the two consortia that are bidding for the project. My view is that there is very little likelihood that either would like to withdraw, given how much they have already put into the process that—of course—started quite some time ago. He also made a reasonable point on the adopt an apprentice programme. That issue is one for my colleague Angela Constance, who has the skills remit. We continued the programme this year, but whether it will continue in the future depends on budget constraints. I will ensure that my colleague takes up the point.

A number of members made the point to Patrick Harvie that the real risk is that, if we were to wait until we had checked the cabling—which will happen in 2012—and the results were wrong, we would not have enough time to build the new bridge. If we do that, we will stand to be condemned by everybody in Scotland.

Patrick Harvie: Does the minister recall that the initial proposal was to report back on the dehumidification work in 2011? Why cannot we proceed according to the original timescale? That would result in only a six-month delay between receiving the report and the current projected timescale for signing the contract.

Keith Brown: The member should know that the cable inspection results will not be known until 2012. This is not only about cabling. As, I think, Margaret Smith said, it is about other aspects of the bridge, too. We cannot risk not having a

replacement crossing in place by the time drastic action needs to be taken in terms of remedial work to the cables and elsewhere on the existing bridge.

In approving the bill to construct the bridge, Parliament will be protecting and investing in the economic wellbeing of Scotland. We will be protecting and investing in our future—Scotland's future. In voting for the bill today, we reaffirm our commitment to our collective future. As I said, we are building an iconic bridge—the third such bridge across the Forth.

Before I finish, I should say that I appreciate Ted Brocklebank's statement on iniquitous tolls. I very much agree with him: we should not have iniquitous tolls on any bridge in Scotland. I worked very hard on that in the past.

As I said, in voting for the bill today, we reaffirm our commitment to our collective future. All that remains is for me to ask Parliament to formally support the motion.

Business Motion

17:19

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-7598, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 22 December 2010

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Equal Opportunities Committee Debate: Report on post-legislative scrutiny: the Mental Health (Care and Treatment) (Scotland) Act 2003

followed by Stage One Debate: Protection of Workers (Scotland) Bill

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 23 December 2010

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Debate: Violence against Women

11.00 am Themed Question Time
Europe, External Affairs and Culture;
Education and Lifelong Learning

11.40 am General Question Time

12.00 pm First Minister's Question Time

12.30 pm Decision Time

Wednesday 12 January 2011

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Business

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 13 January 2011

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am General Question Time

12.00 pm First Minister's Question Time

2.15 pm Themed Question Time
Health and Wellbeing

2.55 pm Scottish Government Business
 followed by Parliamentary Bureau Motions
 5.00 pm Decision Time
 followed by Members' Business—[Bruce Crawford.]
 Motion agreed to.

Decision Time

17:20

The Presiding Officer (Alex Fergusson): There are two questions to be put as a result of today's business.

The first question is, that motion S3M-7566, in the name of Bill Butler, on the Damages (Scotland) Bill, be agreed to.

Motion agreed to,

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

The Presiding Officer: The next question is, that motion S3M-07593, in the name of John Swinney, on the Forth Crossing Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)

Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Mulligan, Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Smith, Margaret (Edinburgh West) (LD)

The Presiding Officer: The result of the division is: For 108, Against 3, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Forth Crossing Bill be passed.

RAF Leuchars

The Deputy Presiding Officer (Alasdair Morgan): The final item of business today is a members' business debate on motion S3M-7530, in the name of Ted Brocklebank, on retention of RAF Leuchars. The debate will be concluded without any question being put.

Motion debated,

That the Parliament considers that RAF Leuchars plays an essential role in the defence of the United Kingdom; commends the professionalism and dedication of military personnel who have served or serve there; considers that those who have been deployed from Leuchars on active service have given exemplary service since the First World War; believes that the case for RAF Leuchars remaining as one of the United Kingdom's two main fighter strike bases is overwhelming as it has a pivotal strategic position on the east coast and is adjacent to Scotland's major population centres; understands, however, that any considerations on how the United Kingdom's air defences are deployed and where aircraft should be based must be made on strategic grounds, and believes that the Secretary of State for Defence must make his decision on that basis.

17:22

Ted Brocklebank (Mid Scotland and Fife) (Con): Tonight's debate is as important as it is timely, especially in the light of renewed press speculation that Leuchars is to close and, indeed, that the Royal Air Force has recommended its closure. The Ministry of Defence has dismissed the story as complete speculation and as

"deeply unsettling for staff at the RAF bases and their local communities".

