



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 25 November 2014

Session 4

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## Tuesday 25 November 2014

### CONTENTS

	<b>Col.</b>
<b>TIME FOR REFLECTION</b> .....	1
<b>BUSINESS MOTION</b> .....	3
<i>Motion moved—[Joe FitzPatrick]—and agreed to.</i>	
<b>TOPICAL QUESTION TIME</b> .....	4
Wave Power Technology (Pelamis) .....	4
<b>MINISTERS AND JUNIOR MINISTERS</b> .....	8
<i>Motions moved—[Nicola Sturgeon]—and agreed to.</i>	
The First Minister (Nicola Sturgeon) .....	8
Jackie Baillie (Dumbarton) (Lab) .....	11
Jackson Carlaw (West Scotland) (Con) .....	13
Willie Rennie (Mid Scotland and Fife) (LD) .....	15
Patrick Harvie (Glasgow) (Green) .....	17
The First Minister .....	19
<b>VALE OF LEVEN HOSPITAL INQUIRY</b> .....	21
<i>Statement—[Shona Robison].</i>	
The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison) .....	21
<b>LEGAL WRITINGS (COUNTERPARTS AND DELIVERY) (SCOTLAND) BILL: STAGE 1</b> .....	34
<i>Motion moved—[Fergus Ewing].</i>	
The Minister for Business, Energy and Tourism (Fergus Ewing) .....	34
Nigel Don (Angus North and Mearns) (SNP) .....	37
Margaret Mitchell (Central Scotland) (Con) .....	40
Jenny Marra (North East Scotland) (Lab) .....	41
Stuart McMillan (West Scotland) (SNP) .....	44
Margaret McCulloch (Central Scotland) (Lab) .....	45
Mike MacKenzie (Highlands and Islands) (SNP) .....	47
Stewart Stevenson (Banffshire and Buchan Coast) (SNP) .....	49
Richard Baker (North East Scotland) (Lab) .....	52
John Mason (Glasgow Shettleston) (SNP) .....	54
John Scott (Ayr) (Con) .....	57
Jenny Marra .....	59
Fergus Ewing .....	60
<b>DECISION TIME</b> .....	64
<b>UKRAINIAN FAMINE (ANNIVERSARY)</b> .....	65
<i>Motion debated—[Kenneth Gibson].</i>	
Kenneth Gibson (Cunninghame North) (SNP) .....	65
Jamie McGrigor (Highlands and Islands) (Con) .....	68
The Cabinet Secretary for Culture, Europe and External Affairs (Fiona Hyslop) .....	70

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## Scottish Parliament

*Tuesday 25 November 2014*

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

### Time for Reflection

**The Presiding Officer (Tricia Marwick):** Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Dr David Brazier, president of the International Zen Therapy Institute and Dharmavidya of the Amida Order of Pure Land Buddhism.

**Dr David Brazier:** Presiding Officer and members of the Parliament, thank you very much for inviting me.

Near to the end of his life, the Buddha was living in a country called Magadha in northern India. At that time, he was approached by a politician called Vassakara, who was asking for advice. Vassakara's overlord, the king of Magadha, wanted to invade a neighbouring country and bring it under his rule. The politician asked the Buddha how easy it would be for Magadha to subdue its neighbour.

The Buddha did not answer directly but, within the hearing of Vassakara, turned to his attendant Ananda and asked, "Do the people of that country have frequent meetings and are those meetings well attended?" Ananda said, "Yes, sir, it is so."

The Buddha asked, "Do the leaders of that country meet in harmony, conduct their business in mutual respect and part in concord?" Ananda said, "Yes, sir, it is so."

The Buddha asked, "In that country, do they respect their ancient traditions and maintain consistency in them in the governance of their affairs?" "Yes, sir, it is so."

"Do the people of that country have respect for their leaders?" "Yes, sir, they do."

"Do the people of that country respect and honour wise and saintly members of their own community?" "Yes, I have heard that they do."

"Do the men of that country refrain from abusing women?" "Yes, I have heard that they do."

"Do the people of that country show respect for their shrines and religious practices?" "Yes, I have heard that they do."

The Buddha said, "As long as they remain firm in those practices, the people of that country will be very hard to subdue. Their strength will increase and not decline."

Vassakara thanked the Buddha and departed intending to advise his king not to attack the neighbouring country directly but to seek other means.

Let me summarise again what the Buddha praised: frequent assembly, mutual respect among leaders, maintenance of tradition, respect for leaders, reverence for wise and saintly people, protection of women—and I think that we can transpose that into modern terms to mean protection of all who are vulnerable, as women were in those days—and respect for all religions.

After Vassakara had gone, the Buddha went on talking to Ananda and listed many other factors that contribute to the strength of countries and communities. These, however, are surely sufficient for today. Thank you very much.

## Business Motion

14:04

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of business motion S4M-11675, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out revisions to the business programme for this week.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Tuesday 25 November 2014—

after

*followed by* Topical Questions

insert

*followed by* First Minister's Appointment of Scottish Ministers and Junior Scottish Ministers—  
[Joe FitzPatrick.]

*Motion agreed to.*

## Topical Question Time

14:04

### Wave Power Technology (Pelamis)

**1. Alison Johnstone (Lothian) (Green):** To ask the Scottish Government how the development of wave power technology will be affected by the company, Pelamis, entering administration. (S4T-00853)

**The Minister for Business, Energy and Tourism (Fergus Ewing):** The news that Pelamis Wave Power has gone into administration is deeply disappointing. I have spoken with the administrators of Pelamis and with some of the main players in the wave sector to express my continued support for the development of Scotland's wave industry. It will be an anxious time indeed for the employees of Pelamis, especially at this time of year, and we stand ready to support affected employees through partnership action for continuing employment. Indeed, I raised the matter with Blair Nimmo just this morning.

Wave energy's development has been hampered by the investment uncertainty facing the energy sector more generally during the United Kingdom Government's reforms to the electricity market. Pelamis's administration is a setback for the sector. It brings into sharp focus the difficult environment in which the sector operates, but we should not lose sight of the monumental achievements that the industry has made. Full-scale machines have been tested at sea, the sector has amassed a huge body of technical data, knowledge and experience, and the wave and tidal sectors have invested more than £217 million in Scotland to date.

The Scottish Government's belief in the potential future success of wave energy is undiminished. I have therefore announced a new model of support for the development of wave power technology: wave energy Scotland. It will promote collaboration between industry and academia to solve the common challenges facing the sector. First, it will seek to retain the intellectual property and know-how from device development in Scotland for future benefit. Secondly, it will assist Scotland's indigenous technologies towards commercial readiness in the most efficient and effective manner, and in a way that allows the public sector to exit in due course. Finally, it will avoid duplication in funding, to encourage collaboration between companies and research institutes. We have produced a fact sheet with further details on the objectives of wave energy Scotland, and I have placed a copy in the Scottish Parliament information centre.

**Alison Johnstone:** The minister will be aware that Pelamis is responsible for a £70 million net contribution to the Scottish economy and employs 56 people in Orkney and in Lothian, and more in associated industries and services. He will be aware that it is technically better placed than ever and has a timeline for commercial wave farms. Can the minister put any Scottish Government funding decision on hold and intervene as strongly as possible to allow further consideration of all options for Pelamis?

**Fergus Ewing:** I welcome the support from Alison Johnstone and her party for the wave and tidal sector in Scotland. Their support is appreciated and it has been consistent. Pelamis is in administration. The Scottish Government and Scottish Enterprise have looked extremely closely at the whole situation, and we believe that the best outcome is to establish wave energy Scotland. The initiative has already been welcomed by people in the sector including Lindsay Leask, senior policy manager of Scottish Renewables, and Professor Stephen Salter, the founding father of wave energy technology, and several other players with whom I have had initial discussions.

I believe that we and Alison Johnstone are wholly committed to the future of wave energy in Scotland. We believe that the best way to ensure collaboration, to bring the best minds together, to harvest the IP and to ensure that we work to seek common convergence for both offshore and nearshore solutions is wave energy Scotland, and we are committed to making that succeed.

**Alison Johnstone:** The minister will understand that Pelamis is now a vulnerable target for buyout and that a low offer could see us lose our industrial lead, perhaps to a company overseas, in a technology that we may be buying back in the near future. Pelamis has brought the technology out of the lab and into the ocean and, although we support the creation of wave energy Scotland, I want to know how many such jobs it will provide. I would be grateful for the minister's comments on what kind of support the Scottish Government will offer now to help Pelamis and its employees.

**Fergus Ewing:** As Alison Johnstone correctly states, the 55 or 56 employees of Pelamis have produced some of the most advanced engineering solutions for the wave energy sector. We anticipate that wave energy Scotland will be able to provide employment opportunities for some of those experts in the sector. However, its function will primarily be to bring together the best minds in the sector, to bring together and preserve for Scotland the intellectual property and to develop the best solutions in what is an extremely challenging sector.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I, too, am a great supporter of wave

energy, and I have always been very proud to have Pelamis based in my constituency. Will the Scottish Government do everything possible to stabilise the situation at Pelamis and save its key staff, who are global leaders in wave power expertise? I welcome the creation of wave energy Scotland. Can the minister, either through wave energy Scotland or in other ways, act now to ensure that the jobs are kept in Leith and that wave technology continues to be developed, given that the work that Pelamis has done is admired throughout the world?

**Fergus Ewing:** I certainly agree with the sentiments that Malcolm Chisholm expresses. It will not be possible for wave energy Scotland to employ people on the same scale as the head count at Pelamis, but we hope and seek to retain the best brains in Scotland.

The difficulties facing the wave energy sector have been experienced in Ireland, Australia and elsewhere in the world. At the same time, however, we understand that there is substantial support from the European Union through its blue energy plan, which was published earlier this year, and the inclusion of ocean energy in the European strategic energy technology plan. There is therefore a prospect of support for marine energy from the EU in future and we will use every avenue to maximise that potential support.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** In the light of the unfortunate administration of Pelamis, can the minister tell me whether the United Kingdom Government has made clear its policy of support for wave power projects in Scottish waters, given that such a developing technology, which is of huge importance for climate change mitigation, needs secure seed money and steady Government support?

**Fergus Ewing:** I have sought to work with the UK Government over the past three years or so. Greg Barker was personally committed to the technology, and we together opened the Pentland Firth and Orkney waters marine energy park. I also met Amber Rudd, Greg Barker's successor, in Paris in October. At that meeting, I asked whether Amber Rudd or her senior officials would be prepared to meet representatives of Pelamis. I am sad to say that, as far as I am aware, that meeting did not take place, despite Ms Rudd's assurances at the time.

We understand that the UK Government is supportive of marine energy in principle, but it is not willing to make any specific commitment until after the UK elections next year.

**Liam McArthur (Orkney Islands) (LD):** Like others, I welcome the announcement about wave energy Scotland. As has been testified, Pelamis is

a global leader, born, bred and anchored in Scotland. Having been the first to generate electricity from the waves, it boasts a series of world firsts and world onlies. Pelamis has an impeccable health and safety record, and I emphasise the economic benefit to which Alison Johnstone alluded.

The minister is correct that the value of the company remains with the expertise and experience of those who are employed by it. Does he accept that, given the uncertainty and risks of administration, we have perhaps days, possibly weeks, but certainly not months, to reach a solution for Pelamis? Does he agree that Pelamis provides an excellent foundation—indeed, it is the ideal foundation—for wave energy Scotland?

**Fergus Ewing:** We have been very supportive of Pelamis, and we have contributed fairly substantial funds through Scottish Enterprise, although they still account for a very small part of the funds, most of which were contributed by the private sector.

I dispute the suggestion that Liam McArthur has, I believe, made in the press, that, had a short-term loan been made available to Pelamis, that would have secured its future. That is simply not the case. I mention that for the record. However, I agree with his sentiment that Pelamis has led the way in the sector. It has led the way because of the human expertise of the people who work for it, and we will do our very best to retain that human expertise in and for Scotland.

## Ministers and Junior Ministers

**The Presiding Officer (Tricia Marwick):** The next item of business is a debate on motions S4M-11672 and S4M-11673, in the name of the First Minister, on the appointment of Scottish ministers and junior Scottish ministers. Members should note that the questions on the motions will be put immediately after the debate, not at decision time.

I will ask the First Minister to speak to and move the motions. I will then invite party representatives to make a short speech. Thereafter, I will ask the First Minister to reply.

14:15

**The First Minister (Nicola Sturgeon):** I rise to speak to and move the motions in my name, which ask that the Parliament agrees that Keith Brown, Roseanna Cunningham and Michael Matheson be appointed as Scottish ministers and that Annabelle Ewing, Marco Biagi, Jamie Hepburn, Maureen Watt and Aileen McLeod be appointed as junior Scottish ministers.

First, I take the opportunity to thank Kenny MacAskill and Mike Russell. They have both been outstanding Scottish ministers with strong records, of which they should be very proud. They have ensured that this country is better educated, safer and more just than it was before they took up their posts. I am extremely grateful for all their efforts, and I have no doubt whatsoever that they will continue to play a significant role in moving this country forward. [*Applause.*]

The Cabinet that I am proposing has 10 members, and I am pleased to be able to say that half of them are women. In Westminster there are also five women in the Cabinet, but that is a Cabinet of 22. I am very proud to lead a Cabinet that does not just talk about equality but lives up to the principle of equality. As far as I am aware, we are one of only three Cabinets in the industrialised world to have a 50:50 gender balance—a move that the United Nations hailed on Friday as setting an example for others to follow.

I said in this chamber last week that I want women and girls to know that they can achieve anything if they work hard enough. I hope that this is more proof of that. It should send a message to everyone in this country that gender equality is not just necessary but, if we set our minds to it, achievable in every walk of life.

The portfolio changes that I have made should send another message—this time, about where this Government's priorities will lie. We will focus on ensuring that our economy and finances are well supported and that we continue to invest for



growth in infrastructure and in every sector of our economy.

We will focus on ensuring that we have strong, high-quality and efficient public services, and on building Scotland's international relationships, particularly with our partners in Europe and particularly in light of a possible in/out referendum. We will focus on tackling inequality, on lifting people out of poverty, especially through good, well-paid work, and on empowering communities.

The ministers who I am proposing will all play a key role in that work. Keith Brown has proven his ability to do challenging things and to do them well since his appointment as Minister for Transport and Veterans. We see that through the creation of the Scottish veterans commissioner and the management of the Forth road bridge project, which is currently on time and under budget. He has earned his promotion to Cabinet Secretary for Infrastructure, Investment and Cities.

Roseanna Cunningham has been an outstanding junior minister, with key legislative achievements in two different portfolios. I have no doubt that she will make an excellent Cabinet Secretary for Fair Work, Skills and Training. Of course, one of her priorities will be to see the living wage extended across the private sector and the wider public sector.

As Minister for Public Health, Michael Matheson has been determined to improve the wellbeing of the people of Scotland and to reduce health inequalities across our country. I know that he will work just as tirelessly as Cabinet Secretary for Justice, and I have no doubt that he will do an excellent job.

Today I am also proposing five new junior ministers. Annabelle Ewing's determination to secure dignity and justice for all, which we can see in her work on issues such as hepatitis C compensation, will make her a tremendous Minister for Youth and Women's Employment.

Marco Biagi has done excellent work both as the deputy convener of the Equal Opportunities Committee and as a key contributor to the Marriage and Civil Partnership (Scotland) Bill that Parliament passed some months ago. I believe that he will bring the same commitment and determination to his new role as Minister for Local Government and Community Empowerment.

Jamie Hepburn has performed exceptionally as a member of the Finance Committee and as deputy convener of the Welfare Reform Committee. I have no doubt that he will do a tremendous job as Minister for Sport and Health Improvement, following on from our successes this year, not least in hosting the Commonwealth games and the Ryder cup.

Maureen Watt is returning to Government having previously held ministerial office as Minister for Schools and Skills. I am delighted that she will be returning as Minister for Public Health. The national health service and the wider health agenda has been and will continue to be a key priority for this Government. I know that Maureen will make a significant contribution to that.

Finally, I am nominating Aileen McLeod as Minister for Environment, Climate Change and Land Reform. Aileen's extensive knowledge of working both in Brussels and here in Holyrood makes her a perfect candidate to take on that role. The specific inclusion of responsibility for land reform in her ministerial title should send a signal about the importance that this Government attaches to moving forward with the important business of land reform.