The ministry is right to say that the reports are "deeply unsettling", with many people in north-east Fife now facing an agonising Christmas because of the prospect of Leuchars closing. However, is it right when it claims that it is still

"far too early to say"

what the RAF's final recommendation will be?

As a one-time newsman, I think that I recognise a leak when I see one, and this week's story in *The Scotsman* carried all the usual hallmarks. The story seemed to have emanated from either Westminster or Whitehall and claimed that senior RAF officers were fighting tooth and nail to keep the Marham air base in Norfolk. If Marham were retained, the argument went, either Leuchars or Lossie would have to be scrapped, because the MOD could afford to keep only one strategic air base in Scotland. Allegedly, Leuchars was to close on cost grounds.

In tonight's debate, there will be those who—rightly—will develop the argument about the economic threat to the village of Leuchars and other north-east Fife communities that rely heavily on the air base. Constituents in my part of the

world are now in exactly the same state of limbo as the residents of Lossiemouth. If Leuchars closes, unemployment in the area is likely to be at least as bad as in Moray, given that the only other large local employer, the Guardbridge paper mill, closed a couple of years back.

Arguments will also be made about the distinguished and crucial role that RAF Leuchars has played in the United Kingdom's air defences, dating back to 1911. I can add a personal note to that. My father, a Yorkshire lad, was posted north to Leuchars and was one of those who took part in the bomber raid on the German pocket battleship Scharnhorst in Stavanger fjord in February 1941. Badly shot up, his Beaufort torpedo bomber limped back to Leuchars. Had he not made it home—it was touch and go—the local lass he had just married would have been widowed and I would not have been here to speak to tonight's motion. I therefore have strong personal, as well as constituency, reasons to argue the case for RAF Leuchars.

No matter how proud the base's history and no matter how serious the likely local economic impact of its closure, I believe that the MOD must base its ultimate decisions on what is right for the future air defences of the United Kingdom. I have already written to the Secretary of State for Defence, Dr Liam Fox, and I will be writing to him again to hammer home this message. I believe that, by any logical yardstick, be it cost efficiency or future strategic capability, the case for the retention of RAF Leuchars is overwhelming.

Now for a brief history lesson. In the wake of 9/11, and after considering the alternatives, which included Lossiemouth and Kinloss, the MOD decided that Leuchars was the right place to headquarter the northern element of the UK's quick reaction alert, based on the new Eurofighter Typhoon. That would build on the excellent job that Leuchars had been doing for decades, intercepting and shadowing aircraft from the former Soviet bloc countries as they carried out exercises around the Scottish coast.

Three squadrons of the latest Typhoons would be based at Leuchars to handle air threats from whichever quarter, and the runways would be upgraded and extended for that role. That work has now been carried out, at a total cost of about £37 million, according to the National Audit Office. During that period, approaches were made to the MOD about the possibility of using part of the Leuchars site as a commercial airport serving Dundee and Fife. That proposal was turned down flat by the MOD, so important was Leuchars, apparently, to the defence of the realm. Are we now to believe that the RAF is prepared simply to abandon Leuchars and to write off £40 million at a time of major cutbacks in defence spending? Such

a decision would surely be seen as blatant capitulation to political pressure from other interested parties, be they north or south of the border. Clearly, it would be totally illogical on any strategic grounds, because Leuchars was the original and preferred option of the MOD.

I am trying very hard not to get into a Leuchars versus Lossiemouth beauty contest here—that would benefit neither community. I seek consistency in decision making by the MOD, along with answers to the following questions. Does the MOD agree that any defence decisions should be made purely on strategic and cost grounds? What changes that would necessitate a change in operating base in our strategic defence strategy have occurred in the four years since the MOD began upgrading the runways at Leuchars in readiness for the new Typhoons? Do our defence chiefs believe that it would be cost efficient to write off the £40 million-worth of runway improvements at Leuchars and instead base the Typhoons elsewhere? Can the MOD confirm that the runways at Lossiemouth and Marham are not capable of operating with Typhoons without considerable further expense for upgrading? Those are fairly basic questions, and I have already put them to the MOD and the RAF—so far with little in the way of a satisfactory response.