Those are the new ministers I am putting forward for Parliament's approval today. I should also say that, although the following appointments are not subject to the approval of Parliament, I am absolutely delighted to have appointed John Swinney as Deputy First Minister of Scotland in addition to his role as finance secretary; Shona Robison as health secretary; Angela Constance as education secretary; Alex Neil to take on the social justice portfolio; Fiona Hyslop to remain at culture, Europe and external affairs; and Richard Lochhead to remain at rural affairs, food and the environment. All those ministers have done excellent work in Government, and I have no doubt that they will continue to do so.

A number of junior ministers are remaining within Government, with some of them in their existing portfolios and some of them moving to new portfolios. However, collectively, as a team, this is a Government that is now ready, willing and eager to take on the challenges that lie ahead.

Finally, it is important for me to stress that I am proposing each of those ministers absolutely, totally and completely on merit. Each and every one of the members of my Government is highly qualified, with the values, skills and attributes that I believe this country needs. The Cabinet and the wider Government will ensure that we are able to tackle the challenges that we face and to work towards a fairer, more just and more prosperous Scotland. However, just as important is that this Government aims to reflect a country where gender equality is not just an aspiration but a reality that we put into practice each and every day.

It gives me great pleasure to move the motions in my name.

I move,

That the Parliament agrees that Keith Brown, Michael Matheson and Roseanna Cunningham be appointed as Scottish Ministers.

That the Parliament agrees that Annabelle Ewing, Jamie Hepburn, Marco Biagi, Maureen Watt and Aileen McLeod be appointed as junior Scottish Ministers.

14:23

**Jackie Baillie (Dumbarton) (Lab):** First, I welcome the First Minister's new appointments. She has delivered a 50:50 gender balance for the Cabinet, something that we urged her to do and that I very much welcome. I look forward to her delivering in due course a 50:50 gender balance in her parliamentary party and, indeed, on every public board in Scotland.

I note that the size of the Scottish Government has grown as it has two additional ministers, costing the public purse an extra £55,000-plus a year. However, we will judge whether it is a price worth paying based on whether her ministers focus on delivering results. I am sure that that is something that the First Minister would agree with.

It is customary, of course, to pay tribute to the outgoing cabinet secretaries, and I will start with Mike Russell. I ask Angela Constance, though, whether he has left his portrait, which took such a prominent position in his office, or whether it has been removed.

Mike Russell is indeed a man of many talents. His musings can be found on the bookshelves of many a member of this chamber. Neil Findlay tells me that he got his copy of "Grasping the Thistle" for 16p off eBay. At the time, Murdo Fraser thought that he was being slightly profligate with his money. In that book, we find some radical thinking, including suggestions for privatising the NHS, introducing vouchers in education and abolishing the corporation tax. I am not sure that many of those ideas find favour with the First Minister. On that basis, I plead with Mike Russell—I urge him—now that he has a bit of spare time to write "Grasping the Thistle 2".

On a serious note, as a neighbouring MSP I have, on occasion, made common cause with Mike Russell on issues of importance, and I look forward to continuing to work with him in the future.

Kenny MacAskill may not be on the Christmas card list of many football fans, but his decision to lift the ban on alcohol at internationals at Murrayfield made him the toast of rugby fans across all the four nations. One member on the Labour benches who will miss him terribly as the justice secretary is Kezia Dugdale. She, for one, does not want him spending more time in his constituency.

In all seriousness, I thank both Kenny MacAskill and Mike Russell for their public service and wish them both well for the future. I also advise them not to despair, as Maureen Watt must offer them hope as she makes her comeback to ministerial office.

I congratulate all the new ministers on their appointments. Although I may challenge much of what they do in the Scottish Government, I never doubt the commitment of those who serve in it. That commitment will be needed, as they have a tough task ahead. When things go wrong we will challenge them, but when things go right, and when they get things right, we will support them in their endeavour.

When Keith Brown took over from Stewart Stevenson, he famously said that civil servants would be the ones to be sacked if there was any bad news about the weather. I observe that we have had mild winters ever since. He has been replaced as the transport minister by Derek Mackay, who will become extremely popular with members as we lobby for our local road projects. I mention the A82 on that basis. I had strongly tipped Derek Mackay for a Cabinet position, which probably did not help him at all—I am sorry for having done so.

I welcome Roseanna Cunningham's promotion to cabinet secretary. She is joined in her portfolio by the latest member of the Ewing dynasty, Annabelle Ewing. It is interesting to have two lawyers in the fair work, skills and training portfolio while we have an occupational therapist and an economist in the justice portfolio. However, Michael Matheson has prior experience of the justice portfolio as a shadow minister and I look forward to his continuing in that portfolio. He will recall that I have praised him shamelessly in order to get him to adopt particular policy positions. I am sure that, unlike in the case of Derek Mackay, that helped him to secure his promotion to the Scottish Cabinet.

Like Annabelle Ewing, Jamie Hepburn was a member of the Welfare Reform Committee. He, too, was tipped for promotion—of course, once he had abandoned his love of the Val Doonican jumper.

What can I say about Marco Biagi other than that he makes me feel old? I remember going to Hermitage academy in Helensburgh as a shiny, newly elected MSP, and there he was—as a pupil—sitting in the back row, growling at me even then as he does now. All that has really changed in all this time is where he is sitting. I wish him well and will watch his progress with great interest.

In closing, I make mention of two women who have been handed very tough jobs in the Cabinet, whom the First Minister mentioned in her closing

remarks. Shona Robison has been left a very full in-tray by her predecessor, Alex Neil, and her work starts with the Clostridium difficile statement this afternoon. I welcome the discussion that she had with the families involved yesterday, and I hope that that is how she intends to continue in her portfolio.

Angela Constance is clearly the Cabinet's trend setter, and she has been left an equally tough job by Mike Russell. She will be judged by the quality of Scottish education, which we surely all agree needs improvement. I met Angela, famous for her Bambi heels, on Sunday disappearing into a well-known shoe shop—but enough said about that. It is a wise move, as she will need to be very sure footed in her new job.

It remains only for me to wish Angela Constance, and indeed all the new appointees, the very best in their new roles.

14:29

**Jackson Carlaw (West Scotland) (Con):** I read at the weekend that yes-ism is now a new, emerging religion. That gives a whole new context to ministerial appointments, does it not?

Some have referred to our First Minister as Margaret without the humour, which I do not think is altogether the compliment that it may at first sound like. The previous most senior woman in politics in Scotland was Helen Liddell, who was known as Stalin's granny. Perhaps Stalin's niece is a soubriquet that the First Minister will look to. I hope, though, that she will hope for slightly more than the Beyoncé of Scottish politics, which a gushing acolyte described her as at the weekend.

In discussing Nicola Sturgeon's first Cabinet, I want to acknowledge immediately the service of Kenny MacAskill and Mike Russell. At times, we have fundamentally disagreed with them but, in the case of Mr MacAskill in particular, I have always believed that the views and decisions that he came to were motivated by sincerity on his part that they were correct. I respect that, even though I disagreed with his decisions at the time.

More surprising, perhaps, is the fact that Mr Neil finds himself still in the Cabinet. After all, he must have realised that there would be consequences, given that he had briefed the media continually for the past two years that he had been tremendously successful in clearing up the mess left by his predecessor. Nonetheless, he is still in the Cabinet.

I congratulate Shona Robison and Angela Constance. I have shadowed Shona Robison previously, and I know that she comes to the health portfolio with a tremendous amount of experience. I hope that she will take forward the

agenda that Alex Neil was pursuing of seeking to find a cross-party consensus on the enormously difficult challenges that we have debated many times in the chamber. She and Angela Constance will be allowed to bring joined-up government to bear: I hope that we see the emergence of a new curriculum subject of the dangers to public health of wearing totally inappropriate footwear; we must wait and see.

I am delighted by Keith Brown's appointment. I have found him to be very courteous and willing to assist and listen carefully. I am tremendously impressed that he has managed not to be put off by Looney Tune commands whispered off stage, if I can put it that way. Mr Brown and Ms Constance stood in the deputy leadership election and reaped the rewards. Therefore, Mr Brown can look Mr Mackay and Mr Yousaf in the face and say, "Who dares wins, boys." After all, those two had their famous canteen, Granita-like pact, whereby they thought that they would sit this election out in the expectation that the rewards would be theirs. My advice to them is: "Start plotting now, boys; it is only 18 months till your next chance comes around."

Michael Matheson has been a very diligent and straightforward politician, and I am delighted that he has been promoted.

Roseanna Cunningham has had the answer—in the nick of time—to the question that has been put by the Beatles so many times. She now knows the answer to the question, "Will you still need me, will you still feed me, when I'm 64?"

**Members:** Oh!

**Jackson Carlaw:** Nicola has said yes.

Annabelle Ewing and Aileen McLeod have—how shall I put this?—worked very hard for their appointments, and I congratulate them.

There are two masterstrokes of political diplomacy in the reshuffle, on which I congratulate the First Minister. The first is her disinterring of the former minister Maureen Watt. That sends a signal to all those ex-ministers on the back benches that they can live in hope, that there is a chance and that, if they stay loyal, the First Minister might be kind next time around.

In addition, of course, slim, trim new health guru Jamie Hepburn gives hope to that back-bench group known as the lost causes—they know who they are—who can also now see that there is still a chance that their time might come.

Nearly every woman in the SNP has been given a chance in Government. Over the weekend, I wondered what Christine Grahame, Joan McAlpine, Christina McKelvie and Sandra White might have said or done. I was quite bewildered until the First Minister's official spokesman issued

a qualifying release that told us why Sandra was not in the Government. I will not repeat the language, Presiding Officer—you and I are demure, shy and retiring. Mr Macintosh and I have never heard language like it, although it might be appropriate in Bute house, in Whitecraigs or in Newton Mearns.

Nor has there been any place for Jim Eadie, Mark McDonald or Dennis Robertson. I am especially sorry that no place has been found for Dennis Robertson, as when Nicola Sturgeon pursues her dog-whistle policies, she would at least have got one bark of approval.

I hope that Marco Biagi, who is sincere and thoughtful as an MSP, will be sincere and thoughtful as a minister.

The last time I made such a speech, the First Minister—the then Deputy First Minister—was kind enough to say that I had made no substantive points whatever, which I freely admit is my remit today. Tomorrow, I think, is when we will see the Government's programme and be able to respond to the substance of it. However, I note that, in 2007, there were five cabinet secretaries and 10 junior ministers, whereas now there are nine and 13. As Jackie Baillie said, we want to see whether they are worth it, and the next few months will prove whether that is the case.

Finally, I offer our unreserved congratulations to Mr Swinney, as Deputy First Minister. He is an SNP loyalist to his boots, but across all parties and, I think, wider Scotland he is regarded as a decent, committed and understated man. His personal efforts on behalf of multiple sclerosis, which I and others have been happy to support, are testament to that, and we certainly wish him well.

I conclude with a final observation about gender balance, which has been mentioned several times this afternoon. In a back-handed compliment to that huge Hollywood blockbuster "Three Men and a Little Lady", this Parliament is now fronted by three ladies and a little Willie Rennie. [*Laughter.*] On that note, I wish the new ministerial team well in their endeavours.

**The Presiding Officer:** Mr Rennie, would you like to follow that? [*Laughter.*]

14:35

**Willie Rennie (Mid Scotland and Fife) (LD):** Halfway through that, Alison McInnes leaned over and said to me, "Don't worry, Willie. Nobody is quite like Jackson Carlaw." Tremendous, Jackson.

The First Minister must be commended for securing gender balance in her ministerial team. The fact that it has been recognised internationally is something that every member in the chamber

should be proud of. Even more important, it sends a powerful message across Scotland and further afield not just to young girls and young women with aspirations, but to men and young boys that they should treat women equally. There should be equality in both the Parliament and the rest of Scotland, and I hope that it becomes the norm rather than the exception. I hope that, when we discuss future ministerial appointments, we will not remark on the fact that we have achieved gender equality; I hope that it becomes accepted as something that should always exist.

I am sure that all the ministerial team have been tasked with working constructively, in the spirit of the First Minister's remarks last week. If so, they will find willing participants among the Liberal Democrats and, I am sure, others in the chamber.

I am reluctant to add a discordant note, but we need an explanation of why the ministerial team has grown to 23. In 2003, John Swinney, who is sitting next to the First Minister, said that he wanted a team of 15 because Government any bigger than that was "bloated". We have had a 50 per cent increase from that time, and we need an explanation. It is not the most significant thing today, but we need to understand the rationale and why it has happened.

Despite my questions about that, I congratulate the team that has been appointed. I know that Alison McInnes is looking forward to working with the justice team and trying to change some aspects of justice policy—perhaps reining back stop and search, looking at armed officers and corroboration, and bringing democracy back into our police.

Jim Hume wants to discuss the pressures in our hospitals and the need for mental health to have equal status with physical health. He is also keen to talk about his member's bill on smoking in cars with children.

Tavish Scott will be pressing the case for transport for the Highlands and Islands, including the north-east, and focusing on the roll-out of the new common agricultural policy.

I want to see how Liam MacArthur is going to get on with the new education team. It has been a bit of a shaky start, but I am sure that he has the talent to rise to the challenge. College places, the curriculum for excellence, university funding and the expansion of nursery education are all big issues that need to be discussed and we need to work together to achieve great things in those areas.

There will be many challenges in the remainder of the current session of Parliament, but the First Minister knows that we will work with her where we agree and advise her where we do not.

This will be an exciting and proud day for those who are entering Government for the first time. For those with new portfolios, it will present a fresh challenge, and for those who have kept their old jobs, there may be a secret sigh of relief, but for all of them, this is an important day. The burden may be great—at times, it may be heavy—but the opportunity that they have to serve their country is a wonderful one, and I am sure that many others in the chamber would love to have it. In that spirit, I wish them all well.

14:40

**Patrick Harvie (Glasgow) (Green):** I, too, congratulate those who have been promoted in and appointed—or indeed reappointed—to the Scottish Government. I thank Jackson Carlaw for his usual bravura performance that we get at these events. I am very grateful that he decided to leave me out of the end of his speech. Oscar Wilde said that the only thing worse than being talked about is not being talked about, but I think that that was the exception to the rule.

This is a moment to mention something positive about the outgoing cabinet secretaries, who deserve our commiserations. I am sure that Mr Russell's commitment to the principle of keeping higher education in Scotland free of fees will remain important to the Scottish Government, but it was a principle that throughout his term in office he insisted on. As for Mr MacAskill, I am grateful for his contribution to supporting my member's bill on hate crime a few years back. He gave a clear commitment to supporting the legislation, which included the support of his officials, and I put on record my gratitude.

There is time to mention only a few individual appointments. I single out Marco Biagi for, as the First Minister said, his commitment to the equal marriage campaign both inside and outside Parliament. I believe that, diaries permitting, the First Minister and I will be co-witnesses for some mutual friends at the end of December; however, way before that, Marco Biagi and I had our own confetti moment when we showered confetti over a symbolic same-sex marriage as part of the campaign. That is a moment that I will remember.

I and my colleague Alison Johnstone will miss Marco Biagi on the Economy, Energy and Tourism Committee. He has earned far more respect than I have from the radical vegan wing of my party, and I should imagine that the supply of vegan scones to the Economy, Energy and Tourism Committee will be diminished to zero once he has moved on. I hope that the catering instruction has been conveyed to St Andrew's house for him.

As for the role that Marco Biagi takes on, working with Alex Neil, I have to say that both will

be responsible for a number of important issues such as the need to address on-going and long-term challenges in the reform of council funding. The council finance issue cannot be ducked for much longer. We need to reinvigorate our local democracy and community empowerment, and Marco Biagi will have an important contribution to make on both issues. The two of them will also have responsibility for planning policies and decisions. I highlight in particular the forthcoming decision on the first unconventional gas proposal, which has been called in by Scottish ministers and which many of us in Scotland, including constituents of many Scottish National Party back benchers who share deep concerns about the industry, consider to be a test case.

I want briefly to mention Mr Wheelhouse, who is moving on to other responsibilities. Although I think that he is due some credit for his role in the climate change brief, that credit comes, as usual with me, with caveats. It is clear that he understood the argument about unburnable carbon and that we cannot simply regard all fossil fuel resources as economic assets. After all, if we burn them all, we will do more harm to the economy than anything else.

The fact remains, however, that the Scottish Government has not yet managed to meet any of its climate change targets. As Aileen McLeod takes on that responsibility—alongside, I should say, land reform, which I am glad the First Minister has picked out in Ms McLeod's job title as something that remains an unfinished task—I hope that she does so in the full understanding that the first three missed targets were the easy ones. The next annual target, which is due to be reported on, represents a single year's cut that is many times greater than the cumulative cut that was supposed to have been achieved already. This is when things start to get hard, and she will have to advocate vociferously with the rest of the Scottish Government for the policy changes that will be necessary to achieve those targets.

I hope that Aileen McLeod is willing to work with Derek Mackay in transport. Unlike Jackie Baillie, I assure Derek Mackay that not all of us will lobby him to approve new road-building projects. Many of us will hope that he will be the first transport minister in a Scottish Administration who is able to have a sustainable transport policy. That will be crucial if Aileen McLeod is to be successful in ensuring that the Scottish Government meets its climate change commitments.

Once again, I congratulate and wish well all the ministers who will serve in the Scottish Government.

14:45

**The First Minister:** I thank everyone for their contributions. Jackie Baillie managed to stay almost entirely positive, which just shows that there is a first time for absolutely everything. I eagerly anticipate the first time that she, as she has promised to do, praises the work of the Government.

However, I sympathise with Jackie Baillie's comments about Marco Biagi making her feel old. I had exactly the same feeling when I saw another member of my Government, who shall remain nameless—Humza Yousaf—on television last week saying that the first time he met me was when I came to speak to his modern studies class, so I know how Jackie Baillie feels today.

I thank Jackson Carlaw for reminding me how much talent I have on the back benches. In all seriousness, I had not appreciated how difficult it is to pick a Government. There are many people on the back benches who I would have loved to appoint to the Government. There is no member of the SNP group who should not aspire to ministerial office as I ensure that, at all times, the Government that I lead contains all the best talent. My best revenge for the remainder of Jackson Carlaw's comments is to leave him to the tender mercies of Roseanna Cunningham, say that it was nice knowing him and wish him all the best.

I move on to Willie—little or otherwise—Rennie. I thank him for his kind comments. We might come back to the issue at greater length on another occasion, but the size of the Government and the allocation of portfolios is what I deem to be appropriate to meet the challenges that we face as a country, and to prepare for the substantial new powers that, as we have been promised by all the other parties in the chamber, are about to come to the Scottish Parliament. That is the reason for the shape of and allocations in my Government. As Jackie Baillie said, we will now get on with proving our worth through the job that we do.

Finally, I thank Patrick Harvie for being constructive and, as he always does, laying down challenges to the ministers who have been appointed. I very much look forward to being a co-witness with Patrick Harvie at one of the country's first same-sex marriages on hogmanay.

I thank everyone who contributed to the debate.

**The Presiding Officer:** That concludes the debate. There are two questions to be put.

The first question is, that motion S4M-11672, in the name of the First Minister, on the appointment of Scottish ministers, be agreed to.

*Motion agreed to,*

That the Parliament agrees that Keith Brown, Michael Matheson and Roseanna Cunningham be appointed as

Scottish Ministers.

**The Presiding Officer:** As the Parliament has agreed to the First Minister's recommendations, she may now invite Her Majesty to approve the appointment of Keith Brown, Michael Matheson and Roseanna Cunningham as Scottish ministers.

The next question is, that motion S4M-11673, in the name of the First Minister, on the appointment of junior Scottish ministers, be agreed to.

*Motion agreed to,*

That the Parliament agrees that Annabelle Ewing, Jamie Hepburn, Marco Biagi, Maureen Watt and Aileen McLeod be appointed as junior Scottish Ministers.

**The Presiding Officer:** As the Parliament has agreed to the First Minister's recommendations, she may now invite Her Majesty to approve the appointment of Annabelle Ewing, Jamie Hepburn, Marco Biagi, Maureen Watt and Aileen McLeod as junior Scottish ministers.

## Vale of Leven Hospital Inquiry

**The Presiding Officer (Tricia Marwick):** The Cabinet Secretary for Health, Wellbeing and Sport, Shona Robison, will now make a statement on the Vale of Leven hospital inquiry.

14:50

**The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison):** The national health service failed the 34 patients who died at the Vale of Leven hospital, it failed the patients who suffered due to the outbreak of *Clostridium difficile*, and it failed the families of those patients. Our NHS failed all those patients and their families and for me—and, I am sure, for everyone here today—that is deeply regrettable. I am sorry, on behalf of the Scottish Government.

Lord MacLean highlights 34 deaths—an increase on previous findings—following his detailed scrutiny of medical records. It was an important purpose of the inquiry to establish the facts. On behalf of the Scottish Government and our NHS, I offer a profound and sincere apology to all patients and their families who have been affected by this tragedy. Our thoughts must be with all of them today; I am aware that some of them have joined us in the chamber this afternoon.

This statement is the Scottish Government's initial response to the "Vale of Leven Hospital Inquiry Report", which was published by Lord MacLean yesterday. The report was also laid in Parliament yesterday, in line with the requirements of the Inquiries Act 2005.

I believe that the report addresses the wide-ranging terms of reference that were set by the chairman, who was charged with undertaking a thorough investigation into the circumstances that contributed to the occurrence and rates of *C. difficile* infection at the Vale of Leven hospital from 1 January 2007 to 1 June 2008. I take this opportunity to thank Lord MacLean and his team for their hard work and commitment to the inquiry.

I would also like to record my personal thanks to the patients and families for their frank and honest evidence to the inquiry. The patients and families of those who were affected by the outbreak quite rightly demanded this public inquiry to investigate what happened, and why it happened and to ensure that lessons are learned. It is clear from my meeting with them that those issues are still driving their search for answers. I believe that the report is balanced and fair and I hope that it will go some way towards giving the answers that the patients and families are seeking.

Since the inquiry was established, there has been some criticism of its cost and of the length of

time that it has taken to report its findings. Under the Inquiries Act 2005 and the rules, it is clear that it is a matter for the chairman of an inquiry to determine the procedure and conduct that will be required in order effectively to carry out the duties of that inquiry. I believe that the chairman published the costs of the inquiry up to 24 November 2014 at the launch of the report yesterday and that final costs will be provided later this year.

Although Lord MacLean acknowledged in his report that ministers wanted a shorter inquiry, it is clear that the length of the delay had a profound effect on patients and families and did nothing to alleviate their distress. I hope that publication of the report will begin to bring closure to those patients and families.

For those of us who have read the report, it makes terrible reading and identifies system-wide and individual failures at the Vale of Leven hospital. The report is a thorough and definitive explanation of what went wrong; it is clear that there was failure at all levels, from nursing and medicine through to management.

Lord MacLean's findings outline the lack of investment in the hospital, which was simply no longer fit for purpose. There was a lack of basic care being provided to patients, no inspection regime was in place, communication was poor at all levels, and staff morale was low. Much of that was related to the uncertainty of the merger, which was announced in 2005, of part of NHS Argyll and Clyde with what was the Greater Glasgow NHS Board. That merger was not implemented until after the outbreak and resulted in a fundamental breakdown in lines of reporting. As I said to the patients and families whom I met yesterday, it is completely unacceptable that that happened in our national health service.

The report identifies 75 recommendations: nine for the Scottish Government, 65 for the NHS boards and one for the Crown Office and Procurator Fiscal Service. Let me make it very clear that I accept them all and, more important, that I intend to address them all. There are a number of recommendations that will need to be worked through and others where we can go even further.

I reassure everyone that the Scottish Government and the NHS have not been idle since the inquiry began—let me tell everyone what we have in place.

Our national healthcare-acquired infection task force drives the wide range of work that is required to ensure that we continue to improve and reduce HAIs. In 2009, we established an effective inspection process through the Healthcare Environment Inspectorate, which completes

comprehensive unannounced inspections and demands urgent actions from boards, where that is required. Those inspections also provide key information that is used nationally and locally to drive continuous improvement.

As an outbreak is defined as two or more cases, timely local intervention is critical. Therefore, robust systems are in place that enable NHS boards effectively to recognise and manage outbreaks as they happen, and to close wards if required. We expect outbreak concerns to be reported to Health Protection Scotland, which will monitor the situation, support the board and escalate to the Scottish Government, if necessary.

The work to date has led to a significant reduction in *C difficile* rates across Scotland's hospitals. The rates have been at their lowest level this year, with an 82 per cent reduction in *C diff* cases in the over-65s since 2007. In addition, the hospital standardised mortality ratio is down by 16 per cent. Lord MacLean's report provides clear direction on how we can build further on that progress. It is encouraging to note that Lord MacLean identified that NHS Greater Glasgow and Clyde was quick to learn the lessons from the outbreak. The board has continued to work hard to reduce the incidence of healthcare associated infections in its hospitals, and it now leads the way in reducing the occurrence of such infections.

I spoke to NHS Greater Glasgow and Clyde yesterday and earlier today about the report and told it how I expect it to consider and address the report's findings. Although the focus is on NHS Greater Glasgow and Clyde, I have today, along with the chief executive of NHS Scotland, written to all boards asking them to consider the implications of Lord MacLean's report. We have requested that they report back to me by 19 January 2015.

I reassure members that work on implementing many of the recommendations has either been completed or is well under way. I will establish an implementation group to consider all the report's recommendations for health boards, and how they can be taken forward in partnership across the NHS. I have invited those who have been affected or who have lost loved ones to consider how they wish to be involved in taking forward the report's findings. That will help to ensure that the memories of those who died continue to make lasting improvements in our NHS.

I have asked the chief medical officer to lead the Scottish response for the United Kingdom five-year antimicrobial strategy, in association with the royal colleges and board medical directors, in order to address and promote prudent prescribing of antimicrobials to reduce the risk of *C diff* infection and antimicrobial resistance.

I have also asked the chief nursing officer to work with board nurse directors to roll out a robust quality assurance system, to put patients, families and their experience at the centre of that work and to ensure that information on it is publicly available and easily accessible in the clinical environment. Additionally, my chief nurse will work with boards to roll out nationally agreed standards for nursing documentation and care planning, including a minimum dataset for patient records. That will be monitored as part of the on-going quality assurance processes.

I have written to the Health and Sport Committee to offer to discuss the report in more detail and I will return to Parliament with the Scottish Government's full response in the spring of next year.

As the minister who is now responsible for our NHS, I pledge to members my commitment that we will take all necessary steps to ensure that a tragedy of such magnitude can never happen again. Finally, I apologise again to the patients, families and relatives who were let down by our NHS at such a vulnerable time in their lives.

**Neil Findlay (Lothian) (Lab):** I congratulate the cabinet secretary on her appointment. I know that in her first outing in her new job, she will, like the rest of us, be extremely concerned and disturbed by Lord MacLean's report on the *C diff* outbreak at the Vale of Leven hospital. It is a truly shocking report. In a hospital of only 136 beds, at least 34 people, and maybe more, lost their lives to *C diff*. As Lord MacLean said, the families of the victims have been "fully vindicated" in demanding the inquiry, and we should pay tribute to them for their perseverance and their commitment to their deceased loved ones.

The report lists management and governance failures, a failure by the health board and Government to heed what was happening following outbreaks elsewhere in the UK, deficiencies in infection prevention and control practices, compromised patient care, low staff morale, recruitment problems and a weak management culture, all of which contributed to the avoidable deaths at the hospital. If that loss of life had been the result of a major incident or disaster, it would have dominated our news for weeks. Sadly, I suspect that it will not.

Will the cabinet secretary now take action to create an independent health regulatory regime that is free from Government and which has powers to protect patients and to close down facilities if they are failing patients? Does the Health and Safety at Work etc Act 1974 apply to patient safety in Scotland? What is the timescale for all the recommendations to be implemented? Who is accountable for ensuring that they are followed through and how is the Parliament to be



kept informed of the process? Will she ensure that Government time is made available soon so that we can discuss the report in full? Patients, families and everyone else involved deserve no less.

**Shona Robison:** The Healthcare Environment Inspectorate is a powerful organisation that can go into a hospital announced or unannounced to examine all aspects of the care there. Many of the improvements in our hospitals are due to the fact that it has been set up.

Lord MacLean's first recommendation is that the Healthcare Environment Inspectorate be given the power to close wards. Of course, wards can be closed if the local infection control team decides that that is required, and that often happens. However, we agree with the recommendation that the inspectorate should have that power. No one should be under any illusion about the power and effectiveness of the Healthcare Environment Inspectorate, and we should support it in its work.

On health and safety at work, there is a UK body that has relevance to many aspects of health and safety within the workplace in Scotland.

On timescales for implementing recommendations, I have said to boards that I want them to come back to me by 19 January laying out clearly which recommendations they have already implemented, which ones they will implement and by when they will do that.

On parliamentary involvement, I said in my statement that I will come back to Parliament with fuller information. I am happy to do that. Of course, the Health and Sport Committee will have an interest in the matter as well, so I expect that it will want to discuss the report in detail with us.

**Nanette Milne (North East Scotland) (Con):** I thank the cabinet secretary for the advance copy of her statement and welcome her to her new position.

I extend the condolences of Conservative members to the families of the 34 patients who tragically died in the C diff outbreak, which first occurred nearly eight years ago.

We welcome the thoroughness of the report and the fact that the Scottish Government has moved quickly to accept all 75 of Lord MacLean's recommendations. We will carefully monitor whether NHS boards throughout Scotland implement the recommendations without delay. Families and patients in the NHS Greater Glasgow and Clyde area will not forget the failings at health board and Government level to provide an adequate infection control and inspection system.

Does the cabinet secretary agree that, to control hospital-acquired infection throughout the NHS in Scotland, there needs to be an emphasis on the role of responsible antibiotic prescribing to prevent

the development of resistant strains of organisms, on maintaining meticulous hygiene in hospitals and on ensuring that all NHS staff in primary and secondary care have a clear understanding of infection control? Does she also agree that responsibility for that lies with everyone who is involved in the care of patients? In particular, does she agree that, among the many recommendations in the report, those regarding the senior ward nurse's role in controlling infection are particularly important, as I argued in the chamber when we discussed hospital-acquired infections nearly seven years ago?

**Shona Robison:** All the issues that Nanette Milne raised have been a focus of the NHS for many years. There have been huge changes in the practice of antibiotic prescribing, and hygiene procedures and awareness of best practice in infection control are front and centre of what happens in our hospitals. The patient safety programme that operates across Scotland has been internationally recognised for the good practice that it has brought.

Nanette Milne commented on the senior ward nurse and leadership in wards, which are hugely important.

We will take forward all the recommendations, because more can always be done to build on the good work that has happened since 2007. We will ensure that that happens.

**Stuart McMillan (West Scotland) (SNP):** How has the Vale of Leven hospital changed since 2007? By that, I mean how many C diff cases have there been in 2014? How does that compare with the number in the outbreak period and the number nationally?

**Shona Robison:** As I said in my statement, there has been a huge change in the number of C diff cases since 2007: an 82 per cent reduction in cases in the over-65 age group. The good practices that are in place and the performance of the Healthcare Environment Inspectorate have led to that huge reduction.

Since 2007 we have reduced the number of *Clostridium difficile* infections in NHS Greater Glasgow and Clyde in those aged 65 and older by 84.7 per cent; the number has fallen from 472 cases in the quarter January to March 2007 to 72 cases in the quarter April to June 2014.

Nationally, the latest C diff rates show a reduction of 81.9 per cent over the same timeframe, from 1,775 cases in 2007 to 322 cases in 2014. I hope that Stuart McMillan agrees that that is a significant decline in the number of C diff cases. However, we can never be complacent, which is why we will take forward all the recommendations in Lord MacLean's report.

**Jackie Baillie (Dumbarton) (Lab):** I am sure that members share my pride in the determination and dignity of the families throughout this process.

It has been seven years since the first deaths at the Vale and it has taken five years for the public inquiry to report. I welcome the robust recommendations in the report.

The cost of the inquiry is in excess of £10 million, but the offer of compensation to the families—the victims in all this—is about £1 million. Although the families are motivated solely by the desire to ensure that this does not happen to anyone else in Scotland, I cannot help but feel that justice has not yet been done. What actions can the cabinet secretary take to ensure that the level of compensation is reviewed?

**Shona Robison:** I recognise Jackie Baillie's role in supporting the families and patients—I saw yesterday how much they appreciated that. I absolutely agree with her comments about the families' determination. They should be respected for what they have endured and the dignity that they have brought to this process.

Jackie Baillie will be aware that detailed discussions on compensation are going on between the health board and the families, and that there is a legal basis for how the process will be worked through. I am clear that those who have lost loved ones as a result of negligent acts by the NHS should be adequately compensated for their loss. It is absolutely essential that, when clinical negligence claims arise, boards learn from those claims and put in place steps to ensure that there are no repeat cases. Although the matter is confidential, I have made it clear to NHS Greater Glasgow and Clyde that it should be as helpful as possible in that regard.