If we are to believe press reports, leaks to interested MPs about the RAF's alleged recommendations are rife, yet responses to legitimate questions from elected MSPs seem to fall on deaf ears. The MOD tells us that a decision is still months away, but MPs in the Norfolk area are reported to be piling on political pressure for the retention of RAF Marham. Fife MPs, including Gordon Brown, Sir Menzies Campbell and Lindsay Roy, as well as MSPs, have been pressing the case for Leuchars, just as local representatives did for RAF Lossiemouth. Those are perfectly legitimate lobbying ploys, and I am happy to be associated with both the Leuchars and Lossie campaigns. I believe that both bases should be part of our defence capabilities.

The Secretary of State for Defence must take all the evidence on board while ignoring the leaks, the froth and the press speculation. He must then clear-headedly make the appropriate decisions for the future defence of the United Kingdom. In that context, I believe that he will find the case for the Typhoon squadrons to continue operating from Leuchars to be unanswerable. Leuchars was the right choice when the MOD originally made it, and it is the right choice a decade later.

17:30

Iain Smith (North East Fife) (LD): I thank Ted Brocklebank for securing this important debate. I

welcome the cross-party support that there is for the campaign to save RAF Leuchars.

For nearly 100 years, RAF Leuchars has played an important role not just in the defence of Scotland but in the community of my North East Fife constituency. At present, the station is home to 6 squadron, 111 fighter squadron, 6 force protection wing headquarters, the 58 RAF regiment squadron, 612 county of Aberdeen squadron of the Royal Auxiliary Air Force—or the air transportable surgical squadron, as it is better known—the 71 Engineer Regiment (Volunteers), the east of Scotland universities air squadron and 12 air experience flight. RAF Leuchars employs around 1,560 service personnel, and 220 civilian staff are directly employed.

The RAF Leuchars mountain rescue team's role is to provide search and rescue for those who find themselves in trouble in the mountains and remote areas of Scotland. RAF Leuchars also supports military operations abroad: between 5 and 10 per cent of its personnel are engaged in operations and deployments in the middle east, Afghanistan and the Falkland Islands at any one time.

Of course, RAF Leuchars is the home of the only remaining battle of Britain air show—the second-largest non-sporting event in Scotland, attracting tens of thousands of visitors every year and raising funds for the RAF Benevolent Fund, the Royal Air Forces Association and local charities. Personnel from the base are involved in many community activities, supporting charities in and around Leuchars.

There is no doubt but that the underlying strategic defence case for retaining RAF Leuchars is overwhelming. It is in the right place to deliver the quick reaction alert—it is the top priority for RAF Leuchars—which requires fighter aircraft to hold high alert for 24 hours a day, 365 days a year in order to scramble and to intercept unidentified aircraft approaching UK airspace.

Since 2005, RAF Leuchars has engaged around 50 times with foreign aircraft attempting to enter our airspace. If ultimately necessary, fighter aircraft from RAF Leuchars can be above Edinburgh or Glasgow—or even Newcastle or Aberdeen—in a matter of minutes. Leuchars can provide a rapid response to air threats to tier 1 targets such as Torness nuclear power station, petrochemical plants and major cities. Some 80 per cent of Scotland's population is within 80 miles of Leuchars and can be reached in minutes. The key training area for the Typhoon is over the North Sea due east of Leuchars. As Ted Brocklebank said, the reasons that led to RAF Leuchars being chosen as the right location for the new Typhoon fighter remain the same reasons that it is the right location today.

I am not saying that to undermine the role of RAF Lossiemouth. It too has a vital strategic role, but it is a different role from that of RAF Leuchars. That is why I am heartened by the response to questions in the House of Commons from my colleague Sir Menzies Campbell MP by the defence secretary Liam Fox, who said:

“the basing review will be based purely on what gives Britain the best defence network ... it is the Ministry of Defence’s job to consider what makes Britain safest.” — [Official Report, House of Commons, 13 December 2010; Vol 520, c 662.]

That must mean the retention of RAF Leuchars.

Will the minister say in responding whether he agrees with that point? Does he also agree with the First Minister’s reply to my question on 25 November that

“it is not acceptable to close RAF Lossiemouth and ... it is not acceptable to close RAF Leuchars”?—[Official Report, 25 November 2010; c 30911.]

Will the minister give an assurance that the Government will campaign to save RAF Leuchars with every bit as much commitment and vigour as it is campaigning to save RAF Lossiemouth?