I understand what Jackie Baillie says about the difference between the inquiry cost and, potentially, the settlement of claims. She will appreciate that it is difficult for a Government to have any control over the costs of an inquiry. That is an issue with the Inquiries Act 2005 that we should look at. Indeed, the inquiry has been a long process and, as Jackie Baillie said, it has reached a cost of about £10 million.

I reiterate that these are sensitive discussions, but I have made clear to the health board that I expect it to be as helpful as it possibly can be in its discussions with the families.

**Bob Doris (Glasgow) (SNP):** Significant progress may have been made on C diff, in the Scottish patient safety programme and with the new Healthcare Environment Inspectorate. However, chapter 15 of the MacLean report makes a detailed series of significant recommendations on infection prevention and control. Will the cabinet secretary assure me that

the recommendations will feed directly into the work of the patient safety programme and the Healthcare Environment Inspectorate and, as important, that that will be monitored to make sure that it is effective?

Were an outbreak similar to that at the Vale of Leven to happen today, we all want to know whether the scale and significance of that tragedy would be dramatically reduced because hospitals are safer and that this Government is doing all that it can, including adopting all the report recommendations, to achieve that.

**Shona Robison:** We will absolutely ensure that all the recommendations are implemented. I am absolutely confident that we will not see another situation like the one at the Vale of Leven hospital. I say that because the mechanisms that we have in place pick up outbreaks. There are and there will be outbreaks in the NHS, but the issue is what is then done about those outbreaks.

I will give a good example of that. In January, there was an outbreak at the Victoria infirmary. In 24 hours, three cases were identified and, because of that, it was counted as an outbreak. All the correct procedures were taken, there was no further spread of the infection and no death arose from it. That is how our NHS should work—an effective response to the challenges that arise with infections in our hospitals. Because of the robust processes that quickly pick up outbreaks, I am absolutely confident that we will not see a Vale of Leven situation arise again.

At the Vale of Leven, as Lord MacLean identified in his report, infections were identified and outbreaks that should have been identified going back to January 2007 were not picked up. The infection then ran rampant throughout the hospital. I am absolutely confident, with the processes that we have in place in the NHS, that that would simply not happen now. People should take confidence from that.

The last thing that I want to see arising from this tragic and disturbing report is for patients to be worried about going into hospital. Our NHS is a different institution from the one that it was in 2007. Patients, particularly elderly patients, should have the confidence when they go into hospital that everything will be done to minimise any chance of them acquiring an infection while they are being treated.

**Jim Hume (South Scotland) (LD):** I thank the minister for advance sight of the statement and welcome her to her new post. I add my thanks to the inquiry team and I recognise the suffering of the friends and families of those who were affected. There have been criticisms of delays and, although those might be valid, it is right that time was taken to get this right. The report is a

substantial piece of work and I welcome the minister's indication that the Government will implement the recommendations.

Recommendations 31 and 36 focus on staffing and the skills mix on wards. Given the pressures that we know exist in some areas in attracting and retaining consultants and lead clinicians, what does the Government propose to do to ensure that the skills mix meets demand at all times?

**Shona Robison:** It is important that the issue of staffing was explored in great detail in the report. On page 211, the report states that the infection control nursing expert—a Mrs Perry—looked into the staffing levels and ratios at the Vale of Leven and found that although they were acceptable, when patients became acutely ill, there was no change to those levels and ratios or the skills mix. One of the key findings of the report was that there has to be leadership on the wards and in management so that, when the circumstances on a ward change and there are suddenly more acutely ill patients, there is the ability to take action to address that.

Recommendations 31 and 36 are important and we will certainly take them forward and make sure that they are implemented.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I associate myself with Jim Hume's comments. I do not want to repeat them, but I would have made exactly the same ones.

Lord MacLean's report states that the Vale of Leven hospital had suffered from a decade of lack of investment. What investments have been made in the hospital since 2007 and how has the service that it provides changed?

**Shona Robison:** I reassure Gil Paterson that there has been a significant level of investment. The capital investment at the Vale of Leven in the past 10 years has been more than £9 million. That has, without doubt, improved the fabric of the building, the ward layout and the hand-washing facilities, addressing many of the criticisms of the fabric that are contained in the report. I assure the chamber that that investment has made the Vale of Leven a very different hospital and one that is very well regarded and thought of within the local community.

I should also say that patients have a very positive experience at the Vale these days. The most recent patient satisfaction survey showed a huge level of positive rating for care and treatment. That was not the case before 2007 and through the period of this outbreak. It is fair to say that the hospital at that time was out of sight and out of mind. It had suffered from a lack of investment; it fell between two stools of organisational change. That led to a lack of morale among staff and a feeling that the hospital had a

major question mark over its future. All of that, along with all the poor practices, is very much the backdrop to the infection outbreak, as Lord MacLean laid out clearly.

I am pleased that Greater Glasgow and Clyde NHS Board has invested in this hospital. It is now a well-functioning hospital and, as I said earlier, it is held in high regard by the local community.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** After the Vale families called for an inspection regime, I lodged motion S3M-02697, on 9 October 2008, entitled, "Regret for Continuing Complacency on Reducing Clostridium Difficile Hospital Infections". In that motion, I called for an immediate move from health board to individual hospital reporting and for an inspection system similar to that which had been introduced in England in 2007. It was April 2009 before the health inspectorate started its very welcome work. Does the cabinet secretary therefore agree with Lord MacLean that we need to look at other jurisdiction reports as they come out on the issues that also affect our people?

Five years on from the outbreak, does the cabinet secretary—who has properly indicated that we have made enormous progress on C difficile—think that the system is working well, when the Hairmyres report showed that Lanarkshire NHS Board left a senior infection control post vacant for five months this year?

I conclude by saying that I am glad that the cabinet secretary agrees with the MacLean report that we need an independent and robust inspection system with enforcement powers, as Labour has been calling for since 2011, but I hope that she agrees that it needs to apply to all aspects of healthcare.

**Shona Robison:** The Healthcare Environment Inspectorate—as Richard Simpson has himself implied—is a good inspection regime. Its establishment was announced back in 2008 and it started its work in 2009, as he said. We will be extending its powers to include the ability to close wards if that is what it recommends.

The inspection regime is one that I believe works well, and it is an independent scrutiny tool in our health service that should probably have been around for many years before it was established. The fact that it was not established earlier is something for us all to reflect upon, but it is there now and we will ensure that it continues to do its good work. If further improvements can be made to the HEI system, I am certainly prepared to consider them, in addition to accepting all the recommendations that have been made in the report.

On the vacancy for an infection control nurse at Hairmyres, I agree that such roles are critical and

that there should, where possible, be no delay in the recruitment of those key personnel. However, what is important is that systems now do not rely on one person. That is one of the lessons that have been learned from the past: systems must be robust and not succeed or fail because of one individual infection control nurse. Nevertheless, it is important that those roles are there.

Lessons have been learned from previous reports. After the CDI outbreak in 2007 to 2008 in Northern Ireland, a number of actions were taken in Scotland, and hugely important lessons were also learned from Mid Staffordshire and in response to the Francis inquiry. That led to a huge amount of work in the NHS. I remember attending meetings as Minister for Public Health and Sport and going through in fine detail what those lessons were going to be and how they would be applied to the NHS in Scotland.

We will always learn lessons from elsewhere. Importantly, I also wrote to health ministers across the UK yesterday to share the findings of the latest report, because it is important that people, whether in the UK or beyond, learn lessons from the report.

**Colin Keir (Edinburgh Western) (SNP):** Could the cabinet secretary explain how she will take forward recommendation 71 in the report, that the Scottish Government should identify a national agency to undertake routine national monitoring of deaths related to CDI?

**Shona Robison:** We will be looking at that recommendation to decide which national agency is most appropriate to take that forward. There are a number of recommendations that we will have to consider in some detail before we decide what is most appropriate, but it is important to remember that the recommendations apply not only to the territorial boards but to the national boards as well, and we will discuss with them which agency is most appropriate. I can assure Colin Keir that the recommendation will be taken forward and implemented.

**Rhoda Grant (Highlands and Islands) (Lab):** I join others in paying tribute to the families who fought so hard for the inquiry. I hope that lessons can be learned so that, in future, families do not have to fight so hard for inquiries at such a difficult time for them.

Will the chief nursing officer, as part of the work being done with the nursing director, consider the standards for testing, to ensure that individual cases are identified and isolated so as to stop outbreaks in the future? Will she also examine how patients and their relatives can raise concerns and request testing if they are concerned about an outbreak occurring in a ward that they are in?

**Shona Robison:** Yes—that is definitely something that we want to take forward. As I have said, we may well go beyond some of the recommendations in some of the elements that we implement.

Rhoda Grant touches on an important point. We discussed this a little with the families yesterday. The issue is how best we utilise the information and the desire of families to communicate when they are not happy with something that they see or experience while they or their family member are receiving treatment. That is a matter of good communication. Indeed, one theme running through the report is how poor the communication was.

Many of the systems are better now. There is better communication and better patient involvement, whether that is provided through patient satisfaction surveys or basic communication with families on wards. It is also a matter of making time for that. There have been changes to how shift patterns work, so that one shift of nurses are not all leaving at the same time as another shift is starting. There needs to be communication there, which it is important to be able to impart to the families.

Without a doubt, there is more that we can do in order to ensure that, if families or patients have something that they wish to feed back or say, the opportunity is afforded to them. That means that we can continue to improve the national health service further.

**Richard Lyle (Central Scotland) (SNP):** I thank the cabinet secretary for her statement and wish her well in her new job.

In her statement, the cabinet secretary has detailed what she intends to do with regard to all the recommendations that have been made and the actions that she intends to take. Does she intend to ensure that all steps are taken to update regularly all those involved—families, the Parliament and the Health and Sport Committee—about the action that she is now taking and will continue to take with regard to the statement?

**Shona Robison:** Yes, absolutely. As I said in my statement, we will be discussing with the families—as will Greater Glasgow and Clyde NHS Board—how they wish to be involved in the implementation of the recommendations. That might not be for everybody but, for those families who wish to be involved, it is a very important part of implementing the recommendations.

As regards updating Parliament, I am committed to coming back to Parliament as often as is required, to ensure that Parliament is kept up to date with the process and the progress of implementation of the recommendations. I reiterate the offer to the Health and Sport

Committee to discuss the report in more detail and, also importantly, to keep the committee informed as to the progress of implementation.

## **Legal Writings (Counterparts and Delivery) (Scotland) Bill: Stage 1**

**The Presiding Officer (Tricia Marwick):** The next item of business is a debate on motion S4M-11664, in the name of Fergus Ewing, on the Legal Writings (Counterparts and Delivery) (Scotland) Bill.

I call on Fergus Ewing to speak to and move the motion. Mr Ewing, you have 10 minutes.

I note that the Labour front-bench spokesperson is not here.

15:29

**The Minister for Business, Energy and Tourism (Fergus Ewing):** I am pleased to open the debate on the general principles of the Legal Writings (Counterparts and Delivery) (Scotland) Bill. I thank everyone who gave evidence in writing and in person, and I thank the Finance Committee and the Delegated Powers and Law Reform Committee for their detailed scrutiny of the bill at stage 1. In particular, I welcome the Delegated Powers and Law Reform Committee's support for the bill's general principles.

As many members are aware, this is the first bill to have been considered under the new Scottish Law Commission bill procedure. When the Parliament decided in May last year to accept recommendations for changes to its standing orders to allow certain Scottish Law Commission bills to be referred to the Delegated Powers and Law Reform Committee, it recognised the commission's valuable role in reforming the law of Scotland.

It was intended that the new process would go some way towards increasing the implementation rate of commission reports. In my view, the process is working well. I have been impressed with the way in which the committee has taken on its new role and I hope that this will be the first of many bills to be considered in this way. I note the committee's recommendation in its stage 1 report, that

"the Scottish Government takes steps in order to ensure appropriate research has been undertaken"

to provide statistical evidence to the committee in connection with Scottish Law Commission bills in future. The committee has my response to the stage 1 report.

A key objective of the Scottish Government is sustainable economic growth and business competitiveness. We want to ensure that Scotland is an attractive place for business. The reforms in the bill might be modest and technical but they

will, in no insignificant fashion, promote business and economic growth and modernise Scots law.

The bill does two main things. First, it enables documents to be executed in counterpart, which will put beyond doubt that such execution is permissible in Scots law—a matter about which there is currently great uncertainty—and will give the legal profession and the business interests that it represents the necessary confidence to use Scots law for transactions.

Secondly, the bill makes provision for the facility to deliver—I use the word “deliver” in its legal sense—traditional documents electronically. Any document that is created on paper may become legally effective by being delivered by electronic means such as email or fax.

I was pleased to note that the Delegated Powers and Law Reform Committee supports the general principles of the bill and, in particular, those two key provisions.

The provisions have the potential to help people who are involved in complex transactions in which the parties and their legal advisers can be in different countries or even on different continents and meeting might be impossible or highly impractical. The provisions also have the potential to help anyone in Scotland who is conducting a transaction that involves a number of parties who are unable to get together, for practical reasons, for example because parties live in remote rural or island areas.

For the avoidance of doubt, let me say that the consequence of the current uncertainty in this area is that practitioners sometimes choose not to use Scots law to govern a document. There is a consistent view that that is common, happens regularly, and might happen at the outset of a transaction or just before the transaction is finalised. I am talking about not just multinational and multijurisdictional transactions but transactions that are entirely Scottish in their make-up and for which, for want of clarity about the use of execution in counterpart, the decision is made to use another law. When Scots law is not used, there is often the knock-on effect of consequential litigation not being conducted in Scotland.

The committee recognised that the current uncertainty about whether execution in counterpart is competent under Scots law appears to have led to a drift away from transactions being concluded under Scots law, with parties opting to conclude under the law of a different jurisdiction—for example, English law—where execution in counterpart is recognised.

A number of people who gave evidence to the committee described the bill as being capable of addressing that drift. A clear benefit of the bill will

be that, in circumstances in which Scots law should be used but is currently not used because of doubt over the legality of executing in counterpart, parties will now have the confidence to use Scots law.

Scots law requires some documents to be delivered—again, in the legal sense—to take full legal effect. In the same way as doubt exists around whether execution in counterpart is valid under Scots law, there are conflicting authorities on whether a paper document may be legally delivered by its electronic transmission to the grantee or a third party such as a solicitor or agent for one of the parties.

That question arose from the 1990s onwards mainly in respect of purported delivery by way of fax of documents relating to land. One of the bill's principal aims is to resolve that uncertainty, particularly but not only as it impacts on transactions completed by way of execution in counterpart. The bill does so by saying that delivery of a copy of a paper document or a copy of part of that document by electronic means constitutes delivery; beyond that, it does not attempt to alter the law on delivery.

During the stage 1 evidence sessions, the Faculty of Advocates levelled some criticisms at the bill. The Faculty's concerns were around increased potential for fraud and, what was more likely in its view, error associated with execution in counterpart particularly if, as the bill allows, only the signature pages of documents are exchanged between parties as part of that process. We have considered those concerns very thoroughly and have concluded that the bill will do nothing to increase the prospects of fraud or error as a result of executing in counterpart and exchanging only the signature pages of the document.

That view was shared by other stage 1 witnesses, and the committee noted that the majority of those giving evidence at stage 1 expressed the general view that fraud and error would always occur to an extent and that the bill was unlikely to lead to an increase in either fraud or error. The committee was particularly thorough in its examination of this issue, and I note that it is not persuaded that the bill will lead to any increase in instances of fraud and error.

In summary, this is a small but important bill that will provide certainty in relation to execution in counterpart and electronic delivery of traditional documents in Scots law. Importantly, the approach has been to ensure that the legislation is permissive and as flexible as possible. Inherent in that flexibility is the ability of the parties to a transaction to set out how the process will work for them. The bill has been very warmly welcomed by the majority of the legal profession and there have been some very positive and encouraging articles

about the bill in the press and in other publications.

I firmly believe that the bill creates a light-touch yet helpful framework for a variety of transactions. We in the Scottish Government are confident that the bill will meet a clear and pressing demand from those likely to be affected by it, and we cannot overestimate the value in bringing clarity, flexibility and certainty to the law.

I move,

That the Parliament agrees to the general principles of the Legal Writings (Counterparts and Delivery) (Scotland) Bill.

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

I call on Nigel Don to speak on behalf of the Delegated Powers and Law Reform Committee—around seven minutes or so, please.