On the front page of today’s *Courier*, the First Minister’s spokesperson insists that the Scottish Government is “working extremely hard” to save RAF Leuchars from closure. That is welcome news, and I hope that the minister can advise the chamber in exactly what way the Scottish Government is working extremely hard. Will he let us know what it has done to date to support the campaign to save RAF Leuchars and what further action it plans to take in the coming weeks? In that respect, I welcome the intended meeting of Fife representatives, Fife Council and the Fife Chamber of Commerce, although I think that the date may need to be revised.

We all owe a debt of gratitude to the personnel from RAF Leuchars, both past and present, who have put their lives at risks in conflicts from world war two to Afghanistan. RAF Leuchars is more than an air base: it is the heart of the community and deserves our full support.

17:34

Tricia Marwick (Central Fife) (SNP): The behaviour of the MOD over Leuchars has been disgraceful. It has proved impossible to get information from it about its intentions for Leuchars, and it has refused even to confirm that Leuchars is being considered for closure. Until a few weeks ago, no one had any idea that that was being considered, never mind threatened; that information has become available to us only in the press.

The case for Leuchars remaining open is overwhelming on the grounds of its strategic importance to the UK and the social implications of closure for the local area and the rest of Fife and Tayside.

The MOD is trying to split communities by pitting Leuchars against Lossiemouth. That simply will not happen—we must not allow it to happen. The Scottish National Party supports the retention of all three facilities—Kinloss, Lossiemouth and Leuchars. I am surprised that Iain Smith is not aware of the Scottish Government’s stance because we have made it clear. He seeks answers from the Scottish Government, but he should also seek answers from the Liberal-Tory coalition at Westminster, because it will make the final decision, not the Scottish Government.

The campaign for Leuchars has cross-party support, like the one for Kinloss and Lossiemouth, and the support of Fife Council, which has also deplored the MOD’s attempts to divide and rule. I note that Peter Grant, the leader of Fife Council, is in the public gallery listening to the debate.

As Ted Brocklebank said, aviation at Leuchars dates back to 1911. Recently, £25 million was invested in upgrading the runway. Leuchars now has one of the best RAF runways in the United Kingdom and is fit for purpose for a further 25 years.

Nearly 1,800 people are directly employed at Leuchars. Businesses, schools and local services rely on the base and the viability of all of them will be put at risk if it closes.

The spin and off-the-record briefings must stop now. The MOD owes it to the personnel and population of Leuchars to make clear whether the base is being considered for closure. However, let us not hold our breath for the MOD. The campaign to retain Leuchars has started already, and I hope that, tonight, the whole Parliament will make its view clear to the Ministry of Defence.

17:37

Claire Baker (Mid Scotland and Fife) (Lab): I thank Ted Brocklebank for initiating the debate and giving the Parliament an opportunity to express its support for RAF Leuchars. I acknowledge the motion in the name of Iain Smith who, as the constituency member, has made clear his opposition to closure. I also acknowledge the commitment of politicians from throughout Fife and across the political parties, and I welcome the invitation that came this afternoon from the Minister for Parliamentary Business to attend a cross-party meeting in Fife.

Reports in yesterday’s *Scotsman* suggest that the decision to close RAF Leuchars is inevitable.

Such threats are concerning. The proposal to withdraw the RAF from Leuchars is short-sighted and wrong, and I hope that the debate will make clear the Parliament's opposition to it.

Some people have the idea that RAF bases do not contribute to the local economy—that they operate independently, that all economic activity happens within the base and that they can be removed with little impact. That is not the case.

Like many in Fife, I have a family connection with RAF Leuchars. My uncle was an engineer in the RAF and, after being stationed in Germany and Wales, he and his family were stationed at Leuchars. I remember the excitement of visiting their home on the base. Once he had retired from the RAF and moved to Guardbridge, he continued to work on the base at the mess and, like many people in the surrounding community, he still had a personal and economic tie to it.

The air force has been in Leuchars in Fife since 1911. The base is an important centre for the north-east Fife economy. It brings diversity to the local economy—a largely rural economy that is built on small and medium-sized businesses—and makes a valuable contribution to it. Fife Council, along with the Fife Chamber of Commerce, is playing an important role in highlighting the economic impact that closure would have on the local community and in stressing the base's importance to local suppliers.