15:38

**Nigel Don (Angus North and Mearns) (SNP):** I genuinely welcome the opportunity to speak on behalf of the Delegated Powers and Law Reform Committee on the Legal Writings (Counterparts and Delivery) (Scotland) Bill, which is, of course, of particular significance as it is the first to be known as a Scottish Law Commission bill following changes to standing orders last year that provided that certain SLC bills might be referred to the Delegated Powers and Law Reform Committee.

The Scottish Law Commission plays a vital role in recommending reforms and in updating and improving Scots law. However, until recently the implementation rate of the commission's proposed bills has been low. The new process, which we are undertaking for the first time, will allow such bills to be given the consideration that they deserve and will allow important reforms to be implemented.

I pay tribute and give my thanks to the parliamentary staff who, a couple of years ago, did the background work that considered whether we should change our standing orders. I also pay tribute to Christine Grahame, who of course is the convener of the Justice Committee, and Bruce Crawford, who was the Government minister responsible at the time, for providing the political impetus that enabled us to change the standing orders to ensure that SLC bills go forward.

We must do what we can to ensure that Scottish law is up to date and competitive. During the passage of the bill, it has been interesting to see what other jurisdictions have been making of this process. I believe that some of them might even be envious of the process that we now have in the Scottish Parliament.

I thank all those who provided written and oral evidence on the bill. In addition to receiving written submissions, we heard from legal, business and

academic representatives over five oral sessions. The detailed evidence that was received was greatly appreciated by the committee.

As the minister says, the bill has two key provisions: that execution in counterpart should be clarified as being a valid process in Scots law; and that paper legal documents should be deliverable, in the legal sense of the word, by electronic means. Execution in counterpart is the process by which documents can be given legal effect by each party signing separate but identical copies of a document rather than the same single physical document. The bill seeks to remove the current uncertainty as to whether that is a valid way of creating legally effective documents in Scots law. In providing for the delivery of paper legal documents by electronic means, the bill aims to resolve any doubt as to whether a document is legally effective if it has been faxed or emailed rather than delivered by traditional means.

Evidence to the committee suggested that there is widespread support for the provisions among the legal, business and academic sectors. The current system for signing contracts under Scots law is generally considered to be inefficient and burdensome, with parties having to go to great lengths to ensure that a single document is signed by them all. To achieve that, they must organise signing ceremonies whereby all parties are required to gather at an agreed place at an agreed time in order to sign a single document. Alternatively, the document is sent to each party sequentially for each signature to be attached one by one.

By making it clear that documents may be executed in counterpart under Scots law, and by allowing for traditional documents to be delivered electronically, the need for such procedures is completely removed. It therefore follows that the process for agreeing a contract may be much more efficient and straightforward, as each party can simply sign their own copy before delivering it to the others.

In the committee's view, one of the main benefits of the bill is its potential to increase the number of contracts that are made under Scots law. The committee heard that a perceived inability to execute documents in counterpart often leads parties who would otherwise have drawn up their contracts under Scots law to state within a document that it will be governed by another legal system, such as the English legal system, allowing them to avoid processes such as the aforementioned signing ceremony.

Many witnesses argued that, by providing for execution in counterpart, the bill could lead to an increase in the number of contracts that are contracted under Scots law. However, we should not get carried away about that. The bill is unlikely

to bring an influx of contracts to Scotland from those who would otherwise have no reason to use Scots law. Parties choose which law will govern their contract for a variety of reasons, and the committee also heard that English and New York law are dominant internationally and will, in all likelihood, continue to be so.

For some, however, the inability to execute a document in counterpart is the determining factor in their choice of law. The committee heard examples of contracts that were switched to English law at the 11th hour when it became apparent that all parties would be unable to gather together to sign a single document. It could be argued that, by allowing for execution in counterpart, the bill will encourage such parties to use Scots law rather than switch to another form of law. The committee therefore considers that the bill has the potential to stop the drift away from Scots law of contracts that would otherwise have been made under our law.

In addition to assessing the potential benefits of the bill, the committee considered its potential challenges. In its evidence to the committee, the Faculty of Advocates suggested that the bill's provisions could lead to an increase in the incidence of fraud or error. The faculty was particularly concerned that the bill allows parties to exchange signature pages as opposed to whole documents. It considered that that would increase the likelihood that the content of the document could be altered.

The faculty's view was not, however, shared by other witnesses. Having considered all the evidence, the committee was not persuaded that the bill will lead to an increase in the incidence of either fraud or error. In reaching that conclusion, the committee took account of the lack of evidence of instances of fraud or error in other countries in which execution in counterpart and electronic delivery of documents are already commonly practised. Further to that, the committee noted the existing safeguards that are in place in our law to both prevent and deal with fraud and error. At the same time, the committee encourages the Scottish Government to continue to ensure that the potential for fraud and error is accounted for and to consider how such risks could be reduced further.

The committee therefore recommends that the general principles of the Legal Writings (Counterparts and Delivery) (Scotland) Bill be agreed to.

Thus far, the new system for implementing Scottish Law Commission bills appears to be working well. I agree with the minister on that and am grateful for his comments. I look forward to the continued progress of the bill and to scrutinising further bills under this welcome process.

15:45

**Margaret Mitchell (Central Scotland) (Con):** I welcome this afternoon's debate and thank the Delegated Powers and Law Reform Committee and its clerks, together with the witnesses and those who submitted evidence during the consultation process, for their contributions and their scrutiny of the bill.

I would be surprised if the bill did not carry the support of all members; it certainly has the support of the Scottish Conservatives, because it is a bill that seeks to improve contract law by making some important changes to the way in which legal documents can be signed and brought into legal effect in Scotland. In doing so, as the minister stated, it focuses on the signing of counterparts—identical copies of a document—rather than the same physical document, and on electronic delivery of scanned documents.

At present, as various respondents to the consultation made clear, there is considerable uncertainty about whether documents can be executed in counterpart under Scots law, despite that being deemed to be more efficient. That is because—depending on the type of transaction—the current preference of legal practitioners is to follow the often time-consuming and cumbersome practice of holding a signing ceremony or to go through the round-robin process, both of which ensure that the same document is signed by all the parties involved. In addition, those options can at times be excessively costly, inefficient and impractical, particularly if the transaction is multijurisdictional in nature and the relevant parties are in separate locations.

Location is a key issue in our increasingly globalised society. That was highlighted in the Weir Group's written submission, in which the company stated that 90 per cent of its contracts involved multiple parties and locations. Furthermore, the bill's provisions will, crucially, bring Scots law into step with other legal systems and will modernise out-of-date processes that have caused delays and ambiguity.

For example, in England and other jurisdictions such as New Zealand, Australia and America, legal documents can be executed—that is, brought into legal effect—if they are signed in counterpart. The University of Glasgow's Dr Ross Anderson made a very perceptive comment when he said that it is

“crucial that Scotland stops exporting transactions that are carried out by the ordinary people of Scotland and by Scottish businesses and companies, and which relate to assets in Scotland.”

That underscores the pressing need for change. After all, it is unacceptable that



“we cannot persuade our own citizenry to use our law”.—  
[*Official Report, Delegated Powers and Law Reform Committee*, 7 October 2014; c 5.]

As Dr Anderson remarked, that “reflects poorly” on its content.

Given that that is the case, the bill’s proposed changes are extremely positive for the development and application of Scots law, for legal practitioners and for those who seek to use Scots law. However, as Robert Howie QC emphasised during his evidence to the committee, it is important to manage expectations and to understand that the bill is not being presented as a panacea that will automatically lead to an increase in the number of contracts that are made under Scots law. Nigel Don emphasised that point.

In particular, in commercial and other transactions, it is often the legal jurisdiction that takes precedence, rather than the associated processes. In many cases, New York and English law are likely to continue to be widely used. That is recognised in the Delegated Powers and Law Reform Committee’s stage 1 report, which makes the assessment that the bill will put Scotland in a more equitable position with other jurisdictions rather than emphasise a potential competitive advantage over them.

Although the legal community is generally supportive of the bill, there has been some criticism. Both the Faculty of Advocates and the law firm Freshfields Bruckhaus Deringer have pointed to several drafting issues that may merit further consideration at stage 2. The faculty has also expressed concern that, under the proposed changes, parties might execute different versions of a document due to either error or fraud, although other witnesses suggested that that is a moot point and that fraud can occur under the present arrangements. However remote the possibility is, it is important to bear it in mind and to ensure that sufficient safeguards are put in place as the bill moves to the next stage.

The bill will have a positive impact on Scots law and will help to ensure that individuals and businesses that seek to undertake transactions in this jurisdiction do not experience obstacles or delays. I therefore confirm again that the Legal Writings (Counterparts and Delivery) (Scotland) Bill and the stage 1 report have the Scottish Conservatives’ support.

15:52

**Jenny Marra (North East Scotland) (Lab):** I start by apologising to you, Presiding Officer, to the minister and to members for my late arrival in the chamber this afternoon.

I am pleased to open this stage 1 debate for Labour. As other speakers have done, I welcome

the general principles of the Legal Writings (Counterparts and Delivery) (Scotland) Bill, which is important for businesses here.

To date, there has been confusion about whether execution in counterpart is legally binding in Scotland. The bill clarifies that signing in counterpart is a valid way of executing a contract in Scotland under Scots law. That is one of the most important elements of the bill.

I also commend the second key element. The provision that paper legal documents will be deliverable by electronic means, including email and fax, will increase efficiency and flexibility and will make it easier for businesses to contract in Scotland under Scots law.

It is encouraging that the bill largely follows the recommendations of the Scottish Law Commission, which noted that the current law is not serving businesses’ needs in the modern electronic age, when it has been more difficult for parties in different locations to enter commercial transactions. I am sure that the law firms will be pleased to see that their taxi bills for sending their young trainees between offices with contracts will be significantly reduced as a result of the bill.

The bill could be viewed as an inevitable technical change to how contracts are concluded, but it is crucial to note that today’s debate brings to the fore a far more significant matter: it signifies a moment of modernisation that we can grasp and use to enter a new phase of digital progression and business innovation.

Let us look at the sections of the bill that allow contracts to be signed in counterpart. They mean that parties will not have to be in the same location at the same time to sign a contract. Put simply, the bill requires counterparts of the document to be supplied and delivered appropriately. Although the ability to sign in counterpart existed before, the clarification and reinforcement under the bill will make forming contracts—and therefore doing business—much easier.

As the Conservative spokesperson and the minister said, that will also prevent businesses from moving to English law at the last minute. None of us wants that for businesses in Scotland, but the practice was becoming increasingly common when all parties could not be present in the same location at the time of signing.

The bill will bring Scots law into line with many other international jurisdictions, as Margaret Mitchell said, including England and New York, which are the two biggest legal centres in the world. Crucially, they do more business than anywhere else. The bill will make it more attractive to do business in Scotland.

In its submission to the Delegated Powers and Law Reform Committee, Dickson Minto WS said:

“The Bill becoming law would represent an immeasurable improvement to the process of the execution of documents in Scotland. The Bill will provide greater flexibility to businesses and improve the speed at which transactions are completed.”

Thus, signing contracts using counterparts will not only increase efficiency, but will make it easier to form, deliver and execute contracts in Scots law.

The second part of the bill addresses electronic signatures, which will improve the efficiency of the contractual process, make the important signing of the document the centre of the process, and dispense with matters such as location, calendars, travel and accommodation costs.

Digital modernisation is key for Scotland. We have discussed the matter many times in the chamber. We can see why when we look at countries such as Estonia, which is now widely recognised as being one of the most tech-savvy nations in the world. It made innovation policy a political priority and paired it with initiatives including giving its population free access to wi-fi. Similarly, Finland’s recovery from its deep depression of the early 1990s was achieved by putting technology innovation at the heart of its response and by maintaining spend on technology in the face of wider cuts.

The Legal Writings (Counterparts and Delivery) (Scotland) Bill paves the way for time and cost savings for businesses entering contracts in Scotland, whether it is a business that provides services to another business or a business that provides services to individuals who are buying houses.

An interesting innovation that the Law Society of Scotland has been working on illustrates the legal world’s keenness to embrace what the bill outlines. That innovation is a smart-card secure scheme, which registers the secure digital signature and then allows practising solicitors to sign documents and contracts entirely electronically, and to receive signatures from others knowing that they have come from a trusted professional system. An increasing number of solicitors are registering with that scheme. The aim is that roll-out will be completed by November next year. That scheme and the proposals in the bill allow us to go forward with confidence about avoiding fraud and error as much as possible.

As well as making business easier, the bill will bring numerous other benefits. I hope that, together, we can build on them with consensus across the chamber.

Labour is pleased to support the principles of the bill at stage 1, and we look forward to its passage through Parliament.

**The Deputy Presiding Officer:** We now turn to the open debate. Speeches should be of about seven minutes, please. There is time in hand.

15:58

**Stuart McMillan (West Scotland) (SNP):** Thank you very much, Presiding Officer. You are generous with the time.

I add my thanks to those of the convener of the Delegated Powers and Law Reform Committee, Nigel Don, for the assistance that the committee received when we scrutinised the bill.

As we have heard, the bill is a first for the Parliament, and going through the process has been very interesting. There have not been many time constraints placed on it, which is probably of great benefit in this instance. I am sure that when more bills from the Scottish Law Commission go through the Delegated Powers and Law Reform Committee, the timescales will reduce slightly—or greatly.

The bill has been non-contentious but, as with any bill, there have obviously been elements on which there has been conflicting evidence. As we have heard, the evidence that we received from the Faculty of Advocates in particular certainly seemed to be at odds with the evidence from other interested parties. That was helpful because it provided an opportunity for further debate as the committee went through the bill process. It certainly helped with our private discussions when we were putting together our report, and it allowed us to question the bill and its stated aims a bit more.

I believe, however, that the bill will be a welcome addition for businesses in Scotland. We heard from a number of people evidence that some business transactions end up taking place under other jurisdictions’ law—predominantly English law, and sometimes New York law. Scotland has lost business as a consequence of a system that does not provide flexibility. The bill will not change the world, but it aims to rectify that problem by making this aspect of Scots law more flexible and competitive so that more business can take place in Scotland. At the very least, the bill will make it easier and cheaper for transactions to take place under Scots law, which we all welcome, I am sure. The committee was not sure how much additional business will be retained in Scotland, but we all believe that it will happen and that aiding businesses in this country will result in economic benefit.

Paragraphs 158 to 174 of the Delegated Powers and Law Reform Committee’s report discuss an electronic repository. That is an idea that first came to my attention a couple of years ago when I was a member of the Economy, Energy and

Tourism Committee and we were scrutinising the Land Registration etc (Scotland) Bill. The concept of an electronic repository for storing legal documents independently received some attention then and again when we were going through this bill. The DPLR Committee supported the concept and the suggestion that it should be maintained by Registers of Scotland. That element—an independent body maintaining the electronic repository—is important. We certainly considered an electronic repository to be a useful tool for storing records of contracts. It could also be a means of executing documents by way of electronic signature, which my colleague Stewart Stevenson was keen to highlight regularly as we scrutinised the bill.

However, the committee thought that two main issues required to be addressed. The first was that sufficient safeguards need to be in place to ensure security. In the fast-moving world of information technology and software development, that could be a challenge, but it is not insurmountable. Secondly, the committee took the view that if an electronic repository is to be created, there should be no obligation for parties to use it—it should be their choice. We heard evidence of examples where a firm might cease trading and its documents might no longer be available. We have also heard today about some activities that have taken place in the past that have not been thoroughly legal, to say the least. We were very much aware that although we might well be talking about a very small number of cases, the situation could create large problems. That was one of the strongest supporting comments for a central repository.

The bill is an important piece of the jigsaw of facilitating a more modern business legal system, and it aids the Scottish Government's digital economy policies. Scottish business transactions will be more efficient and there will be a positive environmental impact as business representatives will no longer need to travel all over the world to sign contracts.

I welcome the bill and I am sure that it will have a positive impact on the legal side of things and on business in Scotland. It will mean a better economic return; a more prosperous Scotland can come from that. I welcome the general principles of the bill.

16:04

**Margaret McCulloch (Central Scotland) (Lab):** This is the first time that a recommendation of the Scottish Law Commission has been taken forward in this way, with the bill being brought to Parliament by the Delegated Powers and Law Reform Committee. The bill that the committee is asking Parliament to consider is one that my

Labour colleagues and I are inclined to support at stage 1.

Not only do I believe that the general principles of the bill are sound, but I believe that the work of the SLC and the committee demonstrates that there is a clear need to modernise contract law in Scotland. In supporting the bill, I hope that Parliament can give clarity—as has been asked for before—on the concepts of counterparts and delivery, and that it can produce a legal framework for contracts that reflects changes in technology and business practice. I also hope that we can make a wider contribution to the Scottish economy.