However, the case for RAF Leuchars is not only its economic contribution, because the base is also part of the local community. It provides day care services, child and youth clubs and a recently opened, purpose-built community centre. Nor is the case for retention only about the local community. I understand that the decision must be driven by the UK's strategic defence interests, but I am concerned that—as with the strategic defence review—it is being driven by money, not military strategy.

I argue that the UK Government's approach to defence is increasingly about the Treasury's approach to cutting the deficit rather than about strategic decision making. A more considered approach to tackling the deficit could mean keeping the bases open. However, I am keen to demonstrate the unity of feeling from members across Fife about RAF Leuchars and to make the defence case as strongly as possible in an attempt to influence the decision positively.

RAF Leuchars occupies a unique position, with 80 per cent of Scotland's population being within 80 miles of the base. Its key role is to maintain the UK's quick reaction alert (interceptor) north, which is pivotal in preventing unidentified aircraft from entering UK airspace and in intercepting them. Its location in Fife is vital to the effectiveness of that

system. The decision to restrict the number of Typhoon jets is threatening the viability of RAF Leuchars and driving the move to have only one base. The decision to deploy three squadrons of Eurofighter Typhoon aircraft at Leuchars was based on long-term strategic considerations and, as Ted Brocklebank pointed out, nothing has changed to undermine the rationale for that deployment.

RAF Leuchars provides a long-standing centre of defence excellence that would be difficult to replicate elsewhere. It offers history, continuity and expertise. I believe that it has a future and that it should continue to play a key role in the UK's defence strategy.

17:41

Maureen Watt (North East Scotland) (SNP): I, too, congratulate Ted Brocklebank on securing this evening's debate. However, I cannot resist the urge to point out the irony of a Tory MSP being responsible for the debate, given that it is a member of his party at Westminster who is driving the threat to air bases in Scotland. I welcome the fact that at Holyrood, at least, there is clearly cross-party support for the retention of RAF Leuchars—although I note that although Iain Smith has urged us to support his motion, as of yesterday he had not added his name to Mary Scanlon's motion on RAF Lossiemouth.

Just a few short weeks ago, I spoke in the members' business debate on RAF Kinloss and RAF Lossiemouth, and I was among the many people who marched to try to convince the UK Government of the need to retain RAF Lossiemouth because of the vital military functions it provides to the UK and the overwhelming role it plays at the heart of the local community in Moray. The large number of people who turned out to campaign for the retention of RAF Lossiemouth clearly demonstrated how strongly people feel about the need to keep the base, but I know that no one on the march would want the saving of RAF Lossiemouth to come about as the result of another base being ripped out of the heart of another Scottish community. Playing one community off against another, as seems to be happening, is frankly deplorable and it is not a trap that anyone who wishes to see the retention of RAF Lossiemouth and RAF Leuchars should fall into. Both bases have strong cases for their retention, and the message from the Scottish Parliament, the Scottish Government and everyone who is campaigning on the issue must be that both bases should continue to play their vital roles.

One of the most damaging aspects of the current discussions is the uncertainty they are causing for service personnel, their families and

the communities that rely on the bases for their survival. Whatever the outcome of the decisions that are made on the future of the bases, they need to be made in a far more timely manner than the current glacial speed of the UK Government. The Tory and Lib Dem Government says that it is undertaking a strategic defence review, but it does not say much about the efficacy of the review if decisions on the closure of air bases are already being made.

No one has mentioned the role that the two bases play in mountain and sea rescue, which is a strong part of their training, never mind the vital role that they play for Scots in that work.

Contradictory statements have been made about the criteria that will be used to make the final decision. That is also far from helpful. Given the scale of the impact that any closure would have, the process needs to be clear and transparent. The UK Government needs to make a clear and unambiguous declaration of how and when the decision will be made, to allow people throughout Scotland to make a loud and resounding argument for the retention of RAF Lossiemouth and RAF Leuchars.

The people of Lossiemouth and the north-east have made clear their feeling about the air bases in the north-east. Many people, not least the thousands who attend Leuchars air show annually—I am among those who have enjoyed that spectacular—will be very sad if the UK Government decides to close RAF Leuchars, and I sincerely hope that that will not happen.

17:45

Murdo Fraser (Mid Scotland and Fife) (Con): I congratulate my good friend Ted Brocklebank on securing tonight's debate on a subject that is very important for his constituents and mine.