I congratulate the SLC on its work on the bill. It has undertaken an informed and extensive consultation. Its work has highlighted the need for the bill and has demonstrated that there is support for reform across the legal, academic and business communities. In its work, the SLC identified two problems with commercial and contract law in Scotland, which it believes could be dealt with through Parliament's new approach to law reform. First, it highlighted the need for clarity in respect of counterparts. It was not clear whether a legal document could be brought into effect if it was signed in counterpart. In other words, the commission was not clear whether it is acceptable under current Scots law for different parties to sign identical copies of a contract instead of signing the same physical copy of the document.

Secondly, the SLC called for clarity in respect of the law on delivery. It is not clear whether a paper document, such as a traditional written contract, can be said to have been delivered if it is sent and delivered electronically.

The view of the SLC is that the current law is not fit for purpose because the letter of our law in Scotland is at variance with common practice and with contract law in neighbouring jurisdictions. The SLC even found evidence that businesses are sometimes choosing to use English law instead of Scots law to govern agreements because counterparts are permitted under English law. That disincentive to using Scots law, coupled with legal uncertainty over methods of delivery, may well be doing harm to our economic competitiveness.

By allowing the use of counterpart signatures as an option to execute a contract, and by allowing contracts to be delivered electronically, we could help businesses to make time-cost savings and reduce travel and accommodation costs.

We should bear in mind that a limited number of people within a business will be authorised to sign legal documents on behalf of the company. I also emphasise that the costs to businesses that are outlined by the SLC are costs that they would not face in jurisdictions where contract law has

already been modernised and where laws take sufficient account of technological change.

Just as we want to be clear about what the bill will do to modernise our laws in respect of counterparts and delivery, let us also be clear about what it will not do: it will not mandate use of electronic signatures, and it will not change the law on fraud. In both civil and criminal law, the existing rules on fraudulent signatures will remain in place. The bill will not change the standard of proof that is required in relation to execution; the general rules on whether a person who claims to have signed a document has actually done so will remain the same.

The bill will not alter general contract law. Issues such as whether a contract has been formed and the rules on breach of contract, damages and so forth will not be affected by the bill. It will not create an electronic repository for legal documents. Although that was a recommendation of the SLC, it is an area of work that the Scottish Government is keen to pursue once the bill has been passed.

The bill will simply bring the law up to date. It will allow for contracts to be signed in counterpart, as is acceptable in other jurisdictions, and it will allow for paper contracts to be delivered electronically.

With the bill, we have an opportunity to remove a disincentive to conducting business using Scots law, and to make it easier for parties to enter commercial contracts and transactions. With small but significant changes that are largely uncontroversial, we can bring contract law up to date and make it fit for purpose. It is for those reasons that I intend to support the general principles of the bill.

16:09

**Mike MacKenzie (Highlands and Islands) (SNP):** I am pleased to have the opportunity to speak in the debate, because the work of the Delegated Powers and Law Reform Committee is seldom properly recognised. It is unlike any of the other committees of the Parliament, because it does not deal with policy. As a consequence, few visitors and even fewer journalists attend its public meetings—a bit like now in the chamber. We members of the committee are therefore perhaps the least scrutinised of the scrutinisers in the Parliament.

**John Mason (Glasgow Shettleston) (SNP):** I feel for the committee given its lack of interest from the public, but does the member feel that that is inevitable and that perhaps some of the most valuable work that is done in the Parliament is not the most seen by the public or the most exciting?

**Mike MacKenzie:** I absolutely agree with Mr Mason. Indeed, I hope to make that point while I have the opportunity to speak about the committee.

The Delegated Powers and Law Reform Committee, as it is now known, still mainly deals with subordinate legislation, which is where our legislative teeth are often found buried rather than on the face of bills, although that is where they are most often looked for.

The committee is sometimes thought to be a dry one that deals with a dry subject, but I have found it to be otherwise. I have found its focus, clarity of thought and discipline to be demanding and instructive. I have found that the words in our Scottish statutory instruments are often words of power, and they are weighed by the committee in an almost poetic search for intent and purpose. I have sometimes said in the committee that it reminds me of a remark that is attributed to Oscar Wilde, who said that he had worked very hard on his latest poem one day—in the morning, he took out a comma and, in the afternoon, he put it back in again.

I have found the committee's deliberations on appropriate levels and forms of scrutiny, clarity of meaning and the width and breadth of powers to be at times almost philosophical. Despite the best intentions of generations of lawyers, the language of our law is much more than the language of mere mathematics, because it often goes beyond logic and is capable of carrying objective and subjective meaning. That is where the challenge for and interest in the committee often lies. We filter our legislation through the finest of sieves.

It has been interesting to see the committee's approach to its first piece of primary legislation—the Legal Writings (Counterparts and Delivery) (Scotland) Bill. I pause at this point to pay tribute to our clerks and legal advisers, who brought the same disciplined and painstaking approach to bear as they do to all our work. I commend them not just for their grasp of the law and impeccable skills of reasoning but for a most important ability—the ability to explain their thoughts in plain terms for us, the laypersons, who in the main make up the committee.

**Nigel Don:** I am very much enjoying the member's speech and I am grateful that he is heaping praise on those who do much of the work for us. Does he share the same enthusiasm for the work of the Scottish Law Commission? It gave us a remarkably precise and careful description of what was involved, complete with drawings, which I still remember. That seemed to be exactly the way to describe law.

**Mike MacKenzie:** I am happy to agree with Nigel Don. I note that the Scottish Government

has said that, because of the work and consultation that the Scottish Law Commission did, it is not necessary to do further consultation. That is the stamp of approval on the work of the Scottish Law Commission and particularly the way in which it has approached the bill.

I ought to say a few words about the bill, although I see that I am beginning to run out of time. By facilitating execution in counterpart and the electronic transmission of documents, the bill simply brings an aspect of Scots law up to date. In 2014, the part of our law that is within the bill's scope will once again become fit for purpose.

The merits of the bill are self-evident—they are obvious. The committee was unanimous on that, as were almost all our witnesses. Only the Faculty of Advocates perplexed us by maintaining that the bill would give rise to an increase in fraud. We were perplexed only in so far as we made a genuine attempt to understand the argument. In the end, we were not persuaded. The bill neither adds to nor removes the possibility of fraud.

It is not a bill of grand and sweeping intent. It is not radical. It is not controversial. It is perhaps not even all that exciting. However, I commend it to members, because modest improvements are often worth while and important.

16:16

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Mike MacKenzie is being grossly unfair to the committee. Only this morning, we had a piece of secondary legislation on food, and the table in the schedule to that instrument told me that corned beef must have 120 per cent meat in it. I will let members go and read for themselves the instrument, which will go to the policy committee shortly. The figure was correct, as it turned out. I would never have known that had I not been on the Delegated Powers and Law Reform Committee.

**John Mason:** How can it be 120 per cent?

**Stewart Stevenson:** No, no—this is not the place. John Mason needs to go and read the relevant instrument. I can tell him that the figure is on page 7 and the explanation is in small print—six-point print—on page 10, if he can understand it when he gets there. He should believe me that it is interesting.

The point is that we deal with the minutiae, and the minutiae on contracts often have profound effects for business and life in Scotland and beyond.

Over the years, I have dealt with a number of contracts. I quickly jotted down the jurisdictions in which I have signed contracts and found 10, ranging from Delaware to Norway. I have been in

San Francisco only once in my life and that was simply to sign a contract. I was in the United States for a grand total of 14 hours and slept for 10 of them because that was overnight.

A friend of mine got up in the morning, got the plane down to Heathrow, got on Concorde, met somebody airside at Kennedy airport, signed a contract, got back on the same Concorde, flew back to Heathrow, got the plane back to Edinburgh and was home an hour earlier than usual, but what a waste of time and effort it was to go all that way to sign a contract. This modest little bill will have profound and useful effects.

Jenny Marra mentioned Estonia. I am surprised that she did not namecheck Skype, which was written by software engineers there. That country has considerable things to offer in the electronic world.

The bill will move us a little bit towards electronic signatures and electronic repositories. The Law Society is producing its electronic card, which will go out to everybody in about a year. It remains the case that the card will be shared among people in a firm, so there will not be individual certainty about who might have used it to sign something electronically. The bill takes the issue forward with its emphasis on electronic signatures but does not take it all the way.

**Mike MacKenzie:** Does Stewart Stevenson agree that the Scottish Government is due praise for implementing across the Highlands and Islands the backbone for a fibre optic broadband system that will allow such technological improvement to our law to take place? Does he also agree that the United Kingdom Government requires to do more work to roll out 2G, 3G and 4G across the Highlands and Islands and the rural parts of Scotland?

**The Deputy Presiding Officer:** I can give Stewart Stevenson an extra minute or two to his seven minutes, to make up for the interventions.

**Stewart Stevenson:** That would be helpful, Presiding Officer, although I might need about an hour to deal with the scope of that intervention. I note that the Irish Government has this very day committed itself to delivering 30 megabit broadband to every location in Ireland, so perhaps we have a little bit to travel. I would welcome 2G, 3G, 4G or any G at home; I currently have none. It is very important.

I will return to the subject of the bill—I am sure that you would wish me to do that, Presiding Officer—and electronic signatures. Electronic signatures are useful in a variety of ways, as they enable people to sign a document and if anything in the document is changed—even if a dot or comma is missing or a single letter is changed—the signature becomes invalid. That kind of

technological approach will give us certainty in the future.

Lawyers are quite reasonably conservative—with a small “c”—about adopting technology. It is very straightforward to describe public-key cryptography, with the appellation of Rivest, Shamir and Adleman—the three American mathematicians who developed the system that we generally use today. In fact, it was developed by Government Communications Headquarters some years earlier but kept secret. It is a system of cryptography that can be described on a single page, but it takes a lifetime of study to understand. It involves the multiplication of two very large prime numbers together and then a matrix formation, so that we can have one key for locking—for signing—and a different, secret key for unlocking. Keys do not have to be shared with anyone. That is the essence of a secure system.

The system is not new. Mary, Queen of Scots used the system; she had a little casket with which she corresponded with her lovers. After putting a message in, she used a key to lock the lock and then sent the casket to her lover. He locked another lock with his private key and sent the casket back to her. She then unlocked her lock and sent the casket back to him. He unlocked her lock and at last he could access the message. The key was never shared with anyone. That is exactly how electronic signatures work, except that instead of physical keys that the owners keep secret we use electronic keys.

As a mathematician, I find prime numbers particularly interesting. They come up time and again. Some of this technology has been described in “The Simpsons”. Most of the team that writes “The Simpsons” are mathematicians, which might surprise members. Eighteen years ago, Homer Simpson referred to Belphegor’s prime. Belphegor is one of the seven princes of hell in John Milton’s “Paradise Lost” and was charged with helping people to make ingenious inventions and discoveries. Belphegor’s prime number is 31 digits long: it is 1 followed by 13 zeroes, followed by 666—which is why it is Belphegor’s prime—followed by 13 zeroes, followed by 1. Of course, it is also symmetric: it is the same read either way around. Prime numbers are exciting and interesting, as well as being useful for electronic signatures.

There is an opportunity for Scotland beyond what we are doing today, such as encouraging Registers of Scotland to develop a secure repository based on such technology, with contracts held there during their development and people able to access them securely to sign, annotate or amend. That gives us security against the failure of companies, so that contracts do not get lost over the years to come; it gives us security

of control and access, with everyone working off the same document; and it could give us significant commercial advantage.

Scots law has been around for a long time. It has stood the test of time. The Scottish Law Commission has usefully helped us to make progress and to bring us up to the mark of other jurisdictions. The debates and the discussions, as well as the information from witnesses that we have had in the committee, show us that we can do more. I hope that we take the opportunity to do that and that we pick up the challenge of secure signatures and encryption because, in mathematical terms—members can look this up—this is an NP, or non-deterministic polynomial time, problem. No one knows how to solve it, no one has yet broken such a key and no one shows any sign of doing so.

16:26

**Richard Baker (North East Scotland) (Lab):**

The debate has been interesting—perhaps much more interesting than many of us had expected when we came into the chamber. It is impossible to follow or to compete with Stewart Stevenson’s tales of transatlantic adventures, da Vinci code-style mathematical problems and—this was an interesting addition to the debate—“The Simpsons”. We always enjoy Mr Stevenson’s ability to spice up a debate of this nature.

It has been a pleasure to be part of the Delegated Powers and Law Reform Committee as, through its first considerations under its new responsibilities, it has considered the bill. The bill has proved to be a good candidate to initiate that new role because, as we have heard, there has been a great deal of consensus around the legislation and, although it is narrow in its compass, it will have a beneficial effect for legal practice.

As others, including the minister and the convener, have done, I reflect on the fact that dealing with bills introduced by the Scottish Law Commission will be beneficial generally to legislative reform in the Parliament. For too long, bills that had been the subject of considerable consultation and a great deal of work by the commission were not taken forward and were left to gather dust. The commission was left reliant on members coming forward to take up the bills individually, as my colleague Bill Butler did successfully in the previous session with the Damages (Scotland) Act 2011, which I am sure that the minister remembers.

Unfortunately, that was a relatively isolated example. Too many bills on important issues, which could have been equally as beneficial as the one that we are considering, were not progressed,

so it is good that with our committee's parliamentary consideration, we can look forward to more progress with such legislation.

I join others in congratulating the convener and the committee clerks and advisers on their stewardship of the process. I have perhaps not found as many moments of philosophy and poetry in the committee's deliberations as Mike MacKenzie did. I congratulate him on doing so. He clearly sees debate over the definition of quantities of corned beef in a different light from me. However, it is important to recognise the committee's good work, so it is right to say that this is an opportunity to reflect on that. In this process, the committee's work will be beneficial not just to Parliament but to the quality of law.

As others have said, the evidence that we took was almost unanimous in its support for the bill's proposals. During our deliberations, I asked witnesses about the potential for fraud, to which members have referred, and the Faculty of Advocates expressed concerns, particularly in its oral evidence. All other witnesses were clear that they did not see the legislation opening up greater potential for fraud in transactions.

As we heard from witnesses, if individuals are determined to commit an act of fraud in such transactions, they will find a way of doing so, regardless of whether the bill is passed. We have not heard evidence of a higher number of examples of fraud or error in England since execution in counterpart and the electronic delivery of documents were allowed there. The issue was best summed up by those who said that it will neither reduce nor increase the risk of fraud if we pass the bill.

The other issue that I pursued with witnesses when we took evidence on the bill was the use of pre-signed signature pages, in relation to which specific concerns were raised about the potential for fraud. Witnesses raised concerns not about the legislation itself but about the concept of the use of pre-signed signature pages. As the policy memorandum makes clear, the bill does not change the existing position on that, but nor does it prevent a pre-signed signature page from being attached to a different document, provided that it can be shown that the party concerned clearly authorised or mandated that in advance, or subsequently ratified what had been done, with full knowledge of the content of the new document.

Witnesses expressed some unease about the use of pre-signed signature pages in general. When I asked Dr Ross Anderson of the University of Glasgow about this issue, he said:

"As a solicitor, I would never use them. ... It seems to me that the authorisation that has been given by the client in that situation is essentially a power of attorney to the

solicitor to sign the document ... I find the use of pre-signed signature pages odd."

However, he also acknowledged that the bill might be taking the approach that it is

"simply to reflect some of the practices that are going on in England and ... to be facilitative for cases that may arise."—*[Official Report, Delegated Powers and Law Reform Committee, 7 October 2014; c 9-10.]*

The committee has reached the right conclusion on this issue, given that the legislation is intended to aid flexibility for legal practice in Scotland. We concluded that, although there might be misgivings about the use of pre-signed signature pages, which we recognise and mention in our report, there might also be circumstances in which their use is justified.

It would be wrong to overestimate the economic impact of the legislation for our legal services industry, but I think that it is beneficial, even if it is narrow in its effect. It is right that we heed the advice of the Law Society that the existing practice of signing contracts under Scots law is in need of updating. The society informs us that parties to a contract are switching to English contract law at a later stage because it is more convenient for the execution of contracts. If by passing the bill we can ensure that contracts can in future be concluded under Scots law, clearly that would be beneficial for our important legal services industry, and that is why it is right to support the bill today.

16:33

**John Mason (Glasgow Shettleston) (SNP):** As members will notice, I was not a member of the Delegated Powers and Law Reform Committee, and I think that I am one of the few back benchers speaking today who has not been very involved in this subject. However, I spent some time this morning reading about it.