We have heard from MSPs of all parties about the importance of RAF Leuchars to Fife, to Scotland and to the United Kingdom. As has been said, the base plays an integral role in the defence of the UK, and it is why many families call Fife home. As Ted Brocklebank pointed out, it is vital to the Fife economy. Businesses in Fife and further afield, including businesses in Angus and Perth and Kinross, would be affected if the base were to close.

As a number of members have said, RAF Leuchars is more than a base for fighter planes. Iain Smith pointed out that it is home to the Territorial Army's 71 Engineer Regiment, 58 squadron of the Royal Air Force Regiment, the Royal Auxiliary Air Force and the regimental headquarters of the RAF cadets in Scotland.

As Ted Brocklebank pointed out, yesterday, following a speculative story in one newspaper, the MOD said:

"There are no plans to close RAF Leuchars, any suggestion that it will close is pure speculation. The RAF is doing a full study of all its bases across the UK, and this is expected to be finalised in March or April. It is far too early to say what the outcome of that study may be, and any speculation is deeply unsettling for staff at the RAF bases and their local communities."

I think that that statement on RAF Leuchars is welcome, and I completely agree that any rumour or speculation on the base's future is deeply unsettling for those who work there, as well as for the local communities and businesses, the livelihoods of which depend on the base.

Nevertheless, it is important for the debate to set a marker and send a message to the MOD that there is strong feeling and affection for RAF Leuchars, and that we have high regard for its importance to Scotland and the UK. As with RAF Lossiemouth, I believe that we must present a united front in Scotland and say with one voice that RAF Leuchars must not be closed. There must be a genuine cross-party coming together on the issue. Despite Maureen Watt's best efforts, I believe that that is what we have seen in the debate.

A cross-party initiative was launched in defence of Lossiemouth, and the same energy must go into a campaign for Leuchars. It should not be a case of keeping either RAF Leuchars or RAF Lossiemouth, thereby setting one base against the other. We should not squabble for an either/or scenario but campaign and make the case for the retention of both bases. That is why I look forward to the minister making a robust case and issuing a rallying call for the retention of both bases.

Next year, 2011, will mark 100 years of aviation at Leuchars. In 1911, a balloon squadron of the Royal Engineers set up a training camp in Tentsmuir forest. Squadrons 224 and 233 were stationed at the base in world war two. On the second day of the war, a Hudson of 224 squadron attacked a Dornier 18 over the North Sea, giving Leuchars the proud accolade of being the base to the first British aircraft to engage the enemy in world war two.

I want RAF Leuchars to continue for another 100 years. It has the full support of the Scottish Conservatives.

17:49

The Minister for Parliamentary Business (Bruce Crawford): I, too, congratulate Ted Brocklebank on securing an extremely important debate and on its timing.

As we have heard, there is no doubt whatever that RAF Leuchars plays a vital role in the defence footprint of Scotland and the rest of the UK. Since the decisions of the strategic defence and security review were announced in October, we have pressed the UK Government and the MOD for the clarity and certainty that members have asked for during the debate. Even before those decisions were announced, we worked closely with all parties in the Parliament to create a united front and to stress the need for the UK Government to take the social and economic implications of its decisions into consideration.

I believe that we need the argument to go beyond the strategic defence reasons. Michael Moore and Danny Alexander agree but, unfortunately, I do not think that we have yet got Liam Fox in that space. What is clear is that we still have a long way to go to convince the UK Government of that principle and to hold it to its commitment to engage with communities.

The strategic defence and security review has cast doubt on the future of all the RAF bases in Scotland. We already know that RAF Kinloss will cease to be an RAF base with the withdrawal of the Nimrod MRA4. The economic impact in Moray is already being felt, and I know that we all share concerns about the implications for the local community and the local economy.

However, our debate today is not about Moray. Today, we are discussing the very real threat to RAF Leuchars. The UK Government is conducting a full bases review, the outcome of which is scheduled for the spring of 2011.

The First Minister has been consistently clear on this issue, which is of national importance to Scotland. Throughout our engagement with the UK Government and the MOD, the retention of all of Scotland's RAF bases has been at the heart of our argument. There are clear strategic arguments for Leuchars to be retained. As others have said, it is currently home to the pilots of 111 fighter squadron, who fly Tornado F3 aircraft, which help to defend our UK airspace but which are being phased out. When 111 squadron goes out of service next spring, Leuchars will, however, continue to play an essential role through 6 squadron, whose Typhoon aircraft and crews will be on high alert to scramble and intercept unidentified aircraft approaching UK airspace.