It had been suggested that it would be useful to have somebody from the Finance Committee speaking on this subject, but I do not think that there are a huge number of financial issues in the bill. It struck me that we could have had somebody from the Education and Culture Committee, the Public Petitions Committee, the Justice Committee or the Health and Sport Committee—or one of the various other committees—speaking on the subject.

However, it seems clear to me that the process of signing documents has become somewhat outdated, so I very much welcome this move to improve the system for executing and delivering documents. I have often been part of one of those round-robin processes in which one hard copy gets posted to somebody for signature, who eventually gets it signed, possibly with a witness, and returns it to the firm of solicitors, which then

sends it out to the second person for signature—and so the process goes on. Clearly, all that takes a considerable amount of time. We all expect things to happen a little bit faster these days.

On that point, I make the general point that there are other areas of legal process that could do with a bit of modernisation. I very much welcome the fact that a relative outsider is becoming the Cabinet Secretary for Justice. Perhaps he will come forward with more proposals about how to update and improve the legal process. Other professions and trades have to meet very tight deadlines nowadays, such as auditors in my profession who have to complete a company audit within a small number of days. It seems to me that sometimes there is not a strong enough emphasis on deadlines that could be in place for court cases and other legal processes. The bill is clearly a step in the right direction in that area.

There are two arguments that most convince me of the need for legislation, having looked at the committee's report. One is that Scots law could be losing out to other jurisdictions and the other concerns the potential cost savings, and time savings, that could result from the updated procedures.

On the second of those points, I suspect that we must accept that the potential cost savings are estimates, and time will tell whether they have been over or underoptimistic. The Faculty of Advocates certainly seemed to take that view, as quoted in paragraph 73 of the committee report:

"Most of the contracts that are made under Scots law are smaller-scale contracts, which are made not in Glasgow, Edinburgh or Aberdeen but in small towns around Scotland. In such cases, we suspect that the saving of cost and the convenience that are envisaged as a result of the electronic execution and exchange of counterparts, instead of simply having people come into the office to do all that, will be limited."—[*Official Report, Delegated Powers and Law Reform Committee*, 30 September 2014; c 22.]

**Mike MacKenzie:** Does John Mason feel that the new legislation might help to meet our climate change targets? Mr Stevenson's worldwide journeys merely to sign contracts may not be necessary in future.

**John Mason:** If it cuts down air travel, that is very much to be welcomed. Clearly, travelling anywhere takes time, even if it is locally and by car. However, I am a little bit doubtful about one of the suggestions that I noted in relation to the bill, that less paper might be used, which I accept would also help the environment. Throughout my working life, I have heard many suggestions that less paper would be used in offices. Sadly, that has not tended to be the case. My suspicion is that, if there are six people signing a document,

we will still end up with six copies, if not more, all signed by different people.

The other argument that convinces me that the bill is important is the suggestion that Scots law could be losing out, although I accept that parties to some contracts will always prefer to use the law of a larger jurisdiction, such as England or the United States. I noted the evidence given by Tods Murray, which is quoted in paragraphs 46 and 47 of the committee report, and which I thought was quite convincing. It states:

"It has been suggested that the lack of a law on counterparts can cause damage to the reputation of Scots law internationally. Tods Murray's written submission suggested that—

'The existing Scots law, particularly the lack of counterpart execution as a valid form of execution, can cause problems in terms of transaction logistics and requirements as well as giving a poor impression of Scots law and Scotland generally as a place in which to do business.'"

That latter statement is what really struck me. Although contracts may account for only a small part of what is happening in Scotland, if there is the impression that Scottish business as a whole is not up to date, not efficient and not doing things in the best possible way, I would be extremely concerned about that, quite apart from the whole legal process.

As a non-lawyer, I have to ask where Scotland is positioning herself in the global market. The legal system is not just another product such as whisky or cheese. It is much more than a product, but it is a product nonetheless. If Scotland is to compete on quality with the best food and drink, top-of-the-range engineering and one of the cleanest environments in the world, similarly we want one of the best legal systems in the world. From that perspective, I do not see today's debate as being of narrow interest only to the legal profession. It has a much wider economic impact. If this Parliament cannot fight the corner of Scots law, I do not know who can.

I note the committee's study of the potential for fraud and error in paragraphs 106 to 129. I was going to read some of that more extensively, but I will not do that.

**The Deputy Presiding Officer:** Please draw your remarks to a conclusion.

**John Mason:** I am happy to do so.

Paragraph 110 of the report points out that fraud and error can "always occur". I experienced that myself some years ago, when a rogue photocopier salesman forged my signature on an agreement to buy a new copier.

As noted in paragraph 111 of the report, the minister acknowledged that there is an existing risk, and that raises the question of how we deal



with risk. I suspect that there are parts of the legal profession that want no risk whatsoever, but I do not believe that that is what we are aiming for. As in other areas of life, we want to manage and minimise risk, but we must weigh up the practicalities and costs of reducing risk beyond a certain level.

**The Deputy Presiding Officer:** I am afraid that you really must close now.

**John Mason:** Therefore, I will close.

**The Deputy Presiding Officer:** We come to the closing speeches.

16:40

**John Scott (Ayr) (Con):** I thank members for the quality of this afternoon's debate. It is clear that the Legal Writings (Counterparts and Delivery) (Scotland) Bill has achieved cross-party support, and I reaffirm that the Scottish Conservatives are supportive of its general principles at stage 1.

There are, however, three points that I wish to address. The first point is the potential benefits of the bill to the business community, legal practitioners and those individuals who seek to use Scots law for transactional purposes. As we heard in evidence from the minister, Fergus Ewing, and from Margaret Mitchell, there is uncertainty in Scots law at present as to whether execution in counterpart is permissible. That uncertainty has acted as a deterrent for businesses and the legal profession.

In addition, parties are often unable to undertake the time-consuming, impractical and costly signing ceremonies that are currently required. Further, it is unclear whether a traditional paper document can be delivered electronically. As a result, in many cases the relevant parties have opted instead to use English or New York law to remove any doubt, which has been to the detriment of Scots law.

The proposed legislation will help to ensure that those who wish to operate under Scots law can do so, by removing many obstacles and constraints. Although we must manage expectations regarding the potential increase in transactions under Scots law that may arise from the bill, the evidence suggests that measures to put execution in counterpart on a statutory footing will give businesses and ordinary individuals the confidence to stop exporting contracts to English law and elsewhere that would otherwise be governed by Scots law. That is an extremely positive and welcome development.

I turn to the risk of fraud, which has been raised by other members and by the Faculty of Advocates. The faculty commented that execution

in counterpart could lead to different parties signing different versions of a document, either knowingly or unknowingly. Furthermore, the faculty expressed concern that parties will be able to exchange signature pages, as opposed to counterparts in their entirety.

Expanding on those concerns, Robert Howie QC explained:

"If one permits execution by the exchange of the back pages of a contract, each signed by a particular party, plus the front page, it is all too easy for the rogue or fraudster to amend the critical stuff in the middle of the sandwich."—*[Official Report, Delegated Powers and Law Reform Committee, 30 September 2014; c 22.]*

Further, the faculty touched on the possibility that such a scenario could lead to an increase in instances of parties coming to court in order to resolve disagreements over the content of the documents. For large transactions, where millions of pounds are at stake, the potential for deception should not be ignored.

However, on balance, and based on the evidence that we heard over a number of sessions, it seemed to me—and to committee colleagues—that the potential for fraud and error is no greater than that which already exists under the current system in Scotland and in jurisdictions where execution by counterpart is commonplace, such as England and Wales, where incidents of fraud are relatively few. Nevertheless, it is worth while bearing in mind the faculty's concerns as the bill moves through its various stages in Parliament.

The bill does not include the SLC's recommendation that a central electronic repository should be established. However, that idea was broadly supported by witnesses in their evidence to the Delegated Powers and Law Reform Committee, and we felt that the concept should be explored further—always providing that adequate safeguards could be put in place and that the technology used would be suitable, adaptable and enduring.

I therefore welcomed the then Minister for Energy, Enterprise and Tourism's update earlier this month, when he indicated that the keeper of the registers of Scotland has expressed interest in exploring the creation of an electronic repository for the execution and preservation of documents. I understand that preliminary discussions between Registers of Scotland and the Scottish Government will be set in motion early next year. We will await the outcome of the discussions with keen interest. We are particularly interested in knowing whether new legislation will be required to bring the initiative into effect, given that it might allow for the execution of documents as well as their preservation.

I reiterate that the bill is helpful and will benefit the business community in Scotland, as well as the legal profession and individuals who seek to carry out transactions under Scots law. That is very much to be welcomed.

I thank everyone who gave evidence to the committee, particularly the people who appeared in person and the Scottish Law Commission. I also thank the committee clerks. I look forward to the bill becoming law.

I commend Mike MacKenzie, who managed to get through about four minutes of his speech without referring to the bill at all. Stewart Stevenson should beware; his role as the Parliament's best filibuster might be under threat.

16:46

**Jenny Marra:** This has been an interesting and, at times, entertaining debate. I thank members for that.

When I saw that we were to discuss the bill this week, I thought that the debate might not be highly popular or populated, but then I remembered the importance of the issue. I have been lobbied on electronic signatures by constituents who think that the proposed amendment to Scots law is central to their businesses and will make it easier and less costly for them to conclude contracts. They think that it will make it easier for them to get more clients and more business, thereby contributing to Scotland's economy. My having been lobbied on the issue during my short time in the Parliament shows that the bill is important for our business community and our economy.

Only a couple of weeks ago I spoke to a lawyer who told me that despite having struck a deal three weeks earlier he was still waiting for the contract to be delivered from one solicitor's office to the next and so on, to ensure that all parties to the contract had signed up appropriately before the deal could be set in motion. In our fast-moving technological world, such a process seems to be very slow, so I congratulate the minister on introducing the bill so that processes can be neatly and more quickly concluded.

Members mentioned climate change. I was glad to hear that people might cut down on flights, and I am sure that Patrick Harvie and the new minister Aileen McLeod will be glad of the contribution to the climate change targets. However, I am not convinced that there will be less paper in legal offices around the country. Anyone who has been in front of a lawyer's desk will know how much paperwork lawyers seem to have in their offices. There is a challenge to the legal community in that regard. The Parliament is allowing it to go electronic, and so it should do.

I was half hoping for a little lecture on Roman law from the minister this afternoon, given how learned he is in the matter. When I read the bill and the briefings on it, I was reminded of my interest in the legal concept of delivery. The Scots law concept of delivery, whereby something is not simply handed over but delivered with the intention of making things happen, has its origins in Roman law. Therefore, it is interesting that in 2014 we are debating whether email or facsimile, which we do not even use any more, constitutes delivery according to that ancient legal concept. There was still ambiguity in our law about delivery until the bill came forward.

**Stewart Stevenson:** To illustrate how cautious professions can be, in 1881 the Bank of Scotland installed its first telephone, five years after the invention was first demonstrated, but the bank's board took the decision to do so on condition that the telephone not be used to conduct business. I suspect that some of that attitude is still around in our professions today.

**Jenny Marra:** Indeed—that is very true. The attitude is that, if something is to be binding, it must definitely be on paper. The minister will probably be able to explain the ancient concept of delivery far better than I can.

This has been a useful debate on the bill, which covers the important aspect of counterpart signing for contracts and, in a very modern and up-to-date sense, delivery. Tackling the barriers of inefficiency for business means that businesses can enter into contracts and work better together to improve the economic landscape of Scotland.

I am very pleased that the committee is supportive of the bill's general principles. I congratulate the committee, the clerks and the convener on taking the bill through stage 1. I wonder whether the minister can indicate in his closing remarks whether the Government is likely to lodge amendments at stage 2 to address the questions that were raised during evidence to the committee at stage 1.

The bill is a very good piece of legislation that will help business. I think that we have all outlined some practical examples in that regard. I am very pleased that there is consensus on the bill across the chamber.

**The Deputy Presiding Officer:** I call on Fergus Ewing to wind up the debate. Minister, you have until 5 o'clock.

16:53

**Fergus Ewing:** In 15 years in the Parliament, I cannot recall there having been a debate in which there has been such a marked absence of any significant controversy. However, that is perhaps a

reflection of the fact that the Scottish Law Commission, headed up by Paul Cullen—Lord Pentland—and his staff, did an excellent job prior to the legislation being submitted to the Parliament.

It is also a tribute to the work of the clerks of the Delegated Powers and Law Reform Committee, the Parliament as a whole and the members of the committee, ably convened by Nigel Don, who earlier led the debate for the committee. That solid hard work and application has produced at stage 1 a piece of legislation that appears to lack significant criticisms so far as the committee's conclusions are concerned.

I should accept Jenny Marra's invitation to comment on some of the key questions. She is quite right on that, although she is quite wrong that I am an authority on Roman law. My recollection is that, despite the excellent tuition of the learned professors and lecturers at the University of Glasgow, I only barely scraped a pass at that.

**Members:** Oh!

**Fergus Ewing:** It has taken several decades to confess that, but better late than never.

Many members asked whether I think that the suggested electronic document repository would be helpful—John Scott alluded to that—and I believe that the idea is worth exploring. Following my appearance before the Delegated Powers and Law Reform Committee at stage 1, I wrote to the keeper of the registers of Scotland seeking a general update and a firmer timescale by which he would be in a position to have preliminary discussions. They should take place early next year. Of course, we have the books of council and session, as members will be aware, in which documents can be registered for preservation and execution. That is a very useful facility that is available to Scots lawyers.

Views on electronic signatures were mooted during the debate, not least by Stewart Stevenson. The use of such signatures is still in its early stages, and market conditions will effectively dictate whether more use is made of them in the future. The bill will not restrict growth in that area.

What are the benefits of the bill? It is difficult to be clear about whether the benefits will be significant, but most members are confident that it is a valuable piece of legislation. Jenny Marra said that she had been lobbied on it, and Margaret Mitchell and John Mason gave some examples of potential benefits. There will be circumstances in which it will be possible for Scots law to be used in the future, as a result of the bill, in which it cannot be used presently.

The bill may also cut down the costs of travelling to meetings and the time that busy people have to

spend travelling. Jenny Marra referred to Dickson Minto and the evidence from Colin MacNeil, and John Mason referred to the evidence from Tods Murray. It is fairly likely that there will be financial benefits and time benefits from the bill.

**Jenny Marra:** I was reflecting on the matter before the debate. Does the minister believe that there might be an increase in the amount of business that is done in Scotland as a result of the bill, or does he believe that the bill will simply make the existing business a bit easier?

**Fergus Ewing:** I think that it will be a bit of both. I am happy to agree entirely with everything that Jenny Marra says—I do not think that I have ever uttered that sentence before in the chamber.

The serious issue that John Scott quizzed me on in the committee was the evidence from the Faculty of Advocates signifying that the bill may lead to a greater risk of fraud or error—I think that it said that error was more likely. We spent a considerable amount of time on that, and I spent a considerable amount of time with Scottish Government officials who provided me with some excellent briefing material on the subject. We concluded that the bill will not change the substantive law.

Fraud exists because there are criminals in the world. The problem is not unique to execution in counterpart, which has been used for decades in England with apparently no ill effect. Clients also place their trust in solicitors, which tends to minimise the possibility of such things happening. Professor Rennie also made the point that, since 1970, documents have been signed on the last page only.

For those reasons, after having looked carefully at the evidence from the Faculty of Advocates, I was persuaded that there is no increased risk. However, to pursue a belt-and-braces approach—which is always sensible for a minister—I am writing to the Faculty of Advocates to ask whether, in the light of reading the *Official Report* of the debate, it has any further comments to add. I will copy my letter to the Lord Advocate and the president of the Law Society of Scotland, to boot.

Reference has been made to some of the lighter comments in the debate. In the short time that is available, I will turn to those. Mr Stevenson gave us not so much a speech as a travelogue that took us from Delaware to Norway and around the globe sustained by an improbable diet of overstrength corned beef. He also ensured that Mary, Queen of Scots made an unexpected entrée into the debate—something of sub-tangential relevance equalled only by his reference to Homer Simpson.

**John Scott:** Does the minister accept that, in Mr Stevenson's speech, the one obvious and

current element that was missing was the contribution of Turing to cryptography?

**Fergus Ewing:** I am sure that he will put that right in due course. Mr Stevenson is the human equivalent of Google or Wikipedia, the difference being that, while we ask Google or Wikipedia for information, Mr Stevenson just provides it whether we want it or not. [*Laughter.*]

**Neil Findlay (Lothian) (Lab):** The only difference is that, occasionally, Wikipedia is correct.

**Members:** Ooh!

**Fergus Ewing:** I am not sure that everyone would agree with that. Would Mr Murphy? The debate is fairly livening up.

Mr MacKenzie regaled us with a terrific speech that he admitted was wholly irrelevant. He stood up for the Delegated Powers and Law Reform Committee, the predecessor of which was the Subordinate Legislation Committee. I volunteered for that committee in 1999 and so boring were my contributions that, to get away from me, one of the committee members actually resigned from the Parliament and the clerk left for employment elsewhere.

**The Presiding Officer (Tricia Marwick):** You have 20 seconds left, minister.

**Fergus Ewing:** It was Donald Dewar who said, prior to devolution, that Scotland was the only country in the world that had its own legal system but lacked a legislature. We are indebted to the Scottish Parliament for the work that everyone has done to reform our law, which—prior to the Parliament's reconvening—was something that we could not do for ourselves.

## Decision Time

17:00

**The Presiding Officer (Tricia Marwick):** There is only one question to be put as a result of today's business.

The question is, that motion S4M-11664, in the name of Fergus Ewing, on the Legal Writings (Counterparts and Delivery) (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Legal Writings (Counterparts and Delivery) (Scotland) Bill.

## Ukrainian Famine (Anniversary)

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

The final item of business is a members' business debate on motion S4M-11537, in the name of Marco Biagi, on marking the anniversary of the Ukrainian famine. The debate will be concluded without any question being put.

I invite Kenneth Gibson to open the debate on behalf of Marco Biagi.

#### *Motion debated,*

That the Parliament notes the day of remembrance of the Holodomor, the Ukrainian famine of 1932-33, on 22 November 2014; further notes that conservative estimates place the number of mortalities in the millions; understands that many historians consider this an entirely avoidable tragedy and a deliberate act of genocide committed by the Stalin regime, and commends the work of campaigners in raising awareness of the Holodomor.

17:01

**Kenneth Gibson (Cunninghame North) (SNP):** Thank you, Presiding Officer.

I am grateful to my colleague, Marco Biagi, who is sitting on my right, for securing time for this valuable debate, and I offer him my warmest congratulations on his recent promotion.

It is a solemn privilege to speak in this evening's debate to mark international Holodomor memorial day, which is a subject that has fascinated and appalled me since I read Robert Conquest's seminal work "The Harvest of Sorrow" back in 1986.

The term "Holodomor" literally means extermination by hunger. It refers to the deliberate actions of Joseph Stalin's soviet regime to crush Ukrainian nationalism and the Ukrainian peasantry, which was perceived to be potentially hostile to Soviet power. The Holodomor ranks among the worst acts of genocide in human history. The death toll certainly exceeded the death toll of the Pol Pot-imposed genocide in 1970s Cambodia, and it potentially exceeded that of the Holocaust. Despite that, recognition, remembrance and understanding of what exactly happened are not as robust as they should be. It is for that reason that international Holodomor memorial day is so crucial in exposing one of the most callous and destructive acts of the 20th century.

The Holodomor was part of Stalin's revolution from above. From 1932 to 1933, his regime inflicted a terror famine on the collectivised peasants of the Ukraine, the Kuban and other areas of high Ukrainian ethnicity. Grain quotas were set in rural Ukraine that the regime knew would be impossible to achieve. The land-owning peasants who were known as kulaks or fists were

considered to be wealthy and exploitative but were often neither, although they were independent of mind, which meant that they were reluctant to collectivise and were targeted.

One of the aims of collectivisation in the Ukraine, as stated in *Pravda* was:

"The destruction of Ukrainian nationalism's social base—the individual land holding."

Cowing the peasants was a Stalinist objective. On 17 January 1933, Stalin said in *Pravda*:

"Today's anti-Soviet elements are ... people who are 'quiet', 'sweet' and almost 'holy'."

He added that the kulak had been

"defeated but not completely exterminated".

Despite the disastrous effects on productivity of the collectivisation that was introduced in 1929, Stalin raised Ukraine's grain procurement quotas by 44 per cent, which meant that there was not enough food to feed the peasants, as the law required that no grain from a collective farm could be given to the members of the farm until the regime's quota had been met. The quota often exceeded the total harvest, which meant that families were left with nothing to eat for the coming year.

Resistance resulted in execution or deportation to Siberia, and all available food was seized to sustain the well-fed squads of police and Communist party apparatchiks—many of whom had been sent from distant Russian cities—who oversaw and enforced such pitiless destruction of lives and communities.

The impact was catastrophic, as it was designed to be, and offers of food aid from overseas and other states within the Union of Soviet Socialist Republics were refused by the regime. Within a year, between a fifth and a quarter of Ukraine's 25 million people lay dead or dying and the remainder were so debilitated that they were unable to work or even bury their loved ones.

While the backbone of the country—the nation's peasants—were dying en masse, the Stalinist regime also targeted the cultural elite, the clergy and anyone else who was able to articulate or represent a sense of Ukraine as a distinct nation.

By the end of 1930, prior to the famine, 80 per cent of the country's village churches had been closed and desecrated, with thousands of clergy shot or deported to gulags. Of Ukraine's 240 authors, 200 disappeared. Of 84 leaders in linguistics, 62 were liquidated. The remainder of both groups were, understandably, cowed into silence and obedience. The Ukrainian theatre and Academy of Sciences also suffered and the local Communist party was purged of "nationalist deviation". It is this evident and documented

desire to wipe out Ukrainian national identity that so obviously points to an act of genocide and not simply an attack on the wider peasantry of the USSR.

Due to the wall of secrecy imposed by the former Soviet Union, it is difficult to know how many perished during the Holodomor, but recent research suggests that 3 million to 7.5 million may have died directly as a result of the Soviet-imposed famine in Ukraine. As Stalin himself is reported to have said, perhaps betraying his real view on mass murder,

“One death is a tragedy; one million is a statistic.”

It is true that, when discussing a crime of this magnitude, it is possible to lose sight of individual tragedies, and I would like to take the opportunity to attempt to convey, in a small way, the intense suffering experienced in Ukraine during this time.

As well as physical effects, starvation produced psychological symptoms, and murders, suicides and denunciations against friends and families were widespread. For example, in the village of Bilka, one man, Denys Ischenko, killed his sister, his brother-in-law and their 16-year-old daughter in order to obtain 30 pounds of flour. The same man also murdered his friend when he saw him carrying four loaves of bread that he had managed to obtain from the city.

Others recounted stories of those who had gone insane, killing their own children and eating them. One mother who was arrested for such an act was described by those who witnessed her arrest as having a human face but the wild and staring eyes of a wolf. She was shot by the regime.

In his unpublished memoirs, the esteemed Russian poet and novelist Boris Pasternak, of “Dr Zhivago” fame, wrote about his experiences of travelling to Ukrainian collective farms in the early 1930s:

“What I saw could not be expressed in words. There was such inhuman, unimaginable misery, such a terrible disaster, that it began to seem almost abstract, it would not fit within the bounds of consciousness. I fell ill. For an entire year I could not write.”

The Holodomor was a man-made tragedy. It was a deliberate crime against humanity and it was entirely preventable. Not only were offers of international aid refused and impossibly high grain quotas imposed, but vital food supplies were allowed to rot in warehouses under armed guard for lack of transport to take them to the cities. The consequences for Ukrainian society, which bore much of the fighting and suffered horrific destruction following the Nazi invasion of 1941 and its aftermath, can only be imagined.

Although denial of the Holodomor by the Soviet regime, while it existed, was to be expected, there

is no excuse for that now. To most minds, the documented evidence of Stalin’s loathing of Ukrainian nationalism, his views on the potential threat that it posed to his regime and his murderous attacks on Ukrainian culture and identity prove that the Holodomor was an act of genocide. I am disappointed that more nations and international organisations are not willing to recognise that fact, and I welcome the continued efforts by the Association of Ukrainians in Great Britain and others to ensure that this crime is fully recognised and remembered.

A growing number of states—currently 25, including Canada, Australia, the United States of America and Poland—officially recognise the Holodomor as a deliberate act of genocide against the Ukrainian people. The European Parliament and the General Assembly of the United Nations have recognised the Ukrainian famine as a crime against humanity and a man-made tragedy, but both have stopped short of recognising it as an act of genocide. Despite a members’ debate in the House of Commons, the United Kingdom Government has also declined to do so.

As Robert Burns wrote in “Man was Made to Mourn”,

“Man’s inhumanity to Man  
Makes countless thousands mourn!”

Few nations have suffered over the past century in the way that Ukraine has. I hope that, in this Parliament, we recognise that fact and the Holodomor in remembrance of so many innocent men, women and children who died.

17:09

**Jamie McGrigor (Highlands and Islands (Con)):** I, too, congratulate Marco Biagi on his new job and on securing this important debate, and I thank Kenny Gibson for standing in for him so well.

The vast famine in Soviet Ukraine in 1932 and 1933, which is known as the Holodomor, is a very sensitive and sobering issue. This past Sunday, Ukraine remembered those who died during that dark chapter in Ukrainian history 81 years ago.

The event would probably have been hidden away in a dusty corner of the vast archives of the Soviet empire had it not been for Gareth Jones, a brave Welshman. He was a journalist and an adviser to David Lloyd George who travelled to the Ukraine when whispers of a horrendous famine started to emerge. He defied the authorities, which did not allow any journalists in the region, and ventured into what he described as

“once the richest farmland in Russia”,  
which had become a desert.

The sight that met him was indeed gruesome. Corpses were lying in the streets and people were so starved that they could not be recognised as human beings. The country was enmeshed in deep despair. He exposed that to the world and was consequently banned from returning by the Soviet Union, which branded him a liar. His life came to a brutal end when he was murdered in the far east a few years later. As the Ukrainian ambassador to the United Kingdom once described him, he is an “unsung hero of Ukraine”.

Famine was not rare in the USSR during the 1920s and 1930s as a result of policies that were inherently doomed to fail with disastrous consequences. The Holodomor in particular was a tragedy, as the Soviet Government did not allow any western aid nor any policies that would have helped to relieve the situation. That was contrary to the previous approach that was adopted to famines in Russia. Unfortunately, many people back then and today have seen that approach as a way to physically weaken the concept of Ukrainian nationality.

Last year, the Euromaidan protests started and the Ukrainian nation rose to show its will for freedom and the desire to shake off Russia’s dominance, and to prove its ability to chart its own course. Thousands of people have died in Ukraine this year, and its borders have been violated as Crimea was illegally annexed. Eastern regions were almost destroyed and lost their remaining economic viability, and people of the Donbas are left without water, electricity and food.

That is not a new Holodomor and is not equal to it, but it is paramount that we continue to act with a sense of urgency. A message of unanimity against the Russian actions and unity with the Ukrainians was sent at the G20 summit; that summit is now over but, unfortunately, the war in Ukraine is not.

Between 3 million and 7 million Ukrainians died during the famine. Many were Ukrainian country people—women and children. They were told to hand over their land in favour of collective farms as part of Stalin’s communist totalitarian utopia, but they refused to comply. The people were asked to abandon their church in favour of atheism and they resisted. Hard-working Ukrainian farmers wanted a chance at prosperity and were told that they had to give up everything that they had. They resisted, but they faced a horrible destiny: a long, drawn-out death by starvation.

We should also not forget Ukraine’s kurkuls—known as kulaks in the other parts of the Soviet Union—who were the relatively affluent farmer class whom Stalin declared he wanted to eliminate. The overwhelming majority of them were executed, sent to gulag camps or imprisoned. Many historians believe that removal of those experienced land managers made the

famine even worse. There were centralised policies—for example, people were told from the centre to make hay when it was raining. Things were as bad as that.

We should never allow the world to forget the atrocities that were committed by the communist regime of the Soviet Union, and they should never be allowed to happen again.

17:14

**The Cabinet Secretary for Culture, Europe and External Affairs (Fiona Hyslop):** I thank Marco Biagi for lodging the motion and congratulate him on his recent appointment. I look forward to working with him in the Scottish Government. I also thank Kenneth Gibson for leading the debate and both members for securing this evening’s debate. I am in no doubt that by securing the debate they have promoted greater understanding of the Holodomor and the magnitude of its impact in Ukraine and on the Ukrainian people.

I want to reflect on Kenneth Gibson’s words and how we all have a duty to face man’s capacity to be inhuman on such a horrendous scale. Robert Burns captured that capacity when he wrote

“Man’s inhumanity to man  
Makes countless thousands mourn!”

We also have an international obligation to recognise the horror that that brings with it.

The Holodomor was a horrific man-made tragedy on an unimaginable scale. It serves as an important reminder of the inhumanity and cruelty that can exist in this world. The pain and suffering of the Ukrainian people must never be forgotten.

The famine, which took place between 1932 and 1933, was the culmination of events which began in 1929 when the Soviets imposed fatal deportation orders on Ukraine’s prospering farmers, as well as the deportation and execution of academic, religious and cultural leaders. The famine was directly caused by the policies of the Soviet Government. The authorities mercilessly seized grain from the Soviet Union’s agricultural regions in order to feed the country’s rapidly expanding urban workforce. Jamie McGrigor talked about Gareth Jones and contemporary observation in reflecting the sheer cruelty of what that meant.

At the height of the famine, 25,000 Ukrainians were dying every day. That the Soviets chose not to put an end to such horror when they had the ability to do so is inexplicable and a gross violation of human rights. It is estimated that between 3 million and 10 million people died. The majority of the deaths were in Ukraine.

For years, the tragedy was overlooked by the western world. It has also been inexplicably denied by others. However, the memory of this horrific event was kept alive by Ukrainians inside the country and their diaspora around the world. The efforts of those people, as well as many historians, have allowed the world to remember those who lost their lives and reflect on the lesson from history that the Holodomor provides for us.

I am proud that Parliament is debating this event here today. In doing so, we are raising awareness of a horrific and regrettable event in history that must not be forgotten. There is no doubt that the famine occurred and was brought about by Stalin and his Government's actions. It is completely unfathomable to me that a leader who was responsible for the people who were living under the Soviet regime could proceed with policies that would clearly have such devastating effects on the people of Ukraine.

The main goal of the famine was to break the resistance of the Ukrainian peasants and force them to collectivise. I do not think that any reasonable man or woman, with any shred of humanity, would say that the end justified the means. It is clear that the Soviet regime was deeply resentful of any form of Ukrainian nationalism. There are numerous examples of how Stalin's policies were disproportionately hostile towards Ukraine. The fact that, during the famine, Stalin closed the eastern border of Ukraine to prevent starving peasants from entering Russia in search of food is a clear illustration of that.

On the substance of one element of the motion, members will be aware that foreign affairs are, of course, a matter reserved to the United Kingdom Government. The UK Government's policy is that the recognition of genocides is a matter for judicial decision under the terms of the 1948 United Nations genocide convention. The Holodomor predates the establishment of the concept of genocide in international law, and the convention was not drafted to apply retrospectively.

That said, the events of the Holodomor are a tragic example of man's inhumanity and act as a reminder that Scotland's strong and enduring commitment to human rights cannot be taken for granted. That places a responsibility on us, as a nation, to ensure that other countries develop and maintain a similar commitment. The Scottish Government uses our international engagement as an opportunity to help to increase respect for and understanding of human rights worldwide.

I want to reflect on the contribution that the Ukrainian community has made to Scotland. I recently had the pleasure of visiting the Ukrainian community centre in Edinburgh where I learnt about the rich culture and traditions that the community brought with them to Scotland. The

community centre has a wonderful collection of materials that relate to the community's history in Scotland, and the Scottish Government is working closely with the centre so that those resources can be displayed to the public and used to promote wider awareness of the Ukrainian community's contribution to this nation.

I add my voice and the voice of the Scottish Government to those welcoming the Ukrainian community to our and their Parliament. Humanity knows no boundaries, national or otherwise, and we should be together in recognising our sense of history, just and unjust. There is no question in my mind but that the people of Ukraine were the victims of the most unspeakable offences, perpetrated by a vicious regime that had no hesitation in committing crimes against humanity, all for the sake of an ideology.

The debate is about remembering those who were subjected to such inhumanity and indignity through no fault of their own. The Holodomor is a tragedy of epic proportions. A ruthless dictatorship with a heartless ideology caused the deaths of many millions of innocent people.

Presiding Officer, I have been invited by the Association of Ukrainians in Great Britain to attend the event to remember the Holodomor this Saturday in Edinburgh. In attending on behalf of the Scottish Government, I will speak for the people of Scotland when I say that we must remember and we must never forget.

*Meeting closed at 17:20.*



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