However, decisions that are based solely on defence capability might not take into account social and economic considerations, both of which are equally important in the current climate. The cross-party submission that we made to the UK Government in September outlined the contribution that RAF Leuchars and the other bases in Scotland make to their local economies and to Scotland in general. All of the major parties

in this Parliament supported that submission, which was explicit on the need for decisions to take full consideration of the implications for local communities and the economy.

As Ted Brocklebank and others have said, aviation at Leuchars dates back to 1911, when a balloon squadron of the Royal Engineers set up a training camp in Tentsmuir forest. Today, RAF Leuchars employs 1,560 service personnel and 220 civilian staff.

Officials in the Scottish Government, Scottish Enterprise and Fife Council are already working to undertake an economic impact assessment. By the end of this week, Fife Council, supported by the work of Scottish Enterprise, will send to the UK Government an initial assessment of the economic impact of the base at Leuchars. That will be followed by a wide-ranging assessment of the social consequences of removing 1,800 employees from a village whose total population is about 4,000. I know that the issues affect an area greater than just the village, but we also know that people living on the base spend their money in the local shops and buy local services, and that the supply chain to the base covers a wide range of contracts with private sector companies across Fife and the whole of Scotland. That spend would vanish if the base closed.

As others have said, around £25 million was recently invested in upgrading the runway at Leuchars, which has made it one of the RAF's best runways and one that will be fit for purpose for the next 25 years. A decision to close the base now would seem to dismiss the investment in creating that fantastic facility.

Helen Eadie (Dunfermline East) (Lab): It is heartening to hear the concern that members from throughout the chamber have expressed.

I am concerned about the 50 incursions and engagements with unidentified aircraft that Iain Smith and others mentioned. I hope that, in discussions with the UK Government, a lot of emphasis will be placed on that, because as well as the economic issues there is an issue about the security of the people of Scotland.

Bruce Crawford: I have said all along that the strategic defence case for RAF Leuchars is strong, but it was argued to the Scottish Government that we should concentrate only on social and economic issues—which we addressed in our joint submission to the UK Government—because we do not have responsibility for strategic defence issues. I would be happy to get to the point that Helen Eadie describes, but I need to take others with me on that journey.

Earlier this week, I discussed the future of RAF Leuchars with Councillor Grant, the leader of Fife Council, who I am pleased to see is—as Tricia

Marwick noted—in the public gallery tonight. Our discussion was constructive, and we agreed that Fife Council, the Scottish Government and Scottish Enterprise will continue to work together to present a united case to protect the future of RAF Leuchars.

I applaud the initiative that Councillor Grant took yesterday in securing a united front across all the parties on the council over the future of RAF Leuchars. I know that Fife Council has asked for a meeting with Liam Fox to set out its concerns.

We will continue to press the MOD and the UK Government to be clear about their timetable for decisions and to do more to work with us to understand the potential consequences of their decision. The First Minister will do so directly when he meets the Secretary of State for Defence on 11 January. He will take the opportunity to press the case for the retention of RAF Leuchars and RAF Lossiemouth.

Our brave servicemen and servicewomen know that if they are divided and not unified they will not win the battle, and we must follow the same approach. We cannot allow the UK Government to operate a process of divide and rule, or to indulge in a process of asking Scotland to rob Peter to pay Paul. We must fight to retain both RAF Leuchars and RAF Lossiemouth in a unified campaign across Scotland. The Scottish Government has been in regular touch with MOD officials and ministers to press the case for the retention of both sites and to protect Scotland's interests in the outcome of the SDSR.

I will meet Fife Council, Fife Chamber of Commerce and Enterprise, Scottish Enterprise, elected members and other parties next week to discuss robust and co-ordinated action to address the unwarranted threat to the base.

Other countries value their air bases. Our neighbours in Norway, for instance, have seven military air bases, but the UK Government seems to want to restrict Scotland to only one. The UK Government's current plans are simply unacceptable, and both bases should be retained.

I thank Ted Brocklebank for bringing the debate to the chamber and I commit to doing all that we can to support the case for retaining RAF Leuchars. I hope that the Conservative and Liberal ministers who hear this debate tonight, which involves Conservative and Liberal MSPs, will listen to what is going on here.

Meeting closed at 17:57.

